

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

RCRev..No. 291 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 32/2011 of RENT CONTROL APPELLATE
AUTHORITY, THRISSUR DATED 16-08-2014

AGAINST THE ORDER/JUDGMENT IN RCP 59/2008 of RENT CONTROL
COURT, THRISSUR DATED 22-01-2011
REVISION PETITIONER(S)/APPELLANT/RESPONDENT/TENANT:

RAMAKRISHNAN
S/O MAILATH LAKSHMIKUTTY AMMA KANATTUKARA DESOM
AYYANTHOLE VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENT(S)/RESPONDENT/PETITIONER/LANDLORD:

MATHEW
S/O PALLISSERY ANTHONY, PARALAM VILLAGE
THRISSUR TALUK, REPRESENTED BY MUKTHIYARAGENT JOICY
PARALAM VILLAGE, DESOM, THRISSUR DISTRICT

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
23-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R.No.291 of 2015

Dated this the 23rd November, 2015

O R D E R

P.N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.59 of 2008 on the file of the Rent Control Court, Thrissur, a petition filed by the landlord for an order of eviction under sections 11(2)(b), 11(3), 11(4)(i) and 11(4)(ii) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short.

2. The landlord had in the petition for eviction averred that he is presently employed abroad, that he intends to come back and settle down in his native place and start a photo copying business in the petition schedule building. He contended that he bonafide needs the petition schedule building for that purpose. He had further averred that the tenant is not using the petition schedule building for the past more than two years, that he has recently sub-let the building to one Rajan who is conducting a hair cutting saloon therein, that the tenant has caused material alteration to the building and that he has kept the rent in arrears from August 1998 onwards.

3. The tenant opposed the application by filing a counter statement. He contended that at the time of entrustment the landlord had received the sum of Rs.20,000/- as advance, that rent upto July

1998 was paid to the landlord and that thereafter rent for six months was sent by Money Order but it was not received by the landlord. The tenant further averred that the landlord had earlier filed R.C.P.No.52 of 2003, that thereafter the sum of Rs.8,500/- was paid on 17.11.2003 and a further sum of Rs.420/- was paid on 21.11.2003, that during the pendency of the rent control petition rent upto November 2003 was paid and that the sum of Rs.2,520/- being the rent for the period from December 2003 to May 2005 was sent by Money Order on 30.5.2005, but the landlord refused to receive it. The tenant further contended that the landlord's contention that he bonafide needs the petition schedule building for the purpose of starting a business, is only a ruse to evict him. The tenant denied the allegation that he has sub-let the building to Rajan and the further allegation that he has caused material alteration to the petition schedule building. He contended that he is running a business in the petition schedule building under the name and style "Sarathi Gents Beauty Parlour and that Rajan is only his employee. He also contended that he is depending for his livelihood mainly on the income derived from the business being conducted by him in the petition schedule building and that no other suitable building is available in the locality.

4. Before the rent control court, the landlord examined himself as PW1. He also produced and marked Exts.A1 to A8. The tenant

examined himself as RW1 and produced and marked Exts.B1 to B20. On application filed by the landlord, an Advocate Commissioner was appointed to inspect the petition schedule building and the neighbouring buildings and the report submitted by her was marked as Ext.C1. The Advocate Commissioner was examined as CW1. The rent control court considered the rival contentions and held that the need put forward is bonafide. The rent control court also held, relying on the report submitted by the Advocate Commissioner and the fact that the telephone number of Rajan finds a place in the name board of the hair cutting saloon, that the tenant has sub let the petition schedule building to one Rajan who is running Sarathi Gents Beauty Parlour and Hair Cutting Saloon therein. The contention of the landlord that the rent is in arrears and that the tenant has caused material alteration to the building, were repelled. Consequently, an order of eviction under sections 11(3) and 11(4)(i) of the Act was passed. Aggrieved thereby, the tenant filed R.C.A.No.32 of 2011 on the file of the Rent Control Appellate Authority, Thrissur. By judgment delivered on 16.8.2014, 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.

5. We heard Shri K.Mohanakannan, learned counsel appearing for the petitioner and Shri Dinesh Mathew Murikkan, learned counsel

appearing for the respondent. We have also gone through the pleadings and the materials on record. The pleadings and the materials on record disclose that the landlord had earlier filed R.C.P.No.52 of 2003 on the file of the Rent Control Court, Thrissur for an order of eviction under sections 11(2)(b), 11(3) and 11(4)(i) of the Act. The landlord had in paragraph 4 of R.C.P.No.52 of 2002, a copy of which is on record as Ext.A6, averred that the tenant has sublet the building to one Ranjith. He had further averred that he bonafide needs the petition schedule building to enable his wife who is a graduate and is qualified in typewriting, to start a job works centre with a photostat machine attached to it. Upon receipt of notice, the tenant appeared and filed Ext.A7 counter statement wherein, in paragraph 5, after denying the averment that he has sublet the petition schedule building to one Ranjith, he had averred that he is running a hardware business and that Ranjith whose name is mentioned in paragraph 4 of the rent control petition is his brother-in-law and his employee. It has come out in evidence that while R.C.P.No.52 of 2002 was pending, the landlord's wife got a Government employment and thereupon he filed an application pointing out that fact and seeking an amendment of the rent control petition. He had in the application for amendment averred that though the bonafide need of the wife does not any longer subsists, an order of eviction may be passed so as to enable him to

