



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 28TH DAY OF MARCH 2025 / 7TH CHAITHRA, 1947

RCREV. NO. 208 OF 2024

AGAINST THE JUDGMENT DATED 29.06.2024 IN RCA NO.16 OF 2018 OF
ADDITIONAL DISTRICT COURT & SESSIONS COURT - III, ALAPPUZHA / III
ADDITIONAL MACT, ALAPPUZHA ARISING OUT OF THE ORDER DATED
28.07.2018 IN RCP NO.9 OF 2016 OF PRINCIPAL MUNSIF COURT,
CHERTHALA

REVISION PETITIONERS/RESPONDENT AND ADDITIONAL RESPONDENTS 2 TO
4/RESPONDENT:

- 1 M. NARAYANAN, (DIED)
AGED 67 YEARS
S/O MOORTHYMOOPAN, CHIRUTHAPARAMBIL, MADACKAL,
CHERTHALA, (KMM DRUG HOUSE, OPPOSITE CATHOLIC SYRIAN
BANK, MUTTOM BAZAR, CMC29, BUILDING NO.536,
CHERTHALA P.O., ALAPPUZHA, PIN - 688524
- 2 SANTHA
AGED 62 YEARS
W/O LATE M. NARAYANAN, CHIRUTHAPARAMBIL, MADACKAL,
CHERTHALA.P.O, ALAPPUZHA, PIN - 688524
- 3 MANOJ
AGED 38 YEARS
S/O LATE M. NARAYANAN, CHIRUTHAPARAMBIL, MADACKAL,



CHERTHALA.P.O, ALAPPUZHA, PIN - 688524

4 MANJUSHA
 AGED 33 YEARS
 W/O. VINAYAN, BALAN NIVAS, KACHERIPPADI JUNCTION,
 ERNAKULAM, PIN - 682018

BY ADV D.PREM KAMATH

RESPONDENTS/APPELLANT/PETITIONER:

JOSEPH THOMAS
AGED 64 YEARS
S/O THOMAS, CHAKKALACKAL HOUSE, CMC-29,
CHERTHALA NORTH VILLAGE, CHERTHALA, PIN - 688524

BY ADVS.
R.SEEMA
P.R.REENA(K/000510/1998)

THIS RENT CONTROL REVISION HAVING COME UP FOR HEARING ON
21.03.2025, THE COURT ON 28.03.2025 PASSED THE FOLLOWING:

**ORDER****P. Krishna Kumar, J.**

The respondent herein filed a petition for eviction under Section 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 ('the Act', for short). As per the order dated 28.07.2018, the Rent Control Court found that the respondent is entitled to get eviction only under Section 11(2)(b), and not under Section 11(3) of the Act. This order was challenged in appeal before the Rent Control Appellate Authority. The Appellate Authority initially concurred with the findings of the Rent Control Court. When the matter came up before this Court, as per order dated 20.02.2024, it set aside the order of the Appellate Authority and remanded back the matter for impleading the legal heirs of the deceased tenant.



2. After the remand, the Appellate Authority found that the landlord is entitled to get vacant possession of the building on both counts i.e., for *bona fide* own occupation under Section 11(3) and for arrears of rent as per Section 11(2)(b) of the Act. This order is challenged before us as per Section 20 of the Act.

3. The landlord sought for vacant possession of the petition-scheduled shop room by claiming that he *bona fide* required it for starting a textile business therein. He further contended that no other vacant building was available in his possession. The attempt of the landlord was resisted by the tenant by contending that the petition-scheduled shop room was taken on rent by the father of the present petitioners from the father of the respondent herein and thus there is no landlord-tenant relationship between them. They also challenged the validity of the Will relied on by the respondent, to trace his title. They also contended that the respondent



is in possession of other shop rooms and he has no *bona fides* in making the claim.

4. As both the Rent Control Court and the Rent Control Appellate Authority concurrently found that the denial of title by the petitioners was without any *bona fides*, we are not adverting to the said question. Anyway, the case of the petitioners is only that the tenancy was created by the father of the respondent.

5. As regards the contention that the landlord failed to prove the *bona fide* need and hence the Appellate Authority ought not have interfered with the said finding, we find no reason to uphold the same. The bone of contention of the petitioners for challenging the genuineness of the claim of the landlord is that he prevaricated during cross-examination. The landlord contended in the eviction petition that he was unemployed. However, during cross-examination, he stated that he was working as a Company Supervisor at the time



of filing of the petition. The Rent Control Court placed heavy reliance on this contradiction and decided the matter against the landlord.

6. We find no reason to agree with the view of the Rent Control Court. It is true that the respondent made such a statement during cross-examination, but the cross-examiner did not invite the attention of the witness/respondent to his statement in his pleadings. In view of the given factual circumstance, as the witness was not given an opportunity to explain as to the real purport of the stand taken in the pleading, it is not fair to disbelieve him solely for that deviation in the deposition.

7. We are also not impressed by the other observations of the Rent Control Court for rejecting the claim put forward by the landlord under Section 11(3) of the Act. The Rent Control Court rejected the claim of the landlord for one more reason. He deposed before the court



that out of the four rooms he obtained from his father through the Will, he has been residing in three rooms and the fourth room is in the occupation of the tenant. Based on this, the Rent Control Court observed that it was the burden of the landlord to prove that those three rooms were not suitable for conducting a textile shop as well as to prove that he is actually residing in the remaining three rooms. As per the scheme of the Act, it is the burden of the tenant to specifically point out the vacant building available in the possession of the landlord for invoking the first proviso to Section 11(3) of the Act. In the written objection filed by the tenant, what is pleaded is only a bald allegation that the landlord has other vacant buildings.

8. By the nature of the above averments, the observations made by the Rent Control Court are obviously incorrect. The Rent Control Appellate Authority correctly found that the landlord *bona fide* required the petition-scheduled building and that the tenant failed to



discharge his initial burden, to invoke the first proviso to Section 11(3).

9. The tenant further failed to prove the twin conditions for attracting the second proviso to Section 11(3) of the Act. In this circumstance, we find no reason to interfere with the impugned order.

10. Therefore, this Rent Control Revision Petition is dismissed. However, considering the fervent plea made by the learned counsel for the petitioners, six months' time is granted to the petitioner to surrender vacant possession of the petition-scheduled shop room to the respondent, subject to the following conditions:

(i) The petitioners shall file an affidavit before the Rent Control Court or the Execution Court, as the case may be, within two weeks from the date of receipt of a certified copy of this order, expressing an unconditional undertaking that they will



surrender vacant possession of the petition-scheduled shop room to the respondent-landlord within six months from the date of this order and that, they shall not induct third parties into possession of the petition-scheduled shop room, and further, they shall conduct any business in the petition schedule shop room only on the strength of a valid licence/permission/consent issued by the local authority/statutory authorities;

(ii) The petitioners shall deposit the entire arrears of rent as on date, if any, before the Rent Control Court or the Execution Court, as the case may be, within one month from the date of receipt of a certified copy of this order, and shall continue to pay rent for every succeeding month, without any default;



(iii) Needless to say, failing to comply with any one of the conditions stated above, the time limit granted by this order to surrender vacant possession of the petition-scheduled shop room will stand cancelled automatically, and the landlord will be at liberty to proceed with the execution of the order of eviction.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

P. KRISHNA KUMAR

JUDGE