

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 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

RCRev..No. 259 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 12/2011 of RENT CONTROL APPELLATE
AUTHORITY, ALAPPUZHA. DATED 20-01-2015

AGAINST THE ORDER/JUDGMENT IN RCP 7/2009 of RENT CONTROL
COURT,ALAPPUZHA DATED 29-11-2010
REVISION PETITIONER(S)/APPELLANT/COUNTER PETITIONER:

P.N BABU AGED 65 YEARS
S/O NARAYANAN, PREETH GARMENTS, SHOP NO. 14/357
UCO BANK BUILDING , CULLEN ROAD, ALAPPUZHA

BY ADVS.SRI.K.S.HARIHARAPUTHRAN
SRI.M.D.SASIKUMARAN
SRI.GEORGE MATHEW
SRI.DIPU JAMES
SRI.SUNIL KUMAR A.G

RESPONDENT(S):RESPONDENTS/PETITIONERS

1. BASHEER AHAMME
LEPPERY HOUSE, ALISSERY WARD, ALAPPUZHA-688 001

2. FARS BASHEER
S/O BASHEER AHAMMAD, LEPPERY HOUSE, ALISSERY WARD
ALAPPUZHA-688 001

3. AFRA BASHEER
D/O BASHEER AHAMMAD, LEPPERY HOUSE, ALISSERY WARD
ALAPPUZHA-688 001

4. JEBIN BASHEER
W/O BASHEER AHAMMAD, LEPPERY HOUSE, ALISSERY WARD
ALAPPUZHA-688 001

BY ADV. SRI.K..SHIBILI NAHA (CAVEATOR)

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
15-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R. No.259 of 2015

Dated this the 15th October, 2015

O R D E R

P.N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.7 of 2009 on the file of the Rent Control Court, Alappuzha. The respondents are the landlords therein. They instituted R.C.P.No.7 of 2009 on 23.1.2009 praying for an order evicting the tenant from the petition schedule room, under section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The landlords contended that the tenant was running a tailoring shop in the petition schedule premises, that practically no tailoring work is done by him for the past few years, that the second petitioner before the rent control court is a M.B.A. graduate having good academic and business background and sufficient experience in ready made garment business and that the landlords bonafide need the petition schedule shop room so as to enable the second petitioner before the rent control court to open a ready made garments shop in the petition schedule room and in the room adjacent to it. The landlords had, in the rent control petition, averred that the adjacent room bearing door No.AMC/14/356 (old number) is lying vacant and if possession of the petition schedule room is also obtained, he can start his business in ready made

garments in the petition schedule room as also in the shop room bearing door No.AMC 14/356 after removing the wall separating the two rooms.

2. The tenant opposed the application by filing a counter statement wherein he contended inter-alia that he is running a tailoring business in the petition schedule room under the name and style "Preeth Garments" for the past 38 years, that the bonafide need put forward is not true, that the second petitioner does not have the ability or capacity to start a business in ready made garments, that even if the second petitioner intends to start a ready made garment business, there are other vacant rooms in the possession of the landlords. He also contended that he is depending for his livelihood mainly on the income derived from the business carried on by him in the petition schedule room and that no other suitable building is available in the locality.

3. Before the rent control court, the second petitioner was examined as PW1 and a real estate broker was examined as PW2 for the purpose of proving the availability of other alternate buildings in the locality. The landlord also produced and marked Exts.A1 to A10. The tenant examined himself as CPW1 and another witness as CPW2. The rent control court considered the rival contentions and held that

the need put forward is bonafide. The rent control court took note of the fact that the father of the second petitioner who is the first petitioner in the rent control petition, is running a business in vegetables as also a ready made shop in partnership basis at Alappuzha, that it has come out in evidence that PW1 is assisting his father for the past three years in his business, and that the fact that the landlords have the capacity to start a business in ready made garments is evident from the admission made by the tenant examined as CPW1 that the landlords have the capacity to raise the required funds for starting a business in ready made garments. The rent control court also took note of Ext.A4 fixed deposit receipt for Rs.2,13,469/-, Ext.A5 fixed deposit receipt for Rs.1,98,512/- and Ext.A6 fixed deposit receipt for Rs.1,16,714/- and held that the evidence on record discloses the fact that the need put forward is true and genuine. The rent control court also took note of the admission made by CPW1 that shop room No.AMC/14/356 (adjacent room) is lying vacant and in the possession of the landlords after the tenant vacated it. The rent control court thereafter proceeded to consider the question whether the landlords have other vacant buildings in the same locality. The rent control court held that as the landlords themselves have admitted the fact that the adjacent shop room is in

their possession and that the proposal is to start a business in ready made garments in the adjacent shop room and in the petition schedule shop room after removing the wall separating the two rooms and that the tenant has not adduced any evidence to show that the landlord is in possession of any other shop room in the ground floor of the building. Though by the time the case came up for trial, the UCO Bank which was occupying the first floor of the building had vacated the premises and PW1 had admitted the said fact when he was cross examined, the contention of the tenant that the proposed business can be run in that premises was repelled on the ground that it is not suitable for the business proposed to be conducted by the landlord. In coming to the said conclusion, the rent control court took note of the fact that apart from the fact that the space occupied by the UCO Bank is on the first floor, the said premises has more area than what is required by the landlord, that the landlords are not in exclusive possession of the said portion of the building and that the other co-owners have consented to the second petitioner running the proposed business in ready made garments only in shop rooms bearing door Nos.AMC/14/357 and 357 and that this constitutes special reasons as contemplated in the first proviso to section 11(3) of the Act. As regards the contention of the tenant that he is entitled to the

protection of the second proviso to section 11(3) of the Act, the rent control court held that he has not proved that he is depending for his livelihood mainly on the income derived from the tailoring business run by him in the petition schedule building and that he has admitted the fact that several other vacant rooms are available in the locality. The rent control court accordingly allowed the petition and passed an order of eviction under section 11(3) of the Act. Challenging that order the tenant filed R.C.A.No.12 of 2011 on the file of the Rent Control Appellate Authority, Alappuzha. By judgment delivered on 20.1.2015 the 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.

