

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

RCRev..No. 289 of 2015 ()

AGAINST THE JUDGMENT IN RCA 76/2014 of THE RENT CONTROL APPELLATE
AUTHORITY, KOZHIKODE DATED 15-07-2015

FROM

THE ORDER IN RCP 48/2012 of RENT CONTROL COURT, KOYILANDY DATED
09-12-2013

REVISION PETITIONERS/APPELLANTS/RESPONDENTS::

1. KAYYUMMA AGED 73 YEARS
W/O.V.C.ABDURAHIMANKUTTY, RESIDING AT SAHILAM HOUSE
MUBARACK ROAD, PANTHALAYANI AMSOM DESOM
KOYILANDY TALUK, KOZHIKODE DISTRICT.
2. SUBAIDA AGED 59 YEARS
D/O.V.C.ABDURAHIMANKUTTY, RESIDING AT SAHILAM HOUSE
MUBARACK ROAD, PANTHALAYANI AMSOM DESOM
KOYILANDY TALUK, KOZHIKODE DISTRICT.
3. SUHARA AGED 49 YEARS
D/O.V.C.ABDURAHIMANKUTTY, RESIDING AT SAHILAM HOUSE
MUBARACK ROAD, PANTHALAYANI AMSOM DESOM
KOYILANDY TALUK, KOZHIKODE DISTRICT.
4. NASEEMA AGED 47 YEARS
D/O.V.C.ABDURAHIMANKUTTY, RESIDING AT SAHILAM HOUSE
MUBARACK ROAD, PANTHALAYANI AMSOM DESOM
KOYILANDY TALUK, KOZHIKODE DISTRICT.
5. SHABEER AGED 45 YEARS
S/O.V.C.ABDURAHIMANKUTTY, RESIDING AT SAHILAM HOUSE
MUBARACK ROAD, PANTHALAYANI AMSOM DESOM
KOYILANDY TALUK, KOZHIKODE DISTRICT.

BY ADVS.SRI.C.ANILKUMAR (KALLESSERIL)
SRI.A.S.BENOY
SRI.JIMMY GEORGE
SRI.C.Y.VINOD KUMAR

RESPONDENT/RESPONDENT/PETITIONER:

K P MOHAMED, AGED 62 YEARS
S/O.IBRAHIMKUTTY, RESIDING AT SHIFA HOUSE
VENGERI AMSOM, NEDUGOTTU DESOM, KOZHIKODE TALUK
KOZHIKODE DISTRICT 673 001.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
20-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

kp/-

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

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R.C.R. No. 289 of 2015

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Dated this the 20th day of November, 2015

ORDER

P.N.Ravindran, J.

The petitioners are the tenants in R.C.P.No. 48 of 2012 on the file of the Rent Control Court, Koyilandy, a petition filed by the respondent-landlord for an order evicting the tenants under sections 11(2)(b), 11(3) and 11(4)(iii) of the Kerala Buildings (Lease & Rent Control Act, 1965, hereinafter referred to as 'the Act' for short. The landlord had in the petition for eviction averred that the tenants have paid rent at the rate of ₹210/- per mensem only for the period upto and inclusive of August, 2000 and that they kept the rent in arrears thereafter. He had also averred that he and his wife have no job or other sources of income and that he intends to start a ready made and tailoring business in the petition schedule building along with his wife. On that averment, he prayed for an order of eviction under section 11 (3) of the Act. He had further averred that the tenants have come by possession of a building reasonably sufficient for their requirement in the same town and therefore, they are liable to be evicted under section 11(4)(iii) of the Act.

2. Upon receipt of the notice, the tenants entered appearance

and filed a counter statement contending that rent upto and inclusive of July, 2012 has been paid. They also denied and disputed the averment in the rent control petition that the landlord bonafide needs the petition schedule building to start a business of his own. It was contended that the landlord has several other sources of income and properties and that he has other rooms in his possession which have been let out on rent. The tenants also claimed the protection of the second proviso to section 11(3) of the Act.

3. Before the rent control court, the landlord examined himself as PW1 and produced and marked Exts.A1 to A3 series. On the side of the tenants, the husband of the second petitioner herein (the second respondent before the rent control court) was examined as RW1. The tenants also produced and marked Exts. B1 to B3. The rent control court considered the rival contentions and held that the tenants have kept the rent in arrears. The rent control court also held that the need put forward by the landlord is bonafide. The rent control court however repelled the contention of the landlord that the tenants have come by possession of another building in the same locality. The contention of the tenants that they are depending for their livelihood, mainly on the income derived from the business carried on by them in the petition schedule building as also their contention that no other suitable building is available in the locality were repelled.

Consequently, an order of eviction under sections 11(2)(b) and 11(3) of the Act was passed directing the tenants to surrender vacant possession of the petition schedule building to the landlord within one month. Challenging that order, the tenants filed R.C.A.No.76 of 2014 on the file of the Rent Control Appellate Authority, Kozhikode. By judgment delivered on 15.7.2015, the rent control appellate authority concurred with the rent control court and dismissed the appeal. The tenants have aggrieved thereby filed this revision petition under section 20 of the Act.

4. We heard Sri. C. Anil Kumar, learned counsel appearing for the petitioners. Learned counsel appearing for the petitioners contended that the landlord who was examined as PW1 was brought to the court in a wheel chair, that it is not in dispute that he is bed ridden, that he is residing at Vengeri away from Koyilandy and therefore, the rent control court and the rent control appellate authority erred in holding that the need put forward is bonafide. Learned counsel contended that the case put forward by the landlord, who is wheel chair bound, that he bonafide needs the petition schedule building for the purpose of starting a business in ready made garments and tailoring, cannot by any stretch of imagination be said to be bonafie and therefore, the impugned judgment/order are liable to be set aside. Inviting our attention to the testimony tendered by the

landlord who was examined as PW1, learned counsel submitted that the landlord has admitted that he has come by possession of another building, that no special reasons have been stated warranting the grant of an order of eviction in respect of the petition schedule building and therefore, on that score also, the impugned judgment/order are liable to be set aside. Learned counsel further submitted that the tenants are depending for their livelihood mainly on the income derived from the business carried on by them in the petition schedule building, that there are no other suitable buildings available in the locality and therefore, the tenants are entitled to the protection of second proviso to section 11(3) of the Act.

