

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

RCRev..No. 229 of 2015 ()

AGAINST THE ORDER IN RCA 199/2012 of RENT CONTROL APPELLATE AUTHORITY,
VADAKARA DATED 06.06.2015

AGAINST THE ORDER IN RCP 1/2011 of RENT CONTROL COURT, PAYYOLI
DATED 16.10.2012

REV.PETITIONERS/APPELLANTS/RESPONDENTS:

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1. SAMEERA, AGED 32 YEARS
D/O.KUNHABDULLA HAJI, KARUVANKANDY HOUSE
THURAYUR AMSOM DESOM, PAYYOLI ANGADI.P.O, THURAYOOR-673523.
 2. FEMINA NOUSHAD(MINOR), AGED 13 YEARS
KARUVANKANDY HOUSE, THURAYUR AMSOM DESOM
PAYYOLI ANGADI.P.O, THURAYOOR-673523.
 3. BROTHER MUHAMMAD SIDAN(MINOR), AGED 7 YEARS, ATUDENT-DO-
 4. SISTER AYISHA FIDA(MINOR) AGED 5 YEARS
 5. MOIDEEN HAJI, AGED 63 YEARS
KARUVANKANDY HOUSE, THURAYUR AMSOM DESOM
PAYYOLI ANGADI.P.O, THURAYOOR-673523.
 6. WIFE NAFEESA, AGED 53 YEARS
KARUVANKANDY HOUSE, THURAYUR AMSOM DESOM
PAYYOLI ANGADI.P.O, THURAYOOR-673523.

BY ADV. SRI.ZUBAIR PULIKKOOL

RESPONDENTS/RESPONDENT/PETITIONER:

PEEDIKAYILAKATH MUHAMMAD,, AGED 46 YEARS
S/O ABOOBACKER HAJI, BUSINESS "MUSHALEEFA"
IRINGAL AMSOM DESOM, IRINGAL.P.O
VIA-VATAKARA KOYILANDY TALUK-673521, KOZHIKODE DISTRICT.

R BY ADV. SRI.B..KRISHNAN (CAVEATOR)

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.229 of 2015

Dated this the 17th day of September, 2015.

ORDER

P.N.Ravindran, J.

The petitioners are the tenants in R.C.P.No.1 of 2011 on the file of the Rent Control Court/Munsiff Magistrate of Payyoli. The respondent is the landlord therein. The respondent instituted R.C.P.No.1 of 2011 under section 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short, on the allegation that the tenants have ceased to occupy the petition schedule shop room from August 2009 onwards without any reasonable cause. It was also contended that the rent is in arrears from January 2009. The petitioners herein entered appearance and filed objections wherein they attempted to explain away the cessation of occupation on the ground that there was some dispute *inter se* among the partners of a firm which was carrying on business in the petition schedule premises. They also pressed into service Ext.B1 partnership deed in support of the said contention. The Rent Control Court considered the rival contentions and held that the tenants have failed to prove their case that the petition schedule shop room was taken for the purpose of business

of the partnership of which their predecessor in interest was the Managing Partner. The Rent Control Court also held relying on the report submitted by the Advocate Commissioner that there was cessation of occupation for more than six months prior to the institution of the rent control petition. The Rent Control Court also took note of the fact that when the Commissioner inspected the petition schedule shop room, 14 motorcycles were parked in front of it and on the veranda of the shop room, waste paper and waste clothes were seen scattered. The Commissioner had also noticed the presence of cobwebs and dust over the shutter and on the pillars. The Rent Control Court accordingly held that there has been cessation of occupation attracting section 11(4)(v) of the Act. An order for eviction was accordingly passed. The appeal filed by the tenant as R.C.A.No.199 of 2012 was dismissed by the Rent Control Appellate Authority/Additional District Judge, Vatakara by judgment delivered on 06.06.2015. Hence this revision petition.

2. When this revision petition came up for consideration today, Sri.Zubair Pulikool, learned counsel appearing for the petitioners submitted that the petitioners are only desirous of seeking reasonable time to remove the fittings and fixtures inside the shop room and also to settle the *inter se* dispute among the partners. Learned counsel submitted that though the tenants have not been able to prove that the entrustment of the shop room was

to Noushad in his capacity as the Managing Partner of the firm, it was the firm which was doing business after the entrustment and therefore, as the accounts between the partners have to be settled, reasonable time may be granted for that purpose. Sri.B.Krishnan, learned counsel appearing for the respondent/landlord submitted that in a case where eviction is ordered due to cessation of occupation which in the instant case commenced in August, 2009, there is no justification in seeking further time for vacating the premises. The learned counsel submitted that the respondent however has no objection in the tenants removing the fittings and fixtures inside the petition schedule shop room.

3. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through the impugned orders. It has come out in evidence that there was cessation of business in the petition schedule shop room six months prior to the date on which R.C.P.No.1 of 2011 was filed. According to the landlord, cessation of occupation commenced in August, 2009. The tenants have not adduced any evidence to show that they were carrying on business in the petition schedule shop room until a few days prior to the date of institution of the rent control petition. However, as a jewellery was being run in the petition schedule shop room and the tenants have installed fittings and fixtures, we are of the opinion that the tenants should be given

reasonable time to remove the fittings and fixtures and also to sort out the differences and disputes if any among partners of the firm.

We accordingly dispose of this rent control revision petition by granting to the petitioners three months' time from today for the purpose of enabling them to remove the fittings and fixtures in the petition schedule shop room, subject to the condition that they shall within two weeks from today file an undertaking in the form of an affidavit in the rent control court to the effect that they will not raise any objection to the execution of the order for eviction or induct third parties or strangers including the partners of the firm into possession of the petition schedule shop room and that they shall within three months from today remove the fittings and fixtures erected/installed by them in the petition schedule shop room. The tenants shall also undertake to pay the arrears of rent if any within one month from today and to continue to pay rent till the date on which vacant possession of the building is handed over to the landlord.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

AV/vpv

/True Copy/

P.A to Judge