

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

RCRev..No. 67 of 2014

R.C.A.NO.241/2011 OF RENT CONTROL APPELLATE AUTHORITY,THRISSUR

R.C.P 84/2011 OF RENT CONTROL COURT, THRISSUR

PETITIONER(S)/APPELLANTS/RESPONDENTS :

- 1. E. MOHANAN, AGED 59 YEARS,
SON OF PARUKUTTY AMMA, MAHARANI TEXTILES,
KIZHAKKE NADA, GURUVAYUR, CHAVAKKAD TALUK,
THRISSUR DISTRICT.**
- 2. SREE RANJINI,
WIFE OF E.MOHANAN, MAHARANI TEXTILES, KIZHAKKE NADA,
GURUVAYUR, CHAVAKKAD TALUK, THRISSUR DISTRICT.**

**BY SRI.K.RAMAKUMAR (SENIOR ADVOCATE)
ADVS. SRI.T.RAMPRASAD UNNI
SRI.S.M.PRASANTH
SRI.M.MANOJKUMAR (CHELAKKADAN)
SMT ASHA BABU
SMT AMMU CHARLES**

RESPONDENT(S)/RESPONDENTS/ PETITIONER :

**T.P.PARAVINDAKSHAN, AGED 77 YEARS,
SON OF SANKARA PANICKER, KASABA AMSOM AND DESOM,
KOZHIKODE TALUK & DISTRICT.**

**BY SRI.T.KRISHNAN UNNI (SENIOR ADVOCATE)
BY ADV. SRI.N.M.MADHU**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD
ON 13-01-2015, ALONG WITH RCR.NO.108/2014 & RCR.NO.109/2014,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.Nos.67, 108 & 109 OF 2014

Dated this the 13th day of January, 2015

ORDER

Antony Dominic, J.

The tenants, who are the respondents in RCP No.84, 83 and 85 of 2011 on the file of the Rent Control Court, Thrissur, against whom the orders of eviction were passed and which orders were confirmed by the Rent Control Appellate Authority, Thrissur in R.C.A.241, 243 and 240 of 2011, are the revision petitioners herein.

2. Briefly stated, the facts of the case are that the respondent herein had filed RCP Nos.59, 61 and 60 of 2005 before the Rent Control Court, Chavakkad. After examination of the parties and witnesses, these cases were transferred to the Rent Control Court, Thrissur, which renumbered the cases as RCP Nos.83, 84 and 85 of 2011 respectively.

3. RCP 84/2011 was filed seeking eviction under Sections 11 (2) and 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 (in short hereinafter referred to as 'the Act') and according to the landlord, he bonafide needed the building for the occupation of his dependent son Ravi Shankar, who wanted to start textile business

in the petition scheduled building. The tenant resisted the prayer of the landlord disputing the bonafides of the need urged by the landlord and contending that Ravi Shankar was otherwise engaged in managing a resort of his mother and that Ravi Shankar is not a dependent of the landlord. The tenant also claimed the benefit of the first and second provisos to Section 11(3). The Rent Control Court accepted the contention of the landlord and ordered eviction. This order was confirmed by the Appellate Authority by dismissing RCA 84/2011. It is these orders, which are challenged in RCR No.67 of 2014.

4. In so far as RCP 83/11 is concerned, the landlord sought eviction urging grounds under Sections 11(2), 11(3) and Section 11(4) (i) of the Act. Similarly, RCP 85/11 was filed seeking eviction under Sections 11(2) and 11(3). In these petitions, the landlord contended that he needed the buildings occupied by the tenants for the occupation of his dependent son Gopikrishnan who wanted to start grocery and stationary business in the tenanted premises. In RCP 83/2011, the landlord additionally contented that the first respondent tenant had sub let the building to the second respondent in the petition.

5. All the three cases were jointly tried. The landlord was examined as PW1 and as RWs 1 to 4, the tenants and the sub tenant were examined. Exts.A1 to A10 were marked on behalf of the landlord and B1 to B10 were marked on behalf of the tenants.

