

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. 95 of 2014 ()

**AGAINST THE JUDGMENT IN RCA 55/2011 ON THE FILE OF THE RENT
CONTROL APPELLATE AUTHORITY, ERNAKULAM.**

**AGAINST JUDGMENT IN RCP 136/2008 OF THE RENT CONTROL COURT,
ERNAKULAM DT.13.12.2010**

REVISION PETITIONER/APPELLANT/RESPONDENT:

**PRAHALADAN, AGED 73 YEARS
SON OF ACHUTHAN, PAZHUPARAMBANS,
NEAR MUTHUKULANGARA
EROOR SOUTH, THRIPIUNITHURA.**

**BY ADVS.SRI.BASIL MATHEW
SRI.K.B.SAJAN**

RESPONDENT/RESPONDENT/PETITIONER:

**JOHNSON, AGED 64 YEARS
SON OF CHELLAPPARAMBIL POULOSE, EROOR SOUTH P.O.
THRIPIUNITHURA.**

**R1 BY ADV. SRI.T.B.THANKAPPAN
R1 BY ADV. SRI.T.T.HARIKUMAR
R1 BY ADV. SRI.ASHISH VIDYADHARAN**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
13-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.95 OF 2014

Dated this the 13th day of January, 2015

ORDER

Antony Dominic, J.

This revision is filed by the tenant against whom respondent landlord filed RCP 136/08 on the file of the Rent Control Court, Ernakulam seeking his eviction under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act and by order dated 13.12.2010, eviction was ordered as prayed for. This order was confirmed in RCA 55/11 on the file of the Rent Control Appellate Authority, Ernakulam. It is in these circumstances, this revision is filed.

2. We heard the counsel for the petitioner and the learned counsel appearing for the respondent landlord.

3. The respondent is the owner of the building leased out to the petitioner where the petitioner is conducting a business in textiles and footwear. According to the respondent landlord, he wanted to shift his equipments hiring business to the petition

schedule premises. It was pleaded that the said business is now being carried on from his residential premises and for a more profitable operation, it is necessary to shift the business and that, therefore, he needed the building in question for his own bonafide need. This is contested by the petitioner contenting that the landlord did not have any business of his own, that the room being the smallest in the building is unsuitable for the business, that the landlord is in possession of a big building and that, since he is depending upon the income from the business for his livelihood, there is no special reason for ordering eviction.

4. Before the Rent Control Court, evidence was adduced by both sides and an Advocate Commissioner also submitted report. Taking note of the evidence available, the Rent Control Court passed the order of eviction under Section 11(3). This order was confirmed in RCA 55/11 filed by the petitioner.

5. The first contention raised by the learned counsel for the petitioner is that the landlord is not conducting any business of equipment hiring as contented by him. It was pointed out that the

landlord did not produce any license or other records showing his business, and according to the counsel for the petitioner, the business is conducted by the brother of the landlord and not by him. However, the fact that the business is being carried on by the landlord is not only pleaded but was also deposed by the landlord himself. Though he was cross examined on this issue, nothing could be brought out to discredit his testimony, which has been accepted by both the lower authorities. The report submitted by the Advocate Commissioner also shows that various items of machineries were stored in his residential premises and also in a shed on the rear side of the building in question. That apart, Ext.A3 Register produced by the respondent also showed the transactions of hiring of the equipments. In the light of these materials and evidence, we cannot accept the oral assertion made by the tenant that the landlord is not engaged in the business as claimed.

6. Secondly, tenant contended that room leased out to him is not suitable for the purpose of the landlord and that the landlord had other buildings in his possession. In so far as the suitability of the room in question is concerned, the argument is that the room is too small for the

requirements of the landlord. In our view, the size of the room cannot affect the bonafides of the landlord. It is for the landlord to adjust his requirements within the space that is available. Therefore, the tenant cannot question the bonafides of the need of the landlord on this contention. That apart, the tenant himself as RW1 admitted that the room is a more suitable one for the business of the landlord which he is presently carrying on in his residential premises.

7. In so far as the other buildings which are stated to be available with the landlord is concerned, the building mentioned by the tenant is a shed situated at an interior place, and the tenant himself in his evidence has admitted that the same is unsuitable for the business of the landlord. This has been taken note of by the Rent Control Court and the Appellate Authority. In such circumstances, the aforesaid contention raised by the tenant also untenable.

8. Counsel also contented that the landlord being in possession of other building, the tenant is not liable to be evicted in view of the first proviso to Section 11(3). We are unable to accept this contention also as we have already seen that the building claimed to be in possession of

the landlord is the shed mentioned above and that shed even according to the tenant is unsuitable for business purposes and is now used by the landlord himself for storage purposes. Such a pleading cannot be relied on to deny the prayer for eviction made by the landlord.

9. The tenant then complained that the orders of the lower authorities show that though the first limb of dependency on the income from the business for the livelihood is found in his favour, on the basis of the Commission Report and tenants own evidence regarding the availability of the buildings in the locality, the lower authorities have denied the benefits of second proviso. As the orders disclose, this finding of the authorities is entirely based on the evidence on record and cannot be said to be illegal justifying interference.

10. In the result, we do not find any one of the contentions raised before us worth acceptance for interference with the orders of the lower authorities. The revision petition is only to be dismissed.

11. At this stage, counsel for the petitioner pointed out that since he is conducting a business in the tenanted premises, he may be given sufficient time to surrender vacant possession of the building. Taking

note of these facts, we direct that the tenant shall surrender vacant possession of the premises in question to the landlord on or before the expiry of six months from today. This shall, however, be subject to the condition that the tenant shall within two weeks from today file an affidavit before the Rent Control Court unconditionally undertaking to surrender possession of the premises in question to the landlord on the expiry of six months from today and is subject to his paying rent without default till the room is surrendered.

Subject to the above, revision is dismissed.

Sd/-
ANTONY DOMINIC,
Judge

Sd/-
ALEXANDER THOMAS,
Judge

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