

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

RCCRev..No. 250 of 2014 ()

**RCA 71/2013 of RENT CONTROL APPELLATE AUTHORITY-II, KOZHIKODE
RCP 30/2011 of RENT CONTROL COURT, QUILANDY**

REVISION PETITIONER(S)/RESPONDENT/RESPONDENT:

**P.R.K.DAMODARAN
S/O. KESAVAN KUTTY, MANOHARA TIMBER WORKS, 19/626
EAST ROAD, PANTHALAYANI AMSOM, KOTHAMANGALAM DESOM
KOYILANDY-673305.**

**BY ADVS.SRI.NIRMAL. S
SMT.VEENA HARI**

RESPONDENT(S)APPELLANT/PETITIONER:

**SARASA SHANMUGHAN AGED 72 YEARS
W/O. POOKAT SHANMUGHAN (LATE), 4/479-C, A.G.ROAD
KATCHERI AMSOM DESOM, KOZHIKODE-673001.**

BY ADV. SRI.E.NARAYANAN

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 28-
01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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R.C.Rev.No. 250 of 2014

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Dated this the 28th day of January, 2015

ORDER

ANTONY DOMINIC, J.:

The respondent-landlady filed R.C.P.No.30/2011 before the Rent Control Court, Koyilandi, seeking eviction of the petitioner, under Secs.11(2)(b), 11(3) and 5(i) of the Rent Control Act. During the pendency of the proceedings, the tenant cleared the arrears of rent. The Rent Control Court, by its order dated 27.3.2013, dismissed the petition. Thereupon, the landlady filed R.C.A.No.71/2013 before the Rent Control Appellate Authority-II, Kozhikode. The Appellate Authority, by its judgment dated 11.7.2014, allowed the appeal accepting the ground under Sec.11(3) of the Act. It is aggrieved by this judgment, the tenant has filed this revision.

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

3. Briefly stated the facts of the case are that the respondent is the landlady of a shop room bearing No.19/26, which

was leased out to the petitioner in 1960. In this shop room, the petitioner is conducting a timber business under the name and style, "Manohara Timber Works". According to the landlady, PW-1 is her unmarried and dependant daughter and she wanted to start a business of fancy stores in the petition schedule building. It is urging this bona fide need, that the landlady filed R.C.P.No. 30/2011. Before the Rent Control Court, her daughter was examined as PW-1. The petitioner and his accountant were examined RWs-1 and 2. Exts.A1 to A3 and B1 to B3 series were marked on behalf of the tenant. It was considering the evidence thus adduced that the Rent Control Court dismissed the petition, which was reversed by the Appellate Authority.

4. The first contention raised by the learned counsel for the revision petitioner is that on 11.6.2004, Ext.A-1 notice was issued on behalf of the landlady demanding eviction on the ground of arrears of rent and bona fide need. It is stated that though the allegations were denied by Ext.P-2 reply notice, the landlady filed the Rent Control Petition only on 16.11.2011, after a delay of almost seven-and-a-half years. The learned counsel contended that this inordinate and unexplained delay on the part of the landlady in

filing the Rent Control Petition itself shows that there was no bona fides in the need urged by her. However, this contention of the learned counsel was disputed and denied by the learned counsel for the respondent landlady. According to the counsel, there was enough materials before the Rent Control Court to show that despite the lapse of time, need urged by the landlady continued to survive even as on the date of presentation of the petition. Therefore, according to the counsel, there is no such substance in this argument.

5. We have considered the submissions made. It is true that though Ext.A-1 notice was issued on 11.6.2004, the landlady filed the Rent Control Petition only on 16.11.2011. It is also true that the bona fide need urged by the landlady in Ext.A-1 notice is the very same need that was urged in the petition also. Though it is so, on facts we notice that the status of the daughter of the landlady as an unmarried person dependent on her mother continued even on the date of presentation of petition. Similarly, there is also no evidence on record to indicate that any factual developments have happened in the meanwhile resulting either in the disappearance of the bona fide need urged by the landlady or in the disappearance of the

daughter's status as a dependant of the landlady. In such circumstances, the mere fact that there is an interval of more than seven years in between Ext.A-1 and the date of the petition by itself will not result in cessation or the disappearance of the bona fide need urged by the landlady. Therefore, we are unable to accept the contention that the delay by itself disentitles the landlady to urge the ground under Sec.11(3).

6. The evidence shows that the unmarried daughter, PW-1, who is dependent on her mother, wanted to start a business on her own. It is true that she is inexperienced in business and was also not in a position to give the exact investment required for commencing the business. But, however, the fact that she is inexperienced does not mean that she cannot venture into business or that the landlady cannot seek eviction of the tenant for that purpose. We, therefore, agree with the Rent Control Appellate Authority that the respondent had succeeded in establishing the bona fide need for the occupation of her daughter, entitling her for an order under Sec.11(3).

7. The tenant claimed the benefit of the proviso to Sec.11(3). Insofar as the first proviso to Sec.11(3) is concerned, the

landlady cannot seek eviction of the tenant provided she has other buildings in her possession and if so, unless the landlady makes out special reason, the Rent Control Court cannot order eviction. Insofar as this case is concerned, though it is admitted fact that the landlady owns other business in the locality itself, we find from the evidence of PW-1 that the other buildings are in the occupation of tenants. This, therefore, shows that requirements of the first proviso are not satisfied.

8. The tenant also claimed the benefit of second proviso, by producing his account books and examining RW-2. He claimed that his sole income was from the business that he carries on in the building in question. Even if this contention of the tenant is accepted, the second part of the proviso requires him to establish non-availability of suitable building in the locality for him to carry on business. This burden of proving the non-availability of building in the locality is entirely on the tenant. His own evidence shows that he did not make any enquiry about the availability of building and admittedly he has not taken out any commission from the court for the purpose of ascertaining non-availability of buildings. This therefore, shows that the tenant did not discharge his burden of

proving the requirement of the second proviso also.

Resultantly therefore the order passed by the Appellate Authority has to be confirmed and we do so. The Revision fails and is dismissed.

At this stage, the learned counsel for the petitioner sought reasonable time to surrender vacant possession of the building to the landlady. On this request, we heard the learned counsel for the respondent also. Taking note of the submissions made and considering the fact that the tenant is conducting a business in the premises in question, we allow him time till 31st of December, 2015 to surrender vacant possession of the building to the landlady. This shall, however, be subject to the condition that within one month from today, the tenant shall file an affidavit before the Rent Control Court undertaking to unconditionally surrender vacant possession of the room in question to the landlady on or before 31.12.2015 and also on his continuing to pay the rent without default.

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Sd/-
ANTONY DOMINIC, JUDGE
Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

