IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 19TH DAY OF JANUARY 2021 / 29TH POUSHA, 1942

RCRev..No.288 OF 2018

AGAINST THE JUDGMENT IN RCA 139/2013 OF ADDITIONAL DISTRICT COURT - II, THALASSERY

AGAINST THE ORDER IN RCP 95/2012 OF PRINCIPAL MUNSIFF COURT, KANNUR

REVISION PETITIONER:

VELLUVANKANDY KAMALKUTTY
AGED 72 YEARS
S/O PAREETH
ELYAVOOR AMSOM, VARAM DESOM,
P.O.VARAM, KANNUR TALUK, KANNUR DISTRICT

BY ADVS.
SRI.K.R.AVINASH
SRI.ABDUL RAOOF PALLIPATH
SRI.E.MOHAMMED SHAFI

RESPONDENT:

R.M. MUNEER
AGED 42 YEARS
S/O MOOSANKUTTY,
C.K.COOL BAR, ELAYVOOR AMSOM
VARAM DESOM, P.O.VARAM,
KANNUR DISTRICT

R1 BY ADV. P.U.SHAILAJAN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 14-01-2021, THE COURT ON 19.01.2021 PASSED THE FOLLOWING:

A.HARIPRASAD & P.V.KUNHIKRISHNAN, JJ.

R.C.R No.288 of 2018

Dated this the 19th day of January, 2021

O R D E R

P.V.KUNHIKRISHNAN, J

The revision petitioner is the petitioner/landlord in RCP No.95 of 2012 on the file of the Rent Controller (Prl. Munsiff), Kannur. The respondent herein is the respondent/tenant in the above petition(hereinafter the revision petitioner and respondent are mentioned as landlord and tenant, respectively.

2. The landlord filed the above petition for eviction u/s.11(2)(b), 11(3), and 11(4)(ii) of the Kerala (Buildings Lease and Rent Control) Act (for short 'Act').

3. The case of the landlord is that the petition schedule building belongs to him, and the same was leased out to the tenant on a monthly rent of Rs.1,200/- by a coolichit

on 20.3.2004. The tenant agreed to increase the rate of rent at the rate of 10% every year. On 1.10.2005, the tenant took a room situated on the back of the building also on rent of Rs.500/-. The rent of the room situated at the back was increased at Rs.550/- from 1.11.2006 onwards. Thus the tenant paid rent @ Rs.3,457/- till 30.9.2009. It is also alleged that the tenant caused substantial damages to the petition schedule building, causing a reduction in utility and use of the building. According to the landlord, the value of the building has been considerably reduced due to the highhanded mischief committed by the tenant. It is also the case of the landlord that the tenant used the building negligently and in a wreckless manner. According to the landlord, there is default in paying rent also. The landlord also contended that he requires the building for conducting a provisional-cum-stationary business. The landlord submitted that the

tenant does not depend on the petition schedule building for his livelihood. He also stated that he is not in possession of any other vacant building. The landlord contends that the vacant buildings are there in the near vicinity for the use of the tenant. Hence, the petition for eviction was filed under Section 11(2)(b), 11(3) and 11(4)(ii) of the Act.

4. The tenant filed a counter statement denying the contentions of the landlord. It is admitted that the petition schedule building belongs to the landlord and the monthly rent was Rs.1,200/- as per the coolichit executed by the tenant. But denied the statement that the tenant agreed to increase the rent @ 10% every year. The bonafide need alleged by the landlord was also denied. The tenant submitted that there is no arrears of rent as alleged by the landlord. The contention of the landlord for eviction under Section 11(4)(ii) was also denied in the counter

statement.

5. To substantiate the case, PW1 and PW2 were examined on the side of the landlord. RW1 was examined on the side of the tenant. Exts A1 to A4 were marked on the side of the landlord and Ext C1 and C2 are the court exhibits. After going through the evidence and documents, the Rent Controller found that the landlord is not entitled to get an order of eviction either under Section 11(2)(b) or under Section 11(3) or under Section 11(4)(ii) of the Act.

6. Aggrieved by the above order, the landlord filed an appeal before the Rent Control Appellate Authority. The Rent Control Appellate Authority/Additional District Judge-II, Thalassery considered the appeal and as per order dated 4.4.2018 in RCA No.139 of 2013 dismissed the appeal confirming the order passed by the Rent Controller. Aggrieved by the above, this Revision Petition is filed under Section 20 of the Act.

7. Heard the counsel for the landlord and the tenant.

8. The landlord's counsel contended that the finding of the lower authorities is without considering the oral and documentary evidence available in this case. It is contended that even if the tenant's case, as far as the rate of rent is accepted, there is arrears of rent. The landlord also contended that the finding of the lower court that the landlord is not entitled eviction under Section 11(4)(ii) is unsustainable in the light of Ext C1 and C2 commission report and plan. According to the counsel, as per the Commission report, it is proved that the tenant used the building in such a manner so as to destroy or reduce its value or utility materially and permanently. As far as the bonafide need is concerned, the landlord reiterated his contention raised before the Rent Control Court and the Appellate Authority. The counsel submitted that there is evidence to substantiate the case of the landlord. The counsel contends

that the landlord is a person aged 70. Simply because there are some contradictions in the landlord's evidence, the entire evidence may not be rejected. The counsel submitted that the lower authorities relied upon the maxim "falsus in uno, falsus in omnibus". He submitted that this approach is wrong. The counsel also submitted that it is a revision filed by a landlord, and in the light of the recent trend of the judgments of this court and the apex court, the revision filed by a landlord may be considered differently from a revision filed by the tenant.

9. The tenant submitted that there is nothing to interfere with the orders passed by the Rent Control Court and the Rent Control Appellate Authority in a revision under Section 20 of the Act. The counsel submitted that the lower authorities considered all the available evidence and documents and came to a definite conclusion that the landlord is not entitled the order of eviction.

10. We considered the contentions of both sides. As far as the landlord's prayer for eviction under Section 11(2)(b) of the Act, we are not in a position to agree with the counsel for the landlord. The Court below rejected the prayer for eviction under Section 11(2)(b) by finding that the rate of rent claimed in the petition is not the actual rate of rent. PW1, who is the landlord in this case, has admitted that the respondent had paid rent to him, which is not covered by the documents produced by him. Of course, he expressed his inability to state authoritatively as to how much rent was paid by the respondent. But PW2 is a witness examined on the side of the landlord. He is a close relative of the landlord. He admitted before the Rent Controller that the tenant paid rent up to February 2012. She stated that she doesn't remember whether receipts were issued for such payment. The landlord claims that there is rent arrears from 1.10.2009 to 31.3.2011. The

witness examined on the landlord's side clearly stated that the tenant paid rent up to February 2012. When there is admission regarding the payment of rent, the contention of the landlord based on Section 9 of the Act cannot be accepted. It is true that as per Section 9(1) of the Act, 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 authorized agent. In this case, PW2 admits that the tenant paid rent. But he doesn't remember whether receipts were issued for such payment. When there is an admission from the side of the witnesses examined on the side of the landlord regarding the payment of rent, the contention of the landlord that the documents to prove the payment of rent is not produced cannot be accepted. Therefore, we are not able to accept the contention of the Landlord, and we have to confirm the

order passed by the lower authorities rejecting the prayer under Section 11(2)(b) of the Act.

11. As far as Section 11(3) of the Act is concerned, the lower authorities considered the point in detail. When PW1 was examined, he deposed that he was abroad for about 16 years, and he is presently engaged in the business of constructing rooms and letting out the same. According to him, he has 11 rooms in his possession near the petition schedule building. The admission regarding vacant rooms in the ownership and possession of the landlord also was considered by the Court below as a circumstance to find lack of bonafides in the need urged by the landlord. This point was considered by the Rent Control Court in detail in paragraph 11 onwards which is extracted hereunder:

> "11.Point No.2:- Petition states that the petitioner requires the petition schedule building

for conducting a provisional cum stationery business. The building is convenient for the business. The petitioner has no job. In the counter statement filed, the respondent denied the recitals. In the counter it is further stated that the petitioner is not in need of the petition schedule building. The building is not suitable or convenient for conducting provisional cum stationery business. The petitioner has no experience in conducting provisional and stationery business. The petitioner cannot conduct the business in the building profitably. The petitioner is not financially sound enough to start the business. The petitioner has no intention to start any business in the building. The intention of the petitioner is to evict the respondent from the building and to let out the same to some other person.

12. In the chief affidavit filed by PW1, the petitioner, reiterated the recitals as stated above. It is further stated that he has no income. In the cross examination he stated that he was in the Gulf for 16 years and returned from the Gulf 20 years ago. He is engaged in the business of construction of new buildings and letting out the same. He owns 11 rooms near the petition schedule building. He admitted that the statement that he has no income is not correct. Thus the statements that the petitioner has no job and no income are proved to be false. Now the genuineness of the only remaining statement that he requires the building for conducting provisional cum stationery business has to be found out. True that apparently nothing was brought out to say that the statement is also false. Under the circumstance the questions are, Whether a mere statement that the petitioner requires the building for the business is sufficient to hold that the need is bona fide?, Why can't the court consider that

the statement is false when the other statements of the person are found to be false? and Is the burden on the respondent to refute the statement? Certainly the burden to prove that the need projected is bona fide is on the petitioner. True that, nothing is there to suggest that PW1 cannot do such a business. But merely that the petitioner is able to do the business is not sufficient to hold that the need projected is bona fide. It will be apposite to consider the entire facts and circumstances of the case. It is also relevant to find out whether the petitioner has an intention to get the respondent evicted for any other reason. In the case at hand, the contention of the respondent is that the petitioner filed petition as he did not heed to the demand of the petitioner to increase the rate of rent. Hence the petition was filed with a view to evict him and to let out the building to other person.

13. Admitedly three grounds were urged by the petitioner to evict the respondent. This court has already found that the eviction sought u/s.11(2)(a)(b) is false. The case advanced by the petitioner is that the respondent at the time of execution of Ext A1 agreed increase of the rent at 10% every year and accordingly the respondent paid increased rent till 30.9.2009. Thereafter no rent was paid. The petitioner waited till 24.5.2012 to file the petition. In the cross examination the petitioner stated that he demanded the respondent to increase the rent as provided in Ext A1. If the respondent paid increased rent till 30.9.2009, why did the petitioner ask the respondent to increase the rent at 10%? This would only show that the petitioner demanded the respondent to increase the rate of rent. According to the petitioner, the respondent is not properly maintaining the building. He admitted that the building has leakage. In the cross examination he

> answered negatively to a question whether he was prepared to plug the leakage. This would show that the petitioner is not liking to continue the tenancy. What is relevant to be noted is that in Ext A3 notice did not mention that the petitioner has any intention to start any business in the petition schedule building. He should have stated in the notice if really