IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

RCRev..No. 204 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 164/2011 of III RENT CONTROL APPELLATE AUTHORITY, THRISSUR DATED 31-01-2015

AGAINST THE ORDER/JUDGMENT IN RCP 31/2007 of I ADDL.RENT CONTROL COURT, THRISSUR DATED 30-03-2011

REVISION PETITIONER(S)/ RESPONDENTS IN RCA/RESPONDENTS IN RCP:
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1. STATE BANK OF TRAVANCORE
HEAD OFFICE, POOJAPPURA, THIRUVANANTHAPURAM
REPRESENTED BY GENERAL MANAGER.

2. STATE BANK OF TRAVANCORE
KOORKKANCHERY, THRISSUR
REPRESENTED BY BRANCH MANAGER.

BY ADVS.SRI.T.SETHUMADHAVAN (SR.)
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENT(S)/(APPELLANTS IN RCA/PETITIONERS IN RCP):
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1. SUKUMARAN
S/O. MOOTHEDATH RAMAN, KOORKKANCHERY
THRISSUR-680 001.

2. DR. M.K.SURENDRAN
S/O. MOOTHEDATH RAMAN, KOORKKANCHERY
THRISSUR-680 001.

3. SUDHA SURENDRAN
W/O. MOOTHEDATH SURENDRAN, KOORKKANCHERY
THRISSUR-680 001.

4. ASHOKAN
H/O. LATE MOOTHEDATH SUMAM
S/O. PUTHENKATTIL KUNJITTI, KOORKKANCHERY
THRISSUR-680 001.

5. SETHU
S/O. LATE MOOTHEDATH SUMAM & ASHOKAN, KOORKKANCHERY
THRISSUR-680 001.

6. SANU
S/O. LATE MOOTHEDATH SUMAM & ASHOKAN, KOORKKANCHERY
THRISSUR-680 001.

7. SREENARAYANA TRADE CENTRE
KOORKANCHERRY, THRISSUR
REPRESENTED BY MANAGING PARTNER, DR. M.K.SURENDRAN
PIN-680 001.

R5 BY ADV. SRI.M.AJAY
R5 BY ADV. SRI.K.R.RAJKUMAR

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 26-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.N. Ravindran &
Babu Mathew P. Joseph, JJ.

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R.C.R. No.204 of 2015

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Dated this the 26th October, 2015

O R D E R

P.N. Ravindran, J.

The State Bank of Travancore which was occupying a building belonging to the respondents under a registered lease deed dated 14.5.2002, has filed this revision petition under section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short, challenging the judgment delivered by the Rent Control Appellate Authority, Thrissur on 31.1.2015 in R.C.A. No.164 of 2011. The brief facts of the case are as follows:

2. Respondents 1 to 6 are the partners of the 7th respondent partnership firm which owns a commercial building situate at Koorkancherry in Thrissur Corporation. The tenanted premises bearing door No.VI/245 of Thrissur Corporation has a total area of 3100 Sq. Ft. and is situate on the first floor of the said building. It was taken on rent by the petitioners on 14.5.2002 for the purpose of locating its Koorkancherry branch. The rate of rent agreed upon was Rs.12,408/-.

There was also a stipulation in the lease deed that the rent will stand enhanced by 25% once in every five years. Consequently, with effect from 1.7.2006 the rent was revised to Rs.5/- per Sq. Ft. corresponding to Rs.15,150/- per month.

3. While matters stood thus, the landlords issued Ext.A2 lawyers notice dated 11.8.2006 demanding revision of rent at the rate of Rs.15/- per Sq. Ft. Though the Branch Manager of the bank received the notice, no reply was sent. Thereupon, the landlords instituted R.C.P.No.31 of 2007 under section 5 of the Act praying that the fair rent for the petition schedule premises may be fixed at Rs.32/- per Sq. Ft.. It was contended that the stipulation regarding the rate of rent contained in the lease deed is inadequate having regard to the prevailing market rent in the locality. The tenant opposed the application contending inter-alia that having regard to the terms and stipulations in the lease deed which provides for increase in the rent by 25% once in every five years, the landlords are not entitled to have the rent enhanced. The tenant also contended that the demand made in the petition for fixation of fair rent is exorbitant and excessive.

