

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 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

RCRev..No. 261 of 2015 ()

**AGAINST THE JUDGMENT IN RCA 18/2013 of RENT CONTROL APPELLATE AUTHORITY-
II,TRIVANDRUM DATED 13.7.2015**

**AGAINST THE ORDER IN RCP 53/2012 of RENT CONTROL COURT, TRIVANDRUM DATED
30.7.2013**

REVISION PETITIONER/APPELLANT/RESPONDENT:

**NUSAIBA A.R.,
W/O.K.MUHAMMAD MOIDEEN, RESIDING AT T.C.14/1474,
PARIS ROAD, THIRUVANANTHAPURAM-695 014.**

BY ADV. SRI.M.SREEKUMAR

RESPONDENT/RESPONDENT/PETITIONER:

**K.S.ASOKAN,
S/O.KASTHOORI, RESIDING AT GEETHA BHAVAN, T.C.26/1620
PRESS ROAD, THIRUVANANTHAPURAM.**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
14-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VPV

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

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R.C.R.No.261 of 2015

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Dated this the 14th day of October, 2015

ORDER

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.53 of 2012 on the file of the Rent Control Court, Thiruvananthapuram filed by the respondent/ landlord for an order evicting the tenant under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as "the Act" for short. He had in the petition for eviction averred that the tenant is in possession of the ground floor portion of a building, bearing door No.TC 26/1624, having an area of 82 sq. ft., that the building of which the said room is a part is situate between the boundary of the residential building belonging to the petitioner and his sister and abutting the main road and that the landlord, who is an insurance agent, needs the said petition schedule shop room for starting his office. The tenant opposed the petition for eviction contending inter alia that she has effected improvements to the building by expending the sum of Rs.50,000/-, that she is running a business in office and school stationary therein and as the space was inadequate she has taken the adjacent shop room bearing door No.TC

26/1616(6) on rent, that there is no other suitable building available in the locality for shifting the business and that she is depending mainly on the income derived from the business carried on by her in the petition schedule shop room, for her livelihood.

2. Before the rent control court, the landlord examined himself as PW1 and produced and marked Exts.A1 and A2. The husband of the tenant was examined as CW1 and Exts.B1 and B2 were produced and marked on her side. The rent control court considered the rival contentions and held, relying on the testimony tendered by PW1, that the need put forward is bonafide. It was held that as the landlord is admittedly an insurance agent for the past 10 years and he has no separate office of his own, it cannot be said that the need put forward is only a mere desire or a ruse to evict the tenant. The contention of the tenant that the landlord has another shop room situate behind the petition schedule shop room and therefore, in the absence of special reasons an order of eviction cannot be passed in view of the first proviso to sub-section (3) of section 11 of the Act was repelled on the ground that the said shop room is a portion of the residential house wherein the landlord is residing with his family members. The rent control court held that though that room was earlier being used by the landlord's father to do some job works it is now part of the residential house without any independent existence. The contention of the tenant that she is entitled to the protection of the second proviso to

section 11(3) of the Act was also negated. Consequently, by order passed on 30.7.2013, the rent control court ordered eviction of the petition schedule shop room. The tenant carried the matter in appeal by filing R.C.A.No.18 of 2013 on the file of the Rent Control Appellate Authority, Thiruvananthapuram. By judgment delivered on 13.7.2015, the rent control appellate authority concurred with the rent control court and dismissed the appeal. The tenant has, aggrieved thereby, filed this revision petition.

3. We heard Sri.M.Sreekumar, learned counsel appearing for the petitioner and Sri.L.Mohanan, learned counsel appearing for the respondent/landlord. We have also gone through the impugned judgment/order. The landlord is admittedly an insurance agent. The petition schedule shop room is situate in the compound of his residential house. It has an area of approximately 82 sq. ft. The landlord has prayed for an order evicting the tenant from the petition schedule shop room on the averment that he bonafide needs it for use as his own office. The rent control court and the appellate authority have concurrently held that the need put forward is bonafide, having regard to the admitted fact that the landlord is an insurance agent. Such being the situation, we are of the opinion that no exception can be taken to the said finding entered by the rent control court and upheld by the appellate authority. The contention of the tenant that the landlord is in occupation of another building of his own, was

repelled on the ground that the said room is a part of the residential building where the landlord is residing with his family members and has no independent existence. The contention of the tenant that she is entitled to the protection of the second proviso to section 11(3) of the Act was also repelled. The tenant had also admitted the fact that as the space in the petition schedule shop room is inadequate she has taken on lease the adjacent shop room bearing door No.TC 26/1616 (6). The tenant is even now in possession of the said building. In such circumstances, we are of the considered opinion that no exception can be taken to the order of eviction passed by the rent control court and affirmed by the appellate authority.

For the reasons stated above, we hold that there is no merit in the instant revision petition. It fails and is accordingly dismissed. After the revision petition was dismissed, learned counsel appearing for the petitioner/tenant sought six months' time to surrender vacant possession of the petition schedule premises to the landlord. The learned counsel appearing for the landlord opposed the said request. However, having regard to the fact that the tenant is running a business in the petition schedule shop room, we deem it appropriate to grant the tenant four months' time from today to surrender vacant possession of the petition schedule shop room to the landlord subject to the following conditions:

- i. The petitioner/tenant shall within three weeks from today file an

undertaking in the form of an affidavit in the rent control court, undertaking to surrender vacant possession of the petition schedule shop room to the respondent/landlord on the expiry of the said period of four months.

- ii. The tenant shall deposit or pay to the landlord the arrears of rent if any within three weeks from today and undertake in the affidavit to be filed as directed above, that she will continue to pay the rent till the date of surrender.
- iii. The tenant shall also undertake that she will not induct third parties into possession of the petition schedule building or commit acts of waste therein.
- iv. In the event of failure on the part of the petitioner/tenant to file an affidavit within the time limit stipulated above, it will be open to the landlord to forthwith execute the order of eviction.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

/true copy/

P.A. to Judge