

**Vijayakumar Vs. Safiya**

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**SooperKanoon Citation :** [sooperkanoon.com/725247](http://sooperkanoon.com/725247)

**Court :** Kerala

**Decided On :** Jul-14-2008

**Reported in :** ILR2008NULL981

**Judge :** P.R. Raman and; T.R. Ramachandran Nair, JJ.

**Acts :** Kerala Buildings (Lease and Rent Control) Act - Sections 11(2), 11(3), 11(4) and 17

**Appeal No. :** RCR No. 163/2008

**Appellant :** Vijayakumar

**Respondent :** Safiya

**Advocate for Def. :** R.S. Kalkura,; M.S. Kalesh,; Harish Gopinath,;

**Advocate for Pet/Ap. :** G.P. Shinod,; Ram Mohan G. and; Manu V., Advs.

**Judgement :**

ORDER

**P.R. Raman, J.**

1. Tenant is the revision petitioner. The respondent landlady sought eviction under Section 11(2), 11(3) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act (for short 'the Act'). The Rent Control Court ordered eviction on all costs. The

defeated tenant filed an appeal. In appeal, the order passed by the Rent Control Court under Section 11(3) was confirmed. Challenging the order of eviction passed under Section 11(3) of the Act, the tenant has come up in revision. Therefore, the only question is whether the order passed by the authorities below confirming the order of eviction passed for eviction under Section 11(3) is correct?

2. Admittedly, the tenant has taken out the tenanted premises for residential purposes only. He had taken out another premises from the parents of the landlady where he was carrying on a business. Since that building had to be vacated the business conducted therein was sifted to a portion of the residential building presently in his occupation. Even though the tenant contended that this was done with the permission of the landlady, no acceptable evidence is adduced to prove the same. On the other hand, the landlady contended that not only no permission was taken for conversion of the building for non residential purposes, because of such illegal act when damage was also caused to the building and that is why she sought eviction under Section 11(4)(ii) of the Act. The bonafide need as alleged by the landlady is that she is residing with her brothers, now she wants to live separately in her own house and except the petition schedule building, she has no other house. The bonafide need as alleged has been supported by the evidence adduced by the landlady herself. Both the Rent Control Court as well as the appellate authority found that the bonafide need alleged in the rent control petition has been proved. We also find that finding regarding the bona fide need of the landlady cannot in any way be doubted.

3. It was then contended by the revision petitioner that he is entitled to the benefit of the second proviso since in a portion of the building he is carrying on a business and he has no other income for his livelihood other than the income derived from the business conducted therein. But the appellate authority did not accept the said contention for the reason that the petitioner did not seek any permission for conversion of a portion of the building for non residential purposes and no petition was also filed under Section 17 of the act before the Accommodation Controller. So long as it is not provided by the tenant that any permission was obtained from the landlord for conversion of the portion of the building for doing any business, the finding of the court below in this regard has to be found correct. Therefore, the

use of the building for non residential purposes is contrary to the arrangement between the tenant and the landlady. No permission, under Section 17, of the Accommodation Controller was also obtained. In these circumstances, a tenant who has violated the terms of the lease as also the statutory provisions contained under Section 17 of the Act, cannot be heard to contend that he is still entitled to seek the benefit of the second proviso, taking advantage of his own wrong committed to the landlady.

4. In this connection, learned Counsel for the revision petitioner/tenant placed reliance on a decision of this Court in *Chami v. Kalliyani* 1997 (2) KLT 577. The question that arose for consideration in that case was different. This Court in the said decision only held that it cannot be said that in all circumstances, the tenant will be disentitled to claim the benefits of the second proviso when a portion of the building is used for residential purposes and another portion for business purposes and above observation contained in that decision was only an obiter. In *Parvathy Ammal v. Sankara Menon* 1982 KLT 62 this Court held against the claim for the benefit of the second proviso to Section 11(3) made by the tenants occupying a building taken for residential purposes. This decision was referred to in a later Division Bench decision of this Court in *Meenakshy v. Kamalakshy Arrona* 1994 (2) KLT 434 and affirmed the view taken in *Parvathi Ammal's* case (supra). Yet another Bench in a subsequent decision in *Navu v. Chinnayyan Chettiar* : 2003(2)KLT283 also agreed with the view taken in *Parvathy Ammal's* case. All the above decisions were referred to in a later decision in *Annie and Anr. v. Hedwin @ Eddy* 2004 (2) KLJ 635 and agreed with the view taken in *Parvathy Animal's* case in the following lines, in para 7 of that judgment.

It is well settled that the paramount purpose of interpretation or construction of a statute is to find out the intention of the Legislature. In so doing, the court should adopt a construction most agreeable to justice and reason. Keeping this principle in mind and on a combined reading of the second proviso to Section 11(3) and Section 17 of the Act we are inclined to agree with the view taken in *Parvathy Ammal's* case (supra) that the tenant of a residential building will not be entitled to the protection of the second proviso to Section 11(3) of the Act even though living there he carried on a trade or business.

5. In view of the aforesaid decision and in view of the fact that no permission as such was obtained from the landlady for conversion of a portion of the building for non residential purposes and in the absence of an application filed under Section 17 of the Act, it has to be taken that a tenant cannot take advantage of the wrong committed by him to avail any statutory benefit.

6. In the result, we find no merit in this revision. Accordingly, the same is dismissed.

7. At this stage, the learned Counsel appearing on behalf of the revision petitioner/tenant sought a reasonable time to surrender vacant possession of the tenanted premises.

8. We have heard both sides. In the circumstances, we direct that the execution of the order of eviction passed by the Rent Control Court as affirmed by the Appellate Authority and by this Court will stand deferred for a period of two months from today on condition that the revision petitioner/tenant shall file an undertaking in the form of an affidavit before the executing court within a period of two weeks from today, agreeing to surrender vacant possession of the tenanted premises on or before the expiry of two months period from today. Besides that, he shall deposit the entire arrears of rent, if any, within the aforesaid period of two weeks from today and continue to deposit an amount equivalent to rent for use and occupation till vacant possession is surrendered. He shall also not induct any third parties to the tenanted premises till vacant possession is surrendered and in case he commits any default in complying with any one of the above said conditions, the order of eviction will taken force forthwith.