

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

RCRev..No. 305 of 2014 ()

**AGAINST THE ORDER/JUDGMENT IN RCA 67/2013 of III ADDL.DISTRICT JUDGE/RENT
CONTROL APPELLATE AUTHORITY, KOZHIKODE DATED 08-08-2014**

**AGAINST THE ORDER/JUDGMENT IN RCP 28/2012 of ADDITIONAL MUNSIF-1/RENT
CONTROL COURT, KOZHIKODE DATED 05-06-2013**

REVISION PETITIONER(S)/APPELLANT/RESPONDENT:

**DAMODARAN M.K AGED 61 YEARS
S/O. KANARAN, ARD-226, RATION SHOP
RAROTH AMSOM DESOM, KOZHIKODE DISTRICT.**

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/PETITIONER:

**KOYAKUTTY T.K., AGED 73 YEARS
S/O. KUNHAMMUTTY
"THIRULAM KUNNUMMAL" RAROTH AMSOM DESOM
P.O. PARAPPANPOYIL, KOZHIKODE DISTRICT.**

**R1 BY ADV. SRI.T.SETHUMADHAVAN (SR.)
R1 BY ADV. SRI.PUSHPARAJAN KODOTH
R1 BY ADV. SRI.K.JAYESH MOHANKUMAR
R1 BY ADV. SMT.VANDANA MENON
R1 BY ADV. SMT.N.DEEPA**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 23-
02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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R.C.R. No. 305 of 2014
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Dated this the 23rd day of February, 2015

O R D E R

Antony Dominic, J.

The tenant is the revision petitioner. RCP No.28/12 was filed by the respondent landlord seeking eviction of the petitioner from the tenanted premises urging ground under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act.

2. According to the landlord, he wanted vacant possession of the tenanted premises for the occupation of his son, who wanted to start a spare parts shop. The tenant entered appearance and contested the petition disputing the *bona fide* need urged by the landlord and also claiming the benefit of the provisos to Section 11 (3) of the Act. The landlord and his son were examined as PW1 and PW2 and the tenant was examined as RW1. Exts.A1 and B1 were also marked by both sides. The Rent Control Court by its order dated 5th of June, 2013 allowed eviction as prayed for by the landlord. This order was challenged before the Rent Control Appellate Authority in RCA No.67/13 filed by the tenant. The Rent Control Appellate Authority by its judgment dated 8th of August,

2014 dismissed the petition. It is aggrieved by these orders, the tenant has filed this revision petition.

3. We heard the learned counsel for the tenant and also the learned senior counsel appearing for the respondent landlord.

4. In so far as the *bona fide* need urged by the landlord is concerned, the landlord and his son have testified before the Rent Control Court about the decision of PW2, the son of the landlord, to start a spare parts business in the premises in question. Although they were subjected to detailed cross examination on behalf of the tenant, nothing could be brought out to discredit their testimony. In such circumstances, their evidence have been accepted concurrently by the Trial Court and the Appellate Court and we do not find any vitiating reason to upset this finding of the courts below. In the result, we do not find any reason to disagree with the view taken by the lower courts.

5. Before us, the contention raised by the learned counsel for the petitioner tenant is that the landlord is having other rooms in his possession. This contention was raised mainly referring to the evidence of PW1 and PW2 and Ext.A1, the assessment

register of Thamarasserry Grama Panchayat. However, both courts have rightly found that the evidence available in the case does not lead to a conclusive proof to the case of the tenant that the landlord is in possession of other premises pleaded by the tenant. But, in spite of it, when this plea was reiterated before us and when the landlord answered that two of the premises mentioned by the tenant were residential premises, in order to resolve that factual controversy, this Court by order dated 30th of January, 2015 appointed an Advocate Commissioner to inspect the premises and to make a report. Accordingly, report has been received, which also confirms the case canvassed by the landlord.

6. In the above circumstances, we cannot accept the case of the tenant that the landlord is in possession of other rooms and that therefore, in the absence of any special reasons as contemplated under the first proviso to Section 11(3), eviction cannot be ordered.

7. In so far as the second proviso to Section 11(3) is concerned, the tenant can take advantage of the said proviso only if the tenant leads evidence and proves that he is entitled to the

benefit thereof. However, in so far as this case is concerned, both courts have concurrently found that though the tenant has proved the first ingredient of the second proviso namely that he is mainly depending on the income from the business for his livelihood, he has failed in proving the second ingredient of the proviso namely that there are no other suitable rooms available in the locality. This finding also does not, in our view, merit any interference.

8. RCR is dismissed.

Be that as it may, having regard to the fact that the tenant is an Authorised Ration Dealer and it is for that purpose the tenanted room is being used, we are inclined to allow him reasonable time to surrender vacant possession of the room to the landlord. Otherwise, it can affect the distributors of the essential commodities in the locality, the beneficiaries of which are mainly people from the poor sections of the society. Therefore, we allow the tenant time till 31st of March, 2016 to surrender vacant possession of the tenanted premises to the landlord. This shall, however, be subject to the condition that the tenant shall file an affidavit unconditionally undertaking to

surrender vacant possession of the room in question to the landlord on or before 31/3/16 and also continuing to pay the rent without default. The affidavit shall be filed within four weeks from today.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge