

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

RCRev..No. 203 of 2015 ()

AGAINST THE JUDGMENT IN RCA 40/2012 of RENT CONTROL APPELLATE AUTHORITY
NO.1, THRISSUR DATED 23-06-2015

AGAINST THE ORDER IN RCP 26/2010 of RENT CONTROL COURT, CHAVAKKAD
DATED 21-12-2011

PETITIONER/APPELLANT/4TH RESPONDENT :

THE SENIOR SUPERINTENDENT OF POST OFFICES,
POSTAL DIVISION, THRISSUR-680 005.

BY ADV. SRI.K.SHRI HARI RAO, CGC

RESPONDENTS/RESPONDENTS/PETITIONERS AND RESPONDENTS 1 TO 3 AND 5 AND 6 IN
RCP :

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1. K.P.ABDUL HAMEED, AGED 73 YEARS
S/O. MOIDUNNY, KESHAVATH PARAMBIL HOUSE, KOCHANNOOR
CHAVAKKAD TALUK, THRISSUR DISTRICT-680 506.
 2. USMAN, AGED 69 YEARS
S/O. P.A.KUNJU MUHAMMED, ARAVALAPIL HOUSE
PARAVATTI VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT
POST PAVARATTI-680 507.
 3. K.P.ABDUL HAMEED AND A.K.USMAN
PARTNERS, PARTNERSHIP FIRM
OFFICE OF THE ANUGRAHA BUILDINGS
VADAKKANCHERRY ROAD, KUNNAMKULAM, A.K.USMAN
REPRESENTED BY THE POWER OF ATTORNEY HOLDER ABDUL HAMEED
POST KUNNAMKULAM, THRISSUR DISTRICT-680 503.
 4. GOVERNMENT OF INDIA
REPRESENTED BY THE SECRETARY, POSTAL SERVICES
NEW DELHI-110 116.
 5. CHIEF POST MASTER GENERAL
THIRUVANANTHAPURAM-695 033.
 6. POST MASTER GENERAL, CENTRAL REGION, ERNAKULAM, KOCHI-682 018.
 7. POST MASTER
KUNNAMKULAM, HEAD POST OFFICE, KUNNAMKULAM-680 503.

8. ASSISTANT DIRECTOR (BUILDING)
DEPARTMENT OF POST, OFFICE OF THE PMG, CENTRAL REGION
KOCHI-682 018.

R4,5,6,7,8 BY ADV. ADV.SATHEESH.M.KUMAR(B/O)

R1 BY ADVS. SRI.S.V.BALAKRISHNA IYER (SR.)

SRI.P.B.KRISHNAN

SRI.P.M.NEELAKANDAN

SRI.P.B.SUBRAMANYAN

R BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
18-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

RCCRev..No. 203 of 2015 ()

APPENDIX

PETITIONER'S ANNEXURES :

ANNEXURE A : COPY OF THE COUNTER AFFIDAVIT IN RCP NO.26/2010 OF RENT
CONTROL COURT, CHAVAKKAD

RESPONDENTS' ANNEXURES : NIL

/TRUE COPY/

P.A TO JUDGE

AV

**P.N.RAVINDRAN
&
BABU MATHEW P.JOSEPH, JJ.**

R.C.R.No.203 of 2015

Dated this the 18th day of September, 2015.

ORDER

P.N.Ravindran, J.

The petitioner is the fourth respondent in R.C.P.No.26 of 2010 on the file of the Rent Control Court, Chavakkad. Respondents 1 to 3 are the petitioners and respondents 4 to 8 are respondents 1 to 3 and 5 to 6 respectively therein. Respondents 1 to 3 as landlords instituted R.C.P.No.26 of 2010 under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short, praying for an order evicting the respondents in the rent control petition (petitioner and respondents 4 to 8 herein) from the petition schedule building. The landlords contended that they are carrying on business at Doha in Qatar and that they intend to settle down in their native place and to start a textile business in the petition schedule building. They also contended that they have got experience in textile business and that they have formed a registered partnership firm namely the third petitioner in the rent control petition, for the purpose of doing business in the petition schedule shop room.

