

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

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

**MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937**

**RCCRev..No. 176 of 2015 ()**  
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**AGAINST THE JUDGMENT IN RCA 30/2013 of THE RENT CONTROL APPELLATE  
AUTHORITY, MANJERI DATED 09-04-2015**

**AGAINST THE ORDER IN RCP 7/2011 of THE RENT CONTROL COURT, MANJERI  
DATED 31-07-2013**

**REVISION PETITIONER(S):**  
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**MOHAMMED IQBAL  
S/O ABDU RAHIMAN MASTER  
KODENGODAN HOUSE, ANAKKAYAM AMSOM,  
PAPPINIPARA DESOM, ERNAD TALUK  
MALAPPURAM DISTRICT**

**BY ADVS.SRI.P.VENUGOPAL (1086/92)  
SMT.T.J.MARIA GORETTI**

**RESPONDENT(S):**  
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**K.P.SHOUKATHALI  
S/O KONDOTTYPARAMBAN KUTTAYI,  
MAMPAD AMSOM, NILAMBUR TALUK  
MALAPPURAM DISTRICT 679 329**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON  
20-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**kkj**

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

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**R.C.R. No.176 of 2015**  
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**Dated this the 20<sup>th</sup> day of July, 2015**

**O R D E R**

Surendra Mohan, J.

The tenant is in revision. The landlord filed RCP No. 7 of 2011 before the Rent Control Court, Manjeri seeking an order of eviction under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). According to the respondent landlord, he wanted to start a small scale bakery business for which, he needed vacant possession of the tenanted shop room. The tenant is conducting a Medical Shop from the shop room. He disputed the need that was put forward by the landlord. According to him, the adjacent shop room that was three times the size of the tenanted shop room had fallen vacant, but had been given on rent by the landlord for starting a Titan showroom. Had the need of the landlord been genuine and bonafide, he

could have started the proposed bakery in the said shop room. Therefore, according to the tenant, this is a case in which the case pleaded by the landlord was liable to be rejected under the first proviso to Section 11(3) of the Act. According to the landlord, there were a number of other bakeries in the locality and therefore, starting of another bakery was not practicable. The tenant had a further contention that, he was entitled to the benefit of the second proviso to Section 11(3).

2. The evidence in the case consists of Exhibits A1 to A3 documents and the oral evidence of PW1 on the side of the landlord. On the side of the tenant, Exhibits B1 to B7 documents were marked and the tenant examined himself as RW1. Exhibit C1 Commission Report has also been marked.

3. On an appreciation of the evidence on record, the Rent Control Court found that the landlord had succeeded in proving the bonafides of his need. It was also held that

the tenant was not entitled to the benefit of the provisos to Section 11(3). Therefore, an order of eviction was granted. The aggrieved tenant challenged the order of the Rent Control Court before the Rent Control Appellate Authority, Manjeri in RCA No.30 of 2013. On a re-appreciation of the evidence, the Appellate Authority has agreed with the findings of the Rent Control Court. Thus, the order of eviction has been confirmed.

4. According to the Sri.P.V. Venugopal who appears for the petitioner, both the authorities below have erred in not giving the benefit of provisos to Section 11(3) to the tenant. In the first place, the landlord had obtained vacant possession of the adjacent shop room which was three times in area than the the tenanted shop room. If the intention of the landlord to start a bakery was genuine, he would certainly have started his bakery in the said shop room. According to the learned counsel, another bakery by name 'Regal Bakery' had been functioning from the said shop

room. Therefore, it was eminently clear that the room was suitable for the conduct of bakery business. In spite of the above, both the authorities below have found that the landlord had made out special reasons for not utilizing the said shop room. With respect to the second proviso to Section 11(3), it is contended by the counsel that, the vacant shop room that was shown to the Advocate Commissioner when he conducted his inspection is about one kilometer away from the tenanted shop room. Therefore, according to the learned counsel, the same cannot be considered to be one located within the same locality. Though it was pointed out that, the tenant had agricultural income from an extent of 50cents of rubber estate owned by him, according to the counsel, the said property had been sold. For the above reasons, it is contended that the proceedings of the authorities below require to be interfered with, in revision.

5. We have heard the counsel at length. We have

been taken through the order of the Rent Control Court as well as the judgment of the Appellate Authority. The counsel has also taken us through portions of the depositions of PW1 and RW1.

6. It is not in dispute that, the adjacent shop room that had fallen vacant was having three times the area of the tenanted shop room. Both the Authorities below have found that, while 'M/s Regal Bakery' was functioning from the said premises, they were running not only a bakery but also a cool bar from the premises. The landlord when he was questioned on the above aspect, has deposed as PW1 that, the business contemplated by him was of a smaller dimension. He only wanted to conduct a small bakery for which the tenanted shop room is the most ideal. He did not want to conduct a bakery and a cool bar in the larger premises that had fallen vacant. It was for the said reason that he had not utilized the said shop room for the proposed business. The said special reason has been accepted by

both the authorities below. The authorities have also found that the need put forward by the respondent landlord was bonafide. We do not find any grounds to take a different view of the matter.

7. In so far as the benefit of the second proviso to Section 11(3) is concerned, it is settled position of law that the onus of proving both the limbs thereof is squarely on the tenant. It is for the tenant to show that, he was mainly depending on the income from the business conducted in the tenanted shop room for his sustenance and also that no other suitable rooms were available in the locality for shifting his business. In the present case, apart from the interested testimony of the tenant as RW1, there is no evidence on record to show that the main source of income for sustenance of the tenant was from the business that was carried on from the tenanted premises. At the same time, it is in evidence that the tenant was the owner of a rubber estate having an area of 50 cents. It is true that, the tenant

has taken up a contention that the said rubber estate has been sold off. However, no evidence of any such sale has been produced before the Court. Therefore, the findings of the authorities below that the tenant had not succeeded in proving the first limb of the second proviso to Section 11(3) is justified. With respect to the non availability of other vacant shop rooms, the landlord had taken out a Commission. Exhibit C1 is the report of the Advocate Commissioner. As per Exhibit C1, the existence of vacant rooms has been reported. The contention of the counsel for the revision petitioner is that the said rooms are located at a place about one kilometer away from the tenanted shop room. Even accepting the said contention, the fact remains that, the tenant has not let in any evidence to discharge the burden of proving the second limb of the second proviso to Section 11(3). Therefore, we do not find any error in the conclusion drawn by the Rent Control Court and the Appellate Authority that the tenant was not entitled to the

benefit of the second proviso to Section 11(3).

8. As a last submission, the counsel for the petitioner sought for the grant of some time to vacate the premises. It is contended that, at least six months time is necessary to identify a suitable shop room for the purpose of shifting his business. The business being a running business, according to the learned counsel, the prospect of shifting would have to be undertaken with much care. Having considered the contentions of the counsel for the petitioner, we are satisfied that it is necessary to grant time to the petitioner to surrender vacant possession of the premises 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 respondent landlord on condition that he swears to an affidavit before the Rent Control Court, Manjeri, in RCP

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No .7 of 2011 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 tenanted shop room to the landlord on or before 31.12.2015.

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

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

Sd/-  
**MARY JOSEPH**  
**JUDGE**

kkj