

**IN THE COURT OF THE RENT CONTROLLER/ MUNSIFF, VATAKARA.**

Present: Sri. Yadukrishnan.B, Rent Controller/Munsiff

Thursday, the 7<sup>th</sup> day of March, 2024**R.C.P. No. 41/2022 & RCP 107/2022****RCP 41/2022****Between:**

Kuruttiypravan Veettil Pocker Haji,  
aged 68 years, S/o Ammad, Puthiyotttil house,  
Ayancheri amsom desom, Vatakara Taluk,  
Kozhikode District, Pin- 673541. } Petitioner

**And:-**

Malliveettil Ibrahim Haji, S/o Kunhabdulla Haji,  
aged 72 years, residing at Madathil house,  
Ayancheri amsom desom, Vatakara Taluk,  
Kozhikode District, Kerala State, Pin- 673541. } Respondent

**RCP 107/2022****Between:**

Kuruttiypravan Veettil Pocker Haji,  
aged 69 years, S/o Ammad, Puthiyotttil house,  
Ayancheri amsom desom, Vatakara Taluk,  
Kozhikode District, Pin- 673541. } Petitioner

**And:-**

Malliveettil Ibrahim Haji, S/o Kunhabdulla Haji,  
aged 72 years, residing at Madathil house,  
Ayancheri amsom desom, Vatakara Taluk,  
Kozhikode District, Kerala State, Pin- 673541. } Respondent

These petitions coming on this day for hearing before me in the presence of Sri. K.K. Anilraj, Smt. Henli H. & Smt. Mijisha P, Advocates for the petitioner and the respondent reported no instruction and proceeded set exparte in both IAs, this Court passed the following.

**COMMON ORDER**

RCP 107/22 is a rent control petition filed u/s.11(2)(b) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965, RCP 41/22 is a rent control petition filed by the petitioner u/s.11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred as 'The Act'. Joint trial is passed

in both cases and both rent control petitions are decided on a common order and RCP 107/22 is considered as the leading case. All the evidences with respect to both the rent control petitions are decided in RCP 107/22.

2. The petition averments, in both the rent control petitions are, in brief, as follows:- In RCP 107/22, petitioner is the owner in possession of the petition schedule shop room which has been leased out to the respondent for a monthly rent of Rs.3500/- per month. The petition schedule shop room was entrusted to the respondent by way of the registered lease deed No.18/1986 dated 20.12.1986 of SRO, Thiruvallur and the respondent is occupying the building as per the terms and conditions set forth therein. The respondent without any reason has kept the rent of the shop room in arrears with effect from 1.1.2022 and the same has not been paid in spite of repeated demands. Since the respondent fails to pay arrears of rent he has liability to pay interest thereon at the rate of 6% per annum. The respondent has commenced the textile business in the petition schedule shop room originally. Thereafter he commenced a bakery business and now a third party is doing a mobile phone sales, service and accessory business therein. The respondent has parted with the physical possession of the room and third party or sublessee is in exclusive physical possession and he is carrying the new business therein. Since the mandatory period of statutory notice contemplated under the statute could not be issued by that time the relief u/s.11(4) (i) of the Act could not be inserted in the rent control petition. The respondent has no right to sublet the shop room without the consent of the petitioner/landlord. The petitioner caused to issue lawyer notice dated 6.4.2022 directing the respondent to pay the arrears of rent of the shop room with statutory interest and cost for a period from 1.1.2022 to until date within 15 days from the date of receipt of notice and also to evict the sub lessee from the petition schedule shop room within 30 days from the date of receipt of notice. In RCP 41/22 the petitioner submits that he bonafidely requires the petition schedule shop room for

her daughter as she bonafidely intends and wishes to commence a bakery business from the petition schedule shop room to have an independent source of income and job for her. The petition schedule shop room is most suitable and convenient for commencing the said business. There are no vacant buildings available in the locality for this respondent to start the aforesaid business. Hence the petitioner bonafidely requires the building for conducting bakery business for her daughter. Hence the petitions.

3. Though the respondent in both the rent control petitions filed their objections the counsel for the respondent submitted no instructions when the petitions were listed for trial. Subsequently the respondent was proceeded ex parte.

4. To prove the case of the petitioners, the petitioners filed consolidated proof affidavit. The first petitioner was examined as PW1 and the daughter of the first petitioner was examined as PW2. The documents were marked as Exts.A1 to A7 and commission report and plan got marked as Ext.C1 and C2. The evidence is taken in RCP 107/22.

5. Heard the side of the petitioners.

6. The points that arise for determination are as follows:-

- (1) Whether the petitioner is entitled to claim relief u/s. 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act ?
- (2) Whether the petitioner is entitled to claim relief u/s. 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act ?
- (3) Whether the petitioner is entitled to claim relief u/s. 11(3) of the Kerala Buildings (Lease and Rent Control) Act?
- (4) Reliefs & costs ?

7. **Point No.(1)** :- Regarding the point no.1, the claim of the petitioner is that the respondent committed default in payment of monthly rent from 1.1.2022 onwards. Ext.A1 is the lawyer notice issued by the petitioner dated 6.4.2022 intimating the respondent to pay the rent arrears from 1.1.2022. The landlord-tenant relationship is admitted and the respondent is proceeded exparte in this case. This itself shows that from the exhibited documents the petitioner has made out his case and established that there is arrears of rent which is in default from 1.1.2022 onwards. Hence, the petitioner is entitled to seek the eviction of tenant u/s.11(2)(b) of the Act. The point found accordingly.

8. **Point No.2:-** Regarding the issue of subletting the case of the petitioners is that the respondent without the consent of the petitioner has subletted the building to a third party and now the third party is doing mobile phone sales, service and accessory business in the petition schedule shop room. It is done without the consent of the petitioner and the act of subletting is contrary to the provisions of the terms and conditions of the lease deed. It is an admitted fact that the third party has not been arrayed as a party to this petition. However, the petitioner caused to issued registered lawyer notice as contemplated under the proviso to Section 11(4)(i) of the Act with regard to subletting. The document is marked as Ext.A3. The petitioner also produced a document from Ayanchery Grama Panchayath which itself shows that the respondent is not doing any business in the petition schedule shop room. It is further established through Ext.C2 commission report. As per the report the advocate commissioner has pointed out that at the time of inspection of the petition schedule shop room the shop room was found to be possession of one Mr.Subair, who is conducting business of mobile phone in the petition schedule shop room. Since the respondent proceeded exparte from the available documents including the commission report the petitioner has established the act of subletting. The petitioner has also satisfied the statutory formalities with regard to the subletting

as contemplated u/s.11(4)(1) of the Act. The point found accordingly.

9. **Point No.3:-** Regarding the bonafide need u/s.11(3) the need is for the daughter of the petitioner to start a bakery business in the petition schedule shop room. The daughter was examined as PW3. There are no other buildings available for PW2 to start the bakery business other than the petition schedule shop room. The need projected by the daughter of the petitioner has not been challenged by the respondent at any stage. Since the respondent is proceeded exparte the need of the petitioner succeeds and is entitled to claim benefit of protection u/s.11(3)of the Act on the ground of bonafide need. Since the petitioner has established the bonafide need and the respondent is proceeded exparte it is not necessary to prove and establish the riders stated under first and second proviso of Section 11(3) of the Act. The point found accordingly.

10. **Point No.(4):-** On the basis of the discussions held in points no.1 to 3, the Rent Control Petitions are allowed as follows:-

***In the result, an order of eviction is passed u/s. 11(2)(b), 11(4) (i) and 11(3) of the Act. The respondent is directed to vacate the petition schedule building and to hand over the same to the petitioners within a period of one month from the date of this order. The order u/s. 11(2)(b) will be subject to the provision of S.11(2)(c) of the Act. The petitioners are entitled to get the costs of the petitions.***

***In the result, the R.C.Ps are allowed with costs.***

(Dictated to C.A, typed by him in Office Computer, corrected and pronounced by me in Open Court, on this the 7<sup>th</sup> day of March, 2024)

Sd/-

**RENT CONTROLLER / MUNSIFF,  
VATAKARA.**

**Petitioner's Witness**

PW1 07.03.2024 : Pocker Haji, S/o Ammad.

PW2 07.03.2024 : Shifa, D/o Pocker Haji.

**Petitioner's Exhibits:**

A1 06.04.2022 : Lawyer notice issued by Advocate K.K. Anilraj to respondent.

A2 07.04.2022 : Postal acknowledgment .

A3 06.04.2022 : Notice to the Secretary, Ayancheri Grama Panchayath issued by Advocate K.K.Anilraj.

A4 07.04.2022 : Postal acknowledgment.

A5 08.07.2022 : Reply notice by Secretary, Ayancheri Grama Panchayath to Advocate K.K. Anilraj.

A6 20.12.1986 : Registered kychit between Pocker Haji and Ibrahim Haji.

A7 - : Receipt with counter foil.

Respondent's Witness : NIL

Respondent's Exhibits : NIL

**Court Exhibits:**

C1 04.11.2022 : Commission report submitted by Smt. Athira Oderan, Advocate Commissioner.

C2 04.11.2022 : Commission plan submitted by Smt. Athira Oderan, Advocate Commissioner.

Sd/-

**RENT CONTROLLER / MUNSIFF,  
VATAKARA.**