

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

RCRev.No.24 of 2014 (C)

AGAINST THE JUDGMENT IN RCA 53/2012 of RENT CONTROL APPELLANTE
AUTHORITY (III ADDL.D.C. KOZHIKODE) DATED 9.9.2013

AGAINST THE ORDER IN RCP 45/2010 of RENT CONTROL COURT (PRL.MUNSIFF
COURT-I, KOZHIKODE DATED 30.1.2012

REVISION PETITIONER/APPELLANT/RESPONDENT:

M.V.JOHNY, AGED 79 YEARS,
S/O. VAREED, M/S. PEOPLES AUTOMOBILES, P.O.NADAKKAVU
NADAKKAVU CROSS ROAD, KACHERI AMSOM, DESOM
KOZHIKODE TALUK AND DISTRICT.

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

RESPONDENT/RESPONDENT/PETITIONER:

SUBAIDA, AGED 59 YEARS
D/O. AYISHABI, RESIDING AT 'BAITHUL SAINABA'
FRANCIS ROAD, P.O.NAGARAM, NAGARAM AMSOM
DESOM, KOZHIKODE TALUK AND DISTRICT-673001.

BY ADV. SRI.V.SREENATH

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 09-
01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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Dated this the 9th day of January, 2015.

ORDER

Antony Dominic, J.

The revision petition is filed by the unsuccessful tenant in R.C.P.No.45/2010 on the file of the Rent Control Court, Kozhikode in which an order of eviction was passed, which was confirmed by the Rent Control Appellate Authority by dismissing R.C.A.No.53/2012.

2. We heard the Senior Counsel appearing for the petitioner and learned counsel appearing for the respondent-landlady.

3. The respondent filed the petition urging grounds under Sec. 11(2)(b) and Sec. 11(3) of the Kerala Buildings (Lease and Rent Control) Act. The building in question is a tiled one in which three rooms are there on the ground floor. Among the three rooms one room is leased out to the petitioner and another is licensed to his son. In the room leased out to him the petitioner he is conducting a spare parts business. According to the landlady, her son, who is employed

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in a super bazaar in a Gulf country, has returned to his native place and wants to set up a super market. She has no other building to provide to her dependant son. It was in these circumstances, she sought eviction of the petitioner under Sec. 11(3) of the Act.

4. It was also contended by the landlady that rent was in arrears for the period from February, 2010 to April, 2010 and that despite a demand the same was not paid. It was therefore the respondent pleaded grounds under Sec. 11(2)(b) of the Act. Both sides adduced evidence before the Rent Control Court and considering the oral and documentary evidence, the Rent Control Court accepted both grounds urged by the respondents and ordered eviction of the petitioner. This order of the Rent Control Court was confirmed by the Appellate Authority by dismissing R.C.A.No.53/2012. It is in this background this revision is filed by the tenant.

5. The first contention raised by the Senior Counsel for the petitioner is that the scheduled building is a single room, the area of which is allegedly 75 Sq. Ft. and that the room is too small for accommodating a super market which is proposed

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to be established by the son of the landlady. It is on record that the landlady has already obtained decrees against the son of the petitioner for surrendering vacant possession of the adjacent room in his possession in the ground floor and the room in the first floor. The decrees have been confirmed in first appeal and second appeals are pending. According to the landlady, the proposal is to use all these rooms together and to start a super market.

6. In so far as the contention now raised that for lack of space, the scheduled building is inadequate for the business is concerned, we should also take note of the fact that this factual contention was not raised by the tenant in the objections filed by him. The tenant has also not taken out a commission on this issue. Facts being as above, we are inclined to think that even apart from the lack of pleading and the absence of a commission report on the issue, it is essentially for the landlady to decide the volume of business she or dependant intends to start and the tenant cannot avoid an order of eviction with this contention. Therefore, if the landlady or her dependant son chooses to start a super market

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which will fit into the room in question it is always open them to do so. The mere fact that the room in question is a small one does not by itself indicate that the need urged by the landlady is not a bonafide one. Further this is a case where specific contention of the landlady is, her son intends to make use of the adjacent room and the room in the first floor which are in the occupation of the petitioner's son also for the purpose of super market. Such being the case, we are unable to accept the contention raised by the learned Senior Counsel for the petitioner.

7. Learned counsel then contended that two rooms which are in the occupation of his son were got evicted by the landlady by filing Rent Control Petition urging ground under Sec. 11(3). According to him, after getting vacant possession of these rooms, and without using the rooms as pleaded, the rooms were let out. This according to the counsel shows the need now urged is only a ruse to get the tenant evicted and there is no bonafide at all.

8. First of all, the fact that during 1980's two Rent Control Petitions were filed and that the need projected then

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did not materialise, cannot be a disqualification on the landlord for all years to come. That apart, the evidence before the Rent Control Court shows that in the room in the ground floor, the petitioner's husband conducted a business for about one year and similarly in the room in the ground floor her elder son had conducted a business for about five years. Therefore, it is incorrect for the petitioner to contend that the rooms were not utilised after getting vacant possession. If that be so, the fact that after closure of the business, the rooms were licensed to the petitioner's son does not mean that the need now urged lacks bonafides.

9. It was then contended that the landlady did not initiate any proceedings for eviction of the third room in the ground floor and that therefore, the need urged is not bonafide. The evidence before the Rent Control Court show that the requirements of the landlady wold be satisfied with two rooms in the ground floor and the one room in the first floor and it is therefore that she did not initiate proceedings for getting the three rooms evicted.

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10. Even apart from all these we notice from Exts.A5 & A6, the Passport and Exit Visa, that the landlady's son has returned from the foreign country and there is nothing to indicate that he is engaged otherwise. RW1 has admitted that the petitioner's son has gained experiences in managing super market. In such circumstances, if the landlady and her son have decided to establish a super market business, such a decision cannot be said to be one of mere desire, unworthy of acceptance. We have also noticed from the evidence that the petitioner admitted that he is in possession of another room in the adjacent building. It is despite that, he is contesting the Rent Control Petition.

11. We do not find any force in the contentions. According to us the Rent Control Court and Appellate Court rightly accepted the grounds urged by the landlady and ordered eviction of the tenant. The revision petition lacks merit and the same is accordingly dismissed.

12. At this stage, the learned counsel for the petitioner sought a reasonable time to surrender vacant possession of the building in question. We heard the counsel for the

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respondent who pointed out that the rent is in arrears since April, 2014 and that respondent's son wanted to start the business immediately. Taking note of the submissions made, we grant the petitioner six months time to the petitioner from today to surrender vacant possession of the building in question. This shall be subject to the condition that within two weeks from today, he shall file an affidavit before the Rent Control Court unconditionally undertaking to surrender the room in question on or before the expiry of six months from today and he shall also clear the arrears of rent and shall also continue to pay the same till the building is surrendered to the landlady.

**SD/-
ANTONY DOMINIC,
Judge.**

**SD/-
ALEXANDER THOMAS,
Judge.**

Bkn/-

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P.A. To Judge.