

Rajeev Thomas vs M.J.Philip,

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Court : Kerala

Decided On : Mar-05-2024

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

Appeal No. : RCRev./51/2024

Appellant : Rajeev Thomas

Respondent : M.J.Philip,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN & THE
HONOURABLE MR. JUSTICE G. GIRISH TUESDAY, THE 5TH DAY OF MARCH
2024/15TH PHALGUNA, 1945

**JUDGMENT DATED 30.11.2023 IN R.C.A.NO.14 OF 2022 OF RENT
CONTROL**

APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE), KOTTAYAM
ARISING OUT OF THE ORDER DATED 20.10.2022 IN R.C.P.NO.7 OF 2019 OF
RENT CONTROL COURT (MUNSIF), CHANGANACHERRY REVISION
PETITIONER/APPELLANT/RESPONDENT: RAJEEV THOMAS AGED 48 YEARS
S/O.THOMAS, RESIDING AT KARUKAYIL HOUSE, KURISUMMOODU P.O.,

VAZHAPPALLY EAST MURI, VAZHAPPALLY EAST VILLAGE,
CHANGANACHERRY TALUK, KOTTAYAM DISTRICT, PIN - 686104 BY ADVS.
KALEESWARAM RAJ THULASI K. RAJ APARNA NARAYAN MENON CHINNU
MARIA ANTONY RESPONDENTS/RESPONDENTS/PETITIONERS: 1
M.J.PHILIP, AGED 70 YEARS S/O.JOSEPH, RESIDING AT MANAMEL HOUSE,
KURISHUMOODU P.O., VEROOR MURI, CHETHIPUZHA VILLAGE,
CHANGANACHERRY TALUK, KOTTAYAM DISTRICT, PIN - 686104 2
LEELAMMA PHILIP AGED 65 YEARS W/O.M.J.PHILIP, RESIDING AT
MANAMEL HOUSE, KURISHUMOODU P.O, VEROOR MURI, CHETHIPUZHA
VILLAGE, CHANGANACHERRY TALUK, KOTTAYAM DISTRICT, PIN - 686104
BY ADV MATHEW SEBASTIAN THIS RENT CONTROL REVISION HAVING
COME UP FOR ADMISSION ON 05.03.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

ORDER

Anil K. Narendran, J The petitioner is the respondent-tenant in R.C.P.No.7 of 2019 on the file of the Rent Control Court (Munsiff), Changanacherry, a petition filed by the respondents herein-landlords seeking eviction of the petition schedule shop room under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. 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 son

of the landlords to start an electronic shop in the petition schedule shop room. In the Rent Control Petition, the tenant entered appearance and filed counter opposing the order of eviction sought for. On the side of the landlords, the 1st respondent herein was examined as PW1, the son of the landlords was examined as PW2 and the Municipal Secretary was examined as PW3. Exts.A1 to A12 were marked on the side of the landlords. The tenant has not chosen to adduce any oral or documentary evidence. 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 first proviso to Section 11(3) of the Act has 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). During the pendency of the Rent Control Petition, the tenant cleared the

arrears of rent. Therefore, the landlords did not press for an order

of eviction under Section 11(2)(b) of the Act. By the order dated 20.10.2022, the Rent Control Court allowed R.C.P.No.7 of 2019, under Section 11(3) of the Act, whereby the tenant was directed to surrender vacant possession of the petition schedule shop room to the landlords, within the time limit specified in that order. It was made clear that, if the tenant failed to surrender vacant possession of the shop room, the landlords would be at liberty to approach the court for getting an order of eviction executed through process of law. During the pendency of the Rent Control Petition, the tenant filed an interlocutory application, directing the 1st respondent herein, who was examined as PW1, to produce the passport of his son, who was examined as PW2. That application was dismissed by the Rent Control Court, by a separate order.

2. Challenging the order of eviction granted by the Rent Control Court under Section 11(3) of the Act, the tenant filed R.C.A.No.14 of 2022 before the Rent Control Appellate Authority (Additional District Judge), Kottayam, invoking the provisions under Section 18(1)(b) of the Act. After considering the rival contentions, the Appellate Authority by the judgment dated

30.11.2023, dismissed that appeal, thereby confirming the order

of eviction granted by the Rent Control Court under Section 11(3) of the Act. Feeling aggrieved by the order of eviction concurrently passed by the Rent Control Court as well as the Appellate Authority, the petitioner-tenant is before this Court in this Rent Control Revision, invoking the provisions under Section 20 of the Act.

3. Heard the learned counsel for the petitioner-tenant and also the learned counsel for the respondents-landlords.

4. During the course of arguments, the learned counsel

for the petitioner-tenant would confine the challenge made in this Rent Control Revision against the finding of the Rent Control Court as well as the Appellate Authority 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, since the tenant has not chosen to mount the box or produce any documents before the Rent Control Court on the applicability of the first and second provisos to Section 11(3) of the Act.

5. The learned counsel for the petitioner would contend that the need projected in the Rent Control Petition for seeking an

order of eviction under Section 11(3) of the Act, i.e., the son of

the landlords, who was examined as PW2, require the petition schedule shop room for starting an electronic shop, is not bona fide, which was only a ruse to evict the tenant from the petition schedule shop room. Though the tenant filed an interlocutory

application before the Rent Control Court seeking an order

directing the 1st respondent herein, who was examined as PW1, to produce the passport of his son, who was examined as PW2, that application was dismissed by the Rent Control Court, without any valid reason.

6. On the other hand, the learned counsel for the

respondents-landlords would contend that after analysing the pleadings and evidence on record, the Rent Control Court as well as the Appellate 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. That finding is neither perverse nor patently illegal, warranting interference in exercise of the revisional jurisdiction of this Court under Section 20 of the Act. The Rent Control Court rightly rejected the

application filed by the tenant directing the 1st respondent herein to produce the passport of his son, who was examined as PW2.

7. 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 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 *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.

9. In *Nalakath Saidali Haji v. Kalluparamba*

Musthafa and others [2015 (4) KHC 815], a decision relied on by the learned counsel for the petitioner-tenant, 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 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.

10. 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.

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

KLJ 164], another decision relied on by the learned counsel for the petitioner-tenant, 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 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.

12. In *Gireeshbabu T.P. v. Jameela and others* [2021

(5) KHC SN 30], a decision relied on by the learned counsel for the petitioner-tenant, 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 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).

13. As already noticed hereinbefore, during the course of

arguments, the learned counsel for the petitioner-tenant confined the challenge made in this Rent Control Revision against the finding of the Rent Control Court as well as the Appellate Authority 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, since

the tenant has not chosen to mount the box or produce any documents before the Rent Control Court on the applicability of the first and second provisos to Section 11(3) of the Act.

14. 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 landlords' son, who was examined as PW2 to start an electronic shop in the petition

schedule shop room. That need is substantiated by the oral testimony of the 1st respondent herein, who was examined as PW1, and that of his son, who was examined as PW2. PW2 gave evidence that after completing Diploma Course, he worked with HCL Services Ltd., Bombay. The document marked as Ext.A10 is the experience certificate. The landlords are aged 70 years and 65 years respectively. The evidence of PW2 is that since his parents are aged and ailing, he resigned his job and now residing with them. He is intending to begin business in the petition schedule shop room. After analysing the evidence of PWs 1 and 2, the Rent Control Court found that the need projected in the Rent Control Petition that PW2 required the petition schedule shop room for starting electronic shop is bona fide. Though PWs.1 and 2 were vehemently cross examined, nothing could be brought out to discredit their version. The employment of the wife of PW2 abroad cannot be taken as a ground to deny the need of PW2 to start a business in the petition schedule shop room. Though various contentions were raised by the tenant, he has not chosen to mount the box before the Rent Control Court. The tenant has

not chosen to produce any documentary evidence in support of his contentions. In the facts and circumstances of the case, the Rent Control Court cannot be found fault with in rejecting the

interlocutory application filed by the tenant seeking an order

directing the 1st respondent herein to produce the passport of the son of the landlords, who was examined as PW2. In the absence of any reliable evidence on the side of the tenant, either oral or documentary, the Rent Control Court as well as the Appellate Authority rightly held 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. In the absence of any case by the tenant to attract the first proviso or second proviso of Section 11(3) of the Act, the

Rent Control Court as well as the Appellate Authority rightly held

that the landlords are entitled for an order of eviction under Section 11(3) of the Act and accordingly, the tenant is directed to vacate the petition schedule shop room within the time limit specified in the impugned order/judgment. 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.

15. 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.

16. 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 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. 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.

22. 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 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.

23. 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 as well as the 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 eviction 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 as well as the Appellate Authority under Section 11(3) of the Act.

24. The learned counsel for the petitioner-tenant would submit that the tenant is conducting business in the petition schedule shop room and he may be granted at

least ten months time to vacate the premises.

25. On the above request made by the learned counsel for

the tenant, the learned counsel for the respondents-landlords would submit that the landlords have no objection in this Court granting a reasonable time to the tenant for surrendering vacant possession of the petition schedule shop room, on condition that the tenant shall clear the entire dues towards arrears of rent and continue to pay the monthly rent for the remaining period, without any default.

26. The learned counsel for the petitioner-tenant would

submit that the tenant is prepared to clear the entire dues towards arrears of rent, within a time limit that may be fixed by this Court and he shall continue to pay the monthly rent for the remaining period, without any default, till he gives vacant possession of the petition schedule shop room to the landlords.

27. In such circumstances, this Rent Control Revision is dismissed declining interference on the impugned judgment of the

Rent Control Appellate Authority and the impugned order of the Rent Control Court; however, by granting six months' time to the petitioner-tenant, to surrender vacant possession of the petition schedule shop room 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 room to the petitioners-landlords within six months from the date of this order and that, he shall not induct third parties into possession of the petition schedule shop room and further he 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 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 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 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/- G. GIRISH, JUDGE

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