5. We have considered the submissions made at the Bar by the learned counsel appearing for the parties. We have also gone through the testimony tendered by the landlord examined as PW1 and the husband of the second respondent before the rent control court who was examined as RW1. The landlord had in the petition for eviction averred that he and his wife are unemployed. RW1 has admitted the said fact in his cross examination. It has also come out in evidence that the landlord is admittedly bed ridden and cannot move about except with assistance and that he was brought to the court in a wheel chair for the purpose of his examination. PW1 has deposed that though he is under treatment for the past 1 ½ years, his doctor has

opined that he will be able to resume normal activities within 1 ½ months. Though PW1 was cross examined at length, nothing was brought out to discredit that statement. In any case, even assuming that he is wheel chair bound, nothing prevents him from starting a business in ready made garments and tailoring with the assistance of his wife. It is not necessary that the landlord himself should be personally present through out in the business place. It is enough that he occasionally comes to the premises. Though the landlord is aged 59 years, it has come out in evidence that his wife is aged only 48 years. She is hale and healthy. In such circumstances, merely for the reason that the landlord was at the time of examination brought to the court in a wheel chair, we are not persuaded to hold that the need put forwarded is not bonafide.

6. That takes us to the question whether the tenants are entitled to the protection of the first and second provisos to the section 11(3) of the Act. As regards the first proviso, the tenants had not pleaded that the landlord is in possession of another building of his own in the same locality. An attempt was however made to show that he has come by possession of another shop room situate in the same building, wherein another tenant was running a textile business under the name and style 'Vichithra'. It has however come out in evidence that though an order of eviction has been passed in respect of the said

shop room, the purpose for which the eviction was sought was to enable the landlord's daughter to start a business and that landlord has not so far obtained vacant possession of the said shop room. The tenants have no case that apart from the said shop room, the landlord is in possession of any other building. In such circumstances, as the tenants have not pleaded or proved that the landlord has come by possession of any other vacant building of his own in the same locality, we are of the opinion that the tenants cannot rely on the first proviso to sub section (3) of section 11 of the Act and contend that an order of eviction should not have been passed.

7. We shall next consider whether the tenants are entitled to the protection of the second proviso to sub section (3) of section 11 of the Act. RW1 has in his cross examination admitted the fact that turn over of the business establishment run by his mother-in-law, who is the first petitioner herein, is in excess of ₹11 lakhs. If that be so, the first petitioner in whose name the licence for business stands, is a dealer and assessee under the Kerala Value Added Tax Act, 2003 who is bound to file periodical returns. However, the returns filed by her before the Sales Tax authorities have not placed on record. It has also come out in evidence that petitioners 3 and 4 herein are residing with their spouses away from the petition schedule building. The fifth petitioner herein is admittedly running another business of his own.

RW1 himself is an expatriate Indian who was formerly employed in the Middle East. Apart from the *ipse dixit* of RW1, there is no material or record to show that the tenants are depending for their livelihood mainly on the income derived from the business carried on by them in the petition schedule building. Beside, the tenants have also not taken steps to prove that no other suitable building is available in the locality. The petition schedule building is situate in Koyilandy town which is a fast growing town. In such circumstances, we find no merit or force in the contention of the petitioners that they are entitled to the protection of second proviso to section 11(3) of the Act.

8. It is also relevant in this context to note that PW1 had in his chief affidavit averred that the tenants are running a business under the name and style as 'Shilpa Furniture' in five shop rooms situate in the very same locality. This statement has not denied by RW1 even in his chief affidavit. RW1 has however chosen to explain the said averment by stating that the said business is being run by his daughter. It has also come out in evidence and it is not in dispute that the fifth petitioner is running an independent business of his own and that petitioners 3 and 4 are not involved in the business, but are residing with their spouses away from Koyilandy. In such circumstances, we are of the considered opinion that there is no merit in the challenge to the finding entered by the rent control court and

upheld by the appellate authority that the need put forward is bonafie and that the tenants are not entitled to the protection of the first and second provisos to the section 11(3) of the Act.

9. The rent control court and the appellate authority have also held that the tenants have kept the rent in arrears. The plea by the tenants is one of discharge. The burden was therefore on them to prove that the rent was paid. Though RW1 has deposed that there are witnesses to prove payment of rent, none of them was examined. In such circumstances, as the tenants have not discharged the burden of proving the case pleaded by them, viz; discharge, we are not persuaded to hold that the finding regarding arrears of rent is in any way infirm.

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 predecessor-in-interest of the tenants was running a business in the petition schedule building for the past more than 50 years, we deem it appropriate to grant them six months' time from today to surrender vacant possession of the petition schedule building to the landlord, subject to the following conditions.

i. The petitioners 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 building to the respondent/landlord on the expiry of the period of six months from today.

ii. They shall deposit or pay to the landlord, the arrears of rent if any and undertake in the affidavit to be filed as directed above that they will continue to pay rent till the date of surrender.

iii. They shall in the said affidavit also undertake that they 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 petitioners to file an affidavit within the time limit stipulated above, it will be open to the landlord to forthwith apply for execution of the order of eviction.

**P.N.RAVINDRAN
JUDGE**

**BABU MATHEW P. JOSEPH
JUDGE**

kp/-