6. The Rent Control Court passed common order dated 28th October 2011, ordering eviction, on the grounds urged by the landlord. These orders were challenged in RCA Nos. 240, 241 and 243 of 2011 filed before the Rent Control Appellate Authority, Thrissur. The Appellate Authority by its common judgment rendered on 25th February, 2014 dismissed the appeals. This is the background in which these revision petitions are filed.

7. We heard the Senior Counsel for the revision petitioner in RCR 67/14 and the learned counsel for the petitioners in the other two RCRs. We also heard the Senior Counsel appearing for the respondent landlord.

8. In RCR 67/14, learned Senior Counsel for the petitioner/tenant contended that the petition filed with ground under Section 11(3) was not maintainable and according to him, the landlord should have urged

ground under Section 11(8) of the Act. According to counsel, part of the building is presently under the occupation of the landlord and, therefore, if he wanted additional space in the building for the occupation of the member of his family, Section 11(8) is to be invoked and not Section 11(3). We have considered the submission made. We find that in paragraph 11 of the Rent Control Petition the landlord has pleaded that he bonafide needed the building for the occupation of his dependent son Sri.Ravi Shankar who had decided to start textile business therein. In the objection filed by the tenant, he did not raise a contention that the petition filed under Section 11(3) was not maintainable for the reason urged before us. In spite of this, this issue has been considered and rejected by the lower authorities.

9. Section 11(8) of the Act provides that a landlord who is occupying only a part of a building, may apply to the Rent Control Court for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his personal use. The words of this Section itself show that this provision can be invoked

only by a landlord who is occupying a part of the building and his requirement must for additional accommodation, which again should be for his personal use. On the other hand, Section 11(3) enables a landlord for an order if he bonafide needs the building not only for himself but also for the occupation of a member of his family who is dependent on him. In this case, the landlord sought eviction for the occupation of his dependent son. In such a case, Section 11(8) cannot be invoked and Section 11(3) alone could have been invoked by the landlord. The contention relying on Section 18 was raised by the tenant on the premise that the landlord is in occupation of a portion of the building on the rear side. However, the evidence available before the Rent Control Court indicates that the said portion of the building can be used only for residential purposes and in fact RW1 in his cross examination has unambiguously stated that the building in question is unsuitable for commercial purposes. The lower authorities have also concurrently found that said portion of the building is now in the occupation of the daughter and son-in-law of the landlord, and that they use this portion during their frequent visits to Guruvayoor not only for

residential purposes but also as a consulting room for the son-in-law who is a doctor. This, therefore, shows that this is not a case where the requirement of Section 11(8) that the landlord should be in occupation of part of a building is satisfied. Therefore, for the aforesaid reasons, the first contention raised by the Senior Counsel for the petitioner in RCR No.67/14 has to fail.

10. It was then contented by the learned Senior Counsel that in so far as Section 11(3) invoked by the landlord is concerned, there was no plea that Ravi Shankar, the son, is a member of the landlord's family and dependent on him. In this context, counsel placed reliance on the judgment of the Apex Court in **Koyilerian Janaki and Others v. Rent Controller (Munsiff), Cannanore and Others (2000) 9 SCC 406** where it has been held that in order to succeed in a petition filed under Section 11(3), the landlord is required to plead and substantiate that the person for whose need the premises is required is a member of the landlord's family, that such member of the family is dependent on the landlord and that there is a bonafide need. According to the counsel, due to dearth of necessary pleadings of the ingredients of Section 11(3) as indicated by

the Apex Court on the issue of the membership in the family and dependency of the son, the petition should fail.