4. We heard Shri K.S. Hariharaputhran, learned counsel for the petitioner and Shri K. Shibili Naha, learned counsel for the landlords who have lodged a caveat. We have considered the submissions made at the Bar by the learned counsel on either side. We have also gone through the impugned judgment/order and the pleadings and the materials on record. The need put forward by the landlords is that they need the petition schedule shop room so as to enable the second petitioner before the rent control court who was examined PW2, to start a business in ready made garments. The proposal is to start a

business in ready made garments in the petition schedule room bearing door No.AMC/14/357 and in the adjacent room bearing door No.AMC/14/356 which is lying vacant and in the possession of the landlords. The landlords have also adduced evidence before the rent control court to show that they have the financial capacity to start such a business and that the first petitioner before the rent control court, viz. the father of the second petitioner is running a business in ready made garments in partnership with his near relatives. The second respondent before the rent control court is a M.B.A. degree holder. In such circumstances, we are in agreement with the rent control court and the appellate authority that the need put forward is bonafide. Though it was contended before the rent control court and the appellate authority that as the landlords have come by possession of the upstairs portion of the building which was formerly in the possession of UCO Bank, the rent control court and the appellate authority have given cogent reasons as to why the availability of that space cannot be a reason to deny an order for eviction. As noticed by the rent control court and the appellate authority, the space occupied by UCO Bank is on the first floor of the very same building. The proposal of the landlords is to start a business in ready made garments in two shop rooms having a total area of approximately 250 sq. ft.

The room vacated by UCO Bank has an area of approximately 1300 sq. ft. which is much more than the space needed for the proposed business. That apart, it will be more advantageous for the landlords if the business in ready made garments is run in the ground floor of the building where passers-by and pedestrians can do window shopping and the landlords can display the wares for sale. In such circumstances, we are in agreement with the rent control court and the appellate authority that the tenant cannot bank on the first proviso to section 11(3) of the Act to contend that an order of eviction could not have been passed. Incidentally it is also to be noticed that at the point of time the rent control petition was filed, UCO Bank was in occupation of upstairs premises. As regards the second proviso to section 11(3) of the Act, the burden was on the tenant to prove the ingredients of both the limbs of the said proviso. The rent control court and the appellate authority have concurrently held that the tenant has signally failed to discharge the burden. Moreover, the tenant has himself admitted the fact that other vacant rooms are available in the locality. His only explanation was that the owners are not prepared to let it out to him on rent. Apart from the *ipse dixit* of the tenant there is no material to substantiate the said statement. In such circumstances, we find no reason to interfere with the impugned judgment/order. The

revision petition fails and is accordingly dismissed.

5. After the revision petition was dismissed, Sri.K.S. Hariharaputhran, learned counsel appearing for the petitioner/tenant submitted that the tenant may be granted atleast one year's time to surrender vacant possession of the petition schedule shop room to the landlord. The learned counsel submitted that the tenant had even before the rent control court, offered to pay Rs.500/- per mensem as rent and in the event of the tenant being granted one year's time to surrender vacant possession, he is prepared to pay a higher rental to the landlords and also discharge the arrears of rent if any at the current rate. Sri.K.Shibili Naha, learned counsel appearing for the landlords very fairly submitted that the landlords are prepared to give the tenant reasonable time namely to the extent of six months to surrender vacant possession of the petition schedule shop room. The tenant is a senior citizen presently aged 73 years. During the course of hearing, the learned counsel appearing for the petitioner had brought to our notice that the wife of the tenant is undergoing treatment for renal impairment at Medical College, Alappuzha and that if he is suddenly forced to shift to another premises, it will lead to disruption of business and consequently, loss of income.

6. Having given our anxious consideration to the submissions

made on either side, we are of the opinion that the tenant can be granted ten months' time from today to surrender vacant possession of the petition schedule shop room to the landlords subject to the following conditions:-

- i. The tenant shall within three weeks from today file an undertaking in the form of an affidavit before the rent control court, undertaking to surrender vacant possession of the petition schedule shop room to the landlords on the expiry of the said period of ten months.
- ii. The tenant shall within one month from today deposit the arrears of rent if any due and payable till today at the current rate namely Rs.230/- per mensem to the landlords.
- iii. The tenant shall also undertake to pay the rent from today onwards till the date of surrender at the rate of Rs.500/- per mensem as offered by him in the counter statement filed by him in the rent control petition. The tenant shall in the affidavit to be filed by him give an undertaking in that regard as well.
- iv. The tenant shall further undertake that he will not induct third parties into possession of the petition schedule shop room or sublet it or commit acts of waste therein.
- v. In the event of failure on the part of the tenant to file an affidavit

within the time limit stipulated above, the order granting time to surrender vacant possession of the petition schedule shop room shall stand withdrawn and it will be open to the landlords to forthwith apply for execution of the order of eviction.

**P.N.RAVINDRAN
JUDGE**

**BABU MATHEW P. JOSEPH
JUDGE**

kav/vpv