

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

RCRev..No. 212 of 2015 ()

**AGAINST THE JUDGMENT IN RCA 27/2013 of RENT CONTROL APPELLATE AUTHORITY,
KOZHIKODE DATED 27-11-2014**

**AGAINST THE ORDER IN RCP 48/2008 of RENT CONTROL COURT, KOZHIKODE DATED
30-11-2012**

REVISION PETITIONERS/APPELLANTS/RESPONDENTS-TENANTS 1, 3 & 4:

- 1. KANDIYIL NALINI, AGED 67 YEARS,
W/O. LATE GOVINDAN, RESIDING AT KANDIYIL HOUSE,
MANKAVU POST, VALAYANAD AMSOM AND DESOM,
KOZHIKODE TALUK.**
- 2. VALSARAJ, AGED 47 YEARS,
S/O. NALINI, RESIDING AT KANDIYIL HOUSE, MANKAVU POST,
VALAYANAD AMSOM AND DESOM, KOZHIKODE TALUK.**
- 3. BEENA, AGED 44 YEARS,
D/O. NALINI, RESIDING AT KANDIYIL HOUSE, MANKAVU POST,
VALAYANAD AMSOM AND DESOM, KOZHIKODE TALUK.**

**BY ADVS.SRI.K.M.JAMALUDHEEN
SMT.LATHA PRABHAKARAN
SRI.K.K.KRISHNA KUMAR**

**RESPONDENTS/RESPONDENTS/PETITIONER-LANDLORD & RESPONDENT NO.2 -
TENANT NO.2:**

- 1. PAIKKATTUKAVIL SREEDEVI, AGED 57 YEARS,
D/O. KUTTIKELU, RESIDING AT KOVILODY HOUSE,
NELLIKODE AMSOM DESOM, NELLIKODE POST,
KOZHIKODE TALUK AND DISTRICT - 673 016.**
- 2. VINAYARAJ, AGED 50 YEARS,
S/O. NALINI, RESIDING AT KANDIYIL HOUSE, MANKAVU POST
VALAYANAD AMSOM AND DESOM, KOZHIKODE TALUK.**

**R1 BY ADV. SRI.P.V.KUNHIKRISHNAN
R2 BY ADV. SMT.S.L.SYLAJA**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 04-12-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

vpv

P.N.RAVINDRAN & SHAJI P.CHALY, JJ.
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R.C.R.No.212 of 2015
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Dated this the 4th day of December, 2015

ORDER

Shaji P.Chaly, J.

This revision is filed by the appellant/tenant against the judgment in R.C.A.No.27 of 2013 of the First Additional Rent Control Appellate Authority, Kozhikode dated 27.11.2014 which is an offshoot of R.C.P.No.48 of 2008 of the Additional Rent Control Court, Kozhikode, whereby the bonafide need put forth by the landlord under section 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as "the Act" for short) was upheld by the rent control court and affirmed by the rent control appellate authority. The facts for the disposal of the revision petition are as follows:

2. The first respondent applied for an order of eviction of the petition schedule building under sections 11(8) and 11(4)(ii) of the Act. The petition schedule building belongs to the first respondent. The same was originally let out to one Govindan. The revision petitioners are his legal heirs. The petition schedule shop room is a part of a two storied building having tiled roof. It was found by the first respondent that the second revision petitioner who is doing business in the schedule building had installed a door and window after

demolishing a portion of the rear wall. Thereby the upper portion of the wall which separates the first floor was seen damaged. The said activity undertaken by the second revision petitioner has affected the value and utility of the petition schedule shop room permanently and materially. Even though the first respondent requested the revision petitioners to restore the wall, the second revision petitioner has not cared to do so. Accordingly, the first respondent filed R.C.P.No.13 of 2002 against the revision petitioners, seeking eviction. But, due to intervention of mediators, the same was withdrawn by signing a joint statement on the belief that the revision petitioners would take steps to restore the building to its original position. Thereafter, revision petitioners have filed a suit seeking injunction against the first respondent and her husband setting up false and frivolous contentions.

3. The son of the first respondent by name Rineesh is doing business in furniture in the room immediately on the northern side of the petition schedule shop room also dealing in cell phones and recharge coupons. The said shop room is not sufficient for his business purposes and for want of sufficient space, he finds it difficult to carry on his business. If the separating wall between the petition schedule shop room and the room now occupied by petitioner's son is removed, both the rooms can be utilised for the need of the petitioner's son and therefore the petition schedule building is required for the bonafide

need of the first respondent. It was also contended that the revision petitioners are only doing a namesake business in the petition schedule shop room and they have income from other sources as well. It is also contended that the respondents are not depending upon the income from the petition schedule shop room for their livelihood. It is thus seeking eviction under sections 11(8) and 11(4)(ii), the rent control petition was filed.