11. The merit of this contention should be examined with reference to the pleadings contained in the Rent Control Petition. In paragraph 7 of RCP 61/05 (renumbered 84/2011), it has been stated thus:

ഹർജിക്കാരന്റെ മകൻ കെ.ടി. രവിശങ്കർ ബി.എ. വരെ പഠിപ്പിച്ചുകൊടുക്കാലം മുമ്പ് പഠനം നിർത്തി (പ്രവൃത്തി ഒന്നുമില്ലാതെ ഇരിക്കുകയാണ്. താഴെ പട്ടികയിൽ വിവരിച്ച പീടിക മൂറികളിൽ മൊത്തമായും ചിലപ്പറയായും ഉള്ള ഒരു ടെക്സ്റ്റൈൽ ബിസിനസ്സ് രവിശങ്കർ തുടങ്ങി നടത്തുവാൻ തീരുമാനിച്ചിട്ടുള്ളതും അതിനുവേണ്ട എല്ല്യാ സഹായ സഹകരണങ്ങളും വല്ല്യാ സാമ്പത്തിക സഹായവും ആവശ്യമായി വന്നാൽ അതടക്കമുള്ളതും ഹർജിക്കാരൻ ടിയാൻ ചെയ്തുകൊടുക്കുവാൻ സന്നദ്ധനായി നിന്നുവരുന്നതും ടിയാൻ ചെയ്തുകൊടുക്കാമെന്ന് ഏറ്റിട്ടുള്ളതും രവിശങ്കർ എന്നവർ ഹർജിക്കാരനെ ആശ്രയിച്ചു ജീവിച്ചു വരുന്ന ആളുമാണ്. ഹർജിക്കാരനോ രവിശങ്കറിനോ മുമ്പ് (പ്രസ്താവിച്ച പ്രകാരമുള്ള ഒരു ബിസിനസ്സ് തുടങ്ങി നടത്തുവാൻ ആവശ്യമായ തരത്തിലുള്ളതോ മറ്റോ ആയി യാതൊരു പീടിക മൂറികളോ കെട്ടിടങ്ങളോ അവകാശ കൈവശത്തിൽ ഈ **locality** യിലോ മറ്റോ ഇല്ലാത്തതുമാണ്. താഴെ പട്ടികയിൽ വിവരിച്ച പീടിക മൂറികൾ രവിശങ്കർ എന്നവർക്ക് മുമ്പ് (പ്രസ്താവിച്ച പ്രകാരം സ്വന്തമായി ഒരു ബിസിനസ്സ് തുടങ്ങി നടത്തേണ്ടതിന് ഉത്തമ വിശ്വാസമായ സ്വന്താവശ്യമുള്ളതും അങ്ങനെ താഴെ പട്ടികയിൽ വിവരിച്ച പീടിക മൂറികൾ ഹർജിക്കാരന് ഉത്തമ വിശ്വാസമായ സ്വന്താവശ്യമുള്ളതുമാണ്. മുമ്പ് (പ്രസ്താവിച്ച കാരണങ്ങളാൽ താഴെ പട്ടികയിൽ വിവരിച്ച പീടിക മൂറികൾ ഒഴിഞ്ഞു തരണമെന്ന് ഹർജിക്കാരൻ പലപ്പോഴും എതിർക്കുകയുണ്ടായിട്ടുണ്ട്. ആവശ്യപ്പെട്ടിട്ടും എതിർക്കുകയുണ്ടായിട്ടും അ (പ്രകാരം ചെയ്തു വാൻ വീഴ്ചവരുത്തുകയാണുണ്ടായത്. ഇതേവരെയും ഒഴിഞ്ഞുതന്നിട്ടില്ല.

12. Reading of the above paragraph show that landlord has categorically stated that Ravi Shankar is his son and that he is dependent on the landlord. The scope of the expression 'dependent' occurring in Section 11(3) was considered by a Division Bench of this Court in ***Ismail v. Kesavan [2004 (2) KLT 56]***. In that judgment, it has been held that dependency does not mean financial dependency, but is dependency for the building which belongs to the landlord and that in our society generally son, daughter, son-in-law, daughter-in-law, brother, sister, etc. are members of the family and would in many cases depend upon the head of the family. It was also held that the Kerala Rent Control Act does not define the term 'family' and that what constitutes family in a society depends upon ancestry, birth, blood relations, common lineage, line of descent and the habits and ideas of persons constituting the family and that its ambit has to be determined with regard to the socio-economic milieu of the parties. Proceeding further, it was also held that there must be sufficient pleading that they are dependent upon the landlord, so that, in the given case, tenant could disprove the dependency showing that the landlord or dependent has

got his own building in their possession and hence there is no dependency.

