

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 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

RCCRev..No. 245 of 2015 ()

**AGAINST THE JUDGMENT IN RCA 142/2011 of RENT CONTROL APPELLATE AUTHORITY,
THALASSERY DATED 23.6.2015**

**AGAINST THE ORDER IN RCP 156/2003 of RENT CONTROL COURT, KANNUR DATED
30.3.2011**

REVISION PETITIONER/RESPONDENT/RESPONDENT:

**MANAGING DIRECTOR,
KANNUR DISTRICT WHOLESALE CO-OPERATIVE CONSUMER STORES LTD.,
KANNUR DISTRICT.**

**BY ADVS.SRI.M.SASINDRAN
SRI.SATHEESHAN ALAKKADAN**

RESPONDENT/APPELLANT/PETITIONER:

**ARJUN LAKSHMANAN,
S/O. LAKSHMANAN,
RESIDING AT BRAMAPURI,
THOTTADA, KANNUR - 670 007.**

BY ADV. SRI.V.PREMCHAND

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 19-11-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VPV

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

R.C.R.No.245 of 2015

Dated this the 19th day of November, 2015

ORDER

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.156 of 2003 on the file of the Rent Control Court, Kannur, a petition filed by the respondent/ landlord for an order of eviction under sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as "the Act" for short.

2. The landlord had in the petition for eviction averred that the petition schedule building belongs to him as per a Will dated 3.3.1992 executed by late Smt.Susheela in her favour, that the said Will was accepted by the Court of the Munsiff of Kannur in O.S.No.514 of 1999 and O.S.No.41 of 2000 and that the petition schedule building and the appurtenant land have been set apart to his share as per the decree passed in the aforesaid suits. He had averred that he bonafide needs the petition schedule building to start a business in grocery and stationery, that he has no job or income and that he is presently depending on his parents for his livelihood. He also contended that the tenant has kept the rent in arrears from 1.7.2000, notwithstanding the registered notice sent to the tenant calling upon him to attorn to him

and to pay rent.

3. Upon receipt of notice, the tenant entered appearance and filed a counter statement contending that it is in occupation of the tenanted premises ever since 1938 and therefore, it is entitled to the protection of section 11(17) of the Act. The tenant denied the allegation that the rent is in arrears from 1.7.2000 and contended that rent upto and inclusive of May 2003 has been paid to Smt.R.G.Raja @ Radha. The tenant also denied and disputed the contention of the landlord that he bonafide needs the petition schedule building to start a business.

4. Before the rent control court, the landlord examined himself as PW1 and produced and marked Exts.A1 to A6. On behalf of the tenant, one of its employees was examined as RW1 and Exts.B1 to B79 were produced and marked. The rent control court considered the rival contentions and held that payment of rent to Smt.R.G.Raja @ Radha cannot amount to payment to the petitioner and that the petitioner being the landlord was entitled to receive the rent in respect of the petition schedule building. The rent control court accordingly held that the rent is in arrears from 1.7.2000. The rent control court also held that the need put forward is bonafide. The tenant being a co-operative society, it was held that it is not entitled to the protection of the second proviso to section 11(3) of the Act (vide the decision of

this court in **Palakkad District Co-op. Bank v. Mohammed Kaleem** [1996 (1) KLT 247]). The contention of the tenant that it is entitled to the protection of section 11(17) of the Act was repelled on the following reasoning:

"21. Yet another contention raised by respondent is that the lease was started as early in the year 1938 and they are entitled to get fixity of tenancy. PW1 deposed that the lease was started in the year 1964 only. There is no evidence produced before this court to show that the lease was started in the year 1936. RW1 deposed that he joined in the respondent's society in the year 1997. The details prior to 1997 was gathered by him from documents and from others. In the absence of evidence to show that the starting of tenancy in the year 1938 or any day prior to 01.04.1940 respondent is not entitled to get fixity of tenancy."

Consequently, an order of eviction under sections 11(2)(b) and 11(3) of the Act was passed on 30.03.2011. Aggrieved thereby, the tenant filed R.C.A.No.142 of 2011 on the file of the Rent Control Appellate Authority, Thalassery. By judgment delivered on 23.6.2015, 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.

5. We heard Sri.M.Sasindran, learned counsel appearing for the

petitioner and Sri.V.Premchand, learned counsel appearing for the respondents. Sri.M.Sasindran, learned counsel appearing for the petitioner submitted that as it has come out in evidence that the tenant has been paying the rent regularly to the nominee of the previous landlord, the rent control court erred in holding that non-payment of rent to the respondent herein would justify an order of eviction under section 11(2)(b) of the Act. The learned counsel also contended that as it has come out in evidence that the tenant was in occupation of the petition schedule building prior to 1.4.1940, an order of eviction could not have been passed in view of the provisions contained in section 11(17) of the Act, especially when the landlord has not proved his entitlement for the exemption contemplated in the said provision. Learned counsel contended that in such circumstances, the impugned judgment is liable to be set aside and the rent control petition dismissed.

6. Per contra, Sri.V.Premchand, learned counsel appearing for the respondent contended relying on the decision of a learned single Judge of this court in **Saleem v. Rajeswary** [1990 (2) KLT 388] that the burden to prove that the tenant was in occupation of the petition schedule premises on 1.4.1940 and that it is in continuous occupation thereafter, is on the tenant, that the tenant in the instant case has not produced any evidence to prove the said fact and therefore, the said

contention was rightly repelled by the rent control court. Learned counsel contended that no contention in that regard was also urged before the appellate authority. As regards the arrears of rent, learned counsel for the respondent contended that the landlord had in Ext.A3 notice dated 26.6.2000 called upon the tenant to attorn to him and to pay rent but the tenant did not attorn to him and instead, it continue to pay rent to a person who had no title to the property. The learned counsel contended that in such circumstances, no exception can be taken to the finding entered by the rent control court that the tenant has kept the rent in arrears from 1.7.2000.

7. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through the pleadings and the materials on record. We shall first consider the question whether the tenant in the instant case is entitled to the protection of section 11(17) of the Act. The case set out by the tenant in the counter statement is that the tenancy arrangement commenced in the year 1938 and therefore, as it was in occupation of the petition schedule premises on 1.4.1940, it is not liable to be evicted in a petition for eviction filed under section 11(3) of the Act. Though an employee of the tenant was examined as RW1 and the tenant had also produced Exts.B1 to B79, none of the documents relate to the period prior to 1940. Though PW1 had in his chief examination stated that

the tenancy arrangement commenced in the year 1938, it is not in dispute that he entered service only in the year 1997. Apart from the *ipse dixit* of the employee of the tenant examined as RW1, there is no material on record to substantiate the case of the tenant that the tenancy arrangement commenced in the year 1938. The tenant has not chosen to produce the lease deed relating to the petition schedule property. It has also not produced receipts evidencing payment of rent to show that it was in possession as on 1.4.1940. A learned single Judge of this court has in **Saleem v. Rajeswary** (supra) held that whoever claims the benefit of section 11(17) of the Act has to plead the necessary facts and prove the same to the satisfaction of the rent control court. It was held that there must be satisfaction that the tenancy originated either on the crucial date (1.4.1940) or on any previous date and that hardship of the tenant to prove the said fact is not a substitute for proof, nor does it relieve him of his burden. The learned single Judge held that the protection envisaged in the subsection being special and exceptional to such a tenant, with its consequence of foreclosing the landlord's right to avail himself of a ground which even a restricting legislation like the Rent Control Act had granted, the tenant's burden to prove that the tenancy originated on or before the crucial date cannot be lightly discharged. It was held that in the absence of the instrument of lease itself, receipt

acknowledging payment of rent on a prior date or an entry in the local body's record may help the tenant to satisfy the court on this score. It was further held that if the point is sought to be established through oral evidence alone, the testimony of witnesses must be such as to instill confidence in the court's mind about its truth.

8. As stated earlier, apart from the *ipse dixit* of the employee of the tenant examined as RW1 there is no material to substantiate the contention of the tenant that the tenancy arrangement commenced in the year 1938 and that it was in occupation of the tenanted premises on 1.4.1940. The tenant has not produced the instrument of lease. It has not produced receipts evidencing payment of rent at the relevant time to show that it was in occupation of the tenanted premises as on 1.4.1940. Apart from examining RW1, an employee who entered service in the year 1997, the tenant has not chosen to examine any of its former employees or members to prove its contention that the tenancy arrangement commenced in the year 1938. It has also not produced any document to show that it was in occupation of the petition schedule premises as on 1.4.1940. In such circumstances, we are not persuaded to hold that the tenant in the instant case has discharged the burden of proving the fact averred by it in the counter statement that the tenancy arrangement commenced in the year 1938 and that it was in occupation of the petition schedule premises on

1.4.1940. We accordingly hold that the tenant has not proved its entitlement to the protection of section 11(17) of the Act.

9. That takes us to the question whether there is any merit in the challenge to the finding entered by the rent control court and upheld by the appellate authority that the tenant has kept the rent in arrears from 1.7.2000. RW1 has in categorical terms admitted that the tenant has not paid rent to PW1 from 1.7.2000 to May 2003. According to RW1, rent for the said period was paid to Smt.R.G.Raja @ Radha. The receipts evidencing payment of rent for the said period to Smt.R.G.Raja @ Radha were however not produced. It is not in dispute that after May 2003, the rent in respect of the tenanted premises is being deposited in the rent control court. In such circumstances, as the tenant has not proved that rent for the period commencing from 1.7.2000 to May 2003 was paid either to the petitioner or to Smt.R.G.Raja @ Radha, we find no reason to interfere with the finding entered by the rent control court and upheld by the appellate authority that the tenant has kept the rent in arrears from 1.7.2000 to May 2003. As rightly observed by the rent control court if as a matter of fact the tenant has paid any amount to Smt.R.G.Raja @ Radha for the period commencing from 1.7.2000 to May 2003, the tenant can no doubt take appropriate steps to realise the same from her. Though during the course of arguments, learned counsel

appearing for the petitioner also canvassed the correctness of the finding entered by the rent control court that the need put forward is bonafide, we find no merit or force in the said contention. The rent control court has, on an appreciation of the evidence available in the case, held that the need put forward is bonafide. The need put forward by the landlord is that he needs the petition schedule building to start a business in stationery. PW1 is not employed. Though the tenant had contended that he is employed, there is no evidence to prove the said averment. Though the tenant had also contended that PW1 has no experience in running a stationery business, it has come out in evidence that PW1 is presently helping his friend in running a business in stationery. In such circumstances, we find no reason to interfere with the finding entered by the rent control court and upheld by the appellate authority that the need put forward is bonafide. The tenant being a co-operative society is also not entitled to the protection of the second proviso to section 11(3) of the Act. The tenant has no case that the landlord is in possession of any other vacant building of his own in the same locality. Therefore, the tenant can also rely on the first proviso to section 11(3) of the Act.

For the reasons stated above, we hold that there is no merit in the instant revision petition. It fails and is accordingly dismissed. However having regard to the fact that the tenant is running a

consumer store in the petition schedule premises, we deem it appropriate to grant the tenant time till 30.4.2016 to surrender vacant possession of the petition schedule building to the landlord.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

/true copy/

P.A. To Judge

vpv