

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

RCRev..No. 252 of 2014 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 18/2013 of RENT CONTROL APPELLATE
AUTHORITY/DISTRICT JUDGE, KASARAGOD DATED 12-08-2014**

**AGAINST THE ORDER/JUDGMENT IN RCP 14/2013 of RENT CONTROL
COURT/RL.MUNSIFF, KASARAGOD DATED 31-10-2013**

REVISION PETITIONER(S)/APPELLANT/LANDLORD:

**CHOORI ABDULRAHIMAN AGED 46 YEARS
S/O.C.A. ABDULLAKUNHI, RESIDING AT RAHMANIYA HOUSE
R.D. NAGAR, KUDLU VILLAGE, KASARAGOD DISTRICT.**

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENT(S)/RESPONDENT/TENANT:

**K.P UDAYAKUMAR, AGED 54 YEARS
S/O.N. NIRMAL KUMAR, RESIDING AT SMITHA HOUSE
PARAKATTA, R.D.NAGAR, KUDLU VILLAGE
KASARAGOD DISTRICT.**

BY ADV. SRI.P.B.KRISHNAN

BY ADV. SRI.P.M.NEELAKANDAN

BY ADV. SRI.SABU GEORGE

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 05-03-
2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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R.C.Rev.No. 252 of 2014

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Dated this the 5th day of March, 2015

ORDER

ANTONY DOMINIC, J.:

The petitioner is the landlord of a building leased out to the respondent tenant. He filed R.C.P.No.14/2013 on the file of the Rent Control Court, Kasargod, seeking eviction of the tenant under Sec.11(3) of the Rent Control Act. According to him, he is a timber merchant and is having his office at his residence. He wanted to shift his office to the scheduled room and therefore he bona fide needed the room for his own occupation. Though the Rent Control Court accepted that the need of the landlord is a bona fide one, the Rent Control Court upheld the claim of the respondent tenant that the landlord has in his possession other buildings and that there was no special reason entitling the landlord for an order of eviction. This order of the Rent Control Court was confirmed by the Rent Control Appellate Authority, Kasargod, by dismissing R.C.A.No. 18/2013 filed by the landlord. We note from the appellate order that the landlord produced Exts.A-14 to A-16 and the Appellate

Authority accepted Ext.A-14 and A-15. But insofar as Ext.A-16 certificate of the Municipality is concerned, the Appellate Authority held that for want of proper proof, the said document cannot be acted upon. It was accordingly, that the appeal was rejected. It is this order, which is under challenge before us, at the instance of the landlord.

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

3. Although the learned counsel for the petitioner contended that the Appellate Authority acted illegally in not acting upon Ext.A-16, we are unable to agree with the learned counsel on this aspect. Admittedly, Exts.A-14 to A-16 were merely produced before the Appellate Authority. Therefore, the Appellate Authority could not have acted upon Ext.A-16 without examining the author of the document or other competent officer of the Municipality, who can prove the document in accordance with law. However, we do agree with the counsel that if the Appellate Authority had no inclination to act upon Ext.A-16, the Appellate Authority should have afforded an opportunity to the petitioner to adduce oral evidence and to prove the document. This, the Appellate Authority

has not done and for that limited reason, we are inclined to set aside the order of the Appellate Authority in R.C.A.No.18/2013.

4. Accordingly, setting aside the judgment of the Rent Control Appellate Authority, Kasargod, in R.C.A.No.18/2013, the matter is remitted back to the Appellate Authority to reconsider the appeal affording an opportunity to the petitioner to adduce oral or documentary evidence in order to contradict the case of the respondent under the first proviso to Sec.11(3). Needless to say, the respondent tenant will also be afforded an opportunity to cross-examine the landlord and also adduce fresh evidence, if any, on that limited issue.

The R.C.R. is disposed of with the above directions.

Sd/-
ANTONY DOMINIC, JUDGE

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Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge

