

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

RCRev.No. 346 of 2014 ()

AGAINST THE JUDGMENT IN RCA 8/2011 of IV ADDL. RENT CONTROL APPELLATE
AUTHORITY, THRISSUR DATED 19-07-2014
AGAINST THE ORDER IN RCP 50/2008 of RENT CONTROL COURT, THRISSUR
DATED 15.9.2010

PETITIONER/APPELLANT/RESPONDENT IN RCP:

SONY AGED 46 YEARS
S/O.KURIAPPAN, BUSINESS, AKKARA HOUSE
OLLUR, DESOM, EDAKUNNI VILLAGE
THRISSUR-680306

BY ADVS.SRI.M.P.RAMNATH
SRI.P.RAJESH (KOTTAKKAL)
SEI.M.VARGHESE VARGHESE
SMT.UMA R.KAMATH
SMT.S.SANDHYA
SRI.BEPIN PAUL
SRI.SHALU VARGHESE

RESPONDENT/RESPONDENT IN RCA/PETITIONER IN RCP:

DORSY, AGED 61 YEARS
W/O.KALLIYATH JOSE, KIZHAKKE ANGADI DESOM
CHEMBUKAVU VILLAGE, THRISSUR TALUK, PIN-680001

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
07.01.2015, THE COURT ON 23-01-2015 PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.346 of 2014

Dated this the 23rd day of January, 2015

O R D E R

Antony Dominic, J.

- 1.This revision petition is filed by the respondent in RCP.50/08 on the file of the Rent Control Court, Thrissur whose order of eviction was confirmed by the Rent Control Appellate Authority, Thrissur, dismissing RCA.8/11 filed by the tenant.
- 2.RCP.50/08 was filed by the respondent herein, seeking eviction of the petitioner under section 11(3) of the Rent Control Act. The building in question was leased out to the petitioner on 28.9.1992 for a rent of ₹1100/-. According to the respondent, she bonafide needed vacant possession of the room for starting a ready-made dress shop. She also contended that there are other rooms available in the locality for the tenant to shift his business and that therefore, the petitioner should be directed to vacate from the premises in question.

3. In the objection filed, the petitioner contended that he had paid a padiki of ₹1,25,000/- and that the lease granted was a permanent one. According to him, he was conducting business in the building in question in partnership with his brother and that on account of the non-joinder of his brother, the petition was defective. It was contended that there were vacant rooms in the building in question for the respondent to start her business and that he was earning his livelihood from the business in the building in question.

4. Before the Rent Control court, the respondent was examined as PW1 and exhibits A1 to A5 were marked. On behalf of the petitioner, Rws.1 and 2 were examined and exhibits B1 to B14 were marked in evidence. Considering the evidence, the Rent Control Court passed its order dated 15.9.2010 allowing the petition as prayed for. This order of the Rent Control Court was challenged by the petitioner in RCA.8/11 before the Rent Control Appellate Authority. By the impugned judgment, the Rent Control Appellate

Authority dismissed the appeal. It is in these circumstances, the tenant has filed this revision.

5. We heard learned counsel for the revision petitioner. The first contention raised by the learned counsel was that when the tenant has raised a case of permanent tenancy, the Rent Control Court ought to have relegated the landlady to move the civil court for appropriate relief. According to him, both the Rent Control Court and the Appellate Authority erred in rejecting his contention and entertaining the petition. It is true that the tenant did set up such a contention. But the mere fact that such a contention has been taken by itself does not lead to the inevitable result that the landlady should be relegated to the civil court or that the Rent Control Court should straightaway decline jurisdiction. In this case, this contention was raised by the tenant relying on Ext.A1 rent deed of 28.9.1992. Both the authorities have concluded that there is no mention of any permanent tenancy in A1. Since there was no basis for the contention of the tenant, the Rent Control Court and the Appellate Authority were

justified in concluding that as the plea set up by the tenant was not a bonafide or substantial one, it was only to be rejected. Therefore, we cannot find fault with the Rent Control Court in having proceeded with the RCP.

6. In so far as the plea of non-joinder raised by the counsel for the petitioner is concerned, according to him, the business in Plywoods and Hardware that was conducted in the building in question was a partnership business of the petitioner and the other partner of the firm is his brother. Counsel therefore submitted that the brother should also have been in the party array and that for his absence in the party array, the petition was defective for non-joinder of necessary parties.

7. This contention has been considered under point No.1 in the order of the Rent Control Court and the finding of that Court has been confirmed by the Appellate Authority also. Reading of the orders show that the reasons which persuaded the Rent Control Court and the Appellate Authority are mainly that

lease was granted only to the petitioner and therefore, he alone was the tenant against whom eviction is to be sought for. If that be so, even if it is assumed that the lessee was conducting the business in partnership with his brother, that does not make the partner a necessary party, necessitating the impleadment of the lessee's brother in a petition for eviction sought for against the lessee. Therefore, this plea has been rightly rejected by both the authorities.

8. The tenant had claimed the benefit of the second proviso to Section 11(3) of the Rent Control Act in as much as according to him he was depending on the income derived from the trade or business carried on in the building in question for his livelihood. It is settled law that the burden to prove this contention is entirely that of the tenant. See in this connection Francis v. Sreedevi Warassiar [(2003) 2 KLT 230 FB]. Although such a plea has been raised by the tenant, it is in evidence that the business establishment has a branch at TB Road, Thrissur. In the evidence, he had confessed that he was depending

on the income from the business at the branch mentioned above also it has been found evidence that there is no case for the petitioner that his major source of income is from the business in the petition scheduled building and not from the branch. It was in such circumstance that the Rent Control Court and the Appellate Authority came to the conclusion that the tenant has not discharged the onus of burden that he is depending upon the income from the tenanted premises for his livelihood. This, therefore, means that the tenant was not entitled to the protection of the second proviso to section 11(3) also. Such being the case, we cannot find fault with the Rent Control Court or the Appellant Authority in having ordered eviction of the petitioner under section 11(3) of the Rent Control Act.

Revision fails and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

k kb.

/TRUE COPY/

PS TO JUDGE

