

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

R.C.Rev.No.294 of 2014

AGAINST THE JUDGMENT IN RCA 12/2006 of THE RENT CONTROL APPELLATE AUTHORITY
(ADDL. DISTRICT COURT) TIRUR DATED 29-08-2014

AGAINST THE ORDER IN RCP 37/2004 of RENT CONTROL COURT, TIRUR DATED 14-02-2006

REVISION PETITIONERS/APPELLANTS/RESPONDENTS:

1. SANTHAKUMARI, AGED 54 YEARS
W/O.LATE VADAKKEPURAKKAL GOPALAN
2. PRASAD KUMAR, AGED 35 YEARS
S/O.LATE VADAKKEPURAKKAL GOPALAN
3. VIJAYAKUMAR, AGED 37 YEARS
S/O.LATE VADAKKEPURAKKAL GOPALAN
4. VINODKUMAR, AGED 36 YEARS
S/O.LATE VADAKKEPURAKKAL GOPALAN
5. SAPINISHKUMAR @ PRAMODKUMAR, AGED 33 YEARS
S/O.LATE VADAKKEPURAKKAL GOPALAN
6. SAVINEESHKUMAR @ PRADEEPKUMAR, AGED 32 YEARS
S/O.LATE VADAKKEPURAKKAL GOPALAN
[ALL ARE RESIDING AT VIJAYA NIVAS, EDAYOOR AMSOM
POOVATHUMTHARA DESOM, TIRUR TALUK]

BY ADV. SRI.K.RAJESH SUKUMARAN

RESPONDENT/PETITIONER:

MUHAMMEDKUTTY, AGED 52 YEARS,
S/O.KUNHAYATHRU HAJI, THEKKUMPARAMBIL PALLIYALIL
VALIYAKUNNU AMSOM, KODUMUDI DESOM, TIRUR TALUK
PIN-676 101.

R1 BY ADV. SRI.K.PSUDHEER

R1 BY ADV. SRI.ARUN MATHEW VADAKKAN

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
08-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.294 OF 2014

Dated this the 8th day of January, 2015

ORDER

Antony Dominic, J.

The respondent herein, the landlord filed RCP 37/14 on the file of the Rent Control Court, Tirur against the petitioners, the tenants urging ground under Section 11(3) of the Kerala Building (Lease and Rent Control) Act, 1965. The Rent Control Court by its order dated 14th February, 2006 allowed the petition. The order was challenged in RCA 12/06 before the Rent Control Appellate Authority, Tirur and the Appellate Authority by its order dated 29th August 2014 dismissed the appeal. It is aggrieved by these orders, the revision is filed.

2. We heard the counsel for the petitioners and the learned counsel appearing for the respondents.

3. The pleadings of the respondent show that ground under Section 11(3) was urged stating that the landlord wants to start a business of Hill produce in the building in question. It was this ground which was accepted by Rent Control Court and confirmed by the Appellate Authority. Before us the attempt of the learned counsel appearing for the petitioner was to demonstrate that the bonafide need urged was without any substance. According to learned counsel, Ext.B1

produced before the Rent Control Court showed that the landlord had a room in his possession and that it was after letting it out, Ext.A2 notice was issued.

4. However, reading of the orders passed by the Rent Control Court and the Appellate Authority show that the room mentioned in Ext.B1 was let out by Ext.A4 rent deed of 30.7.93 to one Hameed. On evidence, it was found that in this room Hameed and his brother Usaf were conducting a medical shop and that now Hameed himself is conducting a footwear shop in the building. This, therefore, shows that though there was a change of the nature of the business carried on, there was no change in the lessee of the room. If that be so, Ext.B1 could not have improve the case of the petitioners and their contention also cannot be accepted.

5. Counsel then contented that Ext.B3 and Ext.B4 documents showed that the landlord had, during the pendency of the proceedings, obtained vacant possession of a room suitable for his purpose. However, this claim of the landlord stands belied by the contents of Ext.C3, the report of the Advocate Commissioner, which show that there was no room as claimed by the landlord and if at all there was a room of a different building number, that room was not under lease to yet another person. Therefore, this contention also does not merit acceptance.

6. Before parting with the case, we should also make reference to the finding of the Rent Control Court in paragraph 15 which show that the tenants are people of resources and are owning several buildings. It is despite this, without any bonafides, they were contesting the bonafide need to the landlord for eviction of the petitioners.

7. We are not satisfied that the orders impugned suffer from any illegality. At this stage, counsel for the petitioner sought time to surrender vacant possession of the room. Taking note of this request and also having regard to the fact that the tenants are conducting jewellery business in the room in question, we allow them six months time from today to surrender vacant possession of the room subject to the condition that within ten days from today they will file an affidavit before the Rent Control Court unconditionally undertaking to surrender the room in question on the expiry of six months from today and paying rent without default.

RCR is disposed of as above.

Sd/-
ANTONY DOMINIC,
Judge

Sd/-
ALEXANDER THOMAS,
Judge

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