

**Eanu Haji Vs. Mustafa**

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**Court :** Kerala

**Decided On :** Mar-09-2004

**Reported in :** 2004(2)KLT668

**Judge :** K.S. Radhakrishnan and; Pius C. Kuriakose, JJ.

**Acts :** Buildings (Lease and Rent Control) Act, 1965 - Sections 11(3)

**Appeal No. :** C.R.P. No. 954 of 1999

**Appellant :** Eanu Haji

**Respondent :** Mustafa

**Advocate for Def. :** K. Ramachandran, Adv.

**Advocate for Pet/Ap. :** T. Krishnan Unni, Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

**K.S. Radhakrishnan, J.**

1. The question that has come up for consideration is whether the commencement of new business during the pendency of the rent control proceedings would spell out lack of bona fides in a petition under Section 11(3) of Act 2 of 1965.

2. Rent Control Petition was preferred by the landlord seeking eviction of two tenanted premises for the purpose of conducting business in auto garage, spare parts and a workshop. Tenanted premises is situated in Pookkayil Bazar Junction by the side of Unnial Road. Landlord started other business by name 'Siddique Hardwares' in a tenanted premises in Tirur-Tanur Road. Contention was raised by the tenant that by starting another business during the pendency of the rent control proceedings the bona fide need urged by the landlord as far as tenanted premises is concerned stood extinguished.

3. Petition schedule building RCP 4/96 was entrusted to one Alavi on 1.4.1993. Petition schedule building in RCP. 10/96 was entrusted to one Mustafa on 31.12.1989. Landlord petitioner is in bona fide need of the schedule building to start a business in auto garage spare parts and workshop. Petitioner was working as manager in a spare parts shop at Qatar for 20 years and returned to his native place in September 1995. He has sufficient experience in dealing with spare parts and workshop at Qatar, therefore he could successfully start the said business in his native place. Further, he has also stated that there is no suitable building of his own for starting business. Tenant in both the cases disputed the bona fide need urged by the landlord. It was also stated it is unnecessary for the petitioner to start a business in his native place since he is otherwise well off. Further it was also pointed out that he had already started a hardware business in the name and style 'Siddique Hardwares' at Tirur-Tanur Road. Further it was also pointed that the landlord had also let out adjacent rooms to tenants for exorbitant rent, just prior to the issuance of notice and therefore there is no bona fides in the plea. Benefit of second proviso was also claimed by the tenant. Rent Control court after considering oral and documentary evidence came to the conclusion that the need is bona fide, so also found that the tenants are not entitled to get benefit of second proviso, consequently allowed the petition. Tenants preferred appeals. Appeals were allowed by the Appellate Authority. Appellate Authority took the view that the need urged by the landlord has already been met by starting a hardware business in a tenanted premises at Tirur-Tanur Road. Appellate Authority also evaluated the bona fide requirement of the tenant vis-a-vis the landlord on the touchstone of comparative hardship. Appellate Authority also found that the tenant is entitled to get the benefit of the second proviso also. Appellate Authority accepted the

contention of the tenant that his sole source of livelihood is the income derived from the business conducted in the tenanted premises. Further Appellate Authority also took the view that the burden is on the landlord to prove that there are vacant premises available in the locality for the tenant to occupy. On the above reasonings Appellate Authority reversed the findings of the Rent Control Court and rejected the petition under Section 11(3). Aggrieved by the same landlord has come up in revision.

4. We have perused the Rent Control Petition, objection as well as the oral and documentary evidence. Landlord has specifically averred that he wants start a business in auto garage, spare parts and workshop. He has also averred that he had sufficient experience in the said line since he was away at Qatar for 20 years. At Qatar he was working as store in charge. While so he was dealing with the business relating to , automobile spare parts and other accessories. The fact that he is experienced in dealing with spare parts and accessories cannot therefore be disputed. He therefore cherished a desire to start a business in his native place. Counsel for the tenants took us through Rent Control Petition and submitted that what was pleaded is that he wants to eke a livelihood, for the said purpose he wants to start a business. Counsel submitted he is well placed in life and therefore there is no necessity of starting a business for his livelihood. We are of the view this contention of the counsel for the tenant cannot be accepted. The mere fact that he is well placed in life does not mean that he shall not start any business, these are all individual choices. The desire expressed by the landlord to conduct a business in spare parts and accessories in our view is bona fide, We are therefore in agreement with the Rent Control Court that the need is bona fide.

5. Contention was raised by tenants that since landlord had already started another business in hardware the need urged by the landlord has eclipsed. Facts would indicate that landlord has started a business in a rented premises and not in his own building. From the point of view of landlord there is a lot of advantages for him to start a business in his own premises. Firstly one could make long term planning by starting business in one's own premises. Secondly, there is no threat of eviction, therefore there will be continuity of business and could also attract large number of permanent customers. Starting a business at tenanted premises

has got its own disadvantages. Tenant will always be under a threat of eviction. He cannot make any long term planning and cannot make alterations or modifications to the premises without the consent of the landlord. Periodical enhancement of rent has to be met. On eviction he will have to find out another place with the possibility of losing customers. The Appellate Authority proceeded as if since the landlord has subsequently started another business in hardwares in a tenanted premises, his bona fide need stood extinguished and therefore there is no justification in seeking eviction of the tenant from his building. We find it difficult to accept this reasoning.

6. We are of the view when once the bona fide need is established the question as to whether the landlord has started any business during the pendency of the rent control proceedings is of no consequence. Taking note of the delay in litigation a prudent business man would always plan his future course of action. He cannot wait till the litigation reaches its finality since every day is precious for a successful businessman. In many cases we have seen rent control litigations take a decade to reach its finality. The mere fact that he had started another business during the pendency of the proceedings does not mean that his claim for eviction has extinguished. We are therefore in agreement with the Rent Control Court and reject the reasoning of the Appellate Authority.

7. Appellate Authority has committed a grave error in holding that the tenant is entitled to get the benefit of second proviso to Section 11(3). A Full Bench of this Court in Francis v. Sreedevi Varassiar, 2003 (2) KLT 230 has held that the burden is on the tenant to prove that he is entitled to get benefit of both the limbs of second proviso to Section 11 (3). It is a duty cast on the tenant to establish that his main source of income for livelihood is from the business conducted in the tenanted premises. Tenant has to prove the same by adducing independent evidence. He can examine independent witnesses. He can also establish that he has no other income of his own apart from the income derived from the business conducted in the tenanted premises. So far as this case is concerned, apart from the interested testimony of the tenant no independent evidence was adduced. Therefore we hold that the tenant had not established the first limb of second proviso. Appellate Authority has committed a grave error in holding that it is for the

landlord to show availability of buildings. Burden is on the tenant to show that no buildings are available in the locality for shifting his business. There is no attempt on the part of the tenant to discharge that burden. We are therefore in agreement with the Rent Control Court that the tenant is not entitled to get benefit of second proviso to Section 11(3). Result is that both the revisions are allowed and the orders passed by the Appellate Authority stand set aside and allow the Rent Control Petition under Section 11 (3) of the Act. Considering the entire facts and circumstances of the case we are inclined to grant time to the tenants upto 30.8.2004 for vacating the premises, provided they file an undertaking before the Rent Control Court within one month that they would vacate the premises within the aforesaid time and that they would pay arrears of rent if any and also future rent.

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