

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

RCRev.No. 205 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN RCA 137/2011 of RENT CONTROL APPELLAE
AUTHORITY (ADDL.DISTRICT COURT), VATAKARA DATED 31-05-2014

AGAINST THE ORDER/JUDGMENT IN RCP 53/2011 of RENT CONTROL COURT
(MUNSIFF COURT), VADAKARA DATED 27.10.2011

PETITIONER(S)/RESPONDENT IN RCA NO.137/2011/RESPONDENT IN RCP 53/2011/
TENANT:

KUZHIHALIL BABU, AGED 49 YEARS,
S/O.KRISHNAN, TRADER, NADAKKUTHAZHE AMSOM
PUTHUR DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT
KERALA STATE.

BY ADVS.SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

RESPONDENT(S)/APPELLANT IN RCA NO. 137/2011/ PETITIONERS IN RCP 53/2011/
LANDLORDS:

1. LEELA, AGED 65 YEARS
W/O.BHASKARAN
RESIDING AT CHATTUOKANDY VATAKARA AMSOM DESOM
NEAR POOVADAN GATE, VATAKARA TALUK, KOZHIKODE DISTRICT
KERALA STATE - 673 101

2. SHEEBA, AGED 44 YEARS,
D/O.BHASKARAN, RESIDING AT CHATTUOKANDY
VATAKARA AMSOM DESOM - 673 101., NEAR POOVADAN GATE
VATAKARA TALUK, KOZHIKODE DISTRICT, KERALA STATE

R1 & 2 BY ADV. SRI.K.RAKESH ROSHAN
R1 & 2 BY ADV. SMT.THUSHARA.V

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
20-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.205 of 2014

Dated this the 20th day of March, 2015

O R D E R

Antony Dominic, J.

1. Respondents, landlords, filed RCP.53/11 on the file of the Rent Control Court, Vatakara seeking eviction of the petitioner tenant urging grounds under section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965. The need projected was that the second respondent, daughter of the first respondent, was unemployed and had no income of her own and therefore, she wanted to start a business of mobile phones. According to the landlords, they did not have any suitable room in their possession for the second respondent to start the intended business.
2. The tenant, who is occupying the room in question and is running a stationery shop there, contested the petition. He also claimed the benefit of the proviso to section 11(3). Though the Rent Control Court found the need of the landlords to be a bonafide one, it found that the respondents are in possession of a room in the upstairs of the building and there was

nothing to show that the said room was not suitable for the need of the second respondent.

3. On the above basis, the Rent Control Court held that the landlords did not make out any special reason as contemplated in the first proviso to section 11(3) to claim an order for eviction and accordingly, the RCP was dismissed. The landlords challenged the order in RCA.137/11 before the Rent Control Appellate Authority. The Appellate Authority, in its judgment dated 31.5.2014, reversed the finding of the Rent Control Court and allowed the appeal. It is aggrieved by this judgment, the tenant has filed this revision.

4. We heard learned counsel for the petitioner and learned counsel appearing for the respondents.

5. The question that arises for consideration is whether the Rent Control Appellate Authority was justified in reversing the finding of the Rent Control Court on the first proviso to section 11(3). Reading of the

order of the Rent Control Court shows that according to it, the fact that a room in the upstairs was in the possession of the landlords was not objected by the landlords. It is also stated that the landlords did not prove that the room was not suitable for their business. It is on that premise that the Rent Control Court came to the conclusion that the landlords did not make out any special reason as contemplated.

6. However, the Appellate Authority re-appreciated these findings. While so, referring to the evidence of the tenant who was examined as RW1, the Appellate Authority found that the tenant has in clear terms expressed his unwillingness to shift his business to the first floor of the building. He has also confessed in the box that no customer would go to his shop if it is shifted to the first floor. Relying on this evidence, the Appellate Authority has found that if the building now available with the landlords is unsuitable for business as confessed by the tenant, the tenant cannot insist that the landlords should

contend themselves by occupying that room in the upstairs of the building. Therefore, according to the Appellate Authority, unsuitability of the building in the first floor stood established by evidence and that therefore, special reasons were there to justify the order for eviction. In coming to this conclusion, the Appellate Authority has also made reference to the judgment of the Apex Court in Dhanakal v. Kalvadi Bai [(2000) 6 SCC 16]. This finding of the Appellate Authority is fully justified in the light of the facts pleaded by the parties and the evidence available on record. In such circumstances, we do not find any reason to disagree with the views of the Rent Control Court as confirmed by the Appellate Authority.

7. Be that as it may, in view of the fact that the petitioner has been conducting business in the ground floor of the premises, he necessarily require a reasonable time to search out a new premises and shift his business establishment. In such circumstances, we are inclined to allow the tenant

six months' time from today to surrender vacant possession of the premises in question to the landlords. However, this shall be subject to the condition that within 3 weeks from today, the petitioner shall file an affidavit before the Rent Control Court/execution court, unconditionally undertaking to surrender vacant possession of the building to the landlords on or before the expiry of the six months' period allowed to him. The tenant should also have to pay rent at the agreed rates during this period, without any default.

Subject to the above, this revision is dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

kkb.

/True copy/

PS to Judge