

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 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

RCCRev..No. 285 of 2015 ()

**AGAINST THE JUDGMENT IN RCA 194/2014 of RENT CONTROL APPELLATE AUTHORITY,
KOZHIKODE- II DATED 31-08-2015**

**AGAINST THE ORDER IN RCP 155/2013 of RENT CONTROL COURT, KOZHIKODE-I DATED
31-10-2014**

REVISION PETITIONER/APPELLANT IN RCA/RESPONDENT IN RCP

**A.M.AYISHABI, AGED 66 YEARS
W/O.SYED MUHAMMED, IV/618, A.M.HOUSE
POOVATTU PARAMBA, PERUMANA, KOZHIKODE-673 024.**

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS/RESPONDENTS IN RCA/PETITIONERS IN RCP:

- 1. P.T.KOYATTY, AGED 70 YEARS,
S/O.A.P.MUHAMMED KOYA, KOYAMARAKKARAKAM HOUSE,
MUCHUNTHI, KUTTICHIRA NAGARAM AMSOM DESOM,
KOZHIKODE TALUK.**
- 2. P.TABDUL SATHAR,, AGED 66 YEARS,
S/O.A.P.MAMMED KOYA, KUNCHIRAMBALAM HOUSE,
EDIYANGARA ROAD, KOZHIKODE-673 001.**
- 3. P.TABDUL HAMEED, AGED 58 YEARS,
S/O.A.P.MAMMED KOYA, P.A.HOUSE, GANI STREET,
KOZHIKODE -673 001.**
- 4. P.TABDUL LATHEEF,, AGED 56 YEARS,
S/O.A.P.MAMMED KOYA, 5/194, BITHUL THIF,
CHARRIKIKAD PARAMBA, ARAKKINAR.P.O, KOZHIKODE-28.**
- 5. P.TABDUL AZEEZ,, AGED 63 YEARS,
S/O.A.P.MAMMED KOYA, 23/1098 A1, 'PRIYA',
THIRUVANNUR NADA.P.O, KOZHIKODE-673 029.**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
03-11-2015, 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.285 of 2015

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Dated this the 3rd day of November, 2015

ORDER

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.155 of 2013 on the file of the Rent Control Court, Kozhikode, a petition filed by the respondents/ landlords for an order of eviction under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as "the Act" for short. The landlords had in the rent control court averred that they bonafide need the petition schedule building so as to enable the fifth petitioner before the rent control court (the fifth respondent herein) who was formerly employed in the middle east and had come back to India in June 2009 on cessation of his employment, to start a hardware business. They had also averred that they do not have any other building in their possession, that though they own three rooms in the building of which the petition schedule room is a part, one room is in the occupation of a tenant who is doing a business therein and the other room is in the possession of a homeo doctor who is running a clinic in that room and that the third room, which is the petition schedule building is not being used for any purpose for the

past two years. The landlords also contended that the tenant is residing in premises bearing door No.IV/618, A.M. House, Poovattuparamba, Perumanna along with her husband and their children.

2. Upon receipt of notice, the tenant entered appearance and filed a counter statement contending inter alia that the fifth petitioner before the rent control court had entered into an agreement with her husband Syed Muhammed on 02.05.1990, agreeing to sell the building of which the petition schedule room is a part and the appurtenant land and that ever since the date of the agreement he is in possession of the petition schedule shop room. She also contended that the need put forward is not bonafide and that it is only a ruse to evict her. The tenant further contended that the petitioners are in possession of room Nos.16/272 and 16/267 situate in the very same premises. She also denied the allegation that she is not putting the building to any use.

