

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 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

RCRev..No. 216 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 23/2013 of RENT CONTROL APPELLATE
AUTHORITY, KALPETTA DATED 10-04-2015

AGAINST THE ORDER/JUDGMENT IN RCP 25/2011 of RENT CONTROL COURT,
SULTHAN BATHERI DATED 11-10-2013
REVISION PETITIONER(S):APPELLANT/RESPONDENT/TENANT

K P USMAN, AGED 54 YEARS, S/O.MOOSA, RESIDING AT
KUZHIMBATTUPURAYIL HOUSE, PULPALLY POST AND VILLAGE,
SULTHAN BATHERY TALUK, WAYANAD DISTRICT.

BY ADVS.SRI.ANEESH JOSEPH
SRI.NIRMAL V NAIR
SRI.RILGIN V.GEORGE
SRI.LIJO VARGHESE
SRI.ARUN PAUL (KAPRASSERY)

RESPONDENT(S):LANDLORD

A.R MANMATHAN, AGED 59 YEARS, S/O.RAGHAVAN NAIR,
RESIDING AT ARIKKAT HOUSE, PULPALLY VILLAGE,
SULTHAN BATHERY TALUK, WANAYAD DISTRICT, PIN-670640.

R-R BY ADV. SRI.P.B.KRISHNAN
R-R BY ADV. SRI.P.M.NEELAKANDAN
R-R BY ADV. SRI.P.B.SUBRAMANYAN
R-R BY ADV. SRI.SABU GEORGE
R-R BY ADV. SRI.S.NITHIN (ANCHAL)

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
23-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R.No.216 of 2015

Dated this the 23rd November, 2015

O R D E R

P.N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.25 of 2011 on the file of the Rent Control Court, Sulthan Bathery, a petition filed by the respondent/landlord for an order of eviction under section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The case set out by the landlord is that he bonafide needs the petition schedule building which consists of two shop rooms to enable his son who is dependent on him, to start a textile business. The tenant opposed the application by filing a counter statement.

2. In the rent control court the landlord examined himself as PW1 and his son, for whose purpose an order of eviction was sought, as PW2. He also produced and marked Exts.A1 to A5. The tenant examined himself as RW1. The rent control court considered the rival contentions and held that the need put forward is bonafide. The contention of the tenant that the landlord is in possession of other vacant rooms in the same locality was repelled. The rent control court thereafter proceeded to consider the question whether the tenant is entitled to the protection of the second proviso to section 11(3) of the

Act. After analysing the pleadings and evidence in the case, the rent control court held that the tenant has not succeeded in proving the ingredients of both the limbs of the second proviso to section 11(3) of the Act. An order of eviction under section 11(3) of the Act was accordingly passed on 11.10.2013. Aggrieved thereby the tenant filed R.C.A.No.23 of 2013 on the file of the Rent Control Appellate Authority, Kalpetta. By judgment delivered on 10.4.2015, the rent control appellate authority concurred with the rent control court and dismissed the appeal. The tenant has, aggrieved thereby, filed this revision petition under section 20 of the Act.

3. When this revision petition came up for admission hearing on 13.10.2015, learned counsel appearing for the petitioner submitted that the petitioner is only desirous of getting a reasonable time to surrender vacant possession of the petition schedule building. In the light of the said submission, we issued notice on admission to the respondent/landlord. The revision petition has accordingly come up before us today after service of notice on the respondent. When the revision petition was taken up today, learned counsel appearing for the petitioner submitted that the petitioner may be granted one year's time from today to surrender vacant possession of the petition schedule building. Learned counsel appearing for the respondent/landlord submitted that the impugned judgment of the rent control appellate authority was delivered on 10.4.2015, that more

than six months have passed thereafter and that the landlord is willing to grant the tenant a further period of six months from today to surrender vacant possession of the petition schedule building. We have considered the request made by the learned counsel appearing for the tenant for one year's time to surrender vacant possession of the petition schedule building. We have also taken note of the submission made by learned counsel appearing for the respondent that the respondent is willing to give six months time from today to the tenant to surrender vacant possession.

4. The impugned judgment was delivered on 10.4.2015. The instant revision petition was filed on 7.8.2015. More than six months have passed after the impugned judgment was delivered. The bonafide need put forward by the landlord in the rent control petition is that his younger son who was examined as PW2 wants to start a textile business. Such being the situation, we are of opinion that the prayer for grant of one year's time from today to surrender vacant possession of the petition schedule building is an unreasonable demand and cannot be acceded to. However, taking note of the fact that the respondent is willing to grant six months time from today to surrender vacant possession, we dispose of the revision petition on the following terms:

“(a) The petitioner shall within one month from today file an undertaking in the form of an affidavit in the rent control court,

undertaking to surrender vacant possession of the petition schedule building to the landlord within three months from today;

(b) The petitioner shall also undertake that he will not induct strangers into possession of the petition schedule building or commit acts of waste therein;

(c) He shall also undertake to deposit the rent, if any, in arrears and to continue to pay the rent till the date of surrender;

(d) Needless to say, in the event of failure on the part of the petitioner to file an affidavit within the time limit stipulated above, it will be open to the landlord to forthwith execute the order for eviction.

(e) The landlord shall refund the sum of Rs.50,000/- (Rupees Fifty Thousand only) paid by the tenant as advance on the day the tenant surrenders possession of the petition schedule building, subject however to the condition that if any amount is due from the tenant by way of arrears of rent, it will be open to the landlord to adjust it from the said sum of Rs.50,000/-.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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