4. On the side of the landlords, the first petitioner before the rent control court who is the managing partner of the 7th petitioner firm was examined as PW1 and the tenant who was occupying a room on the second floor of the same building was examined as PW2. The landlords also produced and marked Exts.A1 to A8. On the side of the tenant, the branch manager who had entered into the lease deed dated 14.5.2002 was examined as RW1 and the branch manager in office at the time of trial was examined as RW2. The tenant also produced and marked Exts.B1 to B3. On application filed by the landlords an Advocate Commissioner was appointed to inspect the tenanted premises as also the locality where it is situate and the report submitted by her was marked as Ext.C1. The Advocate Commissioner was examined as CW1. The rent control court considered the rival contentions and fixed the fair rent payable in respect of the petition schedule building at Rs.11/- per Sq. Ft. corresponding to Rs.34,000/- per mensem with effect from 1.3.2007. The rent control court also directed that the fair rent thus fixed will stand enhanced once in every five years by 35% of the rent payable during the preceding period and

that the next enhancement will be with effect from 1.3.2012.

5. Challenging the order passed by the rent control court, the tenant filed R.C.A. No.175 of 2011 on the file of the Rent Control Appellate Authority, Thrissur. Dis-satisfied with the quantum of fair rent fixed by the rent control court, the landlords filed R.C.A. No.164 of 2011. By a common judgment delivered on 31.1.2015, the appellate authority dismissed R.C.A. No.175 of 2011 filed by the tenants, allowed R.C.A. No.164 of 2011 filed by the landlords and fixed the fair rent payable in respect of the petition schedule building at Rs.15/- per Sq. Ft. corresponding to Rs.46,500/- per mensem with effect from 1.3.2007. The appellate authority also held that the fair rent thus fixed by it shall be enhanced once in every five years by 35% of the rent which is payable during the preceding period. The tenant has, aggrieved thereby, filed this revision petition.

6. We heard Shri T. Sethumadhavan, learned Senior Advocate appearing for the revision petitioners and Shri M.Ajay, learned counsel appearing for the respondents. Shri T. Sethumadhavan, learned Senior Advocate appearing for the petitioners submitted that the landlords had,

in Ext.A2 lawyers notice which preceded the institution of the petition for fixation of fair rent, demanded only Rs.15/- per Sq. Ft. as rent, but in the petition for fixation of fair rent, the landlords had claimed rent at the rate of Rs.32/- per sq. ft., that the lease deed contained a stipulation regarding enhancement of rent once in every five years and having regard to the terms of the lease deed, the landlords are not entitled to any rent in excess of the rent agreed upon between the parties. Learned senior counsel also submitted that though Koorkancherry is a part of Thrissur Corporation, the market rent cannot, by any stretch of imagination, be said to be Rs.15/- per Sq. Ft., that the tenanted premises is situate on the first floor of a building and having regard to the amenities provided by the landlords and other attendant circumstances, by no stretch of imagination can it be said that the rent agreed upon between the parties is not a reasonable rent akin to market rent. Learned senior counsel contended that the enhanced rent fixed by the appellate authority is approximately three times the rent agreed upon between the parties and therefore on that short ground, the impugned judgment is liable to be set aside.

7. Per contra, Shri M.Ajay, learned counsel appearing for the landlords submitted that the tenant surrendered vacant possession of the building on 31.7.2015, that it has taken on lease another building situated in the very same locality, about 100 metres away, agreeing to pay rent at the rate of Rs.36.50 per Sq. Ft. and that this itself is proof positive of the fact that the rent agreed upon by the parties is not reasonable rent akin to market rent. Learned counsel contended that the rent at the rate of Rs.15/- per Sq. Ft. fixed by the appellate authority is for the period commencing from 13.3.2007 and ending with 31.7.2015 and for no justifiable reason the tenant has taken on lease a commercial building in the very same locality paying nearly twice the rent fixed by the appellate authority and therefore, the tenant is not at all entitled to challenge the impugned judgment/order on the ground that the fair rent fixed is exorbitant.

8. We have considered the submissions made at the Bar by the learned counsel on either side. We have also gone through the impugned judgment/order. The rate of rent agreed upon by the parties was Rs.4/- per Sq. Ft. which was later enhanced to Rs.5/- per Sq. Ft.

with effect from 1.7.2006. The landlords had in the petition for eviction sought revision of rent to Rs.32/- per Sq. Ft. The rent control court fixed the fair rent at Rs.11/- per Sq. Ft., corresponding to Rs.34,000/- per month. The appeal filed by the tenant challenging that order was dismissed. The appeal filed by the landlords seeking further enhancement was allowed and fair rent was fixed at the rate of Rs.15/- per Sq. Ft., corresponding to Rs.46,500/- per month. The judgment of the appellate authority was rendered on 31.1.2015. Shortly thereafter, the tenant took on lease the ground floor of a commercial building having an area of 2498 Sq. Ft. situated about 100 metres away from the petition schedule building agreeing to pay rent at the rate of Rs.36.50 per Sq. Ft. corresponding to Rs.91,177/- per mensem. Consequently, the tenant vacated the petition schedule premises on 31.7.2015. The tenanted premises has an area of 3102 Sq. Ft. The tenant was paying only Rs.5/- per Sq. Ft. as rent. The rent control court enhanced it to Rs.11/- per Sq. Ft.. On appeal it was further enhanced to Rs.15/- per Sq. Ft. Instead of continuing in the same building, the tenant moved out to another building in the vicinity having an area of 2498 Sq. Ft., agreeing to pay rent at the rate of Rs.36.50 per Sq. Ft. Though the learned senior counsel appearing for the tenant submitted that the building now taken on lease by the bank is a new building and the tenanted premises is on the ground floor and they need not pay rent for the space occupied by the A.T.M., we are of opinion that the tenant who has taken on rent a building in the very same locality agreeing to pay rent at the rate of Rs.36.50 per Sq. Ft., cannot be heard to contend that Rs.15/- per Sq. Ft. which has been fixed by the appellate authority is not the market rent payable in respect of the tenanted premises which is situated in the very same locality. Though it is contended that the tenanted premises now occupied by the bank is a new building, we are of opinion that that by itself is not a reason to hold that the fair rent fixed by the appellate authority is exorbitant. It is the importance of the locality which would have a bearing on the question as to whether the rent agreed agreed upon between the parties is akin to market rent or not and the mere fact that the premises now occupied by the tenant is in a new building which is situate in the very same locality, is by itself not a reason to hold that the rent which the bank was paying to the landlords was akin to market rent. The tenant had no case that the premises earlier occupied by it till 31.7.2015 lacked any facility or amenity. It had also not pointed out any shortcomings in the tenanted premises which it was occupying till 31.7.2015. It had no case that its customers or employees were put to any difficulty by reason of the branch being located in the premises belonging to the respondents. In such circumstances, the petitioner bank which has taken on lease another building in the very same locality agreeing to pay rent at the rate of Rs.36.50 per Sq. Ft. which corresponds to Rs.91,177/- per mensem cannot, in our opinion, be heard to contend that the fair rent fixed by the appellate authority is on the higher side or that it does not represent the market rent. We therefore find no good grounds to entertain the challenge made to the impugned judgment/order.

For the reasons stated above, we hold that there is no merit in the instant revision petition. It fails and is accordingly dismissed. Though the bank has taken on lease another premises in the very same locality agreeing to pay higher rent, it has not so far discharged its liability under the impugned judgment. Having regard to the said fact, we deem it appropriate, even while dismissing the revision petition, to direct the petitioners to discharge their liability under the impugned judgment/order within one month from today.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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