

Shibu vs Thomas N.J

Shibu vs Thomas N.J

SooperKanoon Citation : sooperkanoon.com/1303973

Court : Kerala

Decided On : Jan-22-2024

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr. Justice G.Girish

Appeal No. : RCRev./223/2023

Appellant : SHIBU

Respondent : Thomas N.J

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN & THE HONOURABLE MR. JUSTICE G. GIRISH MONDAY, THE 22ND DAY OF JANUARY 2024 / 2ND MAGHA, 1945 AGAINST THE JUDGMENT DATED 14.07.2023 IN RCA NO.12 OF 2021 OF THE RENT CONTROL APPELLATE AUTHORITY (DISTRICT JUDGE), ALAPPUZHA, ARISING OUT OF THE ORDER DATED 29.01.2020 IN R.C.P.NO.27 OF 2018 OF THE RENT CONTROL COURT (MUNSIFF), CHERTHALA REVISION PETITIONER/APPELLANT/RESPONDENT: SHIBU, AGED 58 YEARS S/O. SREENIVASAN, THARAYIL HOUSE, WARD NO. 13, MARARIKULAM PANCHAYAT, S.L. PURAM P.O., CHERTHALA, ALAPPUZHA., PIN - 688523 BY ADV JAMES ABRAHAM

(VILAYAKATTU) RESPONDENTS/RESPONDENTS/PETITIONERS: 1
THOMAS N.J, AGED 67 YEARS S/O. OUSEPH, KANNIMEL HOUSE,
S.L. PURAM P.O., MARARIKULAM NORTH PANCHAYAT, WARD 6,
MARARIKULAM NORTH VILLAGE, CHERTHALA, ALAPPUZHA., PIN -
2 KUNJUMON, AGED 69 YEARS S/O. OUSEPH, KANNIMEL HOUSE,
S.L. PURAM P.O., MARARIKULAM NORTH PANCHAYAT, WARD 6,
MARARIKULAM NORTH VILLAGE, CHERTHALA, ALAPPUZHA., PIN -
THIS RENT CONTROL REVISION HAVING COME UP FOR
ADMISSION ON 22.01.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: -2-

ORDER

Anil K. Narendran, J.

The petitioner is the respondent-tenant in R.C.P.No.27 of 2018 on the file of the Rent Control Court (Munsiff), Cherthala, which was one filed by the predecessor-in-interest of the

respondents herein-landlord, invoking the provisions under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, seeking eviction of the tenant from the petition schedule shop room on the ground of arrears of rent and bona fide need. The need projected in the Rent Control Petition for seeking an order of eviction under Section 11(3) of the Act is that of the grandchildren of the landlord to start a grocery shop and a mobile phone repair shop in the petition schedule shop rooms. Before the Rent Control Court, the tenant filed counter opposing the order of eviction sought for. On the side of the landlord PWs 1 and 2 were examined and Exts.A1 to A4 were marked. On the side of the tenant, he was examined as RW1 and Exts.B1 to B3 were marked. A Will deed No.81/3/2011 dated 06.08.2011 was marked as Ext.X1. After considering the pleadings and evidence on record, the Rent Control Court arrived at a conclusion that the need projected in the Rent Control Petition for seeking an order of

eviction under Section 11(3) of the Act is bona fide that the provisions under the first proviso to Section 11(3) of the Act have no application in the facts and circumstances of the case and that the tenant is not entitled to the protection under the second proviso to Section 11(3) of the Act. Accordingly, by the order dated 29.01.2020, the Rent Control Court allowed R.C.P.No.27 of 2018 and the tenant was directed to surrender vacant possession of the petition schedule shop rooms within two months from the date of that order, failing which the respondents herein, who are the legal representatives of the deceased landlord, are entitled to get vacant possession of the shop rooms through the process of court.

2. Feeling aggrieved by the order of eviction granted by

the Rent Control Court in R.C.P.No.27 of 2018, the tenant filed R.C.A.No.12 of 2021 before the Rent Control Appellate Authority, invoking the provisions under Section 18(1)(b) of the Act. That appeal ended in dismissal by the judgment dated 14.07.2023, whereby the order of eviction granted by the Rent Control Court under Section 11(3) of the Act stands confirmed. Challenging the

order of eviction concurrently passed by the authorities below, the

tenant is before this Court in the Rent Control Revision, invoking the provisions under Section 20 of the Act. -4-

3. Heard the learned counsel for the petitioner-tenant.

4. The issue that arises for consideration in this Rent

Control Revision is as to whether any interference is warranted on the order of eviction concurrently passed by the authorities below, under Section 11(3) of the Act, invoking the revisional jurisdiction of this Court under Section 20 of the Act.

5. Section 11 of the Kerala Buildings (Lease and Rent Control) Act deals with eviction of tenants. As per Section 11(3) of the Act, a landlord may apply to the Rent Control Court, for an

order 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 by any member of his family dependent on him. As per the first proviso to Section 11(3), the 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 second proviso to Section 11(3), the Rent Control Court shall not give any direction to a 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

-5- such building and there is no other suitable building available in the locality for such person to carry on such trade or business.

6. In Adil Jamshed Frenchman v. Sardur Dastur

Schools Trust [(2005) 2 SCC 476] the Apex Court reiterated that, as laid down in Shiv Samp Gupta v. Dr. Mahesh Chand Gupta [(1999) 6 SCC 222] a bona fide requirement must be an outcome of a sincere and honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejectment of the tenant. The question to be asked by a judge of facts by placing

himself in the place of the landlord is whether in the given facts

proved by the material on record the need to occupy the premises can be said to be natural, real, sincere and honest. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. As reiterated in Deena Nath v. Pooran Lal [(2001) 5 SCC 705] bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in praesenti and must be manifested in actual need so as to convince the court that it is not a mere fanciful or whimsical desire.

7. In Nalakath Saidali Haji v. Kalluparamba

Musthafa and others [2015 (4) KHC 815], a Division Bench of this Court relied on the law laid down in the decisions of the Apex Court referred to supra. The Division Bench also noticed the law laid down by the Apex Court in Kizhakkayil Suhara v. Manhantavida Aboobacker (dead) by Lrs. [(2001) 8 SCC 19] that, not merely the need of the landlord but also the need of the dependants for whom eviction is sought, should be established to be bona fide. On the facts of the case on hand, the Division Bench noticed that, neither the Rent Control Court nor the Appellate Authority has considered the need put forward by the landlord in accordance with the principles laid down in the decisions referred to supra and in the manner in which, the same ought to have been considered. Both the authorities were influenced by the fact that the landlord was holding an employment visa. The Division Bench noticed that, there is absolutely no evidence available on record regarding the nature of the employment visa that the landlord was holding or the terms subject to which the said visa has been issued to him. The conclusions of both the authorities below are based on the admission made by the landlord, while he was cross-examined as PW1. Nothing precludes the landlord from going abroad for

-7- employment. The case of the landlord in the Rent Control Petition is that, he has left his employment abroad and has come back to his native place. The fact that he is still holding an employment visa, does not militate against the bona fide need pleaded by the landlord.

8. 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.

9. In Regy V. Edthil v. Hubert Leslie D'Cruz [2016 (2)

KLJ 164], a Division Bench of this Court relied on the decision of the Apex Court in Deena Nath v. Pooran Lal [(2001) 5 SCC 705], wherein the Apex Court held that, in order to order eviction on the ground of bona fide need of the landlord, the statutory requirement is that there must be an actual pressing need, not a mere whim or fanciful desire; it must be in praesenti and also the landlord must not be in possession of any other reasonably suitable accommodation of his own in the town or city concerned. In the said decision, the Division Bench relied on the decision of the Apex Court in Shiv Sarup Gupta [(1999) 6 SCC 222], wherein it was held that, the term 'bona fide' or 'genuinely' refers

-8-

to a state of mind. Requirement is not a mere desire. The phrase 'required bona fide' is suggestive of Legislative intent is an outcome of a sincere and honest desire, in contra distinction with a mere desire, by the Rent Control Legislation. In Abdul Salam v. Sebastian [2013 (4) KLT 592], a Division Bench of this Court

held that, when the landlord has clearly admitted in his evidence

that vacant rooms are in his possession, he has to attribute special reasons for not occupying it, as the need mentioned under Section 11(3) of the Act cannot be a mere desire. On the facts of that case, since there was no sufficient opportunity given in the absence of plea, the Rent Control Petition was remitted to the Rent Control Court to enable the landlord to adduce evidence on that aspect and for fresh consideration by the Rent Control Court. Therefore, if there is admission on the part of the landlord of coming into possession of vacant rooms, unless special reason is given for not occupying the same, the need cannot be said to be bona fide and he is not entitled to get an order of eviction under Section 11(3) of the Act.

10. In Gireeshbabu T.P. v. Jameela and others [2021

(5) KHC SN 30], a Division Bench of this Court in which one

among us (Anil K. Narendran, J) was a party, held that, in order

to satisfy the requirement of Section 11(3) of the Act, a bona fide -9-

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 Section 11(3) of the Act but, of course, subject to the first and second provisos to Section 11(3).

11. In the instant case, the need projected in the Rent

Control Petition for seeking an order of eviction under Section 11(3) of the Act is that of the grandchildren of the original landlord for starting a grocery shop and a mobile phone repair shop in the petition schedule shop rooms. The need projected in the Rent Control Petition was substantiated by the oral testimony of PW1, who is a retired Police Officer, who require one among the petition schedule shop room for conducting grocery shop. PW1 has deposed that his son requires the other shop room for starting a mobile phone repair shop. After considering the pleadings and evidence on record, the Rent Control Court as well as the Appellate

-10-

Authority arrived at a conclusion that the need projected in the rent control petition for seeking an order of eviction under Section 11(3) of the Act is bona fide. Viewed in the light of the law laid down in the decisions referred to supra, it cannot be contended that the reasoning of the Rent Control Court and the Appellate Authority on the above aspect is either perverse or patently illegal, warranting interference by this Court in this Rent Control Revision.

12. As per the first proviso to Section 11(3), the 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.

13. In *M.L. Prabhakar v. Rajiv Singal* [(2001) 2 SCC

355] the Apex Court was dealing with a case in which eviction on the ground of bona fide requirement was sought for under Section 14(1)(e) of the Delhi Rent Control Act, 1958. In the said decision, the Apex Court relied on the law laid down in *Ram Narain Arora v. Asha Rani* [(1999) 1 SCC 141], wherein it was held that the question whether the landlord has any other reasonably suitable residential accommodation is a question which is intermixed with the question regarding bona fide requirement. Whether the

-11-

landlord has any other reasonably suitable residential accommodation is a defence for the tenant. Whether the other accommodation is more suitable than the suit premises would not solely depend upon pleadings and non-disclosure by the landlord. The landlord having another accommodation would not be fatal to the eviction proceedings if both the parties understood the case and placed materials before the court and case of neither party was prejudiced. On the facts of the case on hand, the Apex Court found that, even though the landlord has not mentioned about the other two premises, the material in respect of the other two premises was placed before the Rent Controller as well as before the High Court, thus no prejudice has been caused, and the parties have squarely dealt with this question.

14. In *Vasanthi Mallan v. N.S. Aboobacker Siddique*

[2020 (1) KHC 21] the question that arose before a Division Bench of this Court was whether a landlord is bound to plead under first proviso to Section 11(3) of the Act, the availability of vacant building in his possession and seek to explain special reason for non-occupation of such premises, in a proceeding initiated for eviction of the tenant under Section 11(3) of the Act. The Division Bench held that the initial burden to prove that landlord is in possession of the vacant building, if any, is only upon the tenant

-12-

unless the landlord himself admits any such vacant building to be in his possession. Only when the primary burden of proof in this behalf is discharged by the tenant, the burden shifts to the landlord to show otherwise or that the vacant premises are not suited to his needs. He can successfully discharge his part of the burden by adducing evidence either through his own testimony or others or in any other legal manner. Law does not require the landlord to plead that he is in possession of any vacant building and has special reasons for its non-occupation. It is up to the tenant alone to take up the contention and prove that landlord is in vacant possession of premises.

15. In Vasantha Mallan, relying on the law laid down by

the Apex Court in M.L. Prabhakar [(2001) 2 SCC 355] the Division Bench held that, it is not incumbent on the landlord to disclose in his pleading availability of vacant building in his possession. The non-disclosure of vacant premises cannot be picked up as a reason or circumstance to doubt the bona fides of the claim of the landlord put forward under Section 11(3) of the Act. The Division Bench made it clear that it is not obligatory for the landlord to disclose in his pleadings the details of the vacant buildings available in his possession. Nor does first proviso to Section 11(3) of the Act insist the landlord to plead that the

-13-

buildings available in his possession are not sufficient to meet his requirements. These are matters of evidence rather than pleadings. Failure of the landlord to disclose availability of buildings in his possession and plead special reasons for not occupying them, cannot be taken as a valid and legal ground for rejecting the claim of the landlord as not bona fide. What could at the most be said is that it might be a fair and reasonable conduct if the landlord disclosed in his pleadings the details of buildings in his possession and simultaneously explained the reason for non- occupation of the premises for his alleged needs.

16. In Dineshan Pillai P.B. v. Joseph @ Jose [2019 (3)

KHC 206] a Division Bench of this Court was dealing with a case in which one of the contentions of the tenant was that the landlord has several other vacant buildings of his own in his possession to start the proposed business. The Division Bench noticed that, the pleadings are very vague with respect to the first proviso to Section 11(3) of the Act. It is stated that the landlord has several other buildings. No particular vacant room has been identified or pointed out in the pleadings. The Division Bench opined that it is obligatory on the part of the tenant to plead and prove the identity of the vacant building in the possession of the landlord. In the absence of specific pleadings, disclosing the identity of the vacant

-14- building in the possession of the landlord, it can be said that the tenant has not discharged the initial burden of proof under the first Proviso to Section 11(3) of the Act.

17. In the instant case, the tenant has no specific case in the counter filed in the Rent Control Petition, in order to attract the provisions under the first proviso to Section 11(3) of the Act.

18. As per the second proviso to Section 11(3) of the Act,

the Rent Control Court shall not give any direction to a 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.

19. In Ammeer Hamsa v. Ramabhadran and another

[2019 (2) KHC 465] a Division Bench of this Court held that, it is trite law that both limbs under the second proviso to Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act are conjunctive and the burden of proof is on the tenant. Thus, the legal position has been settled by a long line of decisions and the courts below have rightly placed reliance upon those decisions. Vide: Narayanan Nair v. Pachumma [1980 KLT 430], Prasannan v. Haris [2005 (2) KLT 365], Vineethan v.

Fathima and others [2016 (1) KHC 631]. In view of the legal position well settled by the aforesaid decisions, the landlord is not required to plead or prove other sources of income of the tenant. That apart, income is a fact which remains exclusively in the knowledge of each person only and another person cannot adduce evidence to prove income. Merely on the reason that the landlord has stated that the tenant has other sources of income and he is not mainly depending upon the income from the business carried on in the tenanted premises, for his livelihood and he failed to prove so, the tenant cannot escape from the burden of proof cast on him under the first limb of the second proviso to Section 11(3) of the Act. Where the statutory provision itself explicitly imposes the burden of proof on a party to the lis, there cannot be any variation whatever be the pleadings of the other party in that respect. The second proviso to Section 11(3) is an exception to the principal provision, granting protection to the tenant. When the second proviso itself imposes the burden of proof on the tenant, the question whether the landlord has pleaded or proved the facts constituting the said proviso is insignificant and irrelevant. Even if the landlord pleaded so, the burden of proof will not be shifted to him. Since the second proviso to Section 11(3) is an exception to the principal provision, which would dis-entitle

-16- the landlord to get the order of eviction under Section 11(3), the burden of proof, under the said proviso is always on the tenant and unless the burden of proof under the second proviso is discharged satisfactorily, the tenant is not entitled to get protection under the said proviso to Section 11(3) of the Act.

20. In the instant case, other than the interested testimony

of the tenant, who was examined as DW1, there is no cogent and convincing evidence to show that the tenant is depending for his livelihood mainly on the income derived from the business conducted in the petition schedule shop rooms and that there is no other suitable building in the locality for the tenant to carry on such business. In the absence of any cogent and convincing evidence to prove both the limbs of the second proviso to Section 11(3) of the Act, the Rent Control Court as well as the Appellate Authority concurrently found that the tenant is not entitled to the protection under the second proviso to Section 11(3) of the Act.

Viewed in the light of the law laid down in the decisions referred to supra, it cannot be contended that the reasoning of the Rent Control Court and the Appellate Authority on the above aspect is either perverse or patently illegal, warranting interference by this Court in this Rent Control Revision.

-17-

21. Section 20 of the Kerala Buildings (Lease and Rent

Control) Act deals with revision. As per sub-section (1) of Section 20, 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. As per sub-section

(2) of Section 20 of the Act, the costs of and incident to all proceedings before the High Court or District Court under sub- section (1) shall be in its discretion.

22. In Rukmini Amma Saradamma v. Kallyani

Sulochana [(1993) 1 SCC 499], the scope of revisional powers of the High Court under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 came up for consideration before the Three-Judge Bench of the Apex Court. While considering whether the High Court could have re-appreciated entire evidence, 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

-18-

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.

23. 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.

-19-

24. 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* [(1993) 1 SCC 499] 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 -20- the evidence and in coming to the conclusion that the relationship of landlord-tenant did not exist.

25. 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 [(1993) 1 SCC 499] 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 [(1993) 1 SCC 499] 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.

26. 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

[(1993) 1 SCC 499], Ubaiba [(1999) 5 SCC 645] and Hindustan Petroleum Corporation Limited [(2014) 9 SCC 78] the Apex Court held that the findings rendered by the courts -21- 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.

27. In *Abdul Salam v. Sebastian* [2013 (4) KLT 592],

a Division Bench of this Court held that, even though in the decisions of the Apex Court and this Court, it has been held that, in revisional jurisdiction there cannot be a re-appreciation of evidence in order to come to a different conclusion on the same set of facts, it has been held in those decisions itself that, if the view taken is perverse and the statutory scheme has not been kept in mind and if it requires correction, then Court can re- appreciate the evidence. When the argument is that, the approach made by the authorities are perverse, it cannot be said that this Court cannot look into the pleadings and scan through the evidence to find out whether the conclusions have been arrived at properly on the pleadings and evidence.

28. In *Regy V. Edthil v. Hubert Leslie D'Cruz* [2016 (2)

KLJ 164], a Division Bench of this Court held that, the High Court (in revision) is obliged to test the order of the Rent Control Court on the touch stone of whether it is according to law. For that -22- limited purpose, it may enter into reappraisal of evidence for the purpose of ascertaining whether the conclusion arrived at by the Rent Control Court is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available.

29. Viewed in the light of the law laid down in the decisions

referred to supra, conclusion is irresistible that the reasoning of the Rent Control Court and the Rent Control Appellate Authority while ordering eviction of the tenant under Section 11(3) of the Act is neither perverse nor patently illegal. It cannot also be said that, while ordering the eviction of the tenant under Section 11(3) of the Act, the Rent Control Court or the Rent Control Appellate Authority has committed a manifest error, warranting interference in exercise of the revisional jurisdiction of this Court under Section 20 of the Act. Therefore, we find no reason to interfere with the

order of eviction passed by the Rent Control Court and the

Appellate Authority under Section 11(3) of the Act.

30. The learned counsel for the petitioner-tenant would

submit that the tenant may be given at least six months' time to give vacant possession of the petition schedule shop rooms. The tenant is prepared to clear the entire dues towards arrears of rent, if any, within a time limit that may be fixed by this Court and he -23- shall continue to pay the monthly rent for the remaining period, without any default, till he gives vacant possession of the petition schedule shop rooms to the landlords.

31. In such circumstances, this Rent Control Revision is

dismissed declining interference on the impugned judgment of the Rent Control Appellate Authority and also the order of the Rent Control Court; however, by granting three months' time to the petitioner-tenant, to surrender vacant possession of the petition schedule shop rooms to the respondents-landlords, subject to the following conditions:

(i) The respondent-tenant in the Rent Control Petition

shall file an affidavit 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 he will surrender vacant possession of the petition schedule shop rooms to the petitioners-landlords within three months from the date of this order and that, he shall not induct third parties into possession of the petition schedule shop rooms and further he shall conduct any business in the petition schedule shop rooms only on the strength of a valid licence/ permission/consent issued by the local authority/ statutory authorities;

(ii) The respondent-tenant 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 - 24-

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 respondent-tenant

in the 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 shop rooms 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/- G. GIRISH, JUDGE das

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com