

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

RCRev..No. 227 of 2014 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 13/2013 of THE RENT CONTROL
APPELLATE AUTHORITY,THALASSERY DATED 15-07-2014**

**AGAINST THE ORDER/JUDGMENT IN RCP 123/2005 of THE RENT CONTROL COURT,
THALASSERY**

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

**KOLOTTU PADMINI AGED 45 YEARS
D/O.GOVINDAN, BUSINESS, IRIVERI AMSOM
KANAYANNUR DESOM.**

**BY ADVS.SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA
SMT.ANUPAMA JOHNY**

RESPONDENT(S)/RESPONDENT/PETITIONER:

**NADUKKANDY CHANDRAMBATH, AGED 31 YEARS
S/O.MAMMU, BUSINESS IN GULF
RESIDING AT CHANDRAMBATH HOUSE, MAKRERI AMSOM
BAVOD DESOM, THROUGH POWER OF ATTORNEY HOLDER
MANALIL MADOLI, ABDUL KHADER, S/O.MAMMED HAJI
AGED 56 YEARS, RAHATH MANZIL, KANNUR TALUK
KANHIROD AMSOM, DESOM, KANNUR DISTRICT
670592.**

R1 BY ADV. SRI.C.P.PEETHAMBARAN

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
17-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**K.SURENDRA MOHAN &
MARY JOSEPH, JJ.**

R.C.R. No.227 of 2014

Dated this the 17th day of July, 2015

O R D E R

Surendra Mohan, J.

The tenant is in revision before us challenging the order of the Rent Control Court, Thalassery in RCP No.123 of 2005 confirmed in appeal by the Rent Control Appellate Authority, Thalassery in RCA No.13 of 2013. The respondent landlord had filed the Rent Control Petition seeking an order of eviction under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). The need alleged was that, he requires the building for his brother Mohammad who was dependent on him to start a tea shop. It is averred in the petition that, his brother Mohammad is a person who was not having sufficient income to maintain himself and a person who was dependent on the landlord for his sustenance. The need was contested by the tenant

pointing out that, the brother was not dependent on the landlord and that, the need alleged was only a pretext for eviction and further that, the landlord's brother Mohammad had other rooms of his own, if he actually wanted to start a business of his own. The tenant also claimed the benefit of the Provisos to Section 11(3) of the Act.

2. The Rent control Court tried the petition on the above pleadings. Exhibits A1 to A5 documents were marked on the side of the landlord and PWs 1 and 2 were examined as witnesses. The tenant examined herself as RW1. There is no documentary evidence on her side. The Rent Control Court initially dismissed the Rent Control Petition on 21.12.2006. The landlord challenged the said order before the Rent Control Appellate Authority in RCA No. 35 of 2007. The Appellate Authority set aside the order of the Rent Control Court and remanded the matter, finding that the Rent Control Court had not entered specific findings on the provisos to Section 11(3) of the Act. Both the parties were permitted to adduce further evidence and

the Rent Control Court was directed to consider the matter afresh. After remand, the landlord did not adduce any evidence. The tenant was recalled and was examined again. Thereafter, the Rent Control Court considered the matter afresh and allowed the petition. Though the tenant had challenged the order of the Rent Control Court in RCA No.13 of 2013, the Appellate Authority has confirmed the order of eviction granted by the Rent Control Court.

3. According to Sri. K.C.Santhosh Kumar who appears for the revision petitioner tenant, the Rent Control Appellate Authority had remanded the matter finding that it was incumbent on the landlord to satisfy the requirements of the first proviso to Section 11(3) before an order of eviction could be granted to him. However, after remand, the landlord did not adduce any evidence to show that he had no other building of his own in his occupation. At the same time, the tenant had examined herself again and has testified that, the landlord was in possession of other buildings from one of which the proposed business could be

started. The above vital aspect has been completely missed by the authorities below. Therefore, it is contended that the judgment of the Appellate Authority requires interference in revision. Particular reliance is placed on the observation of the Rent Control Appellate Authority in paragraph 8 of its judgment that, even after remand the tenant had not adduced any evidence to substantiate the fact that the landlord was having another building of his own in his possession, to contend that the oral evidence tendered by RW1 after remand has been completely overlooked by the said authority. The counsel also places reliance on the decision of this Court in **Sadanandan v. Kunheen** [1991(2) KLT 628] to contend that, the ingredients under the Second Proviso to Section 11(3) to be proved by the tenant being a negative fact, namely non availability of a suitable building, the burden on the tenant would be discharged by a positive assertion in evidence. Thereupon, it was up to the landlord to let in positive evidence regarding the availability of a suitable building. On the basis of the above decision, it is

contended that the tenant having asserted in the box that the landlord was having other suitable buildings in his possession, the burden had shifted to the landlord to prove otherwise.

4. The contentions of the counsel for the revision petitioner are opposed by Sri. C.Peethambaran who appears for the landlord. The Appellate Authority has not entered any finding regarding the ingredients that constitute the first proviso to Section 11(3) of the Act. In fact, apart from a general averment in the pleadings of the tenant that the landlord had other buildings of his own in his possession, no specific building had been pointed out. Even after remand, except for examining herself again, the tenant had not let in any evidence in support of her contention that, the first proviso to Section 11(3) was attracted in the present case. It is for the said reason, according to the counsel that, both the authorities below have found against the tenant. For the above reasons, it is contended that there are absolutely no grounds to interfere with the proceedings of the

authorities below.

