

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 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

RCRev..No. 293 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCP 6/2010 of RENT CONTROL COURT,
PALAKKAD DATED 30-11-2010

AGAINST THE ORDER/JUDGMENT IN RCA 8/2011 of RENT CONTROL APPELLATE
AUTHORITY, PALAKKAD DATED 27-06-2015
REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

C.S.BALARAM
S/O.SANKARAN, PROPRIETOR, M/S.COCHIN STEEL CORPORATION
BOC ROAD, PALAKKAD, RESIDING AT S/207
CHANDRANAGAR, MARUTHA ROAD, AMSOM
PALAKKAD TALUK.

BY ADV. SRI.P.R.VENKETESH

RESPONDENT(S)/RESPONDENT/PETITIONER:

ASHKAR.M.K
S/O.LATE KUNHIMOIDEEN M.A., MALAYANKODE HOUSE,
M.A.K.COLONY, MEPARAMBA, PALAKKAD TALUK.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
09-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R.No.293 of 2015

Dated this the 9th December, 2015

O R D E R

P.N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.6 of 2010 on the file of the Rent Control Court, Palakkad, a petition filed by the respondent/landlord for an order of eviction under section 11(3) 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 he bonafide needs the petition schedule building to start a wholesale and retail business in steel. The tenant filed a counter statement resisting the petition for eviction. He also claimed the protection of the first and second provisos to section 11(3) of the Act.

2. Before the rent control court, the landlord examined himself as PW1 and produced and marked Exts.A1 to A2. The tenant examined himself as RW1. On application filed by the landlord, an Advocate Commissioner was appointed to inspect the petition schedule building as also the other buildings situate in the locality and the report submitted by her was marked by consent as Ext.C1. The rent control court, after considering the rival contentions and the evidence on record, held that the need put forward is bonafide. The rent control court thereafter proceeded to consider the question whether the

tenant is entitled to the protection of the first and second provisos to section 11(3) of the Act. As regards the first proviso to section 11(3) of the Act, the rent control court held that there is no evidence to prove that the landlord is in possession of any other room of his own in the same locality. As regards the second proviso also, the rent control court held that the tenant has signally failed to prove the ingredients of the first limb of the second proviso. Regarding the second limb of the second proviso, the rent control court held that though not of the same size, other vacant buildings are available in the locality. The rent control court accordingly passed an order of eviction under section 11 (3) of the Act on 30.11.2010. Challenging that order, the tenant filed R.C.A.No.8 of 2011 on the file of the Rent Control Appellate Authority, Palakkad. By judgment delivered on 27.6.2015 the appellate authority concurred with the rent control court and dismissed the appeal. The tenant has, aggrieved thereby, filed this revision petition.

3. When the revision petition came up for admission hearing before us on 3.12.2015, after hearing learned counsel appearing for the revision petitioner at length, we issued notice on admission to the respondent/landlord solely for the purpose of considering the request of the learned counsel appearing for the petitioner for time in excess of six months to surrender vacant possession of the petition schedule

building to the landlord. Notice was accordingly taken out and served on the respondent and he has entered appearance through counsel.

4. When the revision petition came up for hearing today, learned counsel appearing for the landlord submitted that the landlord is willing to grant time till 31.8.2016 to the tenant to surrender vacant possession of the petition schedule building subject to the condition that an affidavit to that effect is filed before the rent control court and the tenant also discharges the arrears of rent and continues to pay rent till the date of surrender.

In the light of the aforesaid submission, we dispose of the revision petition with the following directions:

- i) The petitioner shall, within one month from today, file an undertaking in the form of an affidavit before the rent control court undertaking to surrender vacant possession of the petition schedule building to the landlord on 31.8.2016;
- ii) The petitioner shall also undertake in the affidavit that he will continue to pay rent at the agreed rate till the date of such surrender;
- iii) If as on today any amount is due by way of arrears of rent, the petitioner shall deposit the same in the rent control court along with a calculation statement within one month from today;

- iv) Upon such deposit being made, it will be open to the landlord to withdraw the amount deposited;
- v) The tenant shall further undertake that he will not induct third parties into possession or commit acts of waste in the petition schedule building;
- vi) In the event of default on the part of the petitioner to file an undertaking 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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