

**Abdussalam Vs. Bhaskaran**

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**SooperKanoon Citation :** [sooperkanoon.com/724407](http://sooperkanoon.com/724407)

**Court :** Kerala

**Decided On :** Mar-11-2005

**Reported in :** 2005(3)KLT71

**Judge :** R. Bhaskaran and; M.N. Krishnan, JJ.

**Acts :** Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(4) and 21(1); Karnataka Rent Control Act

**Appeal No. :** C.R.P. No. 1595 of 2001

**Appellant :** Abdussalam

**Respondent :** Bhaskaran

**Advocate for Def. :** P.K. Suresh Kumar and; K.P. Sudheer, Advs.

**Advocate for Pet/Ap. :** P.K. Sreedharan Nair,; V.V. Asokan and; K.N. Harikumar

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**M.N. Krishnan, J.**

1. This is a revision preferred against the judgment in R.C.No. 136 of 1997 of the I Additional District Court and Appellate Authority, Kozhikode. R.C.P.No. 151 of

1995 was filed for eviction of the petition schedule premises under Section 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965. It is the contention of the landlord that the respondent has acquired possession of a building having Assessment No. 39/439 at Bhatt Road, West Hill, Kozhikode, which is more spacious and accommodative compared to the petition schedule building and that he is conducting printing and binding works in the name and style 'Hema Printing Works'. It is further contended that as the said premises is more than reasonably sufficient to satisfy the need of the tenant, eviction may be ordered under Section 11(4)(iii) of the Act. The tenant would contend that Hema Printing Works is a partnership business and it is conducted in a portion of the tarwad house and that he has got only a right as a partner in the business. According to him, the business, which is conducted in the petition schedule premises belongs to him and that only binding work is conducted therein. The Rent Control Court, after analysing the materials available held that the landlord is entitled for eviction under Section 11(4)(iii) of the Act and thereby allowed the petition. It is against that decision, the appeal was preferred. The Rent Control Appellate Authority took a different view and found that the landlord is not entitled to eviction under Section 11(4)(iii) of the Act. It found that the finding of the Court below that the possession of the building where the partnership business is conducted by the tenant will be sufficient to attract Section 11(4)(iii) of the Act appears to be unjustifiable in law and eviction ordered on that basis is unsustainable. It is aggrieved by that decision, the present revision is filed.

2. The point that arises for determination is whether the order of the Appellate Authority reversing the order of the Rent Control Court under Section 11(4)(iii) of the Act is legally correct or not? Admittedly, after the commencement of the tenancy, the tenant has become a partner of the firm 'Hema Printing Works'. It is submitted by the tenant that he is only having a share and the present business which is conducted in the petition schedule premises belongs to him exclusively and he cannot shift his place of business. Under Section 11(4)(iii), if the tenant already has in his possession a building or subsequently acquires possession of or puts up a building, reasonably sufficient for his requirement in the same city, town or village, the landlord will be entitled for an eviction. The question here is whether the tenant is in possession of a building reasonably sufficient for his requirement in

the same city or village. The Apex Court in the decision reported in *Gantusa H. Baddi (Dead) by LRs. v. Meerabai G. Pai*, (2000) 4 SCC 586, had considered this question which arose under the Karnataka Rent Control Act. The Apex Court held:

'The language of Section 21(1)(p) of the Act is clear and unambiguous and given its plain grammatical meaning, it is susceptible of only one construction that it is only when the tenant has built or acquired vacant possession of or has been allotted a suitable building, then only the provision of Section 21(1)(p) of the Act are attracted and not otherwise. The expression 'tenant' has been defined in Section 3(r) and howsoever wide meaning to the said definition be given, it will not bring within its scope, a partnership firm of which the tenant himself may be a partner. In the case in hand the so-called alternative accommodation, has been acquired, admittedly by a partnership firm, no doubt, consisting of the original tenant the father and his sons wherein the father has 15% share, but it cannot be held that the said acquisition of vacant possession is by the tenant.

Therefore, simply by the acquisition of vacant possession of a building by the partnership firm of which the tenant may be a partner, the tenant does not become liable to be evicted by application of Section 21(1)(p) of the Act'.

The said decision applies on all force to the facts of this case and it cannot be held that the tenant has a building reasonably sufficient for his business, thereby the ingredients under Section 11(4)(iii) of the Act are not satisfied in this case. The Appellate Authority has arrived at a correct decision on proper analysis of the materials. The petition schedule premises is only used for binding whereas the printing works is dealt with in the premises, where the partnership business is conducted. Therefore, the tenant cannot continue the present business by shifting it to the partnership business premises. In that view also, Section 11(4)(iii) is not attracted.

Therefore, the Civil Revision Petition lacks merits and is dismissed.