

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

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

RCRev..No. 227 of 2015 ()

AGAINST THE JUDGMENT IN RCA 23/2014 of I ADDL.DISTRICT COURT,
ERNAKULAM DATED 30-06-2015

AGAINST THE ORDER IN RCP 4/2011 of III ADDL.M.C.EKM (RENT CONTROL)
DATED 04-12-2013
PETITIONER/APPELLANT/RESPONDENT:

SITARAMAN AGED 66 YEARS
S/O. ANNAMALAI REDDIAR, RAM NIVAS, K.PADMANABHAN ROAD
AYYAPPANKAVU
ERNAKULAM DOING BUSINESS AT HOTEL ARYAS
PAVURETH BUILDING, NO. 28/232. NEW NO. 28/25, S.A ROAD
MANORAMA JUNCTION, KOCHI - 682 036.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA

RESPONDENT(S)/RESPONDENT/PETITIONER:

C.GEORGE @ GEORGE CHRISTOPHER, AGED 76 YEARS
S/O. P.E.GEORGE, PAVURETH GEMS HOUSE, 25A
PANDIT COLONY ROAD, KOWDIAR, THIRUVANANTHAPURAM
TRUSTEE OF PAVURETH TRUST
HAVING ITS REGISTERED OFFICE AT PATTOM P.O.
THIRUVANANTHAPURAM REPRESENTED BY THE POWER
OF ATTORNEY HOLDER
MR.PUNNOSE JOHN, S/O. P.K.JOHN, NO. 16A
SHANTI NAGAR ANNEX, RAJAGIRI P.O.
SOUTH KALAMASSERY - 683 104.

BY ADV.SHRI.K.R.VINOD

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
18-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JJ

K. SURENDRA MOHAN & SHAJI P. CHALY, JJ.

R.C.R NO.227 OF 2015

Dated this the 18th September, 2015.

JUDGMENT

Surendra Mohan, J.

The tenant who has suffered concurrent orders of eviction under Section 11(3) of the Kerala Buildings (Lease & Rent Control Act), 1965 (the 'Act for short) is the revision petitioner. The respondent landlord had filed RCP 4/2011 before the Rent Control Court, Ernakulam, seeking an order of eviction against the tenant under Section 11(3) of the Act. The need of the landlord was resisted by the tenant putting forward various grounds. It was contended that the landlord is already in possession of the rest of the three storied building of which the tenanted premises forms a part. Therefore, there was no impediment in the landlord satisfying his need, if it were genuine by utilising the portions that were

in his possession. However, according to the landlord, the entire building was necessary for his purpose.

2. After trial, the Rent Control Court found that the need that was put forward was bonafide. The tenant was also held disentitled to the benefit of the second proviso to Section 11(3). The aggrieved tenant had carried the matter in appeal to the Rent Control Appellate Authority, Ernakulam. RCA 23/2014 was considered by the Appellate Authority and has been dismissed, confirming the order of eviction granted by the Rent Control Court. This revision is filed against the said judgment.

3. According to Adv. Philip T.Varghese who appears for the petitioner the Rent Control Petition, as originally instituted was by a trust. The trial had proceeded in spite of the objection raised by the tenant that the Rent Control Petition at the instance of the trust was not maintainable. It was only at

the fag end of the trial that a petition to amend the cause title of the Rent Control Petition and to have the trust represented by the trustee was filed. The same was allowed after the entire evidence was over. It was thereafter that the order of eviction was passed. In view of the above, it is contended that substantial prejudice was caused to the tenant in placing and proving his case.

4. Adv. K.R.Vinod appears for the respondent-landlord. According to the counsel, the tenant had let in evidence in extenso. The landlord was also cross-examined at length on all the aspects of the case. The only change that was brought in by the amendments against which objection is raised, was to substitute the name of the trustee as petitioner. Since the landlord had been cross-examined exhaustively, no purpose would have been served by having the trial conducted afresh. It is contended that the authorities below

have considered all the aspects and that no interference in revision is called for.

5. After having heard the respective counsel at length, we are not satisfied that any interference with the proceedings of the authorities below is called for in the facts and circumstances of this case. We find that the authorities below have approached the issues in the proper perspective and have considered the contentions, properly. The contention that the trust was not properly represented at the time of filing the Rent Control Petition was specifically raised and argued before the Appellate Authority. We find that the Appellate Authority has considered the said aspect and has found that no prejudice was caused to the revision petitioner tenant by the procedure that was adopted. Both the courts below have found that the need put forward by the landlord was bonafide. The question as to whether a need is

bonafide or not is a question of fact. The Appellate Authority being the final authority on the question of facts, we find no grounds to interfere with the said finding. The tenant has been found disentitled to the benefit of the second proviso. The said finding is also justified. For the above reasons, we do not find any grounds to entertain this revision petition.

6. As a last submission, the counsel for the petitioner sought for the grant of a sufficiently long period of time since what is being conducted from the tenanted premises is a restaurant. The restaurant according to the counsel is a source of employment to as many as 25 persons and is functioning very well. The task of identifying a proper premises in the locality and shifting the business, would involve some time for which, a facility is sought for. The counsel for the landlord opposes the grant of any time

pointing out that the Rent Control Petition was filed in the year 2011 and that the matter has been pending for the last four years. However, he does not dispute the fact that, the prospect of finding a suitable place to shift the restaurant would necessarily need time. After discussions and pursuations, the parties agree that a period of one year from today could be granted to the tenant to vacate, however, subject to conditions.

7. In the result:

i) This Rent Control Revision fails and is accordingly dismissed.

ii) The revision petitioner tenant is granted time up to 17.9.2016 to surrender vacant possession of the premises to the landlord on condition that, he shall swear to an affidavit before the Execution Court in RCP 4/2011, within a period of two weeks of the date of receipt of a copy of this judgment

unconditionally undertaking to surrender vacant possession of the premises to the landlord on or before 17.9.2016.

iii) It shall be a further condition for the grant of time that the tenant pays off the arrears of rent, if any remaining unpaid and continues to pay the rent in respect of the premises without any delay or default, until vacant possession is surrendered to the landlord in accordance with the above direction. It is made clear that any default in complying with the above contentions would entail forfeiture of the benefit of the above directions.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
SHAJI P.CHALY
Judge

jj

/True copy/