4. The second respondent in this revision remained exparte. Revision petitioners 1, 3 and 4 filed joint counter statement refuting the claims and demands and allegations in the petition. The revision petitioners have contended that the petition schedule building is a part of the building aged more than 75 years, revision petitioners have not effected any alteration to the rear wall of the shop room and has not fixed any door or window, as alleged. The revision petitioners have not done anything to affect the value and utility of the building permanently or materially. The door and the window mentioned by the first respondent have been there for the past several decades. The claim of the first respondent that she needs the petition schedule building to provide additional accommodation for her son is not bonafide. The second revision petitioner is solely dependent on the income from the business carried on in the petition schedule building and there are no other suitable buildings available in the locality. The

rent control court after evaluating the facts and circumstances and evidence let in by the parties, ordered eviction under sections 11(3) and 11(4)(ii) of the Act.

5. Aggrieved by the said order, the revision petitioners preferred R.C.A.No.112 of 2010 before the Additional Rent Control Appellate Authority-II, Kozhikode. The appellate authority as per order dated 08.12.2011 allowed that appeal and the order passed by the rent control court ordering eviction under sections 11(3) and 11(4)(ii) of the Act was set aside and the case was remanded back to the rent control court for considering the question whether the requirement of the first proviso to sub-section (10) of section 11 of the Act is satisfied and for passing orders on the basis of the finding so arrived after giving opportunity to both the parties to adduce evidence on the limited question of the first proviso to section 11(10). The Appellate Authority has done so finding that the claim put forth by the first respondent is one under section 11(8) of the Act. It was further held that the claim put forth by the first respondent for additional accommodation is bonafide. It was also held that since the trial court proceeded on the footing that sub-section (3) of section 11 is attracted, it has not recorded a finding under the first proviso to sub-section (10) of section 11 of the Act. The said order of the appellate authority has become final. Therefore, the rent control court was

concerned with the question of the first proviso to sub-section (10) of section 11 of the Act alone.

6. After remand, the first respondent did not adduce any further evidence. But, RW1 was recalled and further examined. Exts.B5 to B11 series documents were marked on the side of the revision petitioners. The commission report were marked as Exts.C1 and C2.

7. After evaluating the evidence afresh, the rent control court allowed the petition and ordered eviction under section 11(8) of the Act. Thus aggrieved, petitioners have preferred R.C.A.No.27 of 2013. The appellate authority after re-appreciating the evidence and evaluating the legal circumstances, have found that the order passed by the rent control court is in accordance with law and therefore requires no interference. It is thus challenging the said order of the appellate authority, this revision is preferred.

8. Heard the learned counsel for the petitioners, Sri. K.M. Jamaludheen and the learned counsel for the first respondent, Sri.P.V.Kunhikrishnan.

9. The prime contention advanced by the learned counsel for the petitioners are two-fold: (i) The first respondent has not adduced any evidence to secure the benefit of the first proviso to section 11 (10) and therefore the rent control court should not have ordered

eviction of the revision petitioners, and (ii) Exts.B6 to B11 documents which are extracts from the Kozhikode Municipal Corporation will establish that the first respondent is having other business in another building within the Corporation limits and is earning more income and therefore the first respondent, who is very well off, is not entitled to get advantage against the second revision petitioner who is eking out his livelihood from the business carried on in the petition schedule building.

10. *Per contra*, the learned counsel for the first respondent contended that more income augmented by the landlord is not a ground to non-suit her while considering the question of comparative hardship provided under the first proviso to section 11(10) of the Act. Furthermore, learned counsel contended that there is no prohibition created under the Act for the landlord carrying on any other business in some other premises so as to defeat his claim under section 11(8) of the Act or the same can be considered for the purpose of comparative hardship.

11. We have considered the rival submissions addressed at the Bar, and the questions remain to be considered are whether the first respondent can be non-suited under the first proviso to section 11(10) for want of adducing evidence after the remand made by the Appellate Court to find out the comparative hardship and whether the landlord

who has got other business establishments prevent her from securing the benefit of comparative hardship. It is true that even if the bonafides are proved under section 11(8) of the Act, first proviso to section 11(10) of the Act creates a prohibition from ordering eviction if the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord.

12. So far as the first point is concerned, the rent control court as well as the appellate authority have found that there is sufficient evidence to prove that the first respondent's son is carrying on business in the petition schedule building. Moreover, from the totality of evidence, it was found that first respondent's son is carrying on business in various articles and relying on the Commissioner's report it was also found that he is also carrying on business of bricks from the building. It was also found by the rent control court that if vacant possession of the petition schedule building is received by the first respondent, the business can be carried on in the building more efficiently. The first respondent's son was examined as PW2 and he has deposed before the court the nature and volume of business presently he is carrying on in the petition schedule building. The said evidence shows that he is carrying on the business of steel furniture, wooden chairs, T.V. stand and bricks. The said evidence let in by the first respondent landlord was supported by the report of the Advocate

Commissioner. Moreover, the trial court has found that PW2 was experiencing in lack of space to run the business. It was also found that the Commissioner's report exemplified the space constraints of PW2.

