

**Binesh vs Najeeb**

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**Court :** Kerala

**Decided On :** Mar-17-2022

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

**Appeal No. :** RCRev./53/2022

**Appellant :** Binesh

**Respondent :** Najeeb

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR THURSDAY, THE 17TH DAY OF MARCH 2022 / 26TH PHALGUNA, 1943 R.C.REV.NO.53 OF 2022 AGAINST THE JUDGMENT DATED 08.02.2022 IN R.C.A NO.40 OF 2018 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT JUDGE), TIRUR CONCURRING THE ORDER DATED 28.02.2018 IN R.C.P NO.15 OF 2016 OF THE RENT CONTROL COURT (MUNSIFF) PONNANI

REVISION PETITIONER/APPELLANT/RESPONDENT: BINESH AGED 33 YEARS, S/O. BHASKARAN, RESIDING AT KODIPARAMBIL (H),

THAVANUR AMSAM, MATHOOR DESOM P.O.THAVANUR, PONNANI TALUK, MALAPPURAM DISTRICT,PIN-679 576. BY ADV. A.JANI(KOLLAM) RESPONDENT/RESPONDENT/PETITIONER: NAJEEB S/O.MOIDEEN KUTTY, RESIDING AT MADATHIL (H), 5TH FLOOR, M SONS ARCADE, CHEROOTTY ROAD, CALICUT, KOZHIKODE TALUK, KOZHIKODE DISTRICT, PIN-673 001. THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 17.03.2022, 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.15 of

2016 on the file of the Rent Control Court (Munsiff), Ponnani, a petition filed by the respondent herein-landlord seeking eviction of the tenant from the petition schedule shop room, under Section 11(3) of the Act. The need projected in the Rent Control Petition for seeking an order of eviction under Section 11(3) of the Act is that of his dependent son of the landlord for occupation of the said shop room and the adjacent rooms for starting a computer education training center. Before the Rent Control Court, the tenant, who is conducting automobile workshop in the tenanted premises, filed counter opposing the order of eviction sought for. Before the Rent Control Court, the matter was tried along with R.C.P.Nos.14 of 2016 and R.C.P.No.16 of 2016 filed by the landlord seeking eviction of the adjacent rooms, for the very same need. The landlord and his son were examined as PWs.1 and 2 and Exts.A1 to A3 were marked. The tenants in R.C.P Nos.14 of 2016 and 15 of 2016 were examined as RWs.1 and 2. 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 eviction of the petition schedule shop rooms is bona fide; that the first proviso to Section 11(3) of the Act has no application; and that the respective tenants are not entitled to get protection under the second proviso to Section 11(3) of the Act. Accordingly, the Rent Control Court allowed R.C.P.Nos.14, 15 and 16 of 2016 holding that the landlord is entitled for vacant possession of the petition

schedule shop rooms and the tenants in the respective Rent Control Petitions are directed to hand over vacant possession of the shop rooms to the landlord, under Section 11(3) of the Act, within a period of one month from the date of that order.

## 2. Challenging the order of eviction granted by the Rent

Control Court, the tenants in the respective Rent Control Petitions filed R.C.A.Nos.39, 40 and 41 of 2018, invoking the provisions under Section 18(1)(b) of the Act. The Rent Control Appellate Authority (Additional District Judge), Tirur dismissed all those appeals by a common judgment dated 08.02.2022, thereby confirming the order of eviction granted by the Rent Control Court. Feeling aggrieved by the said judgment of the Appellate Authority

in R.C.A No.40 of 2018, confirming the order of eviction granted by the Rent Control Court in R.C.P No.15 of 2016, the petitioner- tenant is before this Court in this Rent Control revision, under Section 20 of the Act.

## 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 Rent Control Court and the Appellate Authority 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 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.

#### 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 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.

#### 8. The landlord filed R.C.P.No.15 of 2016 along with the

connected matters, namely, R.C.P Nos.14 and 16 of 2016, seeking eviction of the tenant from the shop rooms in the respective Rent Control Petitions, under Section 11(3) of the Act, on the ground that the petition schedule shop rooms are required for starting a computer training center with a computer lab facility by his son, namely, Naji Nageeb, who is an unemployed B.Tech graduate

specialised in Computer Science. The building situates on the side of Ponnani - Edappal Road, between Ponnani and Edappal, which is convenient for children from both sides to get access to the training centre. In the Rent Control Petition, it is pointed out that the landlord or his son is not having vacant possession of any other building, which is suitable for starting the business in question. Before the Rent Control Court, the tenant filed counter statement contending that the respondent is solely dependent upon the income derived from the petition schedule shop room for his livelihood. There are no other suitable room available in the locality for shifting his business.

9. Before the Rent Control Court, the landlord was

examined as PW1 and his son was examined as PW2. In order to prove the educational qualification and experience of PW2, Exts.A1 to A3 certificates were marked. The evidence of PWs.1 and 2 were in tune with the bona fide need projected in the Rent Control Petition. After analysing 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. The said finding now stands

confirmed in the judgment of the Appellate Authority. The concurrent finding of the Rent Control Court and the Appellate Authority that the need projected in the Rent Control Petition is bona fide is neither perverse nor patently illegal and it cannot also be said that while arriving such a conclusion the Rent Control Court or the Appellate Authority has committed any manifest error.

10. 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.

11. 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

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.

12. 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 vacant building, if any, is

only upon the tenant 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.

13. 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 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.

14. Insofar as the first proviso to Section 11(3) of the Act is

concerned, in the Rent Control Petition, the landlord has made a specific averment that neither the landlord nor his dependent son is in possession of any other vacant building within the locality. In the counter statement, the tenant has absolutely no case regarding any other suitable building in possession of the landlord or his dependent son, in order to attract the provisions under the first proviso to Section 11(3) of the Act.

15. 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.

16. 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 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.

17. Insofar as the second proviso to Section 11(3) of the

Act is concerned, other than the interested testimony of RW2, there is absolutely no materials to show that the tenant is depending upon the income derived from the business conducted in the the petition schedule building for his livelihood. No materials were placed before the Rent Control Court to prove non- availability of a suitable building in the locality to shift his business. The tenant could have taken out a Commission when the matter was pending before the Rent Control Court, in order to substantiate his contention as to non-availability of a suitable building. In the absence of any such materials, the Rent Control Court cannot be found fault with in arriving at a conclusion that the tenant is not entitled to the protection under the second

proviso to Section 11(3) of the Act. The Appellate Authority in the

**judgment dated 08.02.2022 in R.C.A No.40 of 2018 confirmed the**

finding of the Rent Control Court on the second proviso to Section 11(3) of the Act. The aforesaid finding of the authorities below, is neither perverse nor patently illegal and it cannot also be said that while arriving at such a finding, the authorities below have committed any manifest error, warranting interference in exercise of the revisional jurisdiction of this Court under Section 20 of the Act.

#### 18. 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.

#### 19. 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.

20. 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.

21. 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.**

22. 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.

23. 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.

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

referred to supra, conclusion is irresistible that the reasoning of the authorities below, is neither perverse nor patently illegal and it cannot also be said that while arriving at such a finding, the authorities below have committed any 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.

25. The learned counsel for the petitioner-tenant would

submit that considering the situation prevailing in the country on account of COVID-19 pandemic, the tenant may be given six months' time to give vacant possession of the petition schedule shop room. The learned counsel would also submit that there is no arrears of rent. The tenant has promptly paid rent and shall continue to pay monthly rent.

26. 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 6 months' time to the petitioner-tenant, to surrender vacant possession of the petition schedule shop room to the respondent-landlord, considering the situation prevailing in the country on account of COVID-19 pandemic, 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 petitioner-landlord within six months from the date of this order and that, he shall not induct third parties into possession of the petition schedule building 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 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 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 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 PV

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