

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

RCRev..No. 303 of 2015 ()

AGAINST THE JUDGMENT IN RCA 19/2013 of II RENT CONTROL APPELLATE AUTHORITY,
PALAKKAD DATED 20-02-2015

AGAINST THE ORDER IN RCP 5/2011 of RENT CONTROL COURT, ALATHUR DATED
20-06-2013

REVISION PETITIONER/APPELLANT/RESPONDENT (TENANT):

SARFUDHEEN, AGED 57 YEARS,
S/O. LATE ABDUL AZIZ, BUILDING NO XI/75, VANOOR ROAD,
KATTUSSERY AMSOM AND DESOM, PALAKKAD DISTRICT.

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENT/RESPONDENT/PETITIONER (LAND LORD):

NASEEMA, AGED 53 YEARS,
D/O.LATE ISMAIL SAHIB, MOOCHIKKATTIL,
PUTHIYANKAM AMSOM AND DESOM, ALATHUR TALUK,
PALAKKAD DISTRICT.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
26-11-2015, 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.303 of 2015

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Dated this the 26th day of November, 2015

ORDER

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.5 of 2011 on the file of the Rent Control Court, Alathur, a petition filed by the respondent/ landlord for an order of eviction under sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as "the Act" for short.

2. The landlord had in the petition for eviction averred that she bonafide needs the petition schedule building to start a copying-cum-computer typing centre and that the tenant has kept the rent at the rate of ₹200/- per mensem in arrears from 1.6.2009. Upon receipt of notice, the tenant entered appearance and filed a counter statement resisting the petition for eviction. He contended that he has not kept the rent in arrears, that the rate of rent is only ₹150/- per mensem and that the bonafide need put forward is not genuine. He also contended that he is entitled to the protection of the second proviso to section 11(3) of the Act. The tenant also contended that the landlord owns another building in the same locality and therefore, in the

absence of special reasons, an order of eviction cannot be passed.

3. Before the rent control court, the landlord examined herself as PW1 and produced and marked Exts.A1 to A3. The tenant examined himself as RW1. On application filed by the landlord, an Advocate Commissioner was appointed to inspect the petition schedule building for the purpose of ascertaining whether it is suitable to run the business proposed to be set up by the landlord and also to report about the availability of other suitable buildings in the locality. The report submitted by the Advocate Commissioner was marked as Ext.C1.

4. The rent control court considered the rival contentions and the evidence on record and held that the need put forward by the landlord is bonafide. The contention of the tenant that the landlord owns another building was repelled on the ground that prior to the institution of the rent control petition that building was sold as per Ext.A3 sale deed. The rent control court also held that the tenant has not succeeded in proving that he is depending for his livelihood mainly on the income derived from the business carried on in the petition schedule building and that he has also failed to prove that no other buildings are available in the locality. In coming to the aforesaid findings, the rent control court took note of the fact that the tenant is admittedly running another business in the room adjacent to the

petition schedule building but belonging to the landlord's sister. The rent control court also placed reliance on Ext.C1 report submitted by the Advocate Commissioner which discloses the availability of other suitable buildings in the locality. The contention of the landlord that the tenant has kept the rent in arrears was however not accepted. Consequently, an order of eviction under section 11(3) of the Act was passed on 20.6.2013.

5. Challenging that order, the tenant filed R.C.A.No.19 of 2013 on the file of the Rent Control Appellate Authority, Palakkad. Before the appellate authority, the tenant contended that after the order of eviction in the instant case was passed, he had to surrender vacant possession of the adjacent shop room belonging to the landlord's sister pursuant to the order of eviction passed by the rent control court in R.C.P.No.13 of 2010 and that he is not doing any business in the adjacent shop room thereafter. The appellate authority after considering the rival contentions and the evidence on record concurred with the rent control court and dismissed the appeal by judgment delivered on 20.2.2015. The tenant has, aggrieved thereby, filed this revision petition.

6. We heard Sri.Rajesh Sivaramankutty, learned counsel appearing for the petitioner. Sri.Rajesh Sivaramankutty, learned counsel appearing for the petitioner contended that PW1 has admitted

that she is residing at Coimbatore, that her name does not figure in the voters list, that in the ration card also her name does not appear and that she does not regularly stay in her ancestral house at Alathur. Learned counsel contended that in such circumstances, the case set out by the landlord that she bonafide needs the petition schedule building to start a copying-cum-computer typing centre cannot be believed as genuine. Referring to the photographs produced before the rent control appellate authority as Ext.B2, learned counsel contended that the landlord's sister who had obtained an order of eviction of the adjacent room in R.C.P.No.13 of 2010 has not occupied it but has put up a notice board to the effect that the said room is available on rent or for sale, that the landlord in the instant case is also likely to sell off the building or let it out on rent to another tenant and therefore for that reason also, the impugned order is liable to be set aside.

7. We have considered the submissions made at the Bar by learned counsel appearing for the petitioner. We have also gone through the pleadings and the materials on record. It is relying on the fact that the landlord is presently residing at Coimbatore with her husband that the finding entered by the rent control court and affirmed by the appellate authority that the need put forward is bonafide is challenged. It has come out in evidence that the landlord is residing in tenanted premises at Coimbatore. It has also come out in evidence

that she and her husband are not employed. She admittedly hails from Alathur where the petition schedule building is situate. Her ancestral house is also located at Alathur. In such circumstances, as the landlord has no permanent place of residence at Coimbatore, the mere fact that she is presently residing at Coimbatore is not a reason to hold that she is not likely to come back to Alathur and settle down in her native place. Likewise, we find no merit or force in the submission of the learned counsel for the petitioner that the landlord is likely to let out the building after eviction to another person or to sell it off to third parties. Even assuming that the landlord in R.C.P.No.13 of 2010 has put up the building for sale without occupying it, is not a reason to hold that the landlord in the instant case will also follow suit. If as claimed by the petitioner the landlord in R.C.P.No.13 of 2010 is not occupying the premises after eviction, his remedy lies elsewhere.

8. The evidence on record, more particularly, the report submitted by the Advocate Commissioner discloses that other suitable buildings are available in the locality. As held by the appellate authority, the tenant has failed to prove that the rent which he will have to pay for the other alternate accommodation available in the locality is beyond his reach or that alternate accommodation available is not suitable for the business which he is carrying on in the petition schedule building. He has also not produced any evidence to prove

that he is depending for his livelihood mainly on the income derived from the business carried on by him in the petition schedule building. In such circumstances, we find no reason to interfere with the finding entered by the rent control court and affirmed by the appellate authority that the need put forward by the landlord is bonafide and that the tenant is not entitled to protection of the first and second provisos 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 appearing for the petitioner sought six months' time to surrender vacant possession of the petition schedule building. Having regard to the fact that the tenant has been running a business in the petition schedule building for the past two decades, we deem it appropriate to grant him six months' time from today to surrender vacant possession of the petition schedule building to the landlord subject to the following conditions:

- i. The petitioner/tenant 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 shop room to the respondent/landlord on the expiry of the said period of six months.
- ii. The tenant shall deposit or pay to the landlord the arrears of rent if

any within one month from today and undertake in the affidavit to be filed as directed above, that he will continue to pay rent till the date of surrender.

- iii. The tenant shall also undertake that he 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 petitioner/tenant to file an affidavit within the time limit stipulated above, it will be open to the landlord to forthwith execute the order of eviction.

Sd/

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**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

/true copy/

P.A. to Judge

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