13. So far as the second point is concerned, the rent control court has found that the business carried on by the landlord in other buildings will not in any manner affect the bonafides or for securing advantage as provided under the first proviso to section 11(10) of the Act. The trial court while appreciating the evidence let in by the tenant has found that the alleged annual income of Rs.25,000/- received by the second revision petitioner cannot be believed at all. The trial court also found that an income of Rs.2,100/- p.m. is not sufficient enough for a person to carry on his every day activities considering the cost of living index in the present society. Therefore, the trial court has arrived at a finding that the second respondent is having other sources of income. The rent control court also found that there was no pleading or evidence let in by the second revision petitioner that he is a poor person and he has difficulties in maintaining himself. It was also found by the rent control court that there are other suitable buildings available in the locality for the use and occupation of the second revision petitioner. Thus, after appreciating the evidence tendered by the parties, and evaluating the legal aspects, the rent

control court has entered into a finding that the hardship caused to the tenant will not outweigh the advantage to the landlord.

14. The Appellate Authority re-appreciated the order of the rent control court also by relying on the legal principles laid down by the Apex Court as well as this Court under the first proviso to section 11(10) of the Act and has found that the order passed by the rent control court is not warranting any interference.

15. We have appreciated the pleadings and the records produced in revision and we are of the considered opinion that the rent control court as well as the appellate authority have appreciated the rival contentions in accordance with law. Merely because the landlord has income from other sources, that by itself, is not a ground to decline the advantage to a landlord in the matter of eviction of the petition schedule building. Apart from that, augmenting more income by a landlord is not a negative factor to secure advantage under the first proviso to section 11(10) of the Act nor the same will cause any manner of hardship to the tenant. While considering the question of comparative hardship, as per well settled proposition of law by this Court as well as the Apex Court, is to find out, as to whether for shifting the business the tenant has any hardship. The trial court clearly found that there are buildings available in the locality for use and occupation of the tenant. Moreover, on facts, the income said to

be received by the second revision petitioner was disbelieved and it was found that the tenant has got sufficient source of income to carry on his activities, from other sources. It is a well settled proposition of law under the first proviso to section 11(10) that both sides should adduce evidence in order to enable the rent control court to appreciate the question of comparative hardship.

16. So far as the first respondent-landlord is concerned, sufficient evidence was let in to show that PW2 who is a dependent of first respondent is carrying on number of activities in the petition schedule building which is having only an area of 180 sq. ft. It was also found that there is dearth of space in the building in which he carries on business. Therefore, while appreciating the advantage of the landlord, the rent control court has found that if the petition schedule building is vacated, the same will satisfy the need of the landlord which was found to be an outweighing feature to the hardship of the tenant. These factual findings were re-appreciated by the appellate court and has declined interference.

17. This Court is conscious of the powers conferred on it under section 20 of the Act. The law permits interference of a revisional court in the findings of the trial court as well as the appellate court only under the three circumstances provided in section 20 i.e. when an illegality or irregularity or impropriety is found in the order or

proceedings. After appreciation of the entire facts and circumstances, and the records of the trial court and the appellate court made available, we are of the considered opinion that there are no situation prevailing in the case warranting our interference by invoking the revisional powers conferred on us. Resultantly, revision fails and accordingly the same is dismissed.

18. As a last submission, learned counsel for the revision petitioners submitted that one year time may be granted to the revision petitioners to vacate the premises. We heard the learned counsel for the first respondent on this question and after hearing the parties, we are of the considered opinion that six months time can be considered, but not without conditions. The second revision petitioner shall file an affidavit before the execution court, Kozhikode within a period of three weeks from the date of receipt of a copy of this order, undertaking to vacate the premises unconditionally on or before 15.06.2016, that arrears of rent, if any, shall be paid within the said period of three weeks and further that the current rent falling due will be paid on or before the 5th day of every succeeding month.

19. It is made clear that if any of the conditions laid down above is violated by the revision petitioners, the first respondent will be at liberty to pursue the execution pending before the execution court and in that eventuality, the execution court shall ensure that

delivery is effected without any delay.

Resultantly, revision is dismissed subject to the stipulations made above.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**SHAJI P. CHALY
JUDGE**

/TRUE COPY/

P.A. TO JUDGE

vpv

R.C.R.No.212 of 2015

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