

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

RCRev..No. 266 of 2015 ()

**AGAINST THE JUDGMENT IN RCA 15/2013 of RENT CONTROL APPELLATE AUTHORITY,
KOLLAM DATED 24.6.2014**

**AGAINST THE ORDER IN RCOP 9/2004 of RENT CONTROL COURT, KARUNAGAPPALLY
DATED 15.7.2013**

REVISION PETITIONER/APPELLANT/COUNTER PETITIONER:

**K.RAJAN AGED 68 YEARS,
S/O.KUNJU PILLAI, MUKADAYIL HOUSE,
MARUTHOORKULANGARA NORTH, ALUMKADAVU PO,
KARUNAGAPPALLY, KOLLAM.**

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT/RESPONDENT/PETITIONER:

**RAJAN, S/O.VASU,
VIPIN NIVAS, MARUTHOORKULANGARA NORTH
ALUMKADAVU PO, KARUNAGAPPALLY,
KOLLAM DISTRICT- 690 573.**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
27-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VPV

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

R.C.R. No.266 of 2015

Dated this the 27th October, 2015

O R D E R

P.N. Ravindran, J.

The petitioner is the tenant in R.C.O.P.No.9 of 2004 on the file of the Rent Control Court, Karunagappally, a petition filed by the respondent/landlord for an order of eviction under section 11(4)(iv) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. Besides the petitioner, the landlord had joined seven other tenants as respondents in the petition for eviction. The tenants resisted the prayer for eviction. The rent control court considered the rival contentions and held that the building needs reconstruction. An order of eviction was accordingly passed on 19.12.2005. By that order the landlord was directed to reconstruct the building within six months from the date on which the tenants surrender vacant possession of the respective shop rooms to him. Seven among the tenants carried the matter in appeal by filing R.C.A. No.8 of 2006 before the Rent Control Appellate Authority, Kollam. By judgment delivered on 29.11.2007, the appellate authority dismissed the appeal. The revision petition filed therefrom by the said tenants as R.C.R. No.53 of 2008 in this court was dismissed by a Division Bench of this court of which one of us (P.N. Ravindran, J.) was a member, by

order passed on 28.2.2008.

2. After the order of eviction attained finality, the tenants surrendered vacant possession of the building to the landlord. The landlord thereafter reconstructed the building and issued a notice to the petitioner herein on 31.10.2009 offering to let out the second room from the western side, hereinafter referred to as Room No.1, on a monthly rent of Rs.750/-. The tenant was called upon to intimate his willingness within 14 days from the date of receipt of the notice. The tenant received the notice on 5.11.2009 and thereafter caused a reply notice dated 18.11.2009 to be issued wherein he expressed willingness to take the aforesaid shop room on a monthly rent of Rs.300/-, but reserving liberty with the landlord to have the fair rent fixed by moving the rent control court. Since there was no consensus between the parties, the landlord let out room Nos.1 and 5 to one Anilkumar, S/o. Velayudhan Achari. The tenant thereafter filed I.A. No.908 of 2010 in the rent control court praying for an order directing the landlord to allot a room in the reconstructed building to him. The aforesaid application was filed on 23.6.2010.

3. While I.A.No.908 of 2010 was pending, the landlord offered to entrust Room No.5 to the tenant. Such an offer was made on 16.9.2010 when both parties were present in court in person.

Accordingly, the key of room No.5 was handed over to the tenant on 17.9.2010, viz., the very next day. The landlord thereafter filed I.A. No.1317 of 2010 praying for an order directing the tenant to return the key handed over to him from court and to receive the key of room No.5 from him. On the very same day, the tenant filed I.A. No.1318 of 2010 praying for an order to break open the lock of room No.1 which according to him, was the room entrusted to him by the landlord. The case set out by the landlord in the affidavit filed in support of I.A. No.1317 of 2010 was that utilising the key handed over to him, the tenant had opened room No.1 which had been let out to Anilkumar, S/o. Velayudhan Achari and that when Anilkumar came over to the tenanted premises with the key of room No.1, the tenant locked room No.1 with another lock and left the place. The substance of the averments in the affidavit filed by the tenant in support of I.A. No.1318 of 2010 is that after he had occupied room No.1 and placed a chair and a bicycle inside the room and had gone out of the room after locking it, the landlord unauthorisedly locked it with another lock and therefore he is not in a position to occupy it.

