

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

RCCRev..No. 174 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 15/2011 of THE RENT CONTROL
APPELLATE AUTHORITY, THRISSUR DATED 19.20.2015**

**AGAINST THE ORDER/JUDGMENT IN RCP 34/2004 of THE RENT CONTROL
COURT,CHAVAKKAD DATED 30-11-2010**

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

**GIRISH AGED 41 YEARS
S/O. ANANDAN, VAYAKATTIL MATHUKKATTIL HOUSE
THRITHALLUR DESOM, CHAVAKKAD TALUK, THRISSUR DISTRICT.**

**BY ADVS.SRI.E.VIJIN KARTHIK
SRI.SREEJITH S.NAIR**

RESPONDENT(S)/RESPONDENT/PETITIONER:

**SASIDHARAN, AGED 49 YEARS
S/O. VELUTHATTIL LEELAVATHY AMMA, NADUVILKARA DESOM
VATANAPILLY, THRISSUR - 680 614.**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
24-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

kkj

**K.SURENDRA MOHAN &
MARY JOSEPH, JJ.**

R.C.R. No.174 of 2015

Dated this the 24th day of July, 2015

O R D E R

Surendra Mohan, J.

The tenant is the revision petitioner. The landlord had filed RCP No.34 of 2004 before the Rent Control Court, Chavakkad seeking eviction of the tenant under Section 11 (3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short. According to the landlord, he was employed abroad. He has returned to his home land and wants to start an Offset Prining Press in the tenanted shop room. The tenant disputed the need that was alleged by the landlord. It was contended that, the need was only a ruse for eviction. According to the tenant even assuming the need to be genuine, the landlord is in possession of other vacant rooms, in which it is possible for him to start his business. The fact that he has not started his business in one of the

vacant rooms in his possession betrays the utter lack of bonafides on his part. Therefore, it was contended that the Rent Control Petition was only to be dismissed.

2. The Rent Control Court tried the petition on the above pleadings. The evidence on the side of the landlord consists of the oral testimony of PWs 1 and 2 as well as Exhibits A1 to A6 documents. On the side of the tenant, RWs 1 to 3 were examined as witnesses and Exhibits B1 to B3 documents were marked. Exhibit X1 has been marked as a third party Exhibit.

3. On a consideration of the evidence on record, the Rent Control Court found that the landlord had succeeded in establishing the ground under Section 11(3). The Rent Control Court also found that the tenant was not entitled to the benefit of the provisos to Section 11(3) of the Act. Accordingly eviction was ordered. Though the tenant challenged the order of the Rent Control Court before the Rent Control Appellate Authority, Thrissur in RCA No.15 of 2011, on a re-appreciation of the evidence, the Appellate Authority found that the order of the Rent Control Court

was fully justified. Accordingly the order of eviction was confirmed. The aggrieved tenant is the revision petitioner.

4. According to Sri.Vijin Karthik. E, the counsel for the petitioner, the tenant had earlier filed a suit O.S.No.509 of 2004 before the Munsiff's Court, Chavakkad seeking a Prohibitory Order against forcible eviction. In the said suit, a Commission had been taken out. The report of the Advocate Commissioner is Exhibit B2. The Commissioner has reported in Exhibit B2 that, two shop rooms adjacent to the tenanted shop rooms were remaining locked. Therefore, according to the learned Counsel, it was incumbent on the landlord to have established special reasons for not occupying the said rooms. No such special reasons have been put forward. Therefore, both the authorities below erred in granting the order of eviction. Apart from the above, according to the counsel, the respondent landlord had gone abroad a number of times though he has stated before the court that he had left his job abroad. This fact clearly indicated that the landlord was still working abroad. Therefore, it is contended that he

actually has no need to get vacant possession of the shop room. Apart from the above, according to the learned counsel, the tenant is a person who is depending for his livelihood on the income derived from the business conducted in the tenanted shop room. There are also no suitable rooms available in the locality for him to shift. Therefore, he should have been given the benefit of the second proviso to Section 11(3).

5. Heard. We have gone through the judgment of the Rent Control Appellate Authority as well as the order of the Rent Control Court. The petitioner has also made available to us copies of the documents relied upon by the authorities below. A perusal of Exhibit B2 report of the Advocate Commissioner shows that the inspection was conducted by the Advocate Commissioner at 6.00PM. He has only stated that two of the rooms were found locked. The inspection was not conducted in the presence of any representative of the landlord. Therefore, the explanation of the landlord was not available. As rightly concluded by the authorities below, for the mere reason that the Advocate

Commissioner had found two rooms to be locked, it does not follow that the said rooms were vacant. The explanation of the landlord in the Rent Control Petition was that, the said rooms were in the occupation of tenants. The landlord has also produced and marked Exhibits A4 and A5 rent deeds in respect of the said shop rooms. In order to attract the first proviso to Section 11(3), it is necessary that the landlord should own as well as possess another room. In the present case, though the landlord owns two other rooms, Exhibits A4 and A5 show that the said rooms are in occupation of tenants. Therefore, we confirm the findings of the authorities below that the first proviso to Section 11 (3) is not attracted in the present case.

6. With respect to the contention of the counsel for the petitioner that, the landlord had been going abroad a number of times even after the filing of the Rent Control Petition, we are not satisfied that any inference could be drawn on the basis of such trips that the landlord was actually working abroad. There is no reason why, the landlord should not go abroad if he choose to do so. It was

for the tenant to have taken steps to produce documents in support of his contention that the landlord was still employed abroad. Had he taken steps for production of the passport of the landlord, evidence regarding the purpose of his business could have been available. But the tenant had not taken any steps for such a production in the present case. Therefore, the said contention has been rightly rejected by the authorities below.

7. In respect of the second proviso to Section 11(3), the burden of proving both the ingredients thereunder is squarely on the tenant. Apart from the oral testimony of the tenant, absolutely no evidence has been produced to show that the income derived from the business carried on from the tenanted premises is his main source of income. His accounts or other documents relating to the business would have evidenced the above facts. The tenant also has not taken any steps to show that no other suitable rooms were available in the locality for him to shift. Therefore, he has rightly been denied the benefit of provisos to Section 11(3). The above being the position, we find no grounds to

interfere with the proceedings of the authorities below, in revision.

As a last submission, the counsel for the petitioner sought for the grant of some time to surrender vacant possession of the premises to the landlord. Having heard the counsel for the petitioner, we are satisfied that it is necessary to grant time to the petitioner to vacate, up to 31.12.2015.

In the result,

1. This Rent Control Revision is dismissed.
2. The tenant is granted time up to 31.12.2015 to surrender vacant possession of the premises to the landlord on condition that he swears to an affidavit before the Rent Control Court, Chavakkad in RCP No.34 of 2004, within a period of two weeks of the date of receipt of a copy of this judgment, unconditionally undertaking to surrender vacant possession of the premises to the landlord on or before 31.12.2015.

3. It shall be a further condition for the grant of time as stipulated above that, the petitioner pays off the arrears of rent, if any remaining unpaid, in respect of the tenanted shop rooms and continues to pay the rent in respect thereof, without any delay or default until vacant possession is surrendered.

Sd/-
**K.SURENDRA MOHAN
JUDGE**

Sd/-
**MARY JOSEPH
JUDGE**