

**IN THE RENT CONTROL APPELLATE AUTHORITY/
ADDITIONAL DISTRICT COURT-III, KOZHIKODE.
Present: Sri. R. Madhu, Rent Control Appellate Authority/
Addl. District Judge-III, Kozhikode.**

Monday, on 09th day of February, 2026

R.C.A No. 50/2024

Between:

1. Suraiyya P.P, aged 53 years,
W/o Late. Alikoya, "Suraiyyas" YMRC Road,
Meenchantha, Post Govt. Arts College,
Kozhikode-673018
2. Risheena Fathima.A, aged 32 years,
D/o. Late Alikoya, "Suraiyyas" YMRC Road,
Meenchantha, Post Govt. Arts College,
Kozhikode-673018
3. Riba Kadeeja A, aged 29 years,
D/o Late. Alikoya, "Suraiyyas" YMRC Road,
Meenchantha, Post Govt. Arts College,
Kozhikode-673018
4. Rifan Abbobacker. A, Aged 26 years,
S/o Late. Alikoya, "Suraiyyas" YMRC Road,
Meenchantha, Post Govt. Arts College,
Kozhikode-673018
(Appellants 1 to 4 residing in Panniankara Village
in Kozhikode Taluk)
- 5 Kunhi Moideen, A.M, aged 56 years,
S/o P.K Muhammed Koya, "Amina Villa",
Pavangad Calicut-673021
Elathur Village, Kozhikode Taluk.

Appellants/
R3 to R5 & R2

And:

1. K.K Nafeesa, aged 79 years,
W/o Late. K. Kunhimoideen Haji,
KMH House, Perunacherry,
Post Chrupazassi,
Via Kolacherry, Kannur-670601

Respondents
Petitioners in R.C.P

2. K.K Subaida, aged 62 years,
D/o Late. K. Kunhimoideen Haji,
Sumayya Manzil, Post Mullakkodi,
Naniyoor Nambaram Via, Kannur-670602
- 3 K.K Mymoona, Aged 60 years,
D/o Late.K. Kunhimoideen Haji,
Mubarak Manzil, Post Cherupazassi
Kolacherry (Via), Kannur-670601
- 4 K.K Razak Haji, Aged 58 years,
S/o Late. K. Kunhimoideen Haji,
Riyaz Manil, Post Mayyil, Kannur-670602
5. K.K Muhammedkutty Haji, aged 53 years,
S/o Late. K. Kunhikoideen Haji,
Mirsheena Mansil, Poyyoor Road,
Post Mayyil, Kannur-670602
6. K.K Ashraf, aged 48 years,
S/o Late.K. Kunhimoideen Haji,
Inshirah, Post Varam, Near Fish Market,
Kannur-670594
7. K.K Sainudheen, aged 45 years,
S/o Late. K. Kunhimoideen Haji,
Darussalam, Post Cheeleery,
Kannur-670604
8. K.K Shafeek, aged 42 years,
S/o Late K. Kunhimoideen Haji,
K.M.H House, Perunachery,
Post Cherupazassi, Via Kolacherry
Kannur-670601
9. K.K Aboobacker, aged 40 years,
S/o Late. K. Kunhimoideen Haji,
KMH House,Perunachery,
Post Cherupazassi, Via Kolacherry
Kannur-670601
- 10 K.K Jaseena, aged 35 years,
D/o Late T.C Muhammed Kunni,

Sumayya Manzil, Post Mullakkodi,
Naniyoor, Nambram Via, Kannur-670602

- 11 K.K Raihanath, D/o E.C Hamza,
Mubarak Manzil, Kottopyil,
Post Cherupazassi, Kannur-670601
- 12 K.K Raseena, aged 34 years,
D/o E.C Hamsa, KMH House,
Post Cherupazassi, Via Koacherry,
Kannur-670601
Rep.by power of attorney Holder
K.K Razak Haji, aged 58 years,
S/o Late.K, Kunhimoideen Haji.

On appeal against the order of the Rent Control/ Munsiff Court-I A,
Kozhikode Dated: 21.12.2023 in RCP 105/2017

RCP 105/2017

Between:

1. K.K Nafeesa, aged 72 years,
W/o. Late K. Kunhimoideen Haji,
KMH House, Perunacherry,
Post Cherupazassi, Via Kolacherry,
Kannur-0670601
2. K.K Subaida, aged 55 years,
D/o Late. K. Kunhimoideen Haji,
Sumayya Manzil, Post Mullakkodi,
Naniyoor Nambaram Via, Kannur-670602
3. K.K Mymoona, Aged 53 years,
D/o Late.K. Kunhimoideen Haji,
Mubarak Manzil, Post Cherupazassi
Kolacherry (Via), Kannur-670601
- 4 K.K Razak Haji, Aged 51 years,
S/o Late. K. Kunhimoideen Haji,
Riyaz Manil, Post Mayyil, Kannur-670602
- 5 K.K Muhammedkutty Haji, aged 46 years,

Petitioners

- S/o Late. K. Kunhikoideen Haji,
Mirsheena Mansil, Poyyoor Road,
Post Mayyil, Kannur-670602
6. K.K Ashraf, aged 41 years,
S/o Late.K. Kunhimoideen Haji,
Inshirah, Post Varam, Near Fish Market,
Kannur-670594
 7. K.K Sainudheen, aged 38 years,
S/o Late. K. Kunhimoideen Haji,
Darussalam, Post Cheeleery,
Kannur-670604
 8. K.K Shafeek, aged 35 years,
S/o Late K. Kunhimoideen Haji,
K.M.H House, Perunachery,
Post Cherupazassi, Via Kolacherry
Kannur-670601
 - 9 K.K Aboobacker, aged 33 years,
S/o Late. K. Kunhimoideen Haji,
KMH House,Perunachery,
Post Cherupazassi, Via Kolacherry
Kannur-670601
 - 10 K.K Jaseena, aged 28 years,
D/o Late T.C Muhammed Kunni,
Sumayya Manzil, Post Mullakkodi,
Naniyoor, Nambram Via, Kannur-670602
 - 11 K.K Raihanath, D/o E.C Hamza,
Mubarak Manzil, Kottopyil,
Post Cherupazassi, Kannur-670601
 - 12 K.K Raseena, aged 27 years,
D/o E.C Hamsa, KMH House,
Post Cherupazassi, Via Koacherry,
Kannur-670601
Rep.by power of attorney Holder
K.K Razak Haji, aged 51 years,
S/o Late.K, Kunhimoideen Haji.

And:

1. N. Alikoya, (Died), aged about 61 years, S/o Aboobacker, Surayyas, YMRC Road, Meenchanda, Post Arts College, Kozhikode-673018	Respondents
2. Kuni Moideen.M, Shop Room No. 13/480, Ever Green Traders, Ground Floor, Diamond Building, Palayam Junction, Calicut-673001	
3 <u>Suppl. Respondents.</u> Suraiyya P.P, aged 53 years, W/o Late. Alikoya, “Suraiyyas” YMRC Road, Meenchantha, Post Govt. Arts College, Kozhikode-673018	
4 Risheena Fathima.A, aged 32 years, D/o late Alikoya, “Suraiyyas” YMRC Road, Meenchantha, Post Govt. Arts College, Kozhikode-673018 Riba Kadeeja A, aged 29 years, D/o Late. Alikoya, “Suraiyyas” YMRC Road, Meenchantha, Post Govt. Arts College, Kozhikode-673018 Rifan Abbobacker. A, Aged 26 years, S/o Late. Alikoya, “Suraiyyas” YMRC Road, Meenchantha, Post Govt. Arts College, Kozhikode-673018	

This appeal coming on 07th day of February 2026, for final hearing before me in the presence of Sri. B.M Shamsuddin and Smt. E. Misna Advocates for the appellants and of Sri. Harish Babu P.N and Smt. Asha Bhaskar Advocates for respondents and having stood over to this day for consideration the court passed the following.

J U D G M E N T

The above appeal is preferred against the order passed by Rent Controller/Additional Munsiff Court-I, Kozhikode dated 21.12.2023 in R.C.P No.105/2017. The said RCP was filed under sections 11(2)(b), 11(3) & 11(4) of the Kerala Buildings (Lease and Rent Control) Act, 1965 [hereinafter referred to as 'the Act' in short]. The trial court granted eviction order u/s.11(2)(b), 11(3) & 11(4). Aggrieved by the said order, the respondents therein i.e., tenants and the subtenant in the RCP have preferred this appeal. For an easy understanding and appreciation of evidence, the parties herein are referred to as the same status before the trial court i.e the appellants 1 to 4 herein as the respondents 3 to 6, the 5th appellant as the 2nd respondent and the respondents 1 to 12 herein as the petitioners 1 to 12. The 1st respondent died during the pendency of proceedings before the trial and his legal heirs were impleaded as supplemental respondents 3 to 6.

2. The case of the petitioner as stated in the petition are stated hereunder in nutshell:-

The petitioners are the co-owners of the building by name 'Diamond Building' and the scheduled room is situated in the said building. The first respondent before the trial court took the scheduled shop for lease at the rate of Rs.1500/- per month. The rent was in arrears from September, 2016 onwards and the same was willfully kept in arrears in spite of repeated demands made to him by the petitioners. The scheduled shop room is situated in the main business center of the Calicut city abutting the National Highway. The children of the second petitioner namely, Thameem P.K and Kunhi Moideen have no job and they bonafidely required the scheduled shop room along with the adjacent shop room bearing Door No.13/479 for commencing stationery business. They have sufficient means and capacity to commence such business. The first respondent is not doing

any business in the scheduled shop room and he is also not depending upon the income derived from the business conducted in the scheduled shop room. There are other vacant shop rooms near to the scheduled shop rooms for commencing such business for the 1st respondent. For eviction the petitioners issued a lawyer's notice dated 17.10.2016, the 1st respondent after receipt of the same issued reply stating false and untenable contentions. After the issuance of the lawyer's notice, the petitioners came to know that the first respondent is not doing any kind of business in the said shop room and he was also not in possession of the same. He illegally and unauthorizedly transferred the possession of the said shop room to the 2nd respondent and he is doing paper bag business by name 'Evergreen Traders'. The said transfer was done without the knowledge and consent of the petitioners. Thereafter, the petitioners again issued a lawyer's notice dated 19.06.2017 requiring respondents 1 and 2 to terminate the sub lease and surrender the scheduled shop room. The respondents 1 and 2 after receipt of the notice issued a joint reply narrating false and baseless allegations. Based upon the above grounds, the present OP was filed before the trial Court.

3. The contentions raised in the counter filed by the 1st respondent is stated hereunder in nutshell :-

This respondent took lease of the said shop room in the year 1995 from the prior owner for a total consideration of Rs.7,25,000/- (Rupees seven lakh twenty five thousand only) and conducted business therein. This respondent learned that the scheduled shop room was transferred to Kunhumoideen Haji and thereby he regularly paid rent to him. The petitioners filed RCP No.88/2009 claiming bonafide need for petitioners 3 to 5 for commencing supermarkets and the other ground raised therein is u/s.11(2)(b) of Act. The said case was dismissed on merits in respect of sec.11(3) and allowed the claim u/s.11(2)(b) of the Act. Against which the petitioners preferred RCA No.38/2010 before the IIIrd Additional District Court and the same was also dismissed on merits on 15.10.2011. In respect of the

relief u/s.11(2)(b) the 1st respondent paid the arrears of rent and thereby the eviction order passed under 11(2)(b) was set aside based on the order passed in IA No.2292/2013 dated 01.01.2014. As such the present relief u/s.11(3) is legally not sustainable. Thereafter, the petitioners filed RCP No.183/2017 for fixation of rent at the rate of Rs.30,000/- per month and the said fact goes to show that the bonafide needs projected by the petitioners are absolutely false. The bonafide need alleged is absolutely not correct as the petition schedule shop room is not suitable for commencing such business. There are other vacant shop rooms wherein they can commence the proposed business. They have no prior experience for conducting such business. The petitioners are affluent persons and therefore they have no necessity to commence such business. The children of the 2nd petitioner are the permanent residents of Kannur and therefore their claim for bonafide need is not correct and they are conducting business at Kannur. As the petitioners refused to receive the rent, this respondent deposited the rent before the court. It is also stated that the arrears of rent was sent to the first petitioner through a DD. This respondent entirely depends upon the income derived from the business conducted in the scheduled shop room. He has no other source of income. There are no other shop rooms near the scheduled shop room for commencing such a business. In the month of July and August of 2017, this respondent was not available in the locality and he went to Hajj for holy visit and during the said period his employees conducted the business. There is no transfer of ownership to the 2nd respondent as alleged. The petitioners after gaining knowledge about the absence of the 1st respondent in the locality had malafidely preferred this OP alleging grounds under sec.11(4) of the Act.

4. The contentions raised in the counter filed by the respondents 3 to 6 are stated hereunder in nutshell :-

These respondents have raised similar contentions which were raised by the first respondent and therefore for the sake of brevity the said contentions are not

repeated hereunder. Apart from the above contentions it is also contended that there are around 40 to 45 shop rooms in the building and the petitioner usually collects rent from the respective lessees through a collection agent. The said collection agent did not approach the 1st respondent for collecting the rent though the 1st respondent was ready to pay the rent. As such the petitioners are not entitled for interest for the rent amount which was due to them. The rent for the period up to 31.08.2016, having a total amount of Rs.49,145/- was sent to the 1st petitioner through demand draft through SBI Palayam branch and the same was received by him. During the pendency of the RCP, the rent for the period from 01.09.2016 to 31.05.2019 which comes to an amount of Rs.49,500/- was deposited. Again, the rent for the period from 01.06.2019 to 30.09.2020, which comes to an amount of Rs.60,000/- was also deposited. In such a contingency, the relief sought for under sec.11(2)(b) is legally not sustainable.

5. Before the trial court, the fourth petitioner was examined as PW1 and the son of the 2nd petitioner was examined as PW2. Ext.A1 to A4 were marked on the side of the petitioner. The 6th respondent was examined as RW1 and Exts. B1 to B4 were marked. The commissioner's report and plan were marked as Ext.C1 and C1(a).

6. The trial court after a full-fledged trial and hearing both sides, directed the respondents to vacate the petition schedule shop room and the resultant portion of the order is reiterated hereunder:

“In the result, RCP is allowed under Sections 11(2)(b), 11(3) and 11(4)(i) of KBLR Act as follows:

1. *The respondent is hereby directed to put the petitioners in possession of the petition schedule shop room within a period of two months from today, failing which the petitioners can execute the present order with the assistance of the Court.*

2. *That the respondent shall pay the costs of the petition”.*

7. The respondents 2 to 6 aggrieved by the said order have preferred this appeal, on substantial grounds.

8. **In the appeal memorandum the following grounds were raised and the same are stated hereunder in nutshell:**

The court below went wrong in appreciating the evidence in its proper perspective. The court below ought to have considered the fact and also the specific allegation in the petition regarding requirement of a building, there was no jurisdiction to rely on the improvised oral statement and evidence given as PW1 & PW2, that too when faced with evidence with regard to the availability of other buildings in their possession. The lower court below ought to have noted and understood that the petition schedule building was part of a multi-storied shopping complex and that a large number of rooms belonging to them were lying vacant in the building. The rooms which they got vacant possession were adjacent to the petition schedule building and equally important and situated with same importance, similar lie and situation. This aspect was not properly understood and considered by the court below. The lower court ought not have allowed the petition under Section 11(2)(b) as prayed by the petitioners in the R.C.P. The lower court went wrong in not considering the admission of the PW1 and PW2 in evidence regarding the availability of other vacant rooms and they had leased out those rooms to third parties without using it for starting business. The court below ought to have considered the fact that the evidence of PW1, PW2 were contradictory and would disprove the bonafide need of the petitioners and the need of the second petitioner and her two sons. The lower court ought not to have set the second respondent in RCP, ex parte, since no summons was served on him to appear before the trial court. The trial court ought to have considered the case of the appellants that the lawyer's notice was received by the 5th appellant from his

home, after the notice was redirected by the postman to his home address, after taking his address from the tenant. The trial court ought to have considered the fact that the 5th appellant/2nd respondent in the R.C.P. was the nephew (not son in law as mentioned in the order) of the 1st respondent. The trial below went wrong in allowing the petition under section 11(4)(1) of the Act, as there was absolutely no evidence to prove sub-lease as alleged by the petitioners and the petition ought to have been dismissed. The evidence of the RW1 respondent while in the witness box was about a period during which his father was unwell and that at that time father's nephew, who happened to be 5th appellant, had helped his uncle could not have been taken as evidence for holding it as sublease. The trial court ought to have considered the fact that 2nd petitioner on whose behalf whose two children the bonafide need was alleged, was not examined in the case to prove the bonafides and that the evidence of PW2, a son, was not sufficient to prove bonafide. The trial court ought to have held that there are other rooms available in the possession and ownership of the respondent for starting the proposed business. Based on the above grounds, the present appeal was preferred.

9. Before this court, the respondents 1 to 12 entered appearance through their counsel after receipt of the appeal summons.

10. Heard both sides and perused the records.

11. Points that arise for consideration are as follows:-

- (1) whether the application filed by the appellants to receive additional documents in IA No.2/2025 can be entertained?
- (2) Whether the eviction order passed by the trial court under section 11(2)(b) of the Act is legally sustainable or the same requires any interference by this court ?
- (3) Whether the eviction order passed by the court below under section 11(3) of the Act is legally sustainable or the same requires any

interference by this court ?

- (4) Whether the eviction order passed by the court below under section 11(4) of the Act is legally sustainable or the same requires any interference by this court ?
- (5) What is the order as to relief and costs?

Point No.1:-

12. I.A. No.2/2025 is the application filed by the 2nd respondent/5th appellant to receive additional documents. In the affidavit filed in support of the application it is stated that he was set exparte before trial court and in fact no notice was issued to him and therefore he was not in a position to produce the documents before the trial court.

12.1. For the said application a counter was filed by the petitioners stating that those documents were not necessary for a proper and effective adjudication of the case and further no reasons were assigned to the effect that what prevented the respondent to produce the same before the trial court.

Discussion and Findings:

12.2. The 1st document filed along with the application is the postal cover of Ext.A3 notice which was sent to the 2nd respondent, the second document is the certified copy of notice issued to the 2nd respondent in IA No.664/2018 and the third document pertains to the certified copy of summons issued to the 2nd respondent in RCP No.105/2017. The case of the 2nd respondent is that the demand notice (Ext.A3) was addressed to the petition schedule room and the trial court on going through the acknowledgment card inferred that the said notice was received by the 2nd respondent in the petition schedule room.

12.3. The postal cover(now produced) reveals the fact that the said notice was redirected to another address which is at Cheruvannur and from where the 2nd respondent received the same. As per the case of the petitioners the 2nd respondent is a sub-tenant of the 1st respondent and sub-tenancy was created without the knowledge and consent of the petitioners and the 2nd respondent is the occupation of the scheduled shop room and doing business therein. Therefore, if Ext.A3 notice was received by the 2nd respondent from the scheduled shop room it can be inferred that he was in possession of the scheduled shop room. In such a contingency, the postal cover showing that the said notice was redirected to another address at Cheruvannur and from where the second respondents received Ext.A3 notice gains more important and the same is highly essential for a proper and effective adjudication of the case in respect of sec.11(4) of the Act. The other documents which are the summons addressed to the scheduled shop room were returned with endorsement 'not found hence affixed'. The same also gains importance for an effective adjudication under sec.11(4) of the Act. Though the certified copy of the said summons forms part of the court records, the same can be received in evidence for an effective adjudication.

12.4. Accordingly, I.A. No.2/2025 is allowed and the documents filed along with said application can be marked as Ext.B5 to B7. The trial court is directed to include the said documents in the list of documents in the judgment.

Point No.2:-

13. Before going into the merits of the case this court has to consider what are the relevant factors to be considered for granting eviction order under 11(2) of the act

13.1. Section 11(2) of the Act is reiterated hereunder for an easy understanding.-

(a) A landlord who seeks to evict his tenant shall apply to the Rent Control Court for a direction on that behalf.

(b) If the Rent Control Court, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable, it shall make an order directing the tenant to put the landlord in possession of the building, and if it is not satisfied it shall make an order rejecting the application thereof by him:

Provided that an application under this sub-section shall be made only if the landlord has sent a registered notice to the tenant intimating the default and the tenant has failed to pay or tender the rent together with interest at six per cent per annum and postal charges incurred in sending the notice within fifteen days of the receipt of the notice or of the refusal thereof.

[(c) The order of the Rent Control Court directing the tenant to put the landlord in possession of the building shall not be executed before the expiry of one month from the date of such order or such further period as the Rent Control Court may in its discretion allow; and if the tenant deposits the arrears of rent with interest and cost of proceedings within the said period of one month or such further period, as the case may be, it shall vacate that order.

13.2. From a bare reading of the above provisions it is clear that, a tenant is under an obligation to pay or tender the rent in respect of the building under his occupation within 15 days after the expiry of time fixed in the agreement of tenancy or in the absence of such agreement by the last day of next month falling for which the rent is payable. Non-payment of rent, as per contract and statutory

provisions, entitles the landlord to seek possession after sending a registered notice to the tenant intimating the default. If after the receipt of such a notice a tenant pays or tenders the rent together with interest at 6% per annum and postal charges, the right accrued to the landlord to get possession on this ground ceases. Even after passing of the eviction order, a further right is conferred upon the tenant to deposit the rent in arrears under Section 11(2)(c). The law requires the tenant to be dispossessed only if he fails to pay the arrears even after 30 days of passing the final order, and any extension of time thereof. The tenants who have failed to pay the arrears of rent at all the three relevant times were not entitled to any discretionary relief.

Regarding service of statutory notice:

14. Before considering the respective submissions of the learned counsels this court has to consider whether the statutory requirements provided under the proviso attached to Section 11(2)(b) of the act was complied with by the petitioner. The said proviso says that before instituting a petition under section 11(2)(b), a registered notice should be sent to the tenant demanding the payment of arrears of rent with interest at the rate of 6% per annum and the postal charges incurred in sending such notice.