4. On application filed by the landlord an Advocate Commissioner was appointed to inspect the two rooms and to submit a report. The report submitted by the Advocate Commissioner was marked as

Ext.C1. The Advocate Commissioner who submitted Ext.C1 report was examined as PW1, the landlord was examined as PW2 and the tenant was examined as RW1. The rent control court considered the rival contentions and held, relying on Ext.C1 report submitted by the Advocate Commissioner that the room entrusted by the landlord to the tenant was room No.5. Such a finding was entered having regard to the observation made by the Advocate Commissioner in Ext.C1 report that she found a bicycle and a chair in room No.5. In coming to the said conclusion, the rent control court took note of the case set out by the tenant in the affidavit filed in support of I.A.No.1318 of 2010 that he had after the entrustment of the room to him occupied it and placed a chair and a cycle therein. The rent control court also took note of the fact that using the key of room No.5 which bears serial No.26, it is possible to open the lock of room No.1 as well. The rent control court also took note of the statement in the report submitted by the Advocate Commissioner to the effect that though she had requested the tenant to open the lock of room No.5 using the key in his possession, he did not oblige. The Advocate Commissioner had also deposed that when she opened room No.5, she saw a bicycle and a plastic chair there. The rent control court accordingly held that as the key handed over by the landlord to the tenant is that of shop room

No.5, the landlord is not entitled to an order as prayed for. I.A.No.1317 of 2010 was accordingly dismissed by order passed on 15.7.2013. On the very same reasoning the application filed by the tenant as I.A. No.1318 of 2010 was also dismissed.

5. Challenging the aforesaid common order, the tenant filed R.C.A.No.15 of 2013 on the file of the Rent Control Appellate Authority, Kollam. By judgment delivered on 24.6.2014 the appellate authority concurred with the rent control court and dismissed the appeal. The appellate authority held that having regard to the materials on record, the rent control court was perfectly justified in entering a finding that it was the key of room No.5 which was actually handed over by the landlord to the tenant. The tenant has, aggrieved thereby, filed this revision petition.

6. We heard Shri B. Krishna Mani, learned counsel for the petitioner. We have also gone through the impugned judgment/order as also copies of I.A. Nos.1317 and 1318 of 2010, the objections thereto filed by the respective parties and Ext.C1 report submitted by the Advocate Commissioner. It is evident from the materials on record that the landlord had handed over the key of a room to the tenant in open court on 17.9.2010. Though there is nothing on record to show that it was the key of room No.5 which was handed over, when the

Advocate Commissioner opened room No.5, she found a bicycle and a chair belonging to the tenant in that room. This fortifies the contention of the landlord that it was the key of room No.5 which was handed over and not the key of room No.1 which, according to the landlord, the tenant attempted to forcibly occupy. It has come out in evidence that using the key of room No.5, the lock of room No.1 can also be opened. It has also come out in evidence that the tenant refused to hand over the key in his possession to the Advocate Commissioner for the purpose of ascertaining whether room No.1 also can be opened using the key of room No.5. From the conduct of the tenant and the attendant circumstances we are satisfied that the finding entered by the rent control court and upheld by the appellate authority that what was really handed over to the tenant by the landlord was the key of room No.5 and not the key of room No.1 appears to be more probable than the case set out by the tenant that it was the key of room No.1 which was handed over to him. The tenant has no case that room No.5 which was handed over to him has a lesser area than the room that was in his possession in the old building which was pulled down and later reconstructed. The tenant has also not proved that he will be put to any real prejudice if room No.1 is not allotted to him. It is evident from the contents of the reply notice sent by the tenant that he was

more concerned about the rate of rent than the location of the shop room. The attempt of the tenant appears to be to get a larger room with two shutters in the place of a comparatively smaller room. The right of the tenant under the Act is only to have a reasonable space in the reconstructed building allotted to him. That right has been recognised and safeguarded by the rent control court. The landlord had, in recognition of that right, handed over the key of room No.5 to the tenant. Such being the situation, we are of the opinion that no interference is called for with the impugned judgment/order. The revision petition fails and is accordingly dismissed. No costs.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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