

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

RCCRev..No. 4 of 2014 ()

RCA 35/2008 of RENT CONTROL APPELLATE AUTHORITY, VADAKARA

RCP 94/2006 of RENT CONTROL COURT, VADAKARA

REVISION PETITIONER:-[RESPONDENT IN RCA/RESPONDENT IN RCP]:-

**ANANDAN, AGED 54 YEARS
S/O.POKKAN, RESIDING AT GANATH THAZHA KUNIYIL
VILLIAPPALLY AMSOM, THIRUMANA DESOM, VATAKARA TALUK
KOZHIKODE DISTRICT.**

**BY ADVS.SRI.T.SETHUMADHAVAN (SR.)
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON
SMT.N.DEEPA**

RESPONDENT:- [APPELLANT IN RCA/PETITIONER IN RCP]:-

**MADATHIL PATHU,, AGED 62 YEARS
D/O.AMMAD HAJI, RESIDING AT MEETHALE KARUVANDIYIL
VATAKARA AMSOM DESOM, VATAKARA TALUK
KOZHIKODE DISTRICT - 673 001.**

**BY ADV. SRI.T.KRISHNAN UNNI (SR.)
BY ADV. SRI.SAJU.S.A**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 19-01-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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R.C.Rev.No. 4 of 2014

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Dated this the 19th day of January, 2015

O R D E R

ANTONY DOMINIC, J.:

The respondent landlady filed R.C.P.No.94/2006 on the file of the Rent Control Court, Vadakara, seeking eviction of the petitioner under Secs.11(2)(b) and 11(3) of the Rent Control Act. The Rent Control Court dismissed the petition. That order was challenged by the landlady in R.C.A.No.35/2008 before the Rent Control Appellate Authority, Vadakara. The Rent Control Appellate Authority, by its judgment dated 6.8.2011, set aside the order of the Rent Control Court and allowed eviction under Sec.11(3) of the Act. This order was challenged by the tenant before this Court in R.C.Rev.No. 361/2011. This Court by order dated 18th March, 2013, disposed of the revision. In this order, the bona fide need found by the Appellate Authority was confirmed. But the case was remanded to the Appellate Authority for considering the subsequent events pleaded by the tenant and its impact on the first proviso to Sec.11 (3). The relevant findings of this Court are contained in paragraphs 12 and 13 of the order, which read thus:

“12. As far as the bonafide need pleaded is concerned, going by the evidence, we are of the view that the finding by the Appellate

Authority is justified. The landlady being a widow, there is nothing unusual in projecting the need for starting a tailoring shop. Therefore, we confirm the said finding.

13. But as far as the applicability of the first proviso to Section 11 (3) and the impact of the subsequent event are concerned, as all the facts have not been clearly stated by adding or amending the pleadings, the matter will have to go back for giving opportunity to both sides to amend the pleadings and to adduce evidence. Both parties will therefore amend the respective pleadings and they are free to adduce further evidence also.”

After remand, the landlady filed I.A.No. 22/2013 and got paragraph 4 in the petition amended. In that paragraph, the landlady explained the circumstances, in which room Nos.1143, 1144, 1145 and 1146 were let out to new tenants and the landlady also pleaded that those rooms were too large for her requirements as the special reason contemplated in the first proviso to Sec.11(3). Before the Appellate Authority, PW-1 was recalled and examined. PWs 2, 3 and 4 were also examined. PW-2 was the earlier tenant in room Nos.1143 and 1144 and PW-3 is the later tenant, who had executed Ext.B-6 lease deed in favour of the landlady. PW-4 is the present tenant occupying room Nos.1145 and 1146 and who executed Ext.B-5 rent deed in favour of the landlady. There was no contra evidence adduced on behalf of the tenant. The Appellate Authority considered the subsequent developments and its impact on the first proviso to Sec.11(3) under points 1 to 3 of its judgment. Rejecting the contention of the landlady that the rooms mentioned above

were transferred by the previous tenants themselves and that therefore the rooms did not come into her possession to apply the first proviso to Sec.11(3) of the Act and placing reliance on Secs.91, 92 and 115 of the Evidence Act, the Appellate Authority concluded that the landlady got vacant possession of the aforesaid four rooms during the pendency of the proceedings. However, accepting the argument of the landlady that for her purpose of starting a tailoring shop, that much big rooms were not necessary and holding that nobody can insist a landlady to opt for a bigger room for her own by sacrificing the potential higher income, which she can derive, as the special reason, the benefit of the proviso to Sec.11(3) was denied to the tenant. Accordingly, the appeal was allowed. It is in this background this revision petition is filed.

2. We heard the learned Senior Counsel for the petitioner and also the learned Senior Counsel appearing for the respondent and have considered the submissions made.

3. The main contention raised by the learned Senior Counsel for the petitioner was that after having found that the four rooms came into the possession of the landlady during the pendency of the proceedings, the benefit of the first proviso to

Sec.11(3) was denied to the tenant only for the reason that the Appellate Authority accepted the potential of the other rooms to fetch a higher rent as a special reason. This, according to the learned Senior Counsel, is against the law laid down by this Court in *Janatha Drugs v. Maithri Construction and others* reported in 2007 (4) KLT 625. Therefore, learned Senior Counsel contended that the order passed by the Appellate Authority deserves to be set aside. However, this contention of the learned counsel was contradicted by the learned counsel for the respondent landlady referring to judgment in *Valsan v. Furtal* reported in 2004 (3) KLT 1046. He also contended that the factual conclusion of the Appellate Authority that the landlady had affixed her signature on Exts.B5 and B6 was incorrect and that therefore the provisions of the Evidence Act relied on have no relevance. The counsel also submitted that the fact that the rooms referred to by the petitioner were too large for the landlord's requirement is certainly a special reason requiring to be relied on when the applicability of the first proviso to Sec.11(3) is considered.

4. We have considered the submissions made. As we have already stated, in the order in R.C.R.No.361/2011 this Court upheld

the bona fide need pleaded by the landlady. Thereafter, the case was remanded only to enable the parties to amend the pleadings and to adduce evidence insofar as the subsequent events urged by the tenant are concerned. Therefore, the scope of the remand was only to consider the subsequent events in the context of the benefit of the first proviso to Sec.11(3) claimed by the tenant. It was accordingly that the landlady got the Rent Control Petition amended by incorporating paragraph 4A, where she pleaded that the room numbers mentioned in the earlier part of this order, were transferred by the previous lessees and that she had accepted transfer. According to her, the present lessees executed rent deeds also in her favour. She also submitted that the walls separating the rooms were removed and four rooms are now converted into two large rooms. According to her, these two rooms are too large for her requirements for the purpose of starting a tailoring shop and that the rooms are fetching much higher rent. This case pleaded by the landlady was testified when she was recalled and examined as PW-1 before the Appellate Authority. This was also substantiated by Exts.B-5 and B-6 and the oral evidence of PWs 2, 3 and 4. On the other hand, there was no contra evidence let in by the tenant. It was

on this position that the Appellate Authority examined the matter.

5. Insofar as the contention raised by the learned Senior Counsel appearing for the petitioner that potentiality of fetching higher rent is no special reason is concerned, it appears that the dictum laid down by the Division Bench of this Court in Janatha Drugs' case (supra) is to that effect, this Court has also taken note of the factual situation emerging in that case which did not contain any relevant pleadings on behalf of the landlord to deny the benefit of the first proviso to the tenant. However, insofar as this is case is concerned, the special reason pleaded by the landlady, as seen from paragraph 4A of the Rent Control Petition, was mainly that the rooms pointed out by the tenant are too large for her requirements to run a small establishment of tailoring shop. Incidentally, she has also pointed out the higher rent the rooms will fetch. In our view, when the landlady, a widow, wanted to start a tailoring shop to earn a livelihood, we cannot expect her to occupy a large room, which may have come to her possession as claimed by the tenant. Instead, considering her requirements, if she chooses a smaller room and decides to let out larger room, that choice made by the landlady is certainly a special reason. This view, we have taken, finds support in

the Division Bench judgment of this Court in Valsan v. Furtal reported in 2004 (3) KLT 1046. Therefore, this is a case where the landlady did plead and establish special reason as contemplated under Sec.11(3) and therefore the Appellate Authority was justified in denying the benefit of the first proviso to the tenant.

6. We also find that the Appellate Authority had concluded that the landlady had affixed her signature on Exts.B5 and B6. According to the Appellate Authority, Exts.B5 and P6 contained an assertion that the rooms in question had come into possession to the landlady. On this basis, referring to Secs.91, 92 and 115 of the Evidence Act, the Appellate Authority held that oral evidence to the contrary cannot be let in. Insofar as this conclusion of the Appellate Authority is concerned, we find that the landlady is not a party to Exts.B5 and B6, nor has she affixed her signature in these documents. We also find that she has not made any admission in this regard, when she was recalled and examined as PW-1 before the Appellate Authority. Therefore, this being the factual basis, the Appellate Authority has come to the above conclusion erroneously.

7. Suffice it to say that for the aforesaid reasons, we do not find any justification to interfere with the order passed by the Rent

Control Appellate Authority. Therefore, the revision is devoid of merit and is accordingly, dismissed.

8. At this stage, the learned Senior Counsel for the petitioner submitted that since the tenant is conducting a furniture business in the room in question, he should be given reasonable time to surrender vacant possession of the building. On this request, we heard the learned Senior Counsel appearing for the landlady. Taking note of the submissions of both sides, we direct that the tenant will surrender vacant possession of the premises in question to the landlady on the expiry of six months from today. This shall, however, be subject to the condition that the tenant shall file an affidavit before the Rent Control Court unconditionally undertaking to surrender vacant possession of the building to the landlady on the expiry of six months allowed by us and also on his continuing to pay the rent without default. The affidavit shall be filed within two weeks from today.

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Sd/-
ANTONY DOMINIC, JUDGE
Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

ALEXANDER THOMAS, J.

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Dated this the day of January, 2015

J U D G M E N T

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ALEXANDER THOMAS, JUDGE