14.1. Ext.A1 is the copy of lawyer's notice dated 17.10.2016 bearing the arrears of rent claimed from November 2014. Ext.A2 is the reply issued by the 1st respondent. Ext.A3 is also the demand notice issued to respondents 1 & 2 wherein the arrears of rent is sought for from September 2016. Ext.A4 is the joint reply issued by both the respondents for Ext.A3 notice. In the OP the arrears of rent is sought for the period from September 2016. Admittedly, there is contradiction in Ext.A1 and A3 regarding the period from which the rent was in arrears. At the time of hearing, the counsel for the petitioners would submit that the same is an error and in fact rent was in arrears from September, 2016 and not from November,

2014. The above aspect was not disputed in the counters filed by the respondents and while crossexamining PW1 and PW2. In such circumstances, this court is also of the view that the same is an error crept in Ext.A1 notice and the same is of little consequence and as such the same is not fatal to the petitioners. From the above discussion and from Ext.A1 to A4, it is very clear that the issuance of notice was done in conformity with the requirements under the proviso attached to sec.11(2)(b).

Section 11(2)(b):-

Submission by the counsel for appellant/respondent.

15. In respect of Sec.11(2)(b), the main contention raised by the counsel for the respondents is that in the building which belongs to the petitioners there were 40 to 45 rooms and usually the petitioners did not collect the rent directly and the rents were collected through a collection agent. Though the 1st respondent was ready and willing to give the rent, the said rent collector failed to approach the 1st respondent for malicious reasons. Therefore, the rent for the period up to 31.08.2016 which comes to Rs.49,145/- was sent to the 1st petitioner through demand draft and the same was received by him. Again as the petitioners neglected to receive the rent amount, the balance rent amount up to 30.09.2020 was deposited before the trial court. As such there are no arrears of rent as claimed by the petitioners and therefore, the eviction sought for under sec.11(2)(b) is liable to be dismissed.

Submission made by the counsel for the petitioner/respondents:

15.1. By refuting the said contentions the said counsel submitted that the fact that the rent was in arrears was frankly admitted in Ext.A2 reply notice and the arrears of rent said to have been paid by the respondents are only during the pendency of the RCP before the trial court and therefore such deposit cannot be treated as due compliance of the provisions enumerated in Sec.11(2)(b) of the Act.

Discussion and Findings:

15.2. The relationship of landlord and tenant is not in dispute and the rate of rent i.e., Rs.1500/-per month is also not in dispute. As submitted by the learned counsel for the petitioners in Ext.A2, it is clearly admitted that the rent was in arrears. The relevant portion is culled out hereunder, *“my client is also ready to pay the remaining arrears of rent which will be sent by cheque by the tenant”*. The same would amply prove that on the date of issuance of demand notice, the rent was in arrears. The said admission comes under the purview of judicial admission. Likewise, in Ext.A4 notice, it is stated that, *“ the rent of the building happened to be in arrears not because my client had failed to pay the rent but because your clients had deliberately not collected the rent from him”*. The same would also prove the fact that even on the date of issuance of Ext.A3 demand notice the rent was in arrears and the contention of the respondents is that the petitioners purposefully failed to receive the rent when the same was offered by the first respondent. In such circumstances, the law is very clear that if a landlord refuses to receive the rent amount, the option available to the tenant is that he can remit the rent to the landlord by money order or issue a notice requiring the landlord to specify a bank into which the rent may be deposited. The above aspect was dealt with Sec.9 of the Act and the same is culled out hereunder.

9. Right of tenant paying rent or advance to receipt.

(1)Every tenant who makes a payment on account of rent or advance shall be entitled to obtain a receipt in the prescribed form for the amount paid, duly signed by the landlord or his authorised agent.

(2)Where landlord refuses to accept, or evades the receipt of, any rent lawfully payable to him by a tenant in respect of building, the tenant may either remit the rent to the landlord by money order after deducting the money order commission and continue to remit any rent which may subsequently become due in

respect of the building in the same manner until the landlord signifies by a written notice to the tenant his willingness to accept the rent or my by notice in writing, require the landlord to specify within ten days from the date of the notice by him, a bank into which the rent may be deposited by tenant to the credit of landlord;

Provided that such bank, if specified as aforesaid shall be one situated in the city, town or village in which the building is situated or if there is no such bank in such city, town or village, within three miles of the limits thereof.

Explanation: - It shall be open to the landlord to specify, from time to time, by a written notice to the tenant and subject to the proviso aforesaid a bank different from the one already specified by him under this subsection.

(3) If the landlord specifies a bank as aforesaid, the tenant shall deposit the rent in the bank and shall continue to deposit in it any rent which may subsequently become due in respect of the building.

(4) If the landlord does not specify a bank as aforesaid, the tenant shall remit the rent to the landlord by money order, after deducting the money order commission and continue to remit any rent which may subsequently become due in respect of the building in the same manner until the landlord signifies by a written notice to the tenant his willingness to accept the rent or specifies a bank in which the rent shall be deposited in according with the provisions of sub-section (2).

15.3. In this regard, our Hon'ble High Court In ***Bhaskaran Assan v. Ammukutty Amma reported in AIR 1993 Kerala 144*** has held that if the tenant is not prudent enough to resort to Section 9, it will require very strong evidence on his side to substantiate a plea that he has paid the rent without obtaining receipts for the same. Again our Hon'ble High Court in ***Sukumaran P v. Hamza Haji reported in 2014 (3) KHC 833*** has held that

Kerala Buildings (Lease and Rent Control) Act, 1965 - S.11(2)(b) - Eviction on ground of arrears of rent - Tenant claimed to have paid rent, but landlord allegedly not in the habit of giving receipts -- Whether sustainable

Held, when tenancy and rate of rent are admitted, burden is upon tenant to prove the plea of discharge of rent -- If landlord was evaded issuing receipts on payment of rent, tenant could have chosen any one of the modes prescribed under S.9 -- Tenant, having failed to take recourse to S.9, liable to be evicted.

15.4. In the present case no such evidence was adduced to show that the first respondent complied with the procedures prescribed under Sec.9 of the Act.

15.5. Now we shall consider the contentions of the respondents that the arrears of rent amounts were deposited before the trial court. In the counter filed by the respondents 3 to 6 it is alleged that during the pendency of the RCP before the trial court, the rent arrears for the period from 01.09.2016 to 30.09.2022 were deposited before the trial court. From the said pleadings itself, it is very clear that such arrears of rent were deposited only during the pendency of RCP and the demand made in Ext.A1 and A3 notices were not duly complied. It is trite that if such payments or deposits of arrears of rent were made during the pendency of RCP, the same is not a ground to reject the claim under 11(2)(b) and such payments can be considered and adjusted while considering an application under sec.11(2)(c) of the Act.

15.6. From the above discussion, this court is of the firm view that the respondents purposefully kept arrears of rent and as such no interference is required in the order passed by the trial court in respect of the eviction order passed under sec.11(2)(b) of the Act. Accordingly, point No.1 is found affirmatively in favour of the petitioners.

Point No. 3:

16. Before venturing into the facts of the case, this court has to consider the object of the act and what are the relevant factors to be considered for granting eviction order under 11(3) of the Act.

16.1. Section 11(3) of the act is reiterated hereunder for an easy appreciation of evidence and for an effective adjudication,

Section 11(3) - Own use and Occupation:

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:

Provided that 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:

Provided further that 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:

Provided further that no landlord whose right to recover possession arises under an instrument of transfer inter vivos shall be entitled to apply to be put in possession until the expiry of one year from the date of the instrument:

Provided further that if a landlord after obtaining an order to be put in possession transfers his rights in respect of the building to another person, the

transferee shall not be entitled to be put in possession unless he proves that he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him.

16.2. From a bare reading of the provisions enumerated in the above section, it is clear that bonafide use and occupation is one of the grounds available for a landlord for evicting his tenant from building. There are four provisos for this section and there is another proviso in Section 11(17) each of these five provisos restrict the landlord's right to get building for his own occupation.

(i) The landlord has another building in his possession. (1st Proviso)

(ii) The tenant is depending on the business conducted in the building for his livelihood and there is no other building available in the locality for conducting the business of the tenant. (2nd Proviso)

(iii) Landlord got right of possession within one year. (3rd Proviso)

(iv) Tenancy commenced before 1940. (Section 11(17))

(v) Tenancy period not over. (Section 11(9)).

16.3. When bonafide need is urged by the landlord, defence available to the tenant is that the landlord does not need the building bonafidely and the tenant is depending on the business or trade carried out in the tenanted premises for his livelihood and no other suitable buildings are available in the locality. Regarding the bonafide need in the petition it is clearly averred that, presently the children of the 2nd petitioner namely, Thameem K.K and Kunhi Moideen have no avocations and they intend to start a stationery business in the scheduled shop room and in the adjoining shop room bearing No.13/479. It is also said that the said shop rooms are ideal, suitable , convenient and adaptable to commence such business and moreover the same is situated in the heart of the Kozhikode city. It is also further stated that they have sufficient means and capacity to commence such business and

no other suitable vacant shop rooms are in their possession to commence such business. The said fact was specifically denied by the respondents in their respective counters and in the forthcoming paragraphs we shall consider the said contentions sequentially.

Submission of the learned counsel for the respondents/appellants.

16.4. The learned counsel would submit that the bonafide need alleged is absolutely false and they have no necessity to commence such business as they are affluent persons, the children of the 2nd petitioner are the permanent residents of Kannur and therefore their requirement to commence business at Kozhikode is not genuine, the children of the 2nd petitioner have no experience for conducting stationery business, they have no idea regarding the area and the other material particulars of the scheduled shop room, till date no preparations were made in the adjoining vacant shop room, the claim for bonafide need made in RCP No.88/2009 was dismissed and as such the present application for the same relief is legally not sustainable, the scheduled shop room is not suitable for commencing such business and the RCP No.183/2017 was preferred by the petitioners for the fixation of fair rent also shows that the aim of the petitioners is to evict the respondents for no reason.

Submission made by the counsel for the petitioners.

16.5. The learned counsel for the petitioners vehemently refuted the contentions of the respondents counsel and he would submit that regarding the bonafide need, the same was clearly narrated in the notices issued by the petitioners as well as in the original petition. Further, the 4th petitioner was examined before this court as PW1 and the son of 2nd petitioner who is in bonafide need of the scheduled room was examined as PW2, they have clearly deposed regarding the bonafide need for commencing stationery business for the betterment of their livelihood. He would add that the evidence spoken by PW1 and

PW2 were not discredited or contradicted at the time of cross examination by the counsel for the respondent. In such circumstances, the oral evidence adduced by PW1 and PW2 can be relied on and based upon which relief can be granted. The said counsel would also add that the affluence of the petitioners is not correct and even if it is considered to be true, the same is not a sufficient ground to reject the claim of the petitioners. Regarding the prior experience for conducting stationery business, the said counsel would submit that PW1 and PW2 have clearly deposed that PW2 have prior experience in conducting stationery business and he would also say that even otherwise the prior experience is not a criteria for deciding the disputed fact of bonafide need. Regarding the other avocation of the children of 2nd petitioner, the said counsel would submit that it is a constitutional right to conduct different kinds of businesses simultaneously and the same would never affect the bonafide need of the petitioners. In respect of the dismissal of RCP No.88/2009, he would submit that the same was preferred by petitioners 3 to 5 herein and the facts considered in the said OP and in the present case are entirely different and therefore the same does not create a bar in deciding the present OP. In respect of the institution of RCP No.183/2017, he would submit that the same was withdrawn by the petitioners and the same is the legal right of the petitioner for seeking enhancement of rent which also does not create a bar. Finally, the said counsel submits that the trial court has elaborately considered the factual and legal aspects and had come to a right conclusion that the bonafide need is a genuine one and therefore the interference of the order passed by the trial court is not necessitated.

Discussion and Findings:

17. The fourth petitioner in the case was examined as PW1 and he has clearly deposed in tune with the averments in the petition, wherein he has clearly stated that,

മെയിൽ ഹർജിയിലെ രണ്ടാം ഹർജിക്കാരിയായ കെ. കെ സുബൈദ എന്നിവരുടെ മക്കൾ തമിം, കെ.കെ. കുഞ്ഞു മൊയ്തീൻ എന്നവർക്ക് മതിയായ വരുമാനം മാർഗ്ഗങ്ങൾ ഇല്ലാത്തതും അവർ ഹർജി പട്ടികയിലെ മുറിയിലും അതിന്റെ വലത്/പടിഞ്ഞാറ് ഭാഗത്തുള്ള 30/479 നമ്പർ മുറിയിലും സ്റ്റേഷനറി കച്ചവടം തുടങ്ങുവാൻ ഉദ്ദേശിക്കുന്നതുമാണ്.

17.1. Likewise, PW2 has deposed that,

“ഹർജി പട്ടിക മുറി നിൽക്കുന്ന കെട്ടിടം കോഴിക്കോട് നഗരത്തിൽ ഏറ്റവും വാണിജ്യ പ്രാധാന്യമുള്ള സ്ഥലത്തു സ്ഥിതി ചെയ്യുന്നതിനാലും, പ്രസ്തുത ലോക്കലിറ്റിയിൽ നല്ല രീതിയിൽ കച്ചവടം നടന്നുവരുന്നതിനാലും, ഹർജി പട്ടിക മുറിയിലും, തൊട്ടടുത്ത മുറിയിലും സ്റ്റേഷനറി കച്ചവടത്തിന് വളരെ നല്ല സാധ്യതയുള്ളതും, നല്ല കച്ചവടം ലഭിക്കുന്നതുമാണ്. ഞങ്ങൾക്ക് സ്റ്റേഷനറി കച്ചവടം നടത്തുന്നതിന് ഹർജി പട്ടിക മുറിയും, തൊട്ടടുത്ത മുറിയുമല്ലാതെ മറ്റ് അനുയോജ്യമായ ഒഴിഞ്ഞ മുറികൾ ഹർജിക്കാരുടെ കൈവശത്തിൽ ഇല്ലാത്തതുമാണ്. മുൻപ്രസ്താവിച്ച പ്രകാരം ഹർജി പട്ടിക മുറിയുടെ തൊട്ടടുത്തുള്ള 13/479 ആം നമ്പർ മുറി ഞങ്ങൾക്ക് സ്റ്റേഷനറി കച്ചവടം തുടങ്ങേണ്ട ആവശ്യത്തിലേക്ക്, പ്രസ്തുതമുറിയിൽ നിന്നും വാടക കൂടിയാന്മാരെ ഒഴിപ്പിച്ചുകിട്ടുന്നതിന് വേണ്ടി ഹർജിക്കാർ ബഹുമാനപ്പെട്ട ഈ കോടതി മുമ്പാകെ R.C.P.No.26/2017 ആയി ഹരജി ബോധിപ്പിച്ചിരുന്നതും പ്രസ്തുത ഹരജിയിൽ പ്രസ്താവിച്ച പ്രകാരം ആയതിലെ പീടിക മുറി ഞങ്ങൾക്ക് ഉത്തമമായ സ്വന്താവശ്യമുണ്ടെന്ന് ബോധ്യപ്പെട്ട് ബഹുമാനപ്പെട്ട കോടതി 03/11/2022 ആം തീയതിയിലെ ഉത്തരവ് പ്രകാരം ഹരജി അനുവദിച്ചിട്ടുള്ളതും ടി. ഉത്തരവിനെതിരായി പ്രസ്തുത കേസിലെ വാടക കൂടിയാന്മാർ ബഹു. Rent Control Appellate Authority മുൻപാകെ RCP 12/2023 ആയി അപ്പീൽ ബോധിപ്പിച്ചിട്ടുള്ളതും ആയത് നിലവിലുള്ളതുമാണ്”.

17.2. The facts deposed regarding the bonafide need was not seen shattered, discredited and contradicted at the time of cross examination. It is trite 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 contrary.

17.3. Now coming to the next aspect regarding the contention raised by the learned counsel for the respondents that the petitioners are affluent persons in the locality and therefore there arises no necessity for commencing such business for the children of 2nd petitioner is also not sustainable. Our Hon'ble High Court in ***Mavilattu Shamsudheen v. Thanthonnikkandiyil Balan Nair @ Narayanan Nair*** reported in **2014 (2) KHC 364** has held that

Kerala Buildings (Lease and Rent Control) Act, 1965 - S.11(3) - Landlord very much affluent with income from other sources with lots of assets and is a member of many clubs - Impact on bona fide need - Income from other sources will not stand in the way of granting eviction - Just because landlord has landed properties or assets yielding attractive income, his claim for eviction cannot be rejected by the Court, if the Court is otherwise satisfied that he is determined to start a business of his own.

17.4. Again, our Hon'ble High Court in ***Sampath S Pawar v Chandroth Vennakaloth Ibrahim*** reported in **2013(3) KHC 495** has held that

Kerala Buildings (Lease and Rent Control) Act, 1965 - S.11(3) - Eviction on the ground of bona fide need - Held, if the claim is bona fide, landlord owning a building and conducting business therein can claim eviction of his tenant in respect of another building - In other words, even if landlord runs other business it would not disentitle him to claim eviction of the tenanted premises if he establishes bona fide need.

17.5. The next contention raised is that due to the dismissal of RCP No.88/2009 which was filed under the ground of bonafide need, the relief sought for herein creates a bar. Admittedly, the said RCP No.88/2009 was preferred by the petitioners 3 to 5 herein to commence a supermarket business and the same was

dismissed. The present case was filed by the children of the 2nd petitioner to commence a stationery business. The facts to be adjudicated in the present case and in the fact adjudicated in the said case are entirely different and the evidence to be adduced also differs from the earlier case. As such the dismissal of RCP No.88/2009 does not operate as res-judicata or create a bar in deciding the present case.

17.6. The other contention raised by the said counsel is that the 2nd petitioner and his family members are permanent residents of Kannur and they are doing separate business at Kannur. Therefore, they have no necessity to come down to Kozhikode to commence the proposed business. The main point urged by the said counsel is that for the above said reason, the bonafide need is not believable. As submitted by the said counsel it is brought out in evidence that Kunhi Moideen is taxi driver and Thamim is an agriculturist. The said contention is also not sustainable for the reason that there is no bar to commence different types of business or job in any place as they wish. Our constitution also provides that it is a fundamental right for the citizen of India to commence any kind of job in any place as he wishes.

17.7. The other contention raised is that, regarding the institution of RCP No.183/2017 which was admittedly filed by the petitioners herein for enhancement of rent under section 5 of the Act. The said RCP was withdrawn by the petitioners and even otherwise it is trite that there is nothing wrong for the landlord to aspire for getting a higher rent and also to demand for a higher rent by preferring appropriate proceedings and the same is not a ground to suspect the genuineness of the need projected by the petitioners. The above aspect was considered by the Hon'ble High Court in **Sukesini Amma v. Nagarajalu reported in [2004, (2) KLT, 427]**.

17.8. The another aspect canvased by the said counsel is that the adjacent room bearing Room No.13/479 was evicted by the petitioners and the non commencing of the proposed business in the said shop room create suspicion over the bonafide need put forward by the petitioners. It is a specific case of the petitioners that they require the scheduled shop room and Room No.13/479 to commence the proposed business. The above aspect was considered by the Hon'ble High Court in **George T.I v. K.A Stanley** reported in **2022 KHC online page No.543** wherein it is held that

“Kerala Buildings (Lease and Rent Control) Act, 1965 - S.11(3) - Bona fide need - Mere fact that landlord had an opportunity to get vacant possession of another room and did not start business does not mean that the bona fide need cannot be said to be genuine - Several factors would go into the mind of landlord and once a choice is made by landlord to take a particular room or rooms for his own occupation, even if, during the pendency of the eviction petition, he comes in possession of another room, that may be immaterial”.

17.9. In view of the above discussion, the said contention raised is legally and factually not sustainable.

17.10. The yet another contention raised by the said counsel is regarding the suppression of material facts. For the said aspect the counsel submitted that it is stated in the petition that the children of 2nd petitioner have no avocation therefore the bonafide requirement of the petition schedule shop room to commence the proposed business is absolutely false. At the same time it is brought out in evidence that Kunhi Moideen is a taxi driver and Thamim is an agriculturist which amounts to suppression of material facts. The said contention is not tenable for the reason that the suppression of jobs and other particulars does not amount to material one since even if they have other jobs, the same would never affect the bonafide requirement.

17.11. At this juncture it is prompt to quote the decision rendered by our Honourable Supreme Court in **Adil Jamshed Frenchman (Dead) By Lrs. v. Sardar Dastur Schools Trust and Others** reported in **2005 KHC 413**,

Rent Control - Rent Control and Eviction - Bona fide requirement of landlord - Meaning of - to be construed - Explained.

17.12. In the above decision paragraph 8 gains more importance and the same is reiterated hereunder,

8. The decree of the Trial Court is based on the landlords' bona fide requirement of the accommodation. In appeal, the question before the court for adjudication was whether the Trial Court was justified in passing the decree in favour of the landlords on the ground of bona fide need and the tenants obviously were within their rights to show that the need of the landlords was not genuine. The evidence produced in that direction would be relevant for the purpose of adjudicating the question of need of the landlords. In Shiv Samp Gupta v. Dr. Mahesh Chand Gupta (1999 (6) SCC 222) this Court has held that 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. In Deena Nath v. Pooran Lal (2001 (5) SCC 705) this Court reiterated that 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.

17.3. In view of the above discussions this court is of the firm view that the bonafide need put forward by the petitioners are genuine in nature and the respondents have miserably failed to disprove the claim of bonafide need put forward by the petitioners.

First Proviso of Section 11(3):

18. Now the burden shifts upon the respondents to prove that the landlords are in possession of another building, and if it is proved, then the burden shifts to the landlords to give special reasons as to why they have not chosen that building.

18.1. In the present case, in the counter file by the respondent, it is alleged that the petitioners are in occupation of the other vacant shop rooms. When this question was put to PW1, he specifically denied the said aspect. The commissioner in his report has not stated the availability of vacant shop rooms near to the petition schedule shop room. At this juncture, the learned counsel for the respondents by relying upon Ext.B1 to B4 would submit that the said shop rooms belonged to the 2nd petitioner and the persons who are in bonafide need of the petition schedule property and therefore it can be inferred that the petitioners were in possession of vacant shop rooms. The said contention is also not sustainable for the simple reason that though it was proved through Ext.B1 to B4 that they are the owners of other shop rooms, the fact that whether the said shop rooms were in vacant possession of the petitioners was not proved. Further, Ext.B1 & B2 refers to the shop rooms owned by the second petitioner and the same is situated in Kannur which is not near to the petitioner scheduled shop room. Likewise, Ext.B3 & B4 cash receipts were issued from Mayyil Gramapanchyath which is also situated in Kannur. Therefore, Ext.B1 to B4 are not relevant documents for the adjudication of these points. Apart from the above fact, the details regarding the shop rooms said to have been vacant were not set forth in the counter. In such circumstances,

it can be safely concluded that in the present case, the first proviso attached to Section 11(3) never gets attracted.

Second Proviso of Section 11(3):

19. Now this court is bound to consider the 2nd proviso attached to section 11(3) and to ascertain whether the facts of the present case falls within the said proviso.

19.1. In order to constitute this proviso, two conditions should prevail. (1) Such a tenant is depending on his livelihood mainly on the income derived from any trade or business carried on in such a building. (2) There is no other suitable building available in the locality for such a person to carry on such trade or business. If both these conditions are present simultaneously the court cannot order an eviction on the ground of own use. The burden of proof of both the conditions are on the tenant. The two ingredients mentioned in the 2nd proviso are not disjunctive but conjunctive.

19.2. In **Shahul Hameed A. v. P. E. Abdu Razak** reported in **2016 (5) KHC 820** our High Court has held that,

Kerala Buildings (Lease and Rent Control) Act, 1965 - S. 11(3) Second Proviso - Tenant need to produce evidence to prove his income and he cannot claim protection under Second Proviso by hiding his income -Though tenant may not prove his precise income, he should prove approximate income and if he has more sources of income than one, he should prove approximate income from each source to prove that the income from the business or trade conducted in the tenanted premises is the main source of income for his livelihood.

Kerala Buildings (Lease and Rent Control) Act, 1965 - S. 11(3) Second Proviso - Second Proviso has two limbs - Burden to prove ingredients of both the limbs of the Second Proviso is on the tenant.

19.3. The evidence of RW1 goes to show that he was in possession of documents relating to the income which he derived from the petition schedule shop room. At the same time no documents were filed before the trial court or before this court to show that the respondents were deriving income from the business conducted in the scheduled shop room. No explanation is also offered to show that, what prevented the respondents from producing the said documents. In such circumstances, this court has no hesitation to hold that the respondents have failed to prove the first limb of second proviso attached to Section 11(3).

19.4. Now coming to the next aspect regarding the non availability of suitable shop rooms, no evidence was adduced on the side of the respondents to prove the said fact. From the evidence of RW1 it is seen that he has not personally verified the non availability of the other shop rooms and he has also not produced the occupancy register for the said locality. The same would prima facie show that the respondents were least bothered to prove the said aspect. In Ext.C1, it is stated that the nearby shop owners told the commissioners that there are no other vacant rooms in the locality and PW1 also failed to identify such vacant rooms. The said fact is not admissible for the reason that the same is hearsay in nature and the commissioner has not personally verified whether such vacant shop rooms are not available in the said locality. In such circumstances, it can be safely inferred that the respondents have failed to prove the second limb of the second proviso attached to Section 11(3) of the Act.

19.5. From the discussion narrated above it is clear that the hardship that the petitioners would suffer by not occupying their own premises would be far greater than the hardship the respondent would suffer by having to move out to

another place. Therefore point No.3 is answered affirmatively in favour of the petitioners.

Point No.4:-

20. Section 11(iv)(i) of the Act is reiterated hereunder for an easy understanding.

Section 11(4)(i) -If the tenant after the commencement of this Act, without the consent of the landlord, transfers his right under the lease or sub-lets the entire building or any portion thereof if the lease does not confer on him any right to do so.

Provided that an application under this clause shall not be made for the first time in respect of one and the same tenancy unless the landlord has sent a registered notice to the tenant intimating the contravention of the said condition of the lease and the tenant has failed to terminate the transfer or the sub-lease as the case may be, within thirty days of the receipt of the notice or the refusal thereof.

Explanation- Where on the partition of a joint family or of the rights of co-tenants or on the dissolution of a firm, the right of the joint family or the co-tenants or the firm under a lease is vested in a member of the joint family, or a co-tenant or a partner, as the case may be, whether by act or parties or otherwise, no transfer by the tenant of his right under the lease shall be deemed to have taken place within the meaning of this clause;

20.1. From a bare reading of the above provision of law, it is clear that issuing a registered notice is a mandatory and prerequisite one. The ingredients to be satisfied before an order of eviction can be passed on the ground of subletting are

- 1) The tenant has sublet or assigned or parted in the possession whole or any part of the premises.
- 2) Such subletting or assigned or parted with the possession has been done without the consent or writing of the landlord.

20.2. Based upon the above discussion, before entering to the facts of the case this court is bound to consider whether the notice was issued to the 1st respondent as contemplated under the proviso attached to 11(4)(i). The law does not mandate issuance of such statutory notice to the 2nd respondent. In the present case Ext.A3 would go to show that statutory notice was issued to the 1st respondent. For the said notice the 1st respondent and the 2nd respondent have issued a joint reply notice i.e., Ext.A4 denying such sub-tenancy. From the above discussion it is evident that the statutory requirement for invoking section 11(4)(i) was complied by the petitioners.

Submission by counsel for respondents/appellants:

20.3. Regarding section 11(4)(i), the learned counsel for the respondents would submit that the trial court has wrongly come to such a conclusion mainly by relying upon Ext.A3(d) which is the acknowledgment card wherein Ext.A3 notice was issued to the second respondent in the address of the petition schedule shop room is stated. In fact, the notice was redirected to “Aditya Flexo Park, 12/724B, Malabar Plywood Compound, Cheruvannur Post” and the same was received by the second respondent from the said address. Therefore, no presumption arises that the 2nd respondent was in possession of the scheduled shop room. Based upon which, the said counsel would submit that the initial burden to prove that the 2nd respondent is in occupation of the scheduled shop room lies upon the petitioners and no direct evidence was let in by them to prove the said fact. Therefore, the order passed by the trial court in respect of section 11(4)(i) is liable to be set aside.

Submission by counsel for petitioners/respondents:

20.4. The learned counsel for the petitioners refuted the said contentions and he would submit that Ext.A4 reply notice was jointly issued by respondents 1 and 2 which prima facie shows that they have colluded together and the said counsel would also pointed out that the 5th appellant is the 2nd respondent before the trial court which also prove the collusion among them for jointly preferring this appeal. He would also add that RW1 at the time of cross examination would say that after the death of his father respondents 1 to 6 were doing business in the scheduled shop room and they were in possession of license obtained from the corporation, GST license, the particulars of sale conducted in the said shop, bill book, accounts book and day book. By pointing out this evidence, the said counsel would submit that if really the respondents are conducting business in the said schedule shop room they ought to have produced the above referred documents before the court. The non production of the said documents would point out the fact that the respondents were not in occupation of the scheduled shop room. Again the said counsel would add that RW1 has categorically admitted the fact that during the period 2016-2018 while the 1st respondent fell ill, the 2nd respondent took control of the shop, the same also prima facie shows that the second respondent was in occupation of the said shop room as a sub-lessee.

Discussion and Finding:-

21. In view of the above said rival submissions by both the counsels this court is bound to consider what is a nature of evidence required to prove the ingredients attached to section 11(4)(i). Admittedly, the 2nd petitioner is the son of the 1st petitioner's sister. In the case law titled us **Gireesh Babu T. P Vs.Jameela and others** reported in **2021 KHC (650)** it is held that

Kerala Buildings (Lease and Rent Control) Act, 1965 -Sec.11 (iv) (i) - Eviction on the ground of subletting - held, since payment of the rent or monetary consideration may have been made secretly , law does not require such payments to be proved by affirmative evidence and who is permitted to draw up on the fact of the case proved at the trial including delivery of exclusive possession to infer that premises may sublet.

21.1. Further in the same case law it was further held that,

Kerala Buildings (Lease and Rent Control) Act, 1965 -Sec.11 (iv) (i) - Eviction on the ground of subletting - when a person other than the tenant is found to be in the building, burden is on the tenant to show that there is no sub lease or transfer of possession.

21.2. In the above case law para No.60 & 61 gains more importance for an effective adjudication of this case and therefore the same are reproduced hereunder:-

Sub tenancy or subletting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This agreement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the

contract or agreement or understanding between the tenant and the sub tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sublet had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump-sum in advance covering the period for which the premises is let out or sublet or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the Court is permitted to draw its own inference upon the facts of the case proved at the trial including the delivery of exclusive posses to infer that the premises were sublet.

It is true that with regard to the question of sub-lease, there should be the exclusive possession by the alleged sub lessee. But as stated in many cases, the transaction is between the lessee and sublessee. When a person other than the tenant is found to be in the building, the burden is on the tenant to show that there is no sub-lease or transfer of possession. On the facts of the case on hand, the Division Bench found that the tenant has not discharged the burden. Both the Courts found that the sub-lease is proved. The tenant, even though had tried to argue on the basis of the licence, the mere fact that the licence is in the name of the tenant cannot ignore the possibility of another person being in possession. The Commissioner has visited the property and he has filed a report. His evidence is relevant. There is nothing wrong in accepting the report of the Commissioner and on the basis of it, the other evidence adduced in the case, one can come to the conclusion that the tenant has not been successful in establishing that respondents 2, 3 and 4 are not in exclusive possession. The Division Bench noticed that the evidence of RW1, the Secretary of Kerala High Court Bar Association also shows that the second respondent is conducting a hotel in his own name.

21.3. From the above case law, it is very clear that if the petitioners were able to prove the occupation of the 2nd respondent in the scheduled shop, it can be inferred that the fact of sub-tenancy. In the case on hand from Ext.B5 it is very clear that the 2nd respondent received Ext.A3 notice not from the scheduled shop room as found by the trial court, the same was received from Cheruvannur. In such circumstances, it cannot be presumed that the 2nd respondent was also in occupation of the scheduled shop room at the time issuance of Ext.B3 notice. The evidence of PW1 and PW2 goes to show that they have no direct knowledge regarding the occupation of the 2nd respondent and PW1 at the time of cross examination had stated that the rent for such sub-tenancy is Rs.1000/-per day but he was unable to adduce any direct evidence regarding the said fact. Now we shall deal with the evidence of RW1. RW1 at the time of cross examination has stated that

“ഒന്നാം എതിർക്കക്ഷിയുടെ സഹോദരിയുടെ മകനാണ് രണ്ടാം എതിർക്കക്ഷി. അദ്ദേഹം ഹർജി പട്ടിക മുറിയിൽ ഉണ്ടാകാറില്ല എന്ന് ചോദിച്ചാൽ ബാപ്പയ്ക്ക് വയ്ക്കാതിരിക്കുന്ന സമയം അദ്ദേഹം ഉണ്ടാവാറുണ്ട് ഏതു കാലഘട്ടത്തിലാണ് രണ്ടാം എതിർക്കക്ഷി അപ്രകാരം ഹർജി പട്ടിക മുറിയിൽ സഹായിച്ചിരുന്നു എന്ന് ചോദിച്ചാൽ 2016 മുതൽ 2018 വരെയുള്ള കാലഘട്ടത്തിലാണ്. 2016 മുതൽ 2018 വരെ ഹർജി പട്ടിക മുറിയിലുള്ള കാര്യങ്ങൾ മുഴുവൻ നടത്തിവന്നിരുന്നത് കണ്ണൂർ മൊയ്തീൻ ആണോ എന്ന് ചോദിച്ചാൽ ശരിയല്ല ബാപ്പയാണ് നടത്തിവന്നിരുന്നത്“.

21.4. From the entire reading of the above evidence RW1 had deposed only to the effect that the 2nd respondent helped the business of the 1st respondent while he was ill during the period 2016-2018. From the above evidence, it cannot be inferred that the 2nd respondent is in occupation of the scheduled shop room. In this regard the law is also very clear that when it is shown that a person other than the original tenant is in exclusive possession, the burden is on the tenant to disprove the prima facie case of subletting established by the landlord. The above

aspect was considered by the Hon'ble High Court in **M/s.Cakolas Sil House v. Abdul Sathar Ismayil Sait** reported in **1999 KHC 8**. Again the Hon'ble High Court in **Sameera v. M.C. Mammatty** reported in **2013 (4) KHC 826**, it was held that the onus of proof of subletting is on the landlord and if the landlord prima facie shows that the 3rd party is in exclusive possession of the premises, it would then be for the tenant to rebut the evidence. In the present case as discussed above the petitioners have failed to discharge the initial burden of proof that the 2nd respondent was in exclusive possession of the scheduled shop room and conducting business therein. Apart from the interested testimony of PW1 and PW2 no other evidence was let in by the petitioners to prove the disputed fact. In the Ext.C1 report as well the commissioner has stated that the 2nd respondent was not present there at the time of his visit. The petitioners have also failed to examine the nearby tenants who have been conducting business to establish the fact that it was the 2nd respondent who is in occupation of the scheduled shop room. Merely for the reason that the respondents 3 to 6 failed to produce the documents relating to the business conducted by them it cannot be inferred that it was the 2nd respondent was conducting business in the schedule shop.

21.5. In view of the above discussion, this court is of the firm view that the petitioners have failed to prove the initial burden of subletting and therefore the interference of the order passed by the trial court in respect of section 11(4)(i) is necessitated. Consequently, the eviction order passed by the trial court in respect of the above provision is set aside.

Point No.5:-

22. As discussed in point 1 to 4, no interference is required in the order passed by the trial court in respect of the eviction order passed under section 11(2) (b) and section 11(3) of the Act. The order passed under section 11(4)(i) is set aside . Hence the appeal is partly allowed to the above extent.

In the result,

- (1) The appeal is partly allowed.
- (2) The respondents 3 to 6 are hereby directed to surrender the vacant possession of the scheduled shop room to the petitioners within a period of two months from the date of this order.
- (3) The appellants/respondents are liable to pay the costs incurred to the respondents/petitioners for the above proceedings.

(Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court, on this 9th day of February, 2026).

**Rent Control Appellate Authority/
III Addl. District Judge.**

Appellant's /Respondent's Witness & Exhibits:-

**Rent Control Appellate Authority/
III Addl. District Judge.**

/

