

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

RRev..No. 144 of 2014 ()

AGAINST THE ORDER IN RCA 37/2008 of ADDITIONAL DISTRICT JUDGE/RENT
CONTROL APPELLATE AUTHORITY, IRINJALAKUDA DATED 31.07.2013

AGAINST THE ORDER IN RCP 43/2006 of THE RENT CONTROL
COURT, IRINJALAKUDA DATED 11.4.2008

REVISION PETITIONER/APPELLANT IN RCA/RESPONDENT IN RCP:

JOBY
S/O.PAYAMMEL LONAPPAN, KALLETUMKARA DESOM
THAZHEKKAD VILLAGE, MUKUNDAPURAM TALUK
THRISSUR DISTRICT, PIN 680 683.

BY ADVS.SRI.M.P.RAMNATH
SRI.P.RAJESH (KOTTAKKAL)
SRI.M.VARGHESE VARGHESE
SMT.S.SANDHYA
SMT.UMA R.KAMATH

RESPONDENT/RESPONDENT IN RCA/PETITIONER IN RCP:

JUSTIN
S/O.CHIRAMMEL, EDATHIRUTHIKKARAN DEVASSY
IRINJALAKUDA VILLAGE & DESOM, MUKUNDAPURAM TALUK
THRISSUR DISTRICT PIN - 680 732.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
14-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

kp/-

P.N.RAVINDRAN & BABU MATHEW P. JOSEPH, JJ.

=====

R.C.R. No.144 of 2014

=====

Dated this the 14th day of October, 2015

ORDER

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.43 of 2006 on the file of the Rent Control Court, Irinjalakkuda, a petition filed by the respondent/landlord for an order evicting the tenant under section 11 (3) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The landlord had, in the rent control petition, averred that he needs the petition schedule building for his own residence. The tenant contended, inter-alia, that he is residing in the petition schedule building and is also running a stationery business in the first room that faces the main road on the northern side, that he is depending for his livelihood mainly on the income derived from the business carried on in the petition schedule building and that no other suitable rooms are available in the locality for shifting his business. He further contended that the landlord owns another building at Irinjalakkuda, that he is residing in a building having all modern facilities and therefore, the averment that he intends to reside in the petition schedule building, which is an old line building with four rooms one behind the other, lacks bonafides and is only a ruse to evict him.

2. The landlord was examined as PW1 and Exts.A1 to A7(a) were produced and marked. On application filed by the landlord, an Advocate Commissioner was appointed to inspect the petition schedule building and she was examined as PW2. The report submitted by her and the plan accompanying it were marked as Exts.C1 and C1 (a) respectively. The landlord had simultaneously instituted R.C.P.No.44 of 2006 praying for an order of eviction in respect of another room situate adjacent the petition schedule room, on the ground that he bonafide needs it to start a business. The Advocate Commissioner appointed in that case was examined as PW3 and the report submitted by PW3 in R.C.P.No.44 of 2006 and the plan accompanying it were produced and marked as Exts.A7 and A7(a) respectively. The tenant examined himself as RW1 and produced and marked Exts. B1 to B7.

3. The rent control court considered the rival contentions and held that the need put forward is bonafide. Though the rent control court accepted the contention of the tenant that he is depending for his livelihood mainly on the income derived from the petition schedule building, the contention of the tenant that no other suitable building is available in the locality was repelled. Consequently an order for eviction was passed on 11.4.2008. Challenging the order passed by the rent control court, the tenant filed R.C.A.No.37 of 2008 on the file of the Rent Control Appellate Authority, Irinjalakuda. By judgment

delivered on 31.7.2013 the appellate authority concurred with the rent control court and dismissed the appeal. The tenant has, aggrieved thereby, filed this revision petition.