start the same business as the one which his wife proposed to start. The said prayer did not find acceptance at the hands of the rent control court which dismissed the application for amendment by Ext.A8 order passed on 18.9.2004 on I.A.No.4123 of 2004 in R.C.P.No.52 of 2002. The rent control court observed that the petitioner can after coming back from the Middle East where he was then employed, file a petition if he bonafide needs the petition schedule building. Consequently, the landlord filed Ext.B13 statement in R.C.P.No.52 of 2002 to the effect that R.C.P.No.52 of 2002 may be dismissed as withdrawn. Thereupon, by Ext.B14 order passed on 3.11.2004 the rent control petition was dismissed as not pressed. It was nearly four years thereafter that the landlord filed the instant rent control petition for an order of eviction on the averments aforesaid.

6. In the counter statement filed in R.C.P.No.59 of 2008 the tenant had in paragraph 7 denied the averment that he has sublet the petition schedule building to Rajan. He had in the said paragraph averred that he is running Sarathi Gents Beauty Parlour in the petition schedule building and that Rajan is only his employee. The presence of Rajan in the petition schedule building is not in dispute. The petitioner is not a barber by profession. He was earlier running a hardware business. Apart from producing Ext.B20 receipt which would show payment of fee for obtaining a licence under the Kerala

Panchayat Raj (Licencing of Dangerous and Offensive Trade and Factories) Rules, 1996, the petitioner has not produced any document to show that prior to 3.3.2008 on which date he paid the fee for obtaining a licence for running a beauty parlour, he was running a gents beauty parlour by engaging an employee in the tenanted premises. The tenant has in his cross examination admitted that accounts between him and his employee are settled either on daily or weekly basis. He has also admitted that Rajan who is stated to be his employee, is not accountable to him and is not maintaining accounts. It has also come out in evidence that Rajan whose name is mentioned in the rent control petition, was earlier running a hair cutting saloon in building bearing door No.11/326 situate directly across the road from the petition schedule building. It has also come out in evidence that in the name board, the phone number of the tenant is not given but the phone number of Rajan alone is given.

7. It is evident from the admitted facts and the attendant circumstances that the petitioner has no control over the business being run in the petition schedule building though the licence thereof stands in his name. Since the petitioner has not sufficiently explained the presence of the phone number of Rajan in the name board of the shop and has not satisfactorily explained by cogent and acceptable evidence that Rajan is his employee, we are not persuaded to hold

that notwithstanding the fact that the licence stands in the name of the petitioner, he has no control over the business and that he has thereby sublet the petition schedule building. We therefore find no reason to interfere with the finding entered by the rent control court that the tenant has sublet the petition schedule building to another person. Regarding bonafide need also we find no merit or force in the challenge to the finding entered by the rent control court. On the pleadings and the evidence on record we find that the bonafide need put forward cannot be said to be a ruse to evict the tenant. The landlord was aged 51 years in the year 2008 when the rent control petition was filed. It is not in dispute that one cannot remain in employment in the Middle East after attaining the age of 60 years. Such being the situation, if the landlord thought that he should start a job works centre in the petition schedule building, that cannot be said to be an irrational wish or a need which is not bonafide. We therefore find no good grounds to interfere with the finding entered by the rent control court and the appellate authority that the need put forward is bonafide. The tenant has no case that the landlord has vacant possession of any other building of his own. He has also not discharged the burden of proving that no other suitable building is available in the locality. It is evident from the fact that the tenant has no control over the business being run by him, that he cannot claim

the benefit of the first limb of the second proviso to section 11(3) of the Act. We therefore find no reason to hold that the tenant has discharged the burden cast on him to prove the ingredients of both the limbs of the second proviso to section 11(3) of the Act.

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 for the petitioner/tenant sought six months time to surrender vacant possession of the petition schedule building to the landlord. Learned counsel appearing for the landlord did not oppose the said request. In such circumstances, even while dismissing the revision petition we deem it appropriate to grant the tenant six months time from today to surrender vacant possession of the petition schedule building on the following conditions:

- “(a) The petitioner shall within one month 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 landlord on the expiry of the period of six months from today;
- (b) The petitioner shall also undertake that he will not induct strangers into possession of the petition schedule building or commit acts of waste therein;

(c) He shall also undertake to deposit the rent, if any, in arrears and to continue to pay rent till the date of surrender;

(d) Needless to say, in the event of failure on the part of the petitioner to file an affidavit within the time limit stipulated above, it will be open to the landlord to forthwith execute the order of eviction."

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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