3. Before the rent control court, the fifth petitioner was examined as PW1 and Exts.A1 to A4 were produced and marked. The husband of the tenant was examined as RW1 and Exts.B1 to B5 were produced and marked. The rent control court considered the rival contentions and the materials on record and held that the need put forward is bonafide. The rent control court held that apart from the testimony tendered by the tenant's husband examined as RW1, there

is no evidence to show that the fifth petitioner is engaged in real estate business or that he is otherwise gainfully employed. The rent control court also held that there is nothing to disbelieve PW1 or the need put forward by him. The rent control court thereafter proceeded to consider whether the tenant is entitled to the protection of the first proviso to section 11(3) of the Act. As regards the two rooms referred to in the counter statement filed by the tenant, the rent control court held that one of the rooms is being occupied by a homeo doctor who is running a clinic and the other room is in the possession of a tenant by name Imbichammu. The rent control court also took note of the fact that one of the two rooms namely the room in the possession of the homeo doctor belongs to the wife of PW1. The rent control court accordingly held that the tenant is not entitled to the protection of the first proviso to section 11(3) of the Act. Since the tenant was admittedly putting the building to use as a residential building the rent control court held that the benefit of the second proviso is not available to her. An order of eviction was accordingly passed on 31.10.2014. Challenging the order of eviction, the tenant filed R.C.A. No.194 of 2014 on the file of the Rent Control Appellate Authority, Kozhikode. By judgment delivered on 31.08.2015, the rent control appellate authority concurred with the rent control court and dismissed the appeal. Hence

this revision petition.

4. We heard learned counsel appearing for the petitioner. We have also gone through the impugned judgment and the pleadings of both sides. The fact that the petition schedule building belongs to the respondents herein who are the petitioners before the rent control court is not in dispute. The need put forward is that the fifth petitioner before the rent control court, who is presently unemployed, needs the petition schedule room to start a hardware business. The rent control court and the appellate authority have held that the fifth petitioner before the rent control court is presently unemployed. Though the tenant had contended that he is engaged in real estate business there is no material to substantiate the said contention. In any case, it has not been established that he is doing any other business. In such circumstances, no exception can in our opinion be taken to the finding entered by the rent control court and upheld by the appellate authority that the fifth petitioner before the rent control court bonafide needs the petition schedule room for the purpose of starting a hardware business. Whether the business will prosper or fail is not a matter which can be gone into for the purpose of considering the question whether the need put forward is bonafide or not. As regards the availability of two other shop rooms it has come out in evidence that one of the shop rooms

which belongs to the wife of the fifth petitioner before the rent control court is in the possession of a homeo doctor and that the other room which jointly belongs to the petitioners before the rent control court is in the possession of a tenant by name Imbichammu. The tenant cannot therefore successfully contend that he is entitled to the protection of the first proviso to section 11(3) of the Act. It is for the landlords to choose the room where they intend to start the business and the tenant cannot be heard to contend that the room in the occupation of another tenant should have been chosen for the purpose of starting the business. We therefore find no reason to interfere with the said finding as well.

5. The tenant has in paragraph 4 of the counter statement filed by her stated that she is residing with her family in the petition schedule building. However in paragraph 5 of the said counter statement she had further averred that in the front room of the petition schedule building, her husband is running a business in the sale of newspapers and magazines and that in the remaining portion she is residing with her family members. The case put forward is not that the tenant is depending for her livelihood mainly on the income derived by her from the business carried on in the petition schedule building. The case set out is that her husband is running a business in the sale of

newspapers and magazines in the front room of the building. She has no case in the counter statement that she is depending for her livelihood mainly on the income derived by her from the business carried on in the petition schedule building. The fact that she is a pensioner is also not in dispute. In such circumstances, as the occupation of the tenant is residential in nature and the tenant is admittedly a pensioner, the tenant cannot claim the protection of the second proviso to section 11(3) of the Act.

6. That takes us to the question whether in view of the agreement for sale referred to in the counter statement the rent control court should have declined an order of eviction. The fact remains that the tenant's husband with whom an agreement for sale was allegedly entered into on 02.05.1990 has chosen to institute a suit for specific performance only in the year 2014. The question whether the tenant's husband is entitled to decree for specific performance can be decided only in that suit. Even assuming that there was an agreement to sell, that by itself is not a reason to deny the prayer for eviction. The tenant cannot relying on the strength of an agreement for sale in favour of her husband successfully resist the prayer for eviction. We therefore find no reason to hold that in view of the agreement for sale stated to have been entered into between the fifth

petitioner before the rent control court with the tenant's husband in the year 1990, an order of eviction could not have been passed.

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 has been found to be in residential occupation of the premises, we deem it appropriate to grant her time till 31.03.2016 to surrender vacant possession of the petition schedule building.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

/true copy/

P.A. to Judge