5. Heard. We have gone through the judgment of the Rent Control Appellate Authority in RCA No.35 of 2007. We find that, the initial order of the Rent Control Court was set aside and the matter was remanded for the only reason that the Rent Control court had not entered any specific findings under the provisos to Section 11(3). The Rent Control Appellate Authority was therefore of the opinion that, it was incumbent on the Rent Controller to have entered specific findings with respect to the provisos to Section 11(3). The Rent Control Appellate Authority has not entered any finding, prima facie or otherwise that either the first proviso or the second proviso to Section 11(3) was attracted in the present case. It is true that both the landlord and the tenant were granted a further opportunity to adduce additional evidence, after remand. However, the landlord did not choose to adduce any further evidence. The tenant has only got herself examined again as RW1. Therefore, the evidence in the case substantially remains

unaltered, even after remand. It is the said evidence that has been considered by the authorities below.

6. A perusal of the objections of the petitioner to the Rent Control Petition shows that, the petitioner has made a general statement therein that, the landlord was possessed of other rooms that were sufficient for the purpose of satisfying the need that was put forward. We notice that, the tenant has not referred to or pointed out any specific room over which the landlord had ownership and possession. It is also worth noticing that, the tenant had got a further opportunity after remand to adduce better evidence had the landlord been actually owning any other building. He could have either taken out a Commission to report regarding the rooms that are alleged to be owned and possessed by the landlord. In the alternative, she could have produced evidence like extracts of the Property Tax Register to prove ownership of the landlord over the other buildings. However, absolutely no evidence was adduced in support of her contention that the landlord was possessed

of other buildings, owned by him. Therefore, except for the bald assertion in her statement and her objections, there is absolutely no evidence to show that the landlord has any other building of his own in his occupation. In cross examination as RW1, after remand she has been asked whether she had produced any documents to evidence that the landlord was in possession of other vacant shop rooms, she has answered that she had not produced any records. The above being the state of evidence, both the Rent Control Court as well as the Rent Control Appellate Authority were right in concluding that with respect to the first proviso to Section 11(3), there is absolutely no evidence available to show that the landlord was owning and possessing any other building.

7. With respect to the second proviso to Section 11 (3), it is settled position of law that, the burden of proving both the limbs thereof is squarely on the tenant. The tenant has while questioned as RW1 after remand, admitted that she is in possession of documents regarding the income

from the business that she is conducting in the scheduled premises. No such document has been produced. Therefore, there is no proof regarding the first ingredient of the second proviso to Section 11(3). There is also no evidence available regarding the second limb. The bona fide need has been found by both the authorities.

8. A contention has been put forward by the counsel for the petitioner that, it was up to the landlord who have pleaded in his Rent Control Petition that he had no other suitable building of his own in his possession for starting the business that he has proposed. The said contention has only to be rejected, in view of the dictum of this Court in **Kunju v. Fathima** [2014(3) KLT 563]. While considering a similar contention, this Court has held in paragraph 10 as follows:-

10. It cannot be understood from the First Proviso to S.11(3) of the Act that the landlords need to plead the particulars of all the premises under their ownership and possession to claim an order of eviction. The proviso only recites that the Rent Control Court shall not order eviction, if the landlord has another building of his own in

his possession, without satisfying the special reasons for not occupying the vacant premises. The function of the proviso is to except something out of the enactment or qualify something enacted, which, but for the proviso, would come within the purview of the enactment. The scope of the First Proviso to S.11(3) of the Act, in the circumstances, is to be understood in the context of the provision in S.11(3) of the Act. S.11 (3) of the Act, confers authority on the Rent Control Court to pass an order, directing the tenant to put the landlord in possession of the building, if he bona fide needs the building for his occupation and the proviso carves out an exception to the authority of the Rent Control Court to order eviction, when the landlord has another building of his own in his possession and there are no special reasons for not occupying the same for the proposed need. A combined reading of the provision and the proviso would indicate beyond doubt that it is only when it is established that the landlord has another building of his own in his possession for his occupation for the proposed need, he need satisfy the Rent Control Court the special reasons for not occupying the said premises. In other words, to non-suit the landlord, the vacant building should be of such a character, which would meet the requirements of the landlord. Any other interpretation of the proviso would lead to absurdity and cannot be accepted.

We are in full agreement with the above observations.

9. For the foregoing reasons, we find no grounds to

interfere with the judgment of Appellate Authority confirming the order of eviction granted by the Rent Control Court. The revision is therefore dismissed.

10. The counsel for the petitioner sought as a last submission, for the grant of a sufficiently long period of time for surrendering vacant possession of the building to the landlord. The request is opposed by the counsel for the respondent. Having heard the counsel appearing for the respective parties, we are satisfied that it is necessary to grant time to the petitioner up to 31.12.2015.

In the result, this RCR is disposed of with the following observations.

1. The Rent Control Revision is dismissed.
2. The tenant is granting time up to 31.12.2015 to surrender vacant possession of the premises to the landlord on condition that she swears to an affidavit before the Execution Court in RCP No.123 of 2005 undertaking to surrender vacant possession of the premises to the landlord on or before 31.12.2005.

3. It shall be a further condition for the grant of such time that the petitioner pays to the landlord all arrears of rent remaining unpaid and continues to pay the rent in respect of the premises without any delay or default until vacant possession of the premises is surrendered.

Sd/-
K.SURENDRA MOHAN
JUDGE

Sd/-
MARY JOSEPH
JUDGE

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