2. Though the petitioner herein and the other respondents in the rent control petition were served and they had entered

appearance through counsel, they did not file objections to the rent control petition. The first petitioner in the Rent Control Court was examined as PW1 and Exts.A1 to A5 were produced and marked on their side. The Rent Control Court after considering the pleadings and evidence on record held that the landlords have succeeded in proving the *bonafide* need put forward in the petition for eviction. The Rent Control Court took note of the fact that though there is a renewal clause in the lease deed, the tenants have not invoked the renewal clause and that before the rent control petition was instituted, the landlords had issued Ext.A2 notice terminating the tenancy. The Rent Control Court also took note of the fact that though there is an arbitration clause in the lease deed which was produced and marked as Ext.A5, the respondents have not offered to avail the benefit of arbitration. The Rent Control Court accordingly allowed the petition and directed the fourth respondent to surrender vacant possession of the petition schedule premises within two months. The fourth respondent carried the matter in appeal by filing R.C.A.No.40 of 2012. The other respondents in the rent control petition were jointed as respondents 4 to 8 therein. The Rent Control Appellate Authority dismissed the appeal by judgment delivered on 23.06.2015. The fourth respondent before the Rent Control Court has, aggrieved thereby, filed this appeal.

3. We heard Sri.K.Shrihari Rao, learned counsel appearing for the petitioner and Sri.P.B.Krishnan, learned counsel appearing for the first respondent. It is evident from the materials before us that the tenants did not file objections to the rent control petition. They did not also put forward a contention that in view of the arbitration clause contained in Ext.A5, the Rent Control Court does not have jurisdiction to entertain the dispute. The tenants did not also dispute the case put forward by the landlords that they *bonafide* need the petition schedule shop room to start a textile business. That apart, though the entrustment was with the Government of India, the Senior Superintendent of Post Offices alone filed an appeal. The Government of India, the Chief Post Master General, the Post Master General, Central Region, Ernakulam, the Post Master, Kunnamkulam Head Post Office and the Assistant Director (Building), Department of Posts, who were respondents 1, 2, 3, 5 and 6 in the rent control petition did not file an appeal challenging the order passed by the Rent Control Court. Though in the instant revision petition it is contended that objections had in fact been filed to the rent control petition and a copy of the counter affidavit stated to have been filed in the rent control court is also produced along with I.A.No.2186 of 2015, such a ground was not put forward before the appellate authority in R.C.A.No.40 of 2012. Paragraph 9

of the judgment of the appellate authority refers to the fact that the appellant and the other tenants had failed to file objections or counter to the petition for eviction. In any view of the matter, the contention now put forward is that though a counter statement was filed, it was returned as one filed beyond time. In view of the admitted fact that a counter statement had not been filed within the time stipulated by the Rent Control Court and as the counter statement is not part of the records, the petitioner or the other tenants cannot be heard to contend that they have apart from entering appearance filed a counter statement before the Rent Control Court. In any view of the matter, the contentions in the counter statement are only to the effect that as the President of India is a party to the rent deed, the petition cannot be tried in any court of law and that in view of the arbitration clause it has to be preferred first before approaching the Rent Control Court. The petitioners had no case that the Rent Control Court has no jurisdiction to entertain the rent control petition. The only ground raised was that arbitration will have to be resorted to first before approaching the Rent Control Court. They have also not categorically and specifically denied the case set out by the landlords that they *bonafide* need the petition schedule building to start a textile business. The only averment in the so called counter

statement is that without any proper business in the native place, it is not possible for the petitioners to settle in Kerala. It was also stated that the averment that the petitioners have sufficient means to start a business is not true and is to be proved. In short, the averments in the counter statement assuming such a counter statement was filed do not amount to a specific denial of the averments in the rent control petition. There is also no averment that in view of the arbitration clause in the rent deed, the rent control petition is not maintainable. Even assuming that a contention to the effect that landlords will have to invoke the arbitration clause was raised in the counter statement, as the counter statement was filed out of time and there was no statement before the Rent Control Court in that regard, the petitioner or the other tenants cannot contend that in view of the arbitration clause, the rent control petition is not maintainable. That apart, as noticed by the appellate authority the Government of India which is the lessee has not chosen to challenge the order for eviction passed by the Rent Control Court.

We therefore find no good grounds to interfere with the impugned judgment/order. The revision petition fails and is accordingly dismissed. However, having regard to the fact that a post office is functioning in the petition schedule premises, we deem

it appropriate to grant to the Government of India four months time from today.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P.JOSEPH
JUDGE

AV