

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

R C Rev.No. 181 of 2014 ()

AGAINST THE JUDGMENT IN RCA 29/2010 of RENT CONTROL APPELLATE
AUTHORITY, THALASSERY DATED 12-02-2014

AGAINST THE ORDER IN RCP 16/2008 of RENT CONTROL COURT, THALASSERY
DATED 26-10-2009

REVISION PETITIONER(S)/RESPONDENT/PETITIONER:

MELAYADATH KANDOTH SHARADA AGED 62 YEARS
W/O.LATE ANANDAN, NO OCCUPATION
RESIDING AT TAIPARAMBATH HOUSE, OLAVILAM AMSOM DESOM
P.O.OLAVILAM, THALASSERY TALUK, KANNUR DISTRICT.

BY ADVS.SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETIL
SRI.P.SAJU
SRI.C.K.SREEDHARAN

RESPONDENT(S)/APPELLANT/RESPONDENT:

N.VALSALAN, AGED 58 YEARS
S/O.GOPALAN NABIAR, BUSINESS, KUNIIYIL HOUSE
KADIRUR AMSOM, PONNIYAM DESOM, HYMA ELECTRONICS
KUTHUPARAMBA ROAD, P.O.PANOOR.

BY ADV. SRI.RAHUL VENUGOPAL

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
09-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.SURENDRA MOHAN & MARY JOSEPH, JJ.

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R.C.R No.181 of 2014

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Dated this the 9th day of June, 2015

ORDER

Surendra Mohan,J.

The landlady in R.C.P No.16 of 2008 of the Rent Control Court, Thalassery is the revision petitioner. The landlady had sought for an order of eviction against the tenant on the ground of bona fide need under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act', for short). After the Rent Control Petition was filed, the petition was amended as per order in I.A No.1791 of 2009.

2. As per the amendment, certain additional pleadings were incorporated into the petition. It has been additionally pleaded that, the petition schedule building is part of a larger building having one room on the first floor and a portion on the side of the stair case was converted into a small room years back. The said portion has been separately numbered by the Panur Panchayat. The details of the other rooms in the building have also been incorporated. It has been further pleaded that, the said rooms

were not suitable for starting a bakery cum cool bar that the landlady's son wanted to start in the building. It was after the amendment of the pleadings that the Rent Control Petition was tried and the order of eviction passed. Aggrieved by the order of eviction, the tenant filed R.C.A No.29 of 2010 before the Rent Control Appellate Authority, Thalassery. Before the Appellate Authority, the tenant contended that, after amendment of the Rent Control Petition, he had filed an additional counter raising various contentions denying the claim put forward by the landlady. It was also contended that the case pleaded in the additional counter had not been considered by the Rent Control Court. Accepting the contentions of the tenant, the Appellate Authority remanded the matter to the Rent Control Court. The Appellate Authority has held as follows in its judgment as the reason for remand.

“Such being the case I think that it is just and proper as well as in the interest of justice to remand the matter to the court below to reconsider all the issues by taking into consideration of the additional contentions raised by the tenant by filing the additional counter in the petition. Hence this appeal is allowed and the matter is referred back to the court below directing the Rent Controller to reconsider the entire matter afresh taking into consideration of the additional contentions raised by

the tenant in the counter in consequence of the amendment carried out by the landlady in the original petition.”

3. The case of the petitioner is that though the remand was made for the specific purpose of considering the contentions raised by the tenant in the additional counter filed by him, no additional counter was in fact filed by the tenant. In view of the above contention raised, the records of the case were called for from the Rent Control Court. We have perused the records of the case. We find that, no additional counter as alleged has been filed by the tenant before the Rent Control Court in R.C.P No.16 of 2008. The above being the position, we are not satisfied that any purpose would be served by a re-consideration of the entire issue by the Rent Control Court, as directed by the Appellate Authority.

4. In the above circumstances, it is only appropriate that the Appellate Authority considers Rent Control Appeal No.29 of 2010 on the merits and disposes of the same, on the basis of the pleadings and evidence already on record.

5. For the above reasons, this revision is allowed. The judgment in R.C.A No.29 of 2010 is set aside. The Rent Control Appellate Authority, Thalassery is directed to take up R.C.A No.20 of 2010 and to dispose of the same on the merits as expeditiously

as possible, at any rate, within a period of six months of the date of receipt of records from this Court. The Appellate Authority shall give priority to the appeal since it is filed against a Rent Control Petition of the year 2008.

Sd/-
K.SURENDRA MOHAN, JUDGE

Sd/-
MARY JOSEPH, JUDGE

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