13. This issue was again by a Full Bench of this court in **Raghavan v. Kelappan [2006 (1) KLT 1 (F.B.)]** where the question considered was whether landlord's brother-in-law was his dependent for the purposes of Section 11(3) of the Act. Upholding the finding of the Rent Control Court and the Appellate Authority that brother-in-law was a dependent and a member of the family of the landlord, this Court held thus:

"5. Learned Single Judge of this Court in Muhammad and Ors. v. Sinnamalu Amma, 1977 KLT 795, held that the expression "family" which is undefined by the Act is elastic and its ambit has to be determined in all the circumstances of the case, having regard to the habits, ideas and soci-economic milieu of the parties. Same view has been taken by a Bench of this Court in Balakrishna Menon v. District Judge, 1994 (1) KLT 102. Another Division Bench of this Court followed the above decision in Krishnan Thampi v. Sankaradas, 2002 (1) KLT 930. Later a Bench of this Court in Kammancheri Janaki & Ors. v. Karattu Govindan Nair & Ors., 2003 (3) KLT 562 = 2004 (1) KLJ 58, to which one of us (Radhakrishnan, J.) was a party, held as follows:

"In the socio economic condition of our country, the expression "family" has to be given a wider meaning which is elastic and that it has to be determined on the facts and circumstances of each case and the status of the dependent in the family".

Later another Division Bench of this Court in Ismail v. Kesavan, 2004 (2) KLT 56, held as follows:

“Dependency does not mean financial dependency, but dependency for the building which belongs to the landlord. In our society generally son, daughter, son-in-law, daughter-in-law, brother, sister etc. are members of the family and would in many cases depend upon the head of the family. The Kerala Rent Control Act does not define the term “family”. But what constitutes the family in a society depends upon ancestry, birth, blood relations, common lineage, line of descent and the habits and ideas of persons constituting the family. In short its ambit has to be determined with regard to the socio-economic milieu of the parties”.

In Prathapan v. Rama Warriar, 2004 (2) KLT 559, a Bench of this Court while construing the word “family” took the view that there may also be cases where sisters, brothers, brothers-in-law, sisters-in-law be treated as members of the family and it all depends upon the family relations and family bonds. A domestic servant who has served the family throughout his life could also in a given situation be treated as member of the family. Personal laws of the parties as such may not guide us to find out the meaning of the expression “family”. The expression “family” has been defined in the Chambers 20th Century Dictionary to mean “all those who live in one house (as parents, children, servants), the descendants of one common progenitor etc. The word “family” may also be taken to mean collective body of persons who live in one house under one head or manager and includes within its fold household, children and servants as the case may be. Osborn's Concise Law Dictionary defines the word “family” so as to include all those persons who were subject to the potestas of the same individual, whether his children, grand children, etc. or unconnected in blood, eg. slaves. Further all descendants of the same ancestors, all persons connected by agnation, slaves of the paterfamily or property of a paterfamily. Various High Courts have also give a wider meaning to the expression “family” as well as the

expression “dependent”. In *B.Balaiah v. Chandoor Lachaiah*, AIR 1965 AP 435, the Court held that it is not only permissible but it is proper and desirable for the Court to bear in mind the context of the social order, the habits and ideas of living and the individual concerned belongs. The Delhi High Court in *Govind Dass v. Kuldip Singh*, AIR 1971 Delhi 151, held that the word family must be construed with reference to habits and ideas of the persons constituting the particular society and the religious and the socio religious custom of the community to which such persons belong. The Bombay High Court in *Kamal Chintaman Mithari v. Ganpatrao Ramachandra Powar*, AIR 1977 Bom. 163, held that the mistress of a tenant who was living with him along with their children in the disputed premises at the time of his death must be regarded as a member of his family for the purpose of S.5(11)(c) of the Bombay Rent Hotel and Lodging House Rates Control Act. Similar view is taken by other High Courts, namely, in *V.M.Deshmukh v. K.M.Kothari*, AIR 1951 Nag. 51, *Firm Rajnilal & Co. v. Vithal Pandurang*, AIR 1953 Nag.144, *Seshanarayana Rao v. Venkatesa Rao*, AIR 1953 Mad. 531, *Kolandavely Chettiar v. Koolayana Chettiar*, 1961 Mad.L.J.184, *Runju v. Ahmed Unnisa Begum*, 1963 (1) Mad.L.J.970, *Bindhubusan v. Commissioner, Patna Division*, AIR 1955 Pat. 496, etc. Reference be made to a few decisions of English Courts. In *Smith v. Penny*, (1946) 2 All.E.R. 672, it was held that children of landlord's friend and his wife to look after the children are considered to be member of the family. In *Jones v. Whitehil*, 1950 (1) All.E.R. 71, it was held that niece of the tenant's wife who had nursed the tenant and his wife is also a member of the family.

6. This Court in *Prathapan v. Rama Warriar*, 2004 (2) KLT 559 = 2004 (2) KLJ 394, examined the scope of the word “dependant” and held that the expression “dependant” is used as an adjective and it literally means person who depends on or looks to another for support or favour or for his maintenance or livelihood. The Court held that dependant member must be a member of the landlord's family and that dependency is not financial dependency but dependency so far as the tenanted

premises is concerned. The word "dependant" as such is not defined in the Act. "Dependant" means one who depends on another for support or otherwise; state of being dependant. The word "dependant" carries with it undue help of depending upon on another person. In other words there is some nexus between the dependant and the person on whom he depends. Dependancy does not mean financial dependency. The word "dependant" in the context of Rent Act is generally considered as dependant on the landlord for the building. In short, it would not be possible to give a clear cut definition as to who all will fall within the expression "member of the family dependant on the landlord", which depends upon variety of factors including relationship landlord has with his members of the family. Courts dealing with rent control matters have to make a pragmatic approach on the issue depending upon the facts and circumstances of each case and it would not be possible to give precise and definite meaning to that expressions in the context of S.11(3) of the Act."

14. In so far as this case is concerned, admittedly Ravi Shankar, for whose occupation the eviction of the building was sought, is the son of the landlord. There is also pleading that he is a dependent of his father. Going by the principles laid down in the above judgments and in the absence of acceptable evidence on the part of the tenant to the contrary, we cannot accept that any more proof is needed for a son to be a member of the family of the father.

15. In so far as further question of dependency is concerned, that fact has been pleaded in paragraph 7 of the petition which has been

extracted in earlier part of this judgment. However, counsel sought to point out that Ravi Shankar is owning a resort in Cheruthuruthy and, therefore, he cannot be a dependent of his father. In this context, it is relevant to refer to the judgment of the Apex Court in **M/s. Sait Nagjee Pursushotham and Co. Ltd. v. Vimalabai Prabhulal and Ors. [AIR 2006 SC 770]** which has been relied on by the Rent Control Court and the Appellate Court. In this judgment, the Apex Court has held thus:

“ The landlords have led evidence to show that one of their sons who had requisite qualification for starting a computer institute wants to establish the same at Calicut and others for extension of their business. The trial Court as well as the first appellate Court and the High Court examined the statements of P.Ws. 2 and 3 and after considering their evidence, the appellate Court reversed the finding of the trial Court and held that the need of the respondent-landlords to start business at Calicut, is bona fide and genuine. It was held that it cannot be said that a person who is already having business at one place cannot expand his business at any other place in the country. It is true that the landlords have their business spreading over Chennai and Hyderabad and if they wanted to expand their business at Calicut it cannot be said to be unnatural thereby denying the eviction of the tenant from the premises in question. It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlords and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business

and the place of business. However, the trial Court held in favour of tenant appellant. But the appellate Court as well as the High Court after scrutinizing the evidence on record, reversed the finding of the trial Court and held that the need of establishing the business at Calicut by the landlords cannot be said to be lacking in bona fide.

5. Learned counsel for the appellant submitted that in fact this plea of either starting business or expanding it at Calicut is nothing but sham and it was also pointed out that some of the sons have multifarious activities and are already established in some other business and one of the sons i.e. respondent No. 9 had already gone to United States of America and he has settled there. Therefore, the need is not bona fide. We fail to appreciate that when two sons are there and if they want to expand their business at Calicut then it cannot be said that the need is a sham one. It is not possible for the landlords and their sons to wait till the disposal of the case. They have to do something in life and they cannot wait till the appellant is evicted from the premises in question. It is common experience that landlord tenant disputes in our country take long time and one cannot wait indefinitely for resolution of such litigation. If they want to expand their business, then it cannot be said that the need is not bona fide. It is alleged that one of the sons of the landlords has settled in the U. S. A. That does not detract from the fact that the other sons of landlords want to expand their business at Calicut. Indian economy is going global and it is not unlikely that prodigal sons can return back to mother land. He can always come back and start his business at Calicut. On this ground we cannot deny the eviction to the landlords."

16. In the objection filed by the tenant, what has been pleaded is that Ravi Shankar was supervising the resort owned by his mother and there is no case that he is owning the resort in question. In fact

evidence shows that the resort in question is owned by his mother and therefore this contention is an untenable one. In any case, even if it is assumed that Ravi Shankar had such a business in the light of the principles laid down by the Apex Court, that does not bar him from starting a new venture in a building owned by his father. In our view, the principles laid down by the Apex Court in the above judgment is a complete answer to the contention raised by the counsel. Therefore, we cannot accept this contention raised.

17. The third contention raised by the learned Senior Counsel for the revision petitioner in RCR 67/2014 was that the tenant is entitled to the protection of the first proviso to Section 11(3). The first proviso to Section 11(3) provides that Rent Control Court shall not give any direction to the tenant to vacate from the premises if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case, it will be just and proper to do so. In so far as this contention is concerned, first of all the tenant did not raise such a plea in the objection that was filed and this issue was raised for

first time during the cross examination of PW1. This contention was raised basically on the allegation that the landlord is in possession of part of the building about which we have already referred to in the course of our discussion with reference to the contention of the tenant under Section 11(8). There we have already indicated that the Rent Control Court and the Appellate Authority have concurrently and correctly found that the landlord is not in possession or occupation of the rooms pointed out by the tenant and that even according to the evidence adduced by the tenants it is not suitable for commercial use. We have also upheld this finding. In such circumstances, the first proviso to Section 11(3) also could not have been invoked by the tenant.

18. In so far as RCR 108/14 and 109/14 are concerned, these revisions are filed against RCA 243 and 240 of 201, filed against the orders in RCP 83 and 85 of 2011. In so far as R.C.R.No.108/2014 arising out of R.C.P.No.83/2011 is concerned, this petition was filed by the respondent-landlord seeking eviction under Secs. 11(2), 11(3) & 11(4)(i) of the Act. The case of the landlord was that the room in question was let out to the 1st respondent in the Rent Control Petition, who had

sub let the room to the 2nd respondent, who alone has filed this revision petition. However, the respondents in the Rent Control Petition contended that the 1st respondent is employed abroad and that during his absence, the 2nd respondent, the alleged sub lessee, was conducting the business for and on behalf of the 1st respondent tenant.

19. In the evidence tendered before the Rent Control Court, it has come out that the 1st respondent tenant is employed abroad for the last more than 30 years and the 2nd respondent sub lessee was conducting the business on his own. This was proved by the fact that the licence from the local authority and the registration under the Sales Tax Act were in the individual name of the sub lessee. The 1st respondent tenant was not even aware of the details of the business nor the accounts thereof. It was taking into account all these facts, the Rent Control Court accepted the case of sub lease pleaded by the landlord and ordered eviction under Sec. 11(4)(i).

20. R.C.R.No.108/2014 is filed only by the 2nd respondent-sub lessee. As we have already stated, before the Rent Control Court, his contention was that he was conducting the business for and on behalf of

the 1st respondent tenant. If that be so, in the absence of the tenant choosing to join as a petitioner, this revision filed by the 2nd respondent in the Rent Control Petition and that too without any power of attorney or other authorisation of the 1st respondent, is not maintainable.

21. Be that as it may, we shall proceed to consider the contention raised by the counsel on the correctness of finding in the issue of sub lease. According to the revision petitioner-sub lessee, his case is covered by explanation to Sec.11(4)(i) of the Act. This explanation reads thus:

11. Eviction of tenants:-

- (1) -----
- (2) -----
- (3) -----
- (4) -----

(i) if the tenant after the commencement of this Act, without the consent of the landlord, transfers his right under the lease or sub-lets the entire building or any portion thereof if the lease does not confer on him any right to do so.

Explanation--Where on the partition of a joint family or the rights of co-tenants, or on the dissolution of a firm, the right of the joint family or the co-tenants or the firm under a lease is vested in a member of the joint family, or a co-tenant or a partner, as the case may be, whether by act of parties or otherwise, no transfer by the tenant of his right under the lease shall be deemed to have taken place within the meaning of this clause; or

Provided that an application under this clause shall not be made for the first time in respect of one and the same tenancy unless the landlord has sent a registered notice to the tenant intimating the contravention of the said condition of the lease and the tenant has failed to terminate the transfer or the sublease, as the case may be, within thirty days of the receipt of the notice or the refusal thereof."

It was his case that he is the nephew of the 1st respondent in the Rent Control Petition and that they were following joint family system. According to him, it is the right of the joint family which was vested in him and that therefore his occupation of the room is not a case of sub lease.

22. We are unable to accept this contention. First of all this contention is contrary to his pleaded case that he is conducting the business for and on behalf of the tenant. Secondly, the explanation to Section 11(4)(i) to the extent it is relevant can apply in a case where on the partition of a joint family, the right of the joint family under a lease is vested on a member of the joint family. We have gone through Ext.A1 lease deed. In this document, the lease is in the name of the 1st respondent-lessee and there is nothing to indicate that the lease was in favour of the joint family. There is also no evidence or pleading involving any joint family in the lease arrangement. This therefore means that the lease was not the right of a joint family which alone could have been partitioned and to vest in a member thereof, as contemplated in the explanation to Sec. 11(4)(i). Apart from all these, a

custom has to be proved by evidence and not by mere argument at the revisional stage. Therefore, the explanation to Sec. 11(4)(i) can have no relevance.

23. The counsel for the revision petitioner then contended that the landlord attorned to the occupation of the revision petitioner in the tenanted premises. In otherwise his contention was that the landlord accepted the sub lease in question. According to him, therefore, it is not open to the landlord to raise a plea of sub lease. This contention is not also acceptable primarily for the reason that such a plea was not taken by the tenant in the objection that was filed before the Rent Control Court. Secondly, when examined as PW1, the landlord was also not cross-examined on this aspect.

24. In support of this plea, one circumstance that was pointed out by the learned counsel for the revision petitioner was that he obtained trade licence for the premises in question with the consent of the landlord and that therefore, the landlord has attorned to his occupation. Here again there is neither any pleading nor any evidence let in by the petitioner. For all these reasons, this contention raised by

the revision petitioner-sub tenant also cannot be accepted.

25. The common ground that was urged by the respondent-landlord in R.C.P.Nos.83 & 85 of 2011, leading to R.C.R.Nos.108 & 109 of 2014 is under Sec. 11(3). According to the landlord, his dependant son, Gopikrishnan, wanted to start a grossery and stationery business in the rooms let out to the tenants in these two Rent Control Petitions. This need urged by the landlord was resisted by the counsel for the tenants by contending that the landlord has a building in his possession and that therefore the tenants are entitled to the benefit of first proviso. When it was pointed out to the learned counsel for the petitioner that the benefit of first proviso to Sec. 11(3) was not claimed by the tenant in the objections filed before the Rent Control Court, the counsel for the tenants herein invited our attention to I.A.No.4447/2010 filed by the respondents in R.C.P.No.61/2005 which was re-numbered on transfer as R.C.P.No.84/2011. While it may be true that tenant in R.C.P.No.61/2005 may have filed interrogatories as I.A.No.4447/2010 to claim the protection of first proviso to Sec. 11(3) of the Act, in the absence of any pleading in the objection filed by the tenants in R.C.P.Nos.83 & 85

of 2011 and they having not taken any such steps, according to us, they cannot take advantage of the plea urged by the tenant in R.C.PNo.84/2011.

26. Even otherwise, in the counter to the I.A filed by the landlord, there was a specific case that rooms mentioned in the affidavit were residential rooms and were in the possession and occupation of his daughter and son-in-law who being a doctor is using the room for consultation purposes. Further, RW1 has also admitted that the room cannot be used for any business purposes. We have already dealt with this matter, while answering the contention of the petitioner in R.C.R.No.67/2014. This therefore, demonstrates that the landlord did not have any building in his possession as provided under first proviso to Sec. 11(3) of the Act in order to deprive the landlord an order of eviction as contemplated under Sec.11(3).

27. The counsel for the tenants relied on the judgment of this Court in **Raghavan v. Govindan Nambiar**, reported in 1995 KHC 109 and contended that in the absence of proving special reasons, the

landlord will not be entitled to an order of eviction under Sec.11(3) of the Act. We are not in a position to accept this case for the reason that the question of assigning special reasons can arise only in a case where the tenant sets up the plea under the first proviso to Sec.11(3). As we have already found that insofar as R.C.P.Nos.83 and 85 of 2011 are concerned, the tenants did not set up such a plea and therefore the question of assignment of special reasons does not arise.

28. These tenants also contended that there was nothing to show that Gopikrishnan, the son of the landlord, was a dependant son and according to him, the dependant should have been examined by the landlord before the court to prove the need of the dependant son. Counsel told us that Sri.Gopikrishnan was having banking business in Calicut and that his wife is a practicing lawyer. Insofar as these contentions are concerned, suffice it to say, that there is no evidence let in by the tenants to prove that Gopikrishnan had any banking business. When such a suggestion was put to the landlord when he was examined PW-1, he had denied it also. Similarly insofar as the allegation that Gopikrishnan's wife is a practicing lawyer, PW-1 deposed before the

court that though she is a law graduate, she is not attending the courts as her child was too young. Our finding on the issue of dependency in the context of RCR 67/2014, is applicable in these two cases also. With regard to the case that the dependent son should be examined before the Rent Control Court, all that we need to state is that there is no such legal requirement and if on the evidence the landlord, the court is satisfied that the landlord requires the room for the occupation of his dependant son, the court is entitled to order eviction. Therefore, this contention also cannot be accepted.

29. The counsel for the tenants then contended that the tenants were entitled to the benefit of second proviso to Sec.11(3) of the Act. As per this proviso, the Rent Control Court shall not give any direction to the tenant to put the landlord in possession, if such is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such persons to carry on such trade or business. Reading of the order passed by the Rent Control Court shows that after detailed discussion of the evidence, insofar as the tenant in

R.C.R.No.108/2014 is concerned, the Rent Control Court has held that the tenant has failed to prove that he is mainly depending for his livelihood on the income from the business in the petition schedule building.

30. Insofar as the tenant in R.C.P.No.85/2011 is concerned, considering the evidence though the Rent Control Court has found that he is mainly depending on his livelihood on the income from the business conducted in the petition schedule building. Thereafter, under Point No.9, the second limb of the proviso about the availability of suitable rooms was considered by the Rent Control Court and found that the tenant failed to prove that no rooms are available in the locality for taking on lease for conducting his business. It was accordingly that the benefit of the second proviso was denied to the tenant. This finding, confirmed by the Rent Control Appellate Authority, is perfectly consistent with the evidence available on record. In this context, we may usefully refer to the Full Bench decision of this Court in ***Thanuja Sunderdas v. Sisirkumar Raj*** reported in 2008 (4) KLT 241(FB), where it has been held that the burden of proving the requirements of the

proviso is entirely on the tenant.

Resultantly, we do not find any substance in the objections raised against the finding of the Rent Control Court, as confirmed by the Appellate Authority. The revisions therefore are devoid of merit and accordingly, are dismissed.

Sd/-

ANTONY DOMINIC, JUDGE

Sd/-

ALEXANDER THOMAS, JUDGE

jes.p.16
bkn.p.22
sdk.p.26