



RCR No.144 of 2024

2024:KER:87763

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 / 30TH KARTHIKA, 1946

RCREV. NO. 144 OF 2024

AGAINST THE JUDGMENT DATED 18.05.2024 IN RCA NO.80 OF 2023
OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE
- III), THALASSERY ARISING OUT OF THE ORDER DATED 13.04.2023 IN
RCP NO.80 OF 2021 OF THE RENT CONTROL (MUNSIFF) COURT, KUTHUPARAMBA

REVISION PETITIONER/APPELLANTS/RESPONDENTS

- 1 VADAVATHI RAJEEVAN,AGED 52 YEARS
S/O. BHASKARAN,YEARS, MECHANIC, P.O.MOORYAD,
KUTHUPARAMBA AMSOM, MOORYAD DESOM, THALASSERY TALUK,
PIN - 670692
- 2 KUNHIPARAMBATH SUDEEP,AGED 46 YEARS
S/O. BHASKARAN MECHANIC, PUTHUR AMSOM, CHENDAYAD
DESOM, THALASSERY TALUK,, PIN - 670692

BY ADVS.
K.V.PAVITHRAN
JAYANANDAN MADAYI PUTHIYAVEETIL
JITHIN S SUNDARAN
ADARSH KURIAN

RESPONDENT/RESPONDENTS/PETITIONERS

- 1 K.VANAJA
AGED 66 YEARS
D/O. VENUGOPALAN P.O.NIRMALAGIRI, KUTHUPARAMBA AMSOM,
AMBILAD DESOM, THALASSERY TALUK., PIN - 670101



RCR No.144 of 2024

2024:KER:87763

2 VIDHYALAKSHMI
 AGED 36 YEARS
 D/O. VENUGOPALAN, NO OCCUPATION, P.O.NIRMALAGIRI,
 KUTHUPARAMBA ASOM, AMBILAD DESOM, THALASSERY TALUK,
 PIN - 670101

BY ADV R SURENDRAN

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
21.11.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**ORDER****MURALEE KRISHNA S., J.**

This rent control revision is filed under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, ('the Act', in short) by the respondents-tenants in RCP No.80 of 2021 on the file of the Rent Control Court (Munsiff), Kuthuparamba. The Rent Control Petition was filed under Section 11(3) of the Act on the ground of bona fide need of the landlords to start a tea shop in the petition schedule room. The tenants opposed the bona fide need raised by the landlords and also claimed benefit of 2nd proviso to Section 11(3). From the side of the landlords, PWs 1 to 3 were examined and Exts A1 to A4 documents were marked. From the side of the tenants RW1 was examined and Exts B1 to B8 documents were marked. After appreciating the evidence, the Rent Control Court allowed the Rent Control Petition and directed the tenants to surrender vacant possession of the petition schedule room within one month from the date of that order. The aggrieved tenants filed RCA No.80 of 2023 before Rent Control Appellate Authority (Additional District Judge-III), Thalassery. After considering the rival contentions raised by the parties, the



appeal was dismissed by the Appellate Authority as per the judgment dated 18.05.2024. The aggrieved tenants are therefore now before this Court with this revision petition.

2. The landlord filed caveat before this Court and hence notice was served to their counsel, before admission.

3. Heard; Sri.K.V Pavithran, the learned counsel for the revision petitioners-tenants and Sri.R Surendran, the learned counsel for the respondents-landlords.

4. The point that arises for consideration in this revision is as to whether any interference is warranted on the order of eviction granted under Section 11(3) of the Act by the Rent Control Court, which was confirmed in appeal by the Rent Control Appellate Authority?

5. The learned counsel for the petitioners-tenants argued that the Rent Control Court as well as the Appellate Authority did not consider the contentions of the petitioners regarding the benefit of 2nd proviso to Section 11(3) of the Act claimed by them, in a proper perspective. The tenants gave oral evidence before the Rent Control Court that they are depending upon the income from the business being conducted in the petition schedule room



and no other vacant rooms are available in the locality for them to shift the business. This aspect is not properly appreciated by the Trial Court as well as by the Appellate Authority.

6. On the other hand, the learned counsel for the respondents-landlords argued that the Rent Control Court as well as the Appellate Authority properly appreciated the evidence on record and came to a conclusion that the tenants failed to discharge their burden of proving the benefit of both limbs of 2nd proviso to Section 11(3) of the Act.

7. Section 11 of the Act deals with eviction of tenant on various grounds. As per Section 11 (3) of the Act, a landlord may apply to the Rent Control Court, for an order of eviction directing the tenant to put the landlord in possession of the building if he bona fide needs the building for his own occupation or for the occupation of any member of his family dependent on him. As per the 1st proviso to Section 11(3) of the Act, Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village, except where the Rent Control Court is satisfied that for special reasons in any particular case it will be just and proper to do so. As per



the 2nd proviso, the Rent Control Court shall not give any direction to the tenant to put the landlord in possession if such tenant is depending for his livelihood mainly on the income derived from any trade, or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business.

8. In **E.C Jose v. V.Gopalakrishan [2023: Ker: 46962: AIR 2023 Ker 195]** a Division Bench of this Court while considering the mode of appreciation of evidence in a petition under Section 11 (3) of the Act held thus:

“In **Ammu v. Nafeesa [2015 (5) KHC 718]** a Division Bench of this Court held that, it is a settled proposition of law that the need put forward by the landlord has to be examined on the presumption that the same is a genuine one, in the absence of any materials to the contra. In **Gireeshbabu T. P. v. Jameela and others [2021 (5) KHC SN 30]** this Court reiterated that in order to satisfy the requirement of Section 11(3) of the Act, a bona fide need must be an outcome of a sincere and honest desire of the landlord in contradistinction with a mere pretext on the part of the landlord for evicting the tenant, claiming to occupy the premises for himself or for any member of his family dependent on him. Once, on the basis of the materials on record, the landlord has succeeded in showing that the need



to occupy the premises is natural, real, sincere and honest, and not a ruse to evict the tenant from the said premises, the landlord will certainly be entitled for an order of eviction under S.11(3) of the Act, of course, subject to the first and second provisos to S.11(3) of the Act”.

9. In **Moideen Kutty K v. Maniparambil Viswanathan Nair [2022 (7) KHC 93 : 2022 (6) KLT 413]** a Division Bench of this Court held thus:

“16. Once, on the basis of the materials on record, the landlord has succeeded in showing that the need to occupy the premises is natural, real, sincere and honest, and not a ruse to evict the tenant from the said premises, the landlord will certainly be entitled for an order of eviction under Section 11(3) of the Act, of course, subject to the first and second provisos to Section 11(3) of the Act”.

10. As said above, in this case the tenants could not disprove the bonafide need stated by the landlords in the Rent Control Petition as well as in his evidence. In **Moideen Kutty’s** case (supra), this Court held that it is settled position of the law that as far as the benefit of 1st and 2nd provisos to Section 11(3) is concerned, the burden is upon the tenant to prove his entitlement for the benefits.

11. In **Sunny Padamadan Rafael @ Sunny Padamadan v. Vijaya Shenoy [2019 (2) KHC 90 : 2019 (2) KLJ 197]** a



Division Bench of this Court held thus:

“22. Coming to the 2nd proviso, both limbs of the 2nd proviso are conjunctive and the burden of proof is on the respondent / tenant. But, no positive evidence has been adduced to prove that he is mainly depending upon the income from the tenanted premises, particularly when he himself admitted that he is a partner of some other business firm and he has been conducting another business as a licensee. Similarly, no evidence has been adduced to prove the non - availability of the vacant building in the locality, by the respondent. Thus, the Courts below are justified in finding that the respondent is not entitled to get protection under the 2nd proviso”.

12. In **Vayalilakath Abdul Nazar v. Paruthithodi Mammad Koya [2011 (2) KHC 677 : 2011 (2) KLT 914]** this Court held thus:

“The burden to establish that the landlord is the owner and in exclusive possession of another building is on the tenant. After analysing the evidence threadbare, the Courts below came to the conclusion that the need projected by the landlord is bona fide and that he has no other building of his own in his possession to start the business intended by him. The concurrent finding entered by the two Courts are founded on legal evidence. It is not unsound or wholly erroneous. This Court cannot re-appreciate the evidence so as to take a different conclusion”.

13. It is trite that in a petition under Section 11(3) of the



Act, the need of the landlord has to be examined on the presumption that the same is a genuine one, in the absence of any materials to the contra. This presumption is unrebutted in this case. From the impugned order of eviction granted by the Rent Control Court and the judgment of the Appellate Authority it is gatherable that originally, the building belonged to the husband of PW1 and after the death of her husband, she has been depending upon the income of the husband of PW2. The evidence of PWs 1 and 2 regarding their bona fide need was unshaken during cross-examination. The need projected by the petitioners could not be proved as not genuine by producing any contra-evidence from the side of the tenants or by bringing out the circumstances to disbelieve the same.

14. While coming to the question of entitlement of the tenants of the benefits of 1st and 2nd provisos to Section 11(3) of the Act, it is gatherable that in this case the tenants did not claim the benefit of 1st proviso. As far as the 2nd proviso is concerned they have not discharged the burden to prove both limbs of the said proviso. They did not produce any evidence showing the income derived from the business run by them in the petition



schedule room and also not adduced any evidence to prove that no suitable vacant rooms available in the locality for them to shift the business from the petition schedule room.

15. Section 20 of the Kerala Buildings (Lease and Rent Control) Act deals with revision. The said Section reads as follows:

"20. Revision.

(1) In cases where the appellate authority empowered under section 18 is a Subordinate Judge, the District Court, and in other cases, the High Court, may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such order in reference thereto as it thinks fit.

(2) The costs of an incident to all proceedings before the High Court or District Court under sub-section (1) shall be in its discretion."

16. In **Rukmini Amma Saradamma v. Kallyani Sulochana [(1993) 1 SCC 499]**, the Apex Court held that even the wider language of Section 20 of the Act cannot enable the High Court to act as a first or a second court of appeal. Otherwise, the distinction between appellate and revisional jurisdiction will get obliterated. Hence, the High Court was not right in re-appreciating the entire evidence both oral or documentary in the light of the



Commissioner's report. The High Court had travelled far beyond the revisional jurisdiction. Even by the presence of the word 'propriety' it cannot mean that there could be a re-appreciation of evidence. Of course, the revisional court can come to a different conclusion but not on a re-appreciation of evidence; on the contrary, by confining itself to legality, regularity and propriety of the order impugned before it.

17. In **T. Sivasubramaniam v. Kasinath Pujari [(1999) 7 SCC 275]** the Apex Court held that the words 'to satisfy itself' employed in Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 no doubt is a power of superintendence, and the High Court is not required to interfere with the finding of fact merely because the High Court is not in agreement with the findings of the courts below. It is also true that the power exercisable by the High Court under Section 25 of the Act is not an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the courts below. But where a finding arrived at by the courts below is based on no evidence, the High Court would be justified in interfering with such a finding recorded by the courts below.



18. In **Ubaiba v. Damodaran [(1999) 5 SCC 645]** the Apex Court considered the exercise of revisional power by the High Court, under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, in the context of an issue as to whether the relationship of landlord-tenant existed or not. It was urged that whether such relationship existed would be a jurisdictional fact. Relying on the decision in **Rukmini Amma Saradamma** it was contended that, however wide the jurisdiction of the revisional court under Section 20 of the Act may be, it cannot have jurisdiction to re-appreciate the evidence and substitute its own finding upsetting the finding arrived at by the appellate authority. The Apex Court held that, though the revisional power under Section 20 of the Act may be wider than Section 115 of the Code of Civil Procedure, 1908 it cannot be equated even with the second appellate power conferred on the civil court under the Code. Therefore, notwithstanding the use of the expression 'propriety' in Section 20 of the Act, the revisional court will not be entitled to re-appreciate the evidence and substitute its own conclusion in place of the conclusion of the appellate authority. On examining the impugned judgment of the High Court, in the light of the



aforesaid ratio, the Apex Court held that the High Court exceeded its jurisdiction by re-appreciating the evidence and in coming to the conclusion that the relationship of landlord-tenant did not exist.

19. In **Hindustan Petroleum Corporation Limited v. Dilbahar Singh [(2014) 9 SCC 78]** a Five-Judge Bench of the Apex Court considered the revisional powers of the High Court under Rent Acts operating in different States. After referring to the law laid down in **Rukmini Amma Saradamma** the Apex Court reiterated that even the wider language of Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 does not enable the High Court to act as a first or a second court of appeal. The Constitution Bench agreed with the view of the Three-Judge Bench in **Rukmini Amma Saradamma** that the word 'propriety' does not confer power upon the High Court to re-appreciate evidence to come to a different conclusion, but its consideration of evidence is confined to find out legality, regularity and propriety of the order impugned before it.

20. In **Thankamony Amma v. Omana Amma [AIR 2019 SC 3803 : 2019 (4) KHC 412]** considering the matter in the



backdrop of law laid down in **Rukmini Amma Saradamma, Ubaiba** and **Dilbahar Singh** the Apex Court held that the findings rendered by the courts below were well supported by evidence on record and could not even be said to be perverse in any way. The High Court could not have re-appreciated the evidence and the concurrent findings rendered by the courts below ought not to have been interfered with by the High Court while exercising revisional jurisdiction.

21. On going through the records and evidence, in the light of the law laid down regarding the scope of interference under Section 20 of the Act as discussed above, we find no sufficient circumstance to interfere with the concurrent findings arrived at by the Rent Control Court and the Rent Control Appellate Authority in the impugned order and judgment, by exercising the revisional jurisdiction under Section 20 of the Act. Therefore, this rent control revision fails and the same is liable to be dismissed.

22. The learned counsel for the revision petitioners-tenants at this juncture submitted that the tenants may be granted at least six months' time to vacate the petition schedule room.



23. Considering the facts and circumstances, we are of the view that the revision petitioners-tenants can be granted six months' time to surrender vacant possession of the petition schedule room to the respondent-landlord, subject to the following conditions:

- (i) The respondents-tenants in the Rent Control Petition shall file affidavits before the Rent Control Court or the Execution Court, as the case may be, within two weeks from the date of receipt of a certified copy of this order, expressing an unconditional undertaking that they will surrender vacant possession of the petition schedule room to the petitioners-landlords within six months from the date of this order and that, they shall not induct third parties into possession of the petition schedule room and further they shall conduct any business in the petition schedule shop room only on the strength of a valid licence/permission/consent issued by the local authority/statutory authorities;
- (ii) The respondents-tenants in the Rent Control Petition shall deposit the entire arrears of rent as on date, if any, before the Rent Control Court or the Execution Court, as the case may be, within two weeks from the date of receipt of a certified copy of this order, and shall continue to pay rent for every succeeding months, without any default;
- (iii) Needless to say, in the event of the respondents-tenants



in the respective Rent Control Petition failing to comply with any one of the conditions stated above, the time limit granted by this order to surrender vacant possession of the petition schedule room will stand cancelled automatically and the petitioners-landlords will be at liberty to proceed with the execution of the order of eviction.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA.S, JUDGE

sks/22.11.2024