

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

RCCRev..No. 180 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 20/2014 of THE RENT CONTROL
APPELLATE AUTHORITY, KOZHIKODE-III DATED 08-04-2015**

**AGAINST THE ORDER/JUDGMENT IN RCP 54/2012 of THE RENT CONTROL COURT,
NADAPURAM DATED 21-12-2013**

REVISION PETITIONER(S)/APPELLANT IN RCA/RESPONDENT IN RCP:

**O.V.SADHU AGED 53 YEARS
S/O.KUNHIRAMAN, BUSINESS, ORKKATTERI VEETTIL HOUSE
KUTTPPURAM AMSOM DESOM, VATAKARA TALUK
KOZHIKODE DISTRICT**

**BY ADVS.SRI.R.PARTHASARATHY
SMT.SEEMA**

RESPONDENT(S)/RESPONDENT IN RCA/PETITIONER IN RCP:

**KELOTH ARIFA
D/O.AMMAD, IYYAMKODE AMSOM, VISHNUMANGALAM DESOM
KALLACHI PO, VATAKARA TALUK, KOZHIKODE DISTRICT 673101**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
22-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

kkj

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

R.C.R. No. 180 of 2015

Dated this the 22nd day of July, 2015

O R D E R

Surendra Mohan, J.

The tenant is in revision before us challenging the order of eviction granted by the Rent Control Court, Nadapuram in RCP No.54 of 2012 and confirmed in appeal by the Rent Control Appellate Authority, Kozhikode in RCA No.20 of 2014. The revision petitioner tenant is in possession of two rooms on the ground floor and one room on the first floor of the building of which the tenanted premises form a part. In one of the shop rooms on the ground floor, the petitioner is conducting vegetable business while in the other he is conducting business in Hill produces. The room on the upper floor is being used as a store room.

2. The landlady had sought eviction on the grounds under Section 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 landlady, her husband who was employed in the Gulf was able to send her only an amount of ₹3,500/- per month. The said amount was not sufficient for meeting the living expenses of herself and her family. Therefore, she wanted to augment her income by starting a business in the tenanted premises in ready made garments. The tenant disputed the need of the landlady alleging that her husband was earning more than one lakh per month, that he was sending sufficient amount to her for her sustenance and that, the need that was put forward at present was only a ruse for eviction. The tenant also contended that, the business conducted in the tenanted premises was the only source of income for himself and his family and that there was no other suitable room available in the locality for him to shift his business.

3. The Rent Control Court tried the petition on the above pleadings. Both sides adduced evidence. The evidence on the side of the landlady consists of Exhibits A1

to A4 documents and the oral testimonies of PWs 1 and 2. The respondent tenant examined himself as RW1 and marked Exhibits B1 to B11 documents on his side. On an analysis of the evidence on record, the Rent Control Court found that, the ground under Section 11(2)(b) was not made out. However, it was found that the landlady had succeeded in establishing the ground under Section 11(3). Therefore, eviction was ordered only on the said ground. Though the aggrieved tenant had challenged the order of the Rent Control Court in RCA No.20 of 2014, the Appellate Authority has confirmed the order of eviction. It is the said judgment that is under challenge in this revision.

4. According to Sri.R.Parthasarathy who appears for the petitioner, both the authorities below have not appreciated the case of the respondent tenant in the proper perspective. It has been brought out in evidence that the husband of the landlady has been working in the Gulf for the past more than 19 years. Her testimony that he is able to send only her an amount of ₹3,500/- per month is

unbelievable. A person who has been working in the Gulf for the last two decades would have earned much more and would be in a position to send sufficient amounts for the sustenance of the landlady, it is contended. It is pointed out that, the authorities below have also erred in not finding that the tenant was entitled to the benefit of the second proviso to Section 11(3) of the Act. According to the learned counsel, the documents Exhibits B1 to B11 show that the petitioner had been paying licence fee to the Nadapuram Grama Panchayat for the business that was being carried on by him from the tenanted shop rooms. The said documents also show that the petitioner has no other business of his own. Since the petitioner has deposed as RW1 that no other suitable rooms were available in the locality for him to shift the business, according to the learned counsel, the tenant should have been granted the benefit of the second proviso to Section 11(3).

5. Heard. This revision comes up before us for admission. We have been taken through the pleadings as

well as the evidence in the case, copies of which were handed over to us by the learned counsel. The need that has been put forward by the landlady is that, she wants to start a business in ready made garments. It is true that, according to her, her husband is sending her only an amount of ₹3,500/- per month. Apart from the admission of PW1 that her husband has been working in the Gulf for the past 19 years, there is absolutely no evidence regarding his income. Nor is there any evidence regarding the job which he is engaged in. Therefore, there is nothing on record to show that the landlady's version as PW1 was false. We notice that both the authorities below have relied on her evidence. Nothing has been pointed out, to justify a different view of the matter. Even assuming that the contention of the tenant regarding the income of the landlady's husband is true, she cannot be found fault with for deciding to start a garment business of her own. She may have her own reasons for deciding to start a business of her own. The only question to be considered is whether

the need put forward is bonafide or genuine. No circumstance is pointed out or brought out in evidence to justify a conclusion that, the need that has been put forward is not bonafide. Therefore, we confirm the findings of the authorities below that the need put forward by the landlady is bonafide.

6. It is not in dispute that the tenant is carrying on business in three rooms of which, one room on the upper floor, is used as a store. The rooms on the ground floor is used by the tenant for carrying on a business in vegetables as well as in hill produces. Though it was alleged that he has another source of income of his own, there is no evidence on record to show that he has any other source of income. However, it is necessary to be borne in mind that, the burden of proof with respect to both the ingredients in the second proviso to Section 11(3) is squarely on the tenant. It is for the tenant to prove that he is depending on the income from the business carried on in the tenanted premises for his sustenance and that there are no other

rooms available in the locality for him to shift. The counsel for the petitioner has placed reliance on the documents produced as Exhibits B1 to B11 to contend that, the licences issued by the Grama Panchayat show that he was conducting business as alleged by him. However, the said documents do not give any indication regarding the income that he has been earning from his business. Since the petitioner has not produced any records to show his income, it has to be held that there is no evidence on record to show that the income derived from the business carried on in the tenanted premises is his main source of livelihood. With respect to the nonavailability of the other rooms in the locality, the only evidence on record is the oral testimony of RW1. The said evidence is insufficient to discharge the burden that is cast on the tenant. It is for the said reason that, both the authorities below have declined the benefit the second proviso to the Section 11(3) to the tenant. We find that, the authorities were justified in doing so. For the above reasons, we find no grounds to interfere with the

proceedings of the authorities below, in revision.

7. 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 landlady. Having heard the counsel at length, we are satisfied that it is necessary to grant time to the petitioner up to 31.12.2015, subject to conditions:-

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 landlady on condition that he swears to an affidavit before the Execution Court in RCP No.12 of 2014, 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 landlady on or before 31.12.2015.
3. It shall be a further condition for the grant of

time to the tenant that he pays to the landlady the arrears of rent, if any remaining unpaid, and continues to pay the rent in respect of the premises without any delay or default, regularly until vacant possession is surrendered.

Sd/-
K.SURENDRA MOHAN
JUDGE

Sd/-
MARY JOSEPH
JUDGE

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