

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7898 OF 2013

[ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 18618 OF 2009]

A. THAUJUDEEN

... APPELLANT(s)

Versus

S. KHALEELU REHMAN

... RESPONDENT(s)

## O R D E R

Leave granted.

2. A. Thajudeen - appellant is the landlord. He took out the proceedings for eviction of the respondent - S. Khaleelu Rehman (tenant) from the subject premises under Sections 11(2)(a)(b) and 11(3) of the Kerala Building (Lease and Rent Control) Act, 1965 (for short "Rent Control Act"). The landlord pleaded that the subject premises were needed by him for his own occupation. The tenant contested the rent control proceedings on diverse grounds. His defence was that the landlord had no intention to start his own business as set-up in the application for eviction; it is only a pretext for eviction. More over the business conducted by the tenant was the sole means of livelihood for himself, his family and there is no other premises available to him for shifting the business.

: 2 :

3. The Rent Controller, Punalur after recording the evidence and hearing the parties, held that the landlord had been able to establish that the subject premises were needed by him for his own occupation and, accordingly ordered tenant's eviction.

4. The tenant challenged the eviction order passed by the Rent Controller in an appeal before the appellate authority but there also, he was unsuccessful.

5. The tenant challenged the concurrent orders in

the revision petition before the High Court.

6. Before the High Court, the tenant sought to set-up a plea that one Rajendran had filed a suit for specific performance of agreement for sale entered into between him and the landlord with regard to the subject premises which disentitles the landlord to the decree for eviction on the ground of bona fide need. The High Court felt that this aspect needed to be examined by the Rent Controller as this has fundamental impact on the question of bona fide need of the landlord. Accordingly, the High Court remanded the matter to the Rent Controller for fresh disposal.

7. In our opinion, the entire approach of the High Court in consideration of the matter was flawed. The suit for specific performance of the agreement for sale : 3 :

filed by one Rajendran has no bearing on the eviction proceedings which the landlord took against the tenant. The fact of the matter is that no decree has been passed in that suit against the landlord. As of today, that suit stands dismissed in default although tenant says that an application for restoration of the suit is pending.

8. We do not intend to go into the question whether the agreement in the suit for specific performance is genuine or not (the landlord claims that the agreement in that suit is forged) because this aspect would be seen by that court if the suit is restored. Suffice, however, to say that the event relied upon by the tenant to upturn the eviction order has no bearing for consideration of the matter on merits by the High Court.

9. We, accordingly, allow the appeal, set-aside the impugned order and restore revision petition being R.C.R. No. 56 of 2007 on the file of the High Court. We request the High Court to hear and decide the above

revision petition expeditiously and preferably within three months from the date of production of copy of this order.

10. No costs.

.....J.  
(R.M. LODHA)

.....J.  
(MADAN B. LOKUR)

NEW DELHI  
SEPTEMBER 09, 2013.  
ITEM NO.204

COURT NO.3

SECTION XIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).18618/2009

(From the judgement and order dated 04/03/2009 in RCR No.56/2007 of The HIGH COURT OF KERALA AT ERNAKULAM)

A.THAJUDEEN

Petitioner(s)

VERSUS

S.KHALEELU REHMAN

Respondent(s)

(With appln(s) for permission to place addl. documents on record and prayer for interim relief and office report )

Date: 09/09/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA  
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Petitioner(s)

Mr. K. Padmanabhan Nair, Sr. Adv.  
Mr. T.G. Narayanan Nair, Adv.  
Mr. K.N. Madhusoodhanan, Adv.

For Respondent(s)

Mr. Aviral Kashyap, Adv. for  
Mr. Satyendra Kumar, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.  
Appeal is allowed in terms of signed order. No costs.

(Pardeep Kumar)  
Court Master

(Renu Diwan)  
Court Master

[SIGNED ORDER IS PLACED ON THE FILE]