

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

RCCRev..No. 205 of 2015 ()

AGAINST THE JUDGMENT IN RCA 144/2013 of RENT CONTROL APPELLATE AUTHORITY,
KOZHIKODE DATED 11.3.2015

AGAINST THE ORDER IN RCP 141/2012 of RENT CONTROL COURT, KOZHIKODE
DATED 30.9.2013

REVISION PETITIONER/APPELLANT/RESPONDENT:

RASHEED MAVAYIL AGED 35 YEARS
S/O ABDURAHIMAN, MAVAYIL PULPARAMBIL HOUSE
NELLIKKAPARAMBA POST, KOZHIKODE.

BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN

RESPONDENT/RESPONDNET/PETITIONER:

ABDUL AZEEZ HASSAN, AGED 41 YEARS
S/O KUTTIYALI HASSAN A., CHATHAPARAMBA POST
KODIYATHUR, KOZHIKODE-673602.

R CAVEATOR BY ADV. SRI.R..RAMADAS

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
17-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R.No.205 of 2015

Dated this the 17th day of September, 2015.

ORDER

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.141 of 2012 on the file of the Rent Control Court/Principal Munsiff Court-II, Kozhikode. The respondent/landlord instituted R.C.P.No.141 of 2012 under sections 11 (3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short, contending that he *bonafide* needs the petition schedule building to start a fancy shop and that the tenant has come by possession of other alternate buildings in the same locality. The Rent Control Court considered the rival contentions and held that the need put forward is *bonafide*. The Rent Control Court thereafter proceeded to consider the applicability of the second proviso to section 11(3) of the Act and held that though the tenant has proved the first limb of the second proviso, he has not adduced any evidence to prove the ingredients of the second limb of the second proviso to section 11(3) of the Act. As regards the claim for eviction under section 11(4)(iii) of the Act, the Rent Control Court held that the landlord has not pleaded or proved the essential requirements for an order of eviction under the said provision of law. The rent control petition was accordingly allowed and an order for

eviction was passed under section 11(3) of the Act. Aggrieved thereby, the tenant filed R.C.A.No.144 of 2013 on the file of the Rent Control Appellate Authority/Additional District Court-V, Kozhikode. By judgment delivered on 11.03.2015, the appellate authority concurred with the Rent Control Court and dismissed the appeal. Hence this revision petition.

2. We heard Sri.K.M.Firoz learned counsel appearing for the petitioner and Sri.R.Ramdas, learned counsel appearing for the respondent/caveator. It is not in dispute that the respondent/landlord purchased the tenanted premises only in the year 2011. Immediately thereafter he entered into an arrangement with the petitioner/tenant. Though the learned counsel for the petitioner contended that from the very fact that after purchasing the property the landlord had entered into Ext.A2 arrangement with the tenant is itself proof of the fact that the *bonafide* need put forward is not genuine, we find no merit or force in the said contention. Under the third proviso to section 11(3) of the Act, a transferee landlord who has obtained title to the tenanted premises by an instrument of transfer inter vivos will have to wait for a period of one year from the date of the instrument to file a petition for eviction under section 11(3) of the Act. Therefore, the mere fact that the tenant was permitted to continue to occupy the premises even after the respondent/landlord acquired title to the property as per Ext.A1 assignment deed, is not a reason to hold that the need put

forward is not *bonafide*. The Rent Control Court and the Appellate Authority have held that the need put forwarded by the landlord namely the need to start a fancy shop is *bonafide*. The contention of the tenant that the landlord being an expatriate Indian, who had returned from the middle east, is wealthy and therefore there is no requirement for him to start a business, was in our opinion rightly repelled by the Rent Control Court and the Appellate Authority. The Rent Control Court and the Appellate Authority have also held that though the tenant has proved the ingredients of the first limb of the second proviso to section 11(3) of the Act, he has not adduced any evidence to show that no other suitable building is available in the same locality. Though the learned counsel for the petitioner contended that the very fact that the landlord wants to start a business in the petition schedule building is proof positive of the fact that no other suitable building is available in the locality, the said contention is in our opinion untenable and without any merit. The Act does not stipulate that it is only if no other suitable building is available in the locality that the landlord can file a petition for eviction under section 11(3) of the Act. The second proviso is a benefit available to the tenant to avoid an order of eviction and the burden is on him to prove the ingredients of both the limbs to the second proviso. As the tenant has failed to prove the ingredients of the second limb of the second proviso to section 11(3) of the Act, no

exception can be taken to the impugned order/judgment. We therefore find no good grounds to entertain the challenge to the impugned orders. However, having regard to the fact that the petitioner/tenant has been running business in gold plated ornaments, we deem it appropriate to grant him six months time from today to surrender vacant possession of the petition schedule premises subject to the condition that he shall within three weeks from today file an undertaking in the form of an affidavit in the Rent Control Court unconditionally undertaking to surrender vacant possession of the petition schedule building to the landlord on the expiry of the said period of six months. He shall in the affidavit, also undertake to pay the rent, if any, in arrears and to continue to pay the rent till the date of surrender. He shall also undertake that he will not commit any acts of waste in the petition schedule property or induct strangers into possession thereof.

For the reasons stated above, we hold that there is no merit in the instant revision petition. It fails and is accordingly dismissed subject to the aforesaid observations.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P.JOSEPH
JUDGE