4. We heard Sri. M.P. Ramnath, learned counsel appearing for the petitioner and Sri.Arun Krishnan, learned counsel appearing for the respondent. We have also gone through the impugned judgment/order as also the judges papers in R.C.R.No.295 of 2013 which arose from R.C.P.No.44 of 2006 filed by the very same landlord. The need put forward in the instant case is for the residence of the landlord. The landlord is admittedly a bachelor. It has also come out in evidence that he does not own any other residential building of his own and that for the time being he is residing with his parents and brother. The rent control court and the appellate authority have concurrently held that the need put forward is bonafide. The tenant is admittedly residing in the petition schedule building along with his family members. In such circumstances, we find no merit or force in the contention of the tenant that the need put forward is only a ruse to somehow or other evict the tenant. Though it is contended that the petition schedule building lacks modern facilities, the tenant cannot in our opinion succeed on that ground. The landlord can, if he is desirous of having modern facilities in the petition schedule premises presently in the occupation of the tenant, make such alterations as are required for his residence. Therefore the mere fact that the petition schedule

building lacks modern facilities, is a plea which cannot in our opinion be countenanced. The fact that the landlord is expatriate Indian who was formerly employed in the Middle East is also not disputed. Even assuming that he does not have funds of his own, home loans are easily available now-a-days and therefore, the fact that the building lacks modern facilities is not in our opinion a reason to deny an order of eviction.

5. That takes us to the question whether the finding of the rent control court as affirmed by the appellate authority, that the tenant has not proved the ingredients of the second limb of the second proviso to section 11(3) of the Act merits interference. It is now well settled by a series of decisions of this court and the Apex Court that the burden of proving the ingredients of both the limbs of second proviso is on the tenant. The tenant in the instant case has failed in discharging that part. That apart, it has come out in evidence through the report submitted by the Advocate Commissioner in the instant case as also in R.C.P.No.44 of 2006 that a large number of rooms are available in the very same locality. The tenant cannot also seek the protection of the second proviso in respect of residential accommodation. In such circumstances, we are not persuaded to hold that the finding regarding the benefit of the second proviso to section 11(3) of the Act is in any way perverse or illegal. We also notice in this context that the prayer for eviction of the nearby building was

granted by the rent control court by order passed on 11.4.2008 in R.C.P.No.44 of 2006. The need put forward therein is to start a business in stationery items. The said order was upheld by the appellate authority by judgment delivered on 16.3.2013 and by this court by order passed on 3.6.2015 in R.C.R.No.295 of 2013. The need put forward in R.C.P.No.44 of 2006 having been upheld, it is reasonable to presume that the intention of the landlord is to reside in the petition schedule building in the instant case and to run a business in the adjacent building which was the subject matter of R.C.P.No.44 of 2006. Therefore, for that reason also we are satisfied that the need put forward is not a ruse to evict the tenant.

For the reasons stated above, we hold that there is no merit in the instant revision petition. It fails and is accordingly dismissed. However, having regard to the fact that the tenant has a school going children and the current academic year will come to an end only on 31st March, 2016 and having regard to the fact that the tenant in R.C.P.No.44 of 2006 was granted six months' time by this court to surrender the vacant possession of the building involved in that case, even while dismissing the revision petition, we deem it appropriate to grant to the tenant in the instant case time till 30th of April, 2016 to surrender vacant possession of petition schedule building, subject to the following conditions:

1. The petitioner-tenant shall within one month from today file an

undertaking in the form of an affidavit before the execution court, if an execution petition is pending or before the rent control court if an execution petition has not so far been filed, undertaking to surrender vacant possession of the petition schedule premises to the landlord on or before 30.4.2016.

2. The tenant shall in that affidavit also undertake to pay the arrears of rent, if any, and to continue to pay rent till the date of surrender.

3. The tenant shall further undertake that he will not induct third parties to the possession of the petition schedule building or commit acts of waste therein.

4. Needless to say in the event of default on the part of the tenant in filing an affidavit within the time limit stipulated above, it will be open to the landlord to execute the order of eviction even within the aforesaid period of six months.

**P.N.RAVINDRAN
JUDGE**

**BABU MATHEW P. JOSEPH
JUDGE**

kp/-