

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

RRev..No. 269 of 2014 ()

AGAINST THE JUDGMENT IN RCA 74/2011 of THE RENT CONTROL APPELLATE
AUTHORITY, THALASSERY DATED 15-07-2014

AGAINST THE JUDGMENT IN RCP 24/2010 of THE RENT CONTROL COURT,
PAYYANNUR DATED 28-02-2011

REVISION PETITIONER(S)/APPELLANT/RESPONDENT (TENANT) :- :

VELLUKKARAN BHARGAVAN
S/O.NARAYANI AMMA, PUNCHAKKAD, P.O.PAYYANUR
KANNUR DISTRICT.

BY ADV. SRI.MAHESH V RAMAKRISHNAN

RESPONDENT(S)/RESPONDENT/PETITIONER (LANDLORD) :- :

K.M.MUHAMMED KUNHI, AGED 56 YEARS
S/O.LATE K.K.UMMER, SHERIEF MANZIL, PUNNAKKADAVU
P.O.VADAKKUMBAD, RAMANTHALI
KANNUR DISTRICT - 670 307.

R1 BY ADV. SRI.M.SASINDRAN CAVEATOR
R1 BY ADV. SRI.M.SASINDRAN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
29-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

kkj

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

R.C.R. No.269 of 2014

Dated this the 29th day of July, 2015

J U D G M E N T

Surendra Mohan, J.

The tenant in RCP No.24 of 2010 of the Rent Control Court, Payyanur against whom an order of eviction has been passed and confirmed in RCA No.74 of 2011 by the Rent Control Authority, Thalassery has filed this revision alleging that the authorities below have committed gross error in passing the orders. The landlord had approached the Rent Control Court seeking an order of eviction against the tenant alleging grounds under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). The tenant disputed the allegations of the landlord. On the question of arrears of rent, the contention of the tenant was that, the rent was being paid regularly but that, the landlord was not issuing any receipts. The need alleged by the landlord was

that, he wanted to start a hotel of his own in the tenanted premises. The tenant is also conducting a hotel. According to the tenant, the need put forward was a mere ruse for eviction. If at all, the landlord wanted to start a restaurant business, he had other rooms in his occupation from which the said business could be started. The Rent Control Court tried the petition on the above pleadings. The landlord produced Exhibits A1 to A16 documents and examined himself as PW1. The tenant produced Exhibits B1 series and B2 documents and examined himself as RW1. Exhibits C1 and C2 Commission Reports were marked as Court Exhibits.

2. On an appreciation of the evidence on record, the Rent Control Court found that the landlord had succeeded in establishing both the grounds of arrears of rent as well as the bonafide need. Therefore, an order of eviction was granted on both the grounds. The tenant carried the matter in appeal before the Rent Control Appellate Authority in RCA No.74 of 2011. On an appreciation of the evidence, the

Rent Control Appellate Authority found that, the property had originally belonged to a joint family and that, the same was partitioned only as per Exhibit A1 Partition deed dated 24.02.2009. The rent deed Exhibit A2 is dated 26.02.2003. Since the landlord had acquired title over the tenanted building only as per Exhibit A1, the claim for arrears of rent raised by the landlord was limited to the said date. On the question of bonafide need, the Appellate Authority also found that, the landlord had successfully established his need but that the tenant was not entitled to the benefit of the provisos to Section 11(3). Therefore, the order of eviction granted by the Rent Control Court was confirmed. The aggrieved tenant is before us, in revision.

3. According to Shri. Mahesh V.Ramakrishnan who appears for the tenant, with respect to the question of arrears of rent, the authorities below ought to have accepted the contention of the tenant that rent had been paid regularly but that, no receipts were being issued by the landlord. With respect to the need put forward by

the landlord, according to the learned Counsel, the same was neither a need nor was it genuine. It is contended that, the landlord is sufficiently affluent and cannot be said to be in any need of generating an additional income by conducting a business of his own. If at all, it was necessary for the landlord to start such a business, he had other shop rooms in his possession from which, it was possible for him to start such a business. It is pointed out by the counsel that, at the instance of the tenant, an Advocate Commissioner had inspected the buildings owned by the landlord and had submitted Exhibit C1 report. As per Exhibit C1 report, the landlord owns other buildings. The fact that he had not disclosed his ownership and possession over the said premises is an aspect that affects the bonafides of the need that has been put forward. The counsel places reliance on the decision of the Hon'ble Supreme Court in **Charan Dass Duggal v. Brahma Nand** [(1983)1 SCC 301] as well as **Janatha Drugs v. Maithri Construction** [2007(4) KLT 625] to contend that the

landlord had a duty to plead and prove that though he had other buildings in his ownership and possession, there were special reasons justifying the grant of eviction in his favour. In the present case, the landlord not having attempted to do so, this is a fit case in which eviction ought to have been disallowed.

4. The contentions of the counsel for the petitioner are seriously disputed by Sri. M.Sasindran who appears for the landlord. The counsel places reliance on the averments in the Rent Control Petition to point out that, it has been specifically averred that there are no suitable rooms in his possession sufficient for satisfying his need of starting a restaurant. According to the learned Counsel, the pleadings sufficiently disclose that though he has other building of his own, they were not suitable for the purpose for which eviction was sought. The counsel refers to the reports of the Advocate Commissioner available in the records to point out that, the rooms pointed out by the petitioner tenant are all occupied by other tenants. Though some of the rooms

were not been opened, they were not in the possession of the landlord as alleged. In other words, there is no evidence to show that the landlord is in possession of any other rooms. With respect to the upper floor portion of the tenanted building which is vacant, it is contended that the said portion is not suitable for the conduct of a hotel. It is pointed out that, the above aspects have been considered properly by both the Rent Control Court as well as by the Rent Control Appellate Authority. For the above reasons, according to the learned counsel, no interference with the said proceedings is called for in revision.

5. Heard. The first question that arises for consideration is whether the order of eviction granted under Section 11(2) of the Act is liable to be interfered with. Even according to the counsel for the petitioner, though rent was being paid regularly in respect of the tenanted premises, the landlord was not in the practice of issuing receipts for such payments. According to the landlord, no rent was being paid by the tenant. The learned Counsel for

the petitioner has placed reliance on the fact that rent had been remaining in arrears from March 2004 onwards is a pointer to the fact that, the rent was actually being paid. It is contended that no landlord would have remained silent for such a long time, if rent was not being paid.

6. The legal position as far as payment of rent is concerned is well settled by the various decisions on the point. It is the duty of the tenant to pay the rent in respect of the tenanted premises, regularly. It is also the duty of the tenant to obtain receipts for the payments made. If the landlord does not issue receipts for payment of the rent, it is for the tenant to pay the rent through Money Order or by some other means so that there would be evidence for such payment. In the present case, admittedly there is no evidence for payment of rent by the tenant. For the payments that are evidenced by the Money Order receipts Exhibits B1 and B1(a) to (d), credit has admittedly been given. Therefore, we find that the order of eviction granted by the authorities below on the ground of arrears of rent is

justified and does not call for any interference in revision.

7. The need put forward by the landlord under Section 11(3) is for the purpose of starting a restaurant of his own, in the tenanted building. The landlord is a person who had been working in the Gulf. He has returned to his homeland and his desire to start restaurant of his own cannot be found fault with. The fact that he has other sources of income or other buildings, cannot be a ground to negative his need. Both the authorities below have found that the need put forward by the landlord was bonafide. We find no grounds to take a different view of the matter.

8. The counsel for the revision petitioner tenant has been at considerable strain to impress on us the fact that, the landlord had not disclosed in his Rent Control Petition about his ownership and possession of other buildings and shop rooms that were sufficient for the purpose of satisfying the need that has been put forward. He has also not disclosed any special reasons for not utilizing the rooms in his possession for starting the hotel business, it is alleged.

According to the learned counsel, Exhibits C1 and C2 Commission Reports clearly evidence the existence of other vacant rooms.

9. We have gone through Exhibits C1 and C2 Commission Reports as well as the evidence in the case, in detail. Though it is clear from Exhibits C1 and C2 reports that, the respondent landlord owns other buildings, there is no evidence of the fact that he is also in possession of the rooms referred to therein. The landlord has pleaded in the Rent Control Petition that, he had no other rooms in his possession sufficient to satisfy the need that was put forward by him. The said pleading is sufficient for the purpose of satisfying the requirement of the first proviso to Section 11(3) of the Act. It has been held by a Division Bench of this Court in **Kunju v. Fathima** [2014(3) KLT 563] that it is not necessary for the landlord to plead the particulars of all the premises under his ownership and possession in order to claim an order of eviction. Paragraph 10 of the said judgment explains the requirements to be

insisted upon while considering the applicability of the first proviso to Section 11(3). Paragraph 10 reads as under:-

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.

10. We notice that the said decision has considered the decisions in **Janatha Drugs v. Maithri Construction** [2007(4) KLT 625] and the decision in **Abdul Salam v. Sebastian** [2013(4)KLT 592] on which reliance has been placed by the counsel for the tenant. In view of the above dictum, what is necessary to be considered is whether the rooms to which reference has been made in Exhibits C1 and C2 are suitable for the need of the landlord.

11. Exhibits C1 Commission Report refers to a building in Ramanthaly Grama Panchayat which admittedly is about ½ kms away from the tenanted building. The said building also belongs to the landlord. Though there are rooms available in the said building, it has come out in evidence that the said rooms are occupied by other tenants.

From one of the rooms, the landlord himself is conducting an STD booth. It is evident from the description in the Commission Report that the contention of the landlord that the said shop room was not suitable for his purpose, is justified. Exhibit C2 Commission Report shows that the upper floor portion of the tenanted building is vacant and in possession of the landlord. However, the landlord has when examined as PW1, stated that the said premises are not suitable for the purpose of the proposed business. When he was examined as RW1, the tenant has also admitted that there is no kitchen or chimney on the upper floor portion which are necessary for the conduct of a hotel business. For the above reasons, the authorities below have found that the said premises are not suitable for the business proposed by the landlord. We are in agreement with the findings of the authorities below on the above aspects. On an overall examination of the materials as well as the evidence on record, we find no impropriety, illegality or irregularity warranting an interference with the

proceedings of the authorities below in revision. Therefore, this revision is only to be dismissed. It is held so.

12. As a last submission, the counsel for the petitioner seeks the grant of some time to surrender vacant possession of the premises to the landlord. Considering the fact that the tenant has been conducting a business in the premises from the year 2003 onwards, we are satisfied that, it is necessary to grant six months time to the tenant to surrender vacant possession of the premises.

Accordingly this RCR is ordered as follows.

1. The RCR is dismissed.
2. The tenant is granted time up to 31.01.2016 to surrender vacant possession of the tenanted premises to the landlord on condition that he files an affidavit before the Rent Control Court, Payyannur in RCP No.24 of 2010 within a period of two weeks of the date of receipt of a copy of this judgment, unconditionally undertaking to surrender vacant possession of

the tenanted premises to the landlord on or before 31.01.2016.

3. It shall be a further condition for the grant of time as mentioned above that, the tenant pays off the entire arrears of rent remaining unpaid and continues to pay the rent in respect of the premises without any delay or default until vacant possession is surrendered.

Sd/-
K.SURENDRA MOHAN
JUDGE

Sd/-
MARY JOSEPH
JUDGE