

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 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

RCRev..No. 318 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 14/2012 of RENT CONTROL APPELLATE
AUTHORITY, THALASSERY DATED 24-07-2015

AGAINST THE ORDER/JUDGMENT IN RCP 30/2011 of RENT CONTROL COURT, KANNUR
DATED 28-09-2011

REVISION PETITIONER(S)/APPELLANT:FIRST RESPONDENT

K.P SATHYAN, AGED 45 YEARS,
S/O. CHIRUKANDAN, K.P. HOUSE, KAMBILIADAVU
P.O. PARASSINIKADAVU, KANNUR DISTRICT.

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENT(S):RESPONDENTS/PETITIONER AND 2ND RESPONDENT

1. V. SHYAMALA,
D/O. CHATHU NAIR, CHIRAKKAL AMSOM, DESOM
P.O. CHIRAKKAL, KANNUR DISTRICT - 670011.

2. N.P. SATHYAN,
S/O. AMBU, CP 342, HIGHWAY JUNCTION
P.O. CHIRAKKAL, KANNUR DISTRICT - 670011.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
07-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R.No.318 of 2015

Dated this the 7th December, 2015

O R D E R

P.N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.30 of 2011 on the file of the Rent Control Court, Kannur, a petition filed by the first respondent/landlord for an order of eviction under sections 11(3) and 11(4)(i) 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 she bonafide needs the petition schedule building to start a restaurant and that the tenant has without her consent and knowledge sublet the petition schedule building to the second respondent herein.

2. The petitioner resisted the petition for eviction by filing a counter statement. Before the rent control court the landlord examined herself as PW1 and produced and marked Exts.A1 to A8(a). The petitioner herein, the first respondent before the rent control court, examined himself as RW1. On application filed by the landlord, an Advocate Commissioner was appointed and the report submitted by her was marked by consent as Ext.C1. After considering the rival contentions and the evidence oral and documentary available in the case, the rent control court held that the need put forward is bonafide. The rent

control court also held that the tenant has failed to prove the ingredients of both the limbs of the second proviso to section 11(3) of the Act. It was further held that the tenant who was examined as RW1, had after the entrustment of the petition schedule building, got employment as driver in the Kerala State Road Transport Corporation ('KSRTC' for short), that the Advocate Commissioner has reported that the petition schedule building is in the possession of the second respondent and that the tenant has not satisfactorily explained the presence of the second respondent in the petition schedule building. The rent control court accordingly held that the tenant has sublet the petition schedule building to the second respondent. In coming to the said conclusion, the rent control court also relied on Rule 48 of the Kerala Government Servants Conduct Rules, 1960 which applies to employees of the KSRTC. An order of eviction was accordingly passed under sections 11(3) and 11(4)(i) of the Act. Challenging the said order, the petitioner herein filed R.C.A.No.14 of 2012 before the Rent Control Appellate Authority, Thalassery. By judgment delivered on 24.7.2015 the appellate authority concurred with the rent control court and dismissed the appeal. The tenant has, aggrieved thereby, filed this revision petition.

3. We heard Shri P.U. Shailajan, learned counsel appearing for

the petitioner. Learned counsel appearing for the petitioner raised two main grounds. The first is that the landlord has obtained vacant possession of another tenanted premises on the ground that she bonafide needs the said building, but after obtaining vacant possession let it out to another person and in that shop room the tenant is proposing to start a business under the name and style V.P. Traders. It is contended that the bonafide need put forward in the rent control petition thus stands eclipsed. Regarding the sub-lease, learned counsel submitted that though the tenant had secured employment in the KSRTC after the entrustment, currently he is not attending to his duties and is on leave and therefore, the rent control court and the appellate authority erred in holding that the petitioner has sub-let the petition schedule building to another person.

4. We have considered the submissions made at the Bar by the learned counsel appearing for the petitioner. It has come out in evidence that after the entrustment of the petition schedule building to him, the petitioner herein who was examined as RW1, got employment as driver in KSRTC. His contention before the control court was that he is no longer discharging his duties as a driver. However, no documentary evidence was produced to substantiate the said contention. Even assuming that he is on leave with or without

allowances, as he has not ceased to be an employee of the KSRTC, he cannot run a business in the petition schedule building. He cannot therefore be heard to contend that the second respondent herein who was the second respondent before the rent control court, is an employee engaged by him to run his business. The rent control court has, having regard to the aforesaid fact and the admitted presence of the second respondent in the petition schedule building and the failure of the second respondent to file a counter statement before the rent control court and also the failure of the petitioner herein to examine the second respondent as a witness, held that the petitioner herein has failed to prove the jural relationship between him and the second respondent. After giving anxious consideration to the materials on record, we are not persuaded to hold that the finding entered by the rent control court and upheld by the appellate authority that the tenant has sub let the building to another without the consent and knowledge of the landlord is a perverse finding so as to warrant interference in exercise of the revisional jurisdiction of this court.

5. That takes us to the question whether the order of eviction passed under section 11(3) of the Act warrants interference. Though it was contended before us that the landlord had obtained vacant possession of another shop room on the ground that her son needs it

to establish a business, she has after obtaining vacant possession, let it out to another person and that person has opened a business therein under the name and style V.P.Traders, no material is produced to substantiate the said contention. There is nothing on record to show that the said business is not the one in which the landlord's son has any interest. In any view of the matter, as the petitioner is not in possession of the petition schedule building and has sub let it to another, he cannot successfully resist the prayer for eviction. Such being the situation, it is immaterial whether the bonafide need stands eclipsed by reason of subsequent events.

We therefore find no grounds to entertain the challenge to the impugned judgment/order. The revision petition fails and is accordingly dismissed in limine.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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