IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 09TH DAY OF DECEMBER 2020 / 18TH AGRAHAYANA, 1942

RCRev..No.203 OF 2020

AGAINST THE ORDER/JUDGMENT IN RCA 103/2017 OF ADDITIONAL DISTRICT COURT - II, THALASSERY

AGAINST THE ORDER/JUDGMENT IN RCP 117/2012 OF MUNSIFF COURT, THALASSERY

REVISION PETITIONER/S:

UPPIKKARAMBATH ABOOBACKAR
S/O. CHERIYA MAMMAD HAJI, SUPER TRADERS,
SHOP NO. APXIV/432, CHAKKARAKAL P.O, MAWANCHERRY,
KANNUR DISTRICT

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENT/S:

M.P.PRAMOD
AGED 47 YEARS
S/O. M.K KUMARAN VAIDYAR, SOUPARNIKA,
CHAKKARAKAL P.O, MAMBA, ANJARAKANDY AMSOM,
MAMBA DESOM, KANNUR TALUK, KANNUR DISTRICT-670 613

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 02-12-2020, THE COURT ON 09-12-2020 PASSED THE FOLLOWING:

O R D E R

BECHU KURIAN THOMAS,J.

The tenant challenges the concurrent orders of eviction issued by the Rent Control Court and the Appellate Authority, Thalassery, under Sec.11 (3) of the Kerala Building (Lease and Rent) Control Act, 1965 (for short 'the Act').

2. R.C.P No.117 of 2012, before the Rent Control Court, Thalassery, was filed by the respondent herein, claiming eviction under Sec.11(2) (b) and 11 (3) of the Act. It was stated that apart from the rent being kept in arrears, the landlord required the building for setting up a business in fancy and stationery items, for the purpose of augmenting his family income.

3. It was also contended by the tenant that after retirement from the military service, the landlord was employed and drawing a salary and hence, there was no requirement for augmenting his income. The tenant opposes the claim further by

stating that the need projected by hand-hold was not *bona fide*. He also claimed the benefit of second proviso to Sec.11 (3).

4. After analysing the evidence of PW1, Exts.A1 to A3, RW1 and Exts.C1 and C2, adduced by the parties before the trial court, the Rent Control Court allowed the petition and directed the tenant to put the landlord in possession of the building on the ground of *bona fide* need under Sec.11 (3).

5. In the appeal preferred by the tenant as R.C.A No.103 of 2017, before the Rent Control Appellate Authority Thalasery, it was contended that the judgment of the Rent Control Court was erroneous and also that the non-mentioning of the availability of other rooms with the landlord, ought to have been found to be fatal to the case of the landlord. However, both courts, including the Appellate Authority by judgment dated 31.01.2020 dismissed the appeal. Challenging which, the present revision is preferred.

6. We have heard Adv.C.P Peethambaran, the learned counsel for the revision petitioner, who argued that the courts

below erred in finding *bona fide* need in favour of the landlord especially since, the wife of the landlord had not mounted the witness box and also since the landlord was not an unemployed person and had regular salaried income.

7. We are not impressed with the contentions raised by the tenant, so as to warrant interference under Sec.20 of the Act. It is true that the landlord is an ex-serviceman and he may be currently employed in the Central Prison, Kannur after retirement. Though, in cross-examination of PW1, he had clearly stated that his employment as a jail warden was only a temporary employment and that as on the date of examination, he was not under any employment, the employment may not have a bearing on the need canvassed in this case. Alternatively, it may be noted that merely because the landlord has employment, such employment does not militate against his claim that he and his wife need to start a business for the purpose of augmenting their family income.

8. As rightly observed by the Appellate Authority, relying upon the decision in ***Abdul Rub v. Jobby Tharian (2003 (3) KLT 733),*** *'it is not only an impecunious person alone can think of commencing an activity that generates income, so as to pass the test of bona fides and also that law does not insist that a landlord having other source of income shall not carry any other income generating activity.'* In such a view of the matter, the finding of the courts below on the question of *bona fides*, cannot be faulted with.

9. It is settled position of law that the burden to prove the two limbs of second proviso to Sec. 11(3), is on the tenant. The tenant had not produced any evidence to show that he is earning his livelihood from the business activity conducted in the scheduled building. He has also not taken any steps to discharge his burden to prove the absence of any other building in the locality to which he could move to. In such circumstances, as found by the courts below, the tenant is not entitled to the benefit of second proviso to Sec.11(3) of the Act. 10. The last

contention taken up by the learned counsel was the alleged suppression or non-mention of the building in possession of the landlord and absence of special reasons. We find that even though, originally, there was no mention in the pleadings subsequently, by way of an amendment, the pleadings were incorporated as evident from the judgments under challenge before us. Once an amendment was carried out to the pleadings, the same will relate back to the date of filing and hence, it cannot be now contented that there was no such pleading.

10. Even otherwise, as per the decisions in ***Vasantha Mallan v. N.S Aboobacker Siddque and another (2020 (1) KHC 21)*** as well as ***Kunhamina.K. v. V.K.T Aboobacker Haji (2016 KHC 639)*** . It has been held that even if the landlord did not disclose the availability of another room, if materials were placed before the court, showing special reasons for not occupying the same and both parties have proceeded with the understanding of the case against each other, then eviction cannot be denied on the

ground of non-disclosure of availability of other room.

11. We are satisfied that the courts below have correctly appreciated all the contentions raised by the parties. There is no irregularity, impropriety or illegality in the judgments under challenge.

12. However, taking note of the circumstances of the case, we are of the view that some breathing time can be granted to the tenant to vacate the building. Accordingly, the following conditions are issued:

(i) The tenant shall file an affidavit before 22.12.2020 undertaking to vacate the schedule building within three months from today. The undertaking shall be filed before this Court.

(ii) The tenant shall pay the arrears of rent, if any, within four weeks from today and shall continue to pay the rent for the schedule building as and when it falls due until he vacates the building.

(iii) In the event of any default in complying with any of the

conditions stipulated above, the benefit of this order shall not be available to the tenant.

The revision petition lacks merits and is accordingly, dismissed, with the above observations.

Sd/-

S.V.BHATTI

JUDGE

Sd/-

BECHU KURIAN THOMAS

JUDGE

JS