

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

RCRev..No. 236 of 2015

AGAINST THE JUDGMENT IN RCA 7/2012 of ADDL.DISTRICT -
COURT-I (RENT CONTROL APPELLATE AUTHORITY), MAVELIKKARA DATED 9/4/15

AGAINST THE ORDER IN RCP 1/2011 of MUNSIFF COURT (RENT CONTROL
COURT), KAYAMKULAM DATED 17/8/12

REVISION PETITIONER/APPELLANT/COUNTER PETITIONER:

MANIYAPPAN, AGED 49 YEARS,
S/O CHELLAPPAN,
KRISHNA BHAVANAM,
CHIRAKKADAVAM MURI,
KAYAMKULAM, ALAPPUZHA.

BY ADVS. SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENT/RESPONDENT/PETITIONER:

CHAKRADHARI, AGED 63 YEARS,
S/O PADMANABHAN,
PALLIYUDE THEKKETHIL VEEDU,
CHIRAKKADAVOM MURI,
KAYAMKULAM, ALAPPUZHA.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
23-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R. C. R. No.236 of 2015

Dated this the 23rd day of September, 2015

ORDER

P. N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.1 of 2011 on the file of the Rent Control Court, Kayamkulam. The respondent is the landlord therein. The respondent/landlord instituted R.C.P.No.1 of 2011 under sections 11(2)(b), 11(3) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the "Act", for short, praying for an order evicting the petitioner herein from a bunk shop. He contended that the rent is in arrears from September, 2010; that the tenant is not occupying the premises for the last six months and that he bona fide needs the bunk shop to start business in candies, lime water, juice, soda and like items. The tenant opposed the application by filing written objections. He disputed the fact that rent is in arrears. He contended that the respondent is a former employee of the Kerala State Road Transport Corporation getting a monthly pension; that his sons are all grown up and become earning members;

and that his wife is also getting monthly income in the form of pension. The tenant also contended that the landlord owns three other shops in the same locality and therefore, he is not entitled to an order of eviction. He further contended that he is depending for his livelihood on the income derived from the petition schedule shop room and therefore, he is entitled to the benefit of the second proviso to section 11(3) of the Act.

2. Before the Rent Control Court, the landlord examined himself as PW1 and produced and marked as Exts.A1 to A4. The tenant examined himself as DW1 and produced and marked as Exts.B1 to B5. The son of the landlord was examined as DW2 for the purpose of proving the tenant's case that the children of the landlord are well settled in life. Before the Rent Control Court, the landlord did not pursue the prayer for eviction under section 11(2)(b) of the Act. The Rent Control Court considered the rival contentions and held that the need put forth by the landlord is bona fide. As regards the benefit of the second proviso to section 11(3) of the Act, the Rent Control Court held that the tenant has not discharged the burden to prove the ingredients of the second proviso to section 11(3) of the Act. The

contention that there was cessation of occupation for six months was repelled. The Rent Control Court, accordingly passed an order for eviction under section 11(3) of the Act. Aggrieved thereby, the tenant filed R.C.A.No.7 of 2012 on the file of the Rent Control Appellate Authority, Mavelikkara. By judgment delivered on 09-04-2015, the Appellate Authority concurred with the Rent Control Court and dismissed the appeal. Hence, this revision petition.

3. We heard Sri.R.Sunil Kumar, the learned counsel appearing for the petitioner. We have also gone through the impugned judgment. The Rent Control Court and the Appellate Authority have concurrently held that the bona fide need put forward by the landlord is true and genuine. The Rent Control Court as well as the Appellate Authority have held that though the landlord owns three other buildings which have been let out to the tenants, as the investment required to start a bunk shop business in selling candies, lime water, juice, soda and like items is low, by no stretch of imagination can it be said that the need put forward is only a ruse to evict the tenant. It has also come out in evidence that the tenant is running an autorickshaw and earning income from autorickshaw. The Rent Control Court and the Appellate

Authority have on that ground held that the tenant has not proved that he is depending for his livelihood on the income derived from the petition schedule shop. The Rent Control Court and the Appellate Authority also held that the tenant has not discharged the burden to prove the second limb of the second proviso to section 11(3) of the Act.

4. After hearing the learned counsel for the petitioner and going through the impugned judgment, we are not persuaded to hold that the impugned judgment of the Appellate Authority is in any way illegal or perverse. We therefore find no ground to entertain the revision petition. It fails and is accordingly dismissed. However, having regard to the request made by the petitioner/tenant for reasonable time to surrender vacant possession of the petition scheduled bunk shop, we deem it appropriate to grant three months' time from today to the petitioner/tenant to surrender vacant possession of the petition schedule bunk shop to the respondent/landlord subject to the condition that he shall within two weeks from today file an undertaking in the form of an affidavit before the Rent Control Court, if no petition for execution has been filed, or before the execution court, if a petition for

execution has been filed, undertaking to surrender vacant possession of the petition schedule bunk shop to the landlord within three months from today. The tenant shall also undertake that he will continue to pay the rent payable in respect of the petition schedule bunk shop till the date of surrender and that he will not induct third parties into possession of the petition schedule bunk shop. In the event of failure on the part of the tenant to file an undertaking as directed above, it will be open to the landlord to forthwith apply for execution of the order for eviction.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

