

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 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

RCCRev..No. 296 of 2015

AGAINST THE JUDGMENT IN RCA 31/2011 of ADDL. D.C. - III, THALASSERY
DATED 07-08-2015

AGAINST THE ORDER IN RCP 35/2010 of PRL.M.C. (RCC), KANNUR
DATED 18-10-2010

REVISION PETITIONER/APPELLANT/TENANT:

PARAMBATH MUHAMMED HARIS,
S/O ABDULLA KUNHI,
AGED 55 YEARS, BUSINESS, MT-8/176,
NEAR T.K.ENGINEERING, THALASSERY ROAD,
KANNUR MUNICIPALITY, TALUK AND DISTRICT.

BY ADVS. SRI.E.M.MURUGAN
SRI.V.GOPIKRISHNAN

RESPONDENT/RESPONDENT/LANDLORD:

MADATHIL SOUDABI, D/O HAMEED, AGED 64,
NO OCCUPATION, RESIDENT AT SABIREEN,
NEAR T.K.ENGINEERING, THALASSERY ROAD,
KANNUR MUNICIPALITY, TALUK AND DISTRICT.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
17-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R.No.296 of 2015

Dated this the 17th day of November, 2015

ORDER

P. N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.35 of 2010 on the file of the Rent Control Court, Kannur, a petition filed by the respondent landlord for an order of eviction under sections 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the "Act", for short. The landlord had in the petition for eviction averred that she bona fide needs the petition schedule building to enable her son who was examined as PW1 to start a business in automobile accessories. She had also contended that the respondent owns a large number of buildings in Kannur town where the petition schedule building is situate. Upon receipt of notice, the tenant entered appearance and filed a counter statement denying and disputing the bona fide need put forward by the landlord. He also denied the averment that he is in possession of other buildings in the

locality. He also contended that he is entitled to the benefit of the second proviso to section 11(3) of the Act.

2. Before the Rent Control Court, the son of the landlord for whose benefit an order of eviction was sought, was examined as PW1 and Exts.A1 to A4 were produced and marked. The tenant examined himself as RW1 and produced and marked Exts.B1 to B4. The rent control court considered the rival contentions and the evidence on record and held that the need put forward is bona fide. The rent control court also held that the tenant has not succeeded in establishing the ingredients of both the limbs of the second proviso to section 11(3) of the Act. The claim of the landlord for an order of eviction under section 11(4)(iii) of the Act was repelled on the ground that there is no pleading in support of the said contention. Consequently, an order of eviction under section 11(3) was passed directing the tenant to put the landlord in possession of the petition schedule building within two months from the date of order, namely

18.10.2010. Aggrieved thereby, the tenant filed R.C.A.No.31 of 2011 on the file of the Rent Control Appellate Authority, Thalassery. By judgment delivered on 07.08.2015, the rent control appellate authority concurred with the rent control court and dismissed the appeal. Hence this revision petition.

3. We heard Sri.E.M.Murugan, learned counsel appearing for the revision petitioner. We have also gone through the impugned order and judgment. The materials on record disclose that eviction was sought under section 11(3) of the Act on the ground that PW1, who is none other than the son of the landlord needs the petition schedule building to start a business in automobile accessories. It has come out in evidence that PW1 holds a diploma in automobile engineering and that he is presently employed in a shop where the same business is being carried on. The rent control court and the appellate authority have concurrently held that the need put forward is bona fide. Though PW1 was cross-examined at length, nothing was brought out to

discredit his testimony. In such circumstances, we find no merit in the challenge by the tenant to the finding concurrently entered into by the rent control court and the appellate authority that the need put forward is bona fide.

4. That takes us to the question whether the tenant is entitled to the protection of the second proviso to section 11(3) of the Act. It is now well settled by a series of decisions of this court that the burden is on the tenant to prove the ingredients of both the limbs of the second proviso to sub-section (3) of section 11 of the Act. Apart from merely contending that he is entitled to the benefit of the second proviso to section 11(3) of the Act, the tenant has not produced the sales tax returns or income tax returns. It is not in dispute that the tenant is an assessee under the Value Added Tax Act, 2003. He had when examined as RW1 admitted that he is having 2/3rd share in a partnership business under the name and style "Farag Hostel and Lodging" and that he owns two residential buildings which have been

let out on rent to the tenants. He had further admitted the fact that the building which formerly belonged to his mother, of which he is now a co-owner has been let out on a monthly rent of ₹9,000/-. The tenant has also not taken steps to show that other suitable vacant rooms are not available in the locality. In such circumstances, as the tenant has not discharged the burden of proving the ingredients of both the limbs of the second proviso to section 11(3) of the Act, no exception can be taken to the finding in that regard entered by the rent control court and the appellate authority.

5. For the reasons stated above, we hold that there is no merit in the instant revision petition. It fails and is accordingly dismissed.

6. After the revision petition was dismissed, learned counsel for the petitioner prayed for six months' time to surrender vacant possession of the petition schedule building. Having regard to the fact that the order of eviction was passed on 18.10.2010 and merely five years have passed thereafter, we are of the opinion that it will be

grossly unjust at this stage to grant the tenant a further period of six months to surrender the vacant possession of the petition schedule building. We, however deem it appropriate, having regard to the fact that the tenant is running a business in the petition schedule building, to grant him four months' time from today to surrender vacant possession of the petition schedule building. We accordingly grant the petitioner tenant four months' time to surrender vacant possession of the petition schedule building to the landlord subject to the condition that he shall within three weeks from today file an undertaking in the form of an affidavit before the Rent Control Court, if no petition for execution has been filed, or before the execution court, if a petition for execution has been filed, undertaking to surrender vacant possession of the petition schedule building to the landlord within four months' from today. The tenant also shall undertake to pay the rent, if any, in arrears and to continue to pay the rent payable in respect of the petition schedule building till the date of surrender. The tenant shall

also undertake that he will not induct strangers into possession of the petition schedule building or commit acts of waste therein. In the event of failure on the part of the tenant to file an undertaking as directed above, it will be open to the landlord to forthwith apply for execution of the order for eviction.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE