

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

RCRev..No. 7 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN RCA 43/2004 of RENT CONTROL APPELLATE
AUTHORITY/ADDL. DISTRICT COURT, TIRUR DATED 31-07-2013

AGAINST THE ORDER/JUDGMENT IN RCP 17/2003 of RENT CONTROL
COURT/MUNSIFF COURT, ,PARAPPANANGADI DATED 30.10.2014

REVISION PETITIONER/APPELLANT/RESPONDENT:

P.P.SANKARA NARAYANA MENON, AGED 67 YEARS,
S/O.KRISHNA PANICKER, ARYA VIDYA PHARMACY COIMBATORE
LTED (AGENCY), P.O.KOTTAKKAL,
KOTTAKKAL AMSOM, MALAPPURAM DISTRICT.

BY ADVS.SRI.K.RAMACHANDRAN
SRI.BINOY VASUDEVAN

RESPONDENTS/RESPONDENTS/PETITIONERS:

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- 1. MOHAMMED FAIZAL, THUMBATH EDAPPANATTU,**
S/O.KUNHIMUHAMMED MASTER, AGED ABOUT 37 YEARS,
PARAPPOOR AMSOM, P.O. PARAPPOOR, PIN 676 503.
 - 2. MUMTAZ, AGED ABOUT 42 YEARS,**
D/O.KUNHIMUHAMMED MASTER, THUMBATH EDAPPANATTU,
P.O.MELANGADI, KONDOTTY,
MALAPPURAM DISTRICT, 676 503.
 - 3. SULEKHA, D/O.KUNHIMUHAMMED MASTER, THUMBATH**
EDAPPANATTU, P.O., MOONNIYOOR,
MALAPPURAM DISTRICT, 676 503.

R1-R3 BY ADV. SMT.SUMATHY DANDAPANI (SR.)
R1-R3 BY ADV. SRI.MILLU DANDAPANI
R1-R3 BY ADV. SRI.PREMCHAND R.NAIR

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 10-03-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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R.C.Rev.No. 7 of 2014

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Dated this the 10th day of March, 2015

ORDER

ANTONY DOMINIC, J.:

The respondents are the landlords and the petitioner is the tenant. The respondents filed R.C.P.No.17/2003 on the file of the Rent Control Court, Parappanangadi, seeking eviction of the petitioner under Sec.11(3) of the Rent Control Act. The Rent Control Act allowed the petition and that order was confirmed by the Appellate Authority, by dismissing R.C.A.No. 43/2004 filed by the tenant. It is aggrieved by these orders, the Revision is filed by the tenant.

2. In the Rent Control Petition, the landlords contended that the scheduled building belongs them and that they bona fide needed the building for occupation of the 2nd respondent, for her to start business in the ready-made garments. This bona fide need urged by the landlords was contested by the tenant by contending that the 2nd respondent is a married lady living at Kondotty, with her children and that she had no intention to start any business as

claimed. Before the Rent Control Court respondents 1 and 2 were examined as PWs 1 and 2 and the petitioner was examined as RW-1. Exts.A-1 to A-10, B-1 to B-6(a) and C-1 to C-3 were also marked. It is thereafter that the Rent Control Court upheld the bona fide need of the landlords and allowed the petition. This order was confirmed by the Appellate Authority also.

3. We heard the learned counsel for the petitioner and the learned Senior Counsel appearing for the respondents.

4. The landlord-tenant relationship is not disputed. Before us also, the main dispute was on the bona fide of the need urged by the landlords. As we have already stated, the case put forward by the landlords was that the 2nd respondent wanted to start business of ready-made garments and that it was therefore that they needed vacant possession of the room in question. The contention of the tenant is that she is a married lady settled at Kondotty, which is about 30 kilometres away from Kottakkal and that her children are also studying at Kottakkal. Being a Muslim lady from a conservative family, according to the tenant, she is not going to start the business as claimed. Therefore, according to the tenant, the need projected by the landlords lacked bonafides justifying an order of

eviction. Having considered this contention, we are of the view that the bona fide need of PW-2, the 2nd respondent, was spoken to not only by herself but also by PW-1, the 1st respondent. Both of them have testified before the court that the 2nd respondent has decided to start a business of ready-made garments. The cross-examination did not bring out anything creating a shadow of doubt over the need projected by them. It is true that the 2nd respondent is staying at Kondotty, which is about 30 kilometers away from Kottakkal. However, in her evidence itself she has stated that she is in a position to come to Kottakkal and carry on the business. There is nothing before us to conclude that she is a person who is not likely to engage in business. In the nature of the evidence that is available, we are not in a position to differ from the concurrent finding arrived at by the lower authorities on the bona fide need projected by the landlords.

5. The second contention raised by the learned counsel for the petitioner is that the assertion of the respondents that the title to the petition scheduled building is vested in them is incorrect. The counsel contended that the title is with PW-1, the 1st respondent. This contention was raised relying on the claim that in 1991, the

lease was executed with PW-1. Reference was also made to Ext.A-3 notice and the objection filed before the Rent Control Court. The lease of 1991 was spoken to by RW-1 or the assertions in paragraph 3 of the objections. So also, Ext.-A3 does not make a positive assertion that it is PW-1, who is the landlord of the building. This therefore means that the tenant did not have such a specific case before the Rent Control Court. We also notice that such a contention was not raised either before the Rent Control Court or before the Appellate Authority and in fact, both these authorities have not even made a point on that contention. In such circumstances, we are not inclined to entertain this contention now raised for the first time in this Revision.

6. Thirdly, it is contended that along with I.A.No.386/2014, the petitioner has produced, as Annexure-1, lease deed dated 5.8.2010 executed by respondents 2 and 3 in favour of a stranger. The counsel states that this document was produced by the petitioner before the Appellate Authority along with I.A.No. 2635/2013 and that the Appellate Authority has wrongly dismissed the said I.A. Referring to the Supreme Court judgment in Adil Jamshed Frenchman v. Sardar Dastur School Trust reported in AIR

2005 SC 996, the counsel contended that this document being relevant ought to have been accepted by the Appellate Authority. However, this contention was refuted by the learned Senior Counsel for the landlords by relying on the Apex Court judgment in *Gaya Prasad v. Pradeep Srivastava* reported in (2001) 2 SCC 604 and contended that the bona fide need as on the date of presentation of the petition is what is relevant and that therefore Annexure-1 executed on 5.8.2010 cannot be pressed into service to contradict the bona fide need claimed by the landlords in the Rent Control Petition filed by them in 2003. Irrespective of the controversies, from the document that is relied on and the counter affidavit filed by the landlords before this Court opposing I.A.No.386/2014, what we find is that the room mentioned in Annexure-1 lease deed is a room situated in the first floor of the building. Admittedly, the purpose of eviction is to enable the 2nd respondent to start a ready-made garment business. In a village like Kottakkal, we cannot expect that a ready-made garments business would be started in the first floor of the building. Such a business would need close proximity to the road so that customers will have access and will be attracted to the shop. Therefore, as rightly contended by the learned

counsel for the respondent landlords, we are inclined to conclude that such a room could not have satisfied the requirements of the landlords. Therefore, we cannot agree with the request of the learned counsel for the petitioner that since I.A.No.2635/2013 was wrongly rejected by the Appellate Authority, this case should be remanded to the Appellate Authority afresh for reconsideration and to our mind would further delay the proceedings in this rent control petition, which was instituted in 2003. For all these reasons, we do not find any merit in the revision petition.

At this stage, the learned counsel for the petitioner requested that the petitioner should be given reasonable time to vacate the premises. According to the counsel, he requires a longer time to realise the proceeds of the credit sales he has effected and also to locate a new premises, apart from liquidating the stock. We agree that in the circumstances pointed out, reasonable time should be given to the tenant. Therefore, despite the objections of the learned counsel for the landlords, we allow the tenant one year's time from today to surrender vacant possession of the building to the landlords. This shall, however, be subject to the condition that within three weeks from today, the tenant shall file an affidavit

before the Rent Control Court unconditionally undertaking to surrender vacant possession of the room to the landlords on or before the expiry of one year period allowed by us. He shall also continue to pay the rent without default. Both sides agree that the future rent can be adjusted from the Rs.15,000/- paid by the tenant to the landlords, as advance at the time when they occupied the room in 1991.

Sd/-

ANTONY DOMINIC, JUDGE

Sd/-

ALEXANDER THOMAS, JUDGE

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P.S. to Judge