

Jasmin Shabeer Vs. Ibrahim

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Court : Kerala

Decided On : Oct-09-2014

Judge : Honourable Mr.Justice Thottathil B.Radhakrishnan

Appellant : Jasmin Shabeer

Respondent : ibrahim

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN & THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH THURSDAY, THE 9TH DAY OF OCTOBER 2014 17TH ASWINA, 1936 OP (RC).No. 123 of 2014 (O) ----- PETITIONER: ----- JASMIN SHABEER, W/O SHABEER, AGED 41 YEARS, READYMADE SHOP, IX/140 G, NEAR ST. XAVIER'S COLLEGE, ALUVA. BY ADV. SMT.BIMALA BABY RESPONDENT: ----- IBRAHIM, AGED 34 YEARS, S/O USEPH, KURICKAL HOUSE, CHAKKARAPPADAM DESOM, PERINJANAM VILLAGE, KODUNGALLOOR TALUK REP. BY THE POWER OF ATTORNEY MOOSSAN, AGED 50 YEARS, S/O IBRAHIM, PUTHANANGADI PUTHENPURAYIL, VENGOLA KARA, PATTIMATTAM VILLAGE, KUNNATHUNADU TALUK. THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 09/10-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP (RC).No. 123 of 2014 (O) APPENDIX PETITIONER'S EXTS EXT.P1:- TRUE COPY OF THE COMMISSION REPORT. EXT.P2:- TRUE COPY OF THE

ORDER

DATED 19/14 PASSED BY THE COURT OF THE MUNSIF, ALUVA IN IA NO.1928/13 IN RCP1412. THOTTATHIL B. RADHAKRISHNAN & BABU MATHEW P. JOSEPH, JJ.

----- O. P. (RC) No.123 of 2014
----- Dated this the 9th day of October, 2014

JUDGMENT

Thottathil B. Radhakrishnan, J.

We have heard the learned counsel for the petitioner quite in extenso.

2. This original petition under Article 227 of the Constitution of India is filed by the tenant in a petition for eviction filed by the landlord under Sections 11(3) and 11(2) (b) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (Act 2 of 1965). The landlord appears to have set up a case that the tenanted premises is required for his bona fide need. The tenant appears to have filed an application for issuance of a commission for local inspection. That led to a commission report. The tenant filed a second application for a further local inspection by a civil engineer to ascertain whether the nature of the structure of the building is in such O. P. (RC) No.123 of 2014 -2- a way that the bona fide need of the landlord as pleaded by him could be upheld. The Rent Control Court has dismissed that application. That is under challenge in this original petition.

3. By now, law is well settled as to what are the ingredients of Section 11(3) of Act 2 of 1965; the defences available to a tenant in such proceeding and the burden of proof, including the initial onus and shifting of such burden with evidence coming from both sides. We do not find any legal infirmity or jurisdictional error in the order of the Rent Control Court dismissing the second application for local inspection by a civil engineer. However, we put a word of caution that the parties should not stand tied down to the contents of the order impugned in this original petition while the rent control petition is finally decided upon at trial. Subject to that and preserving the right of the tenant to agitate all questions, including exclusion of

required evidence, in appropriate proceeding, including in any statutory appeal under Section 18 of the Act against a final O. P. (RC) No.123 of 2014 -3- order of Rent Control Court, if such a situation arises, this original petition is dismissed.
Sd/- THOTTATHIL B. RADHAKRISHNAN JUDGE Sd/- BABU MATHEW P. JOSEPH JUDGE
kns/- //TRUE COPY// P.A. TO JUDGE

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