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**Ibraham vs Sheraffunisa**

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**SooperKanoon Citation** : sooperkanoon.com/1449067

**Court** : Kerala

**Decided On :** Feb-07-2022

**Judge** : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

**Appeal No.** : RCRev./119/2020

**Appellant** : Ibraham

**Respondent** : Sheraffunisa

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR MONDAY, THE 7TH DAY OF FEBRUARY 2022 / 18TH MAGHA, 1943 R.C.REV.NO.119 OF 2020 AGAINST THE JUDGMENT DATED 16.10.2019 IN R.C.A.NO.9 OF 2019 OF THE RENT CONTROL APPELLAT AUTHORITY (DISTRICT JUDGE), THIRUVANANTHAPURAM AND AGAINST THE ORDER DATED 30.01.2019 IN R.C.P.NO.35 OF 2016 OF THE RENT CONTROL COURT (ADDITIONAL MUNSIFF), THIRUVANANTHAPURAM REVISION PETITIONER:

IBRAHIM AGED 61 YEARS, S/O.USMAN PILLAI, T.C.NO.38/849 AND T.C.38/909(7), GANDHI HOTEL LANE, CHENTHITTA, MARAKKADA ROAD, CHALAI, THIRUVANANTHAPURAM. BY ADVS. SRI.M.R.ANANDAKUTTAN SMT.M.A.ZOHRA SRI.MAHESH ANANDAKUTTAN RESPONDENT: SHERAFFUNISA AGED 72 YEARS, T.C.21/1859(6), KARAMANA P.O., THIRUVANANTHAPURAM-695002. BY ADV SRI.R.V.SREEJITH THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL HEARING ON 07.02.2022, ALONG WITH R.C.Rev.NO.120 OF 2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR MONDAY, THE 7TH DAY OF FEBRUARY 2022 / 18TH MAGHA, 1943 R.C.REV.NO.120 OF 2020 AGAINST THE JUDGMENT DATED 16.10.2019 IN R.C.A.NO.7 OF 2019 OF THE RENT CONTROL APPELLATE AUTHORITY (DISTRICT JUDGE), THIRUVANANTHAPURAM AND AGAINST THE ORDER DATED 30.01.2019 IN R.C.P.NO.36 OF 2016 OF THE RENT CONTROL COURT (ADDITIONAL MUNSIFF), THIRUVANANTHAPURAM

REVISION PETITIONER: MOHAMMED HUSSAIN, AGED 69 YEARS, S/O.MOHAMMED THAHA, T.C.38/839, GANDHI HOTEL LANE, CHENTHITTA, MARAKKADA ROAD, CHALAI, THIRUVANANTHAPURAM. BY ADVS. M.R.ANANDAKUTTAN SMT.M.A.ZOHRA SRI.MAHESH ANANDAKUTTAN RESPONDENT: SHERAFFUNISA, AGED 72 YEARS, T.C.21/1859(6), KARAMANA P.O., THIRUVANANTHAPURAM-695002. BY ADV SRI.R.V.SREEJITH THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL HEARING ON 07.02.2022, ALONG WITH R.C.Rev.NO.119 OF 2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## ORDER

**Ajithkumar, J.**

The respective respondents in R.C.P.Nos.35 of 2016 and 36 of 2016 on the file of the Rent Control Court (Additional Munsiff), Thiruvananthapuram are the petitioners in these revision petitions filed under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965.

2. In a row building belonging to the respondent-

landlady there are five shop rooms. There are tenants in each of the said rooms. The landlady filed five rent control petitions, including present ones, for eviction of the respective tenants under Section 11(3) of the Act. The need urged is that the daughter of the landlady, Smt.Nabila, who is conducting a hotel in a tenanted building, is in need of all the five rooms for shifting her hotel.

3. The respective tenants-revision petitioners resisted

the eviction petitions on common grounds. They contended that the need urged was not bonafide, the landlady has other building which can be used for the purpose, the pleadings are insufficient to make out a ground under Section 11(3) of the Act and the petitioners are entitled to get the benefit of the second proviso to Section 11(3) of the Act.

4. The Rent Control Court tried all the five rent control petitions jointly and held that the need urged by the landlady was bonafide and the petitions were allowed. The

petitioners preferred appeals before the

R.C.A.Nos.7 and 9 of 2019 respectively, were dismissed. Feeling aggrieved thereof, the petitioners filed these revision petitions.

5. On 04.08.2020, notice was ordered. It was also

**directed to maintain the status quo with respect to the order**

of eviction, initially for eight weeks. The order has been extended from time to time.

6. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

7. The submissions of the learned counsel appearing

for the petitioners are essentially with respect to the bonafides of the need urged by the respondent and plea under the second proviso to Section 11(3) of the Act. That the building in question is a very old one consisting of a row of rooms and it is not amenable to any modification. Even if converted, it would not suit to accommodate a hotel. The landlady or Smt.Nabila did not give evidence. Oral testimony of PW1, who is the power of attorney of the landlady, is totally insufficient to prove the need projected. The respondent is a person having several other buildings and to any one of which Smt.Nabila can conveniently shift her business. For those reasons the need can only be said not to be bonafide.

8. The learned counsel appearing for the respondent,

on the other hand, would contend that both the courts below considered the question in detail and correctly held that the need was bonafide. The said findings of the courts below are well justified in law and supported by sufficient reasons. The learned counsel accordingly would contend that the said findings are not liable to be interfered with.

9. Section 11 of the Act deals with eviction of tenants.

As per Section 11(1), notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Act. 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.

10. 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.

11. 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.

12. PW1 is the husband of the respondents daughter.

He deposed that he along with his wife, as a partnership firm, is conducting a hotel in a rented premises. It is his further version that owing to the burden of making payment of rent, they are unable to do the business profitably and that is the immediate necessity to shift the hotel to their own building. When the landlady wants her dependent daughter to shift her hotel business from a rented premises to own building in the

above situation, it cannot be said that it is without bonafides. The reasons, such as old age of the building, conversion/ modification required to the building, space constraints, etc. are all the concerns of the landlady to which she and her dependent have to adjust with. If she, with all such constraints, wants to make use of the building for own use, the tenant cannot have any say in it. Both the courts below considered these aspects after due marshaling of entire evidence and reached the conclusion that the need is bonafide.

13. Non-examination of the landlady or her daughter is

highlighted to contend that need urged does not really exist and that is the reason why neither of them was examined. The Apex Court in Gulraj Singh Grewal v. Dr. Harbans Singh [(1993) 2 SCC 68] while dealing with a petition for eviction on the grounds, including personal need under Section 13(3)(a)(i)(a) of East Punjab Urban Rent Restriction Act, 1949, examined the question whether non-examination of the son as such would be fatal to the petition for eviction.

Apex Court held as follows:

> 'Respondent 1 who is the father of respondent 2, has supported and proved the need of respondent 2, who also is a landlord. The fact that for want of suitable accommodation in the city of Ludhiana, respondent 2 is at present carrying on his profession at some distance from Ludhiana is not sufficient to negative the landlords need. In these circumstances, the non- examination of respondent 2 also, when respondent 1 has examined himself and proved the need of the landlord, is immaterial and, at best, a matter relating only to appreciation of evidence, on which

ground this finding of fact cannot be reopened.'

14. This Court in Devayani v. Pulickaparambil

Hamsa Haji [1997 (1) KLJ 230] held that merely because the landlord's son was not examined, it cannot be said that bonafide requirement cannot be proved. Whether bonafide need is established on the basis of the evidence is a question depending upon the facts of each case. This view was reiterated in Abdul Asees v. Sahadevan and another [2019 (2) KHC 936]. So far as this case is concerned, we are convinced that non-examination of the landlady or her daughter is not fatal since evidence of PW1 is sufficient to

prove the need urged by the respondent.

15. The learned counsel appearing for the petitioners

did not stress much on the first proviso to Section 11(3) of the Act. It has come out in evidence that the landlady has another building at a different place, but in the same city. The said building is essentially a lodge and not conveniently to house a hotel. In the light of the said evidence, the courts below found that this is not a case where the first proviso can have application. We find no reason to interfere with the said finding.

16. 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. A Full Bench of this Court in

## Francis v. Sreedevi Varassiar [2003 (2) KLT 230] held

that it is for the tenant to prove both the limbs of the second proviso to Section 11(3) of the Act and that the tenant cannot insist that alternative accommodation should be similar to that of the tenanted premises in terms of the rate of rent and

convenience.

17. Neither of the petitioners produced any document with respect to the income they are drawing from the

business being conducted by them. The petitioner in R.C.Rev.No.120 of 2020 is conducting a scrap business in the petition schedule shop room. The petitioner in R.C.Rev.No.119 of 2020 maintains that if he shifts his business from the petition schedule shop rooms, it is difficult to sustain his business since his customers are from the nearby areas and the nature of his business involves rolling of money. In the absence of any documentary evidence with respect to the income they have been drawing from their business, the oral testimony of the respective petitioners alone cannot be based on to find that the sole income on which they can depend for their livelihood is the income from their business in the respective petition schedule shop room.

18. Coming to the availability of other buildings in the

locality, the evidence let in by the petitioners is totally insufficient. It has come out in evidence that several vacant rooms are available in the locality. A two-storied building and another building, named Siji's Plaza, both having several rooms, are stated to be available vacant in the locality. PW1 deposed in court pointing out the availability of those rooms. CPWs 1 or 2 did not state that they have made any serious enquiry about availability of vacant rooms in the nearby area. In the said circumstances, the inevitable conclusion is that the petitioners failed to prove both limbs of second proviso to Section 11(3) of the Act. The findings of the courts below on this score also are legally and factually correct.

19. 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 at its discretion.

20. 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.

21. 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.

22. 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.

23. 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.**

24. 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.

25. In view of what are stated above, we are of the view that the orders of eviction passed by the Rent Control Court in R.C.P.Nos.35 and 36 of 2016, which stand confirmed

by the Appellate Authority in the respective appeals, R.C.A.Nos.9 and 7 of 2019, are not liable to be interfered with by invoking the jurisdiction of this Court under Section 20 of the Act. The revision petitions are therefore dismissed.

26. The learned counsel appearing for the petitioners

submitted that a reasonable time is required for the petitioners to shift their business from the respective petition schedule shop rooms for which six months period may be granted.

27. Having heard the learned counsel appearing for

both the petitioners as well as the respondent, we deem it appropriate to grant six months time to surrender vacant possession of the petition schedule shop rooms, subject to the following conditions:

(i) The respondents-tenants in the Rent Control Petitions

shall file an affidavit before the Rent Control Court 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 shop room to the petitioner-landlord within six months from the date of this order and that, they shall not induct third parties into possession of the petition schedule shop room and further that they will 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 Petitions

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 four 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 Rent Control Petitions 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 petitioner-landlord will be at liberty to proceed with the execution of the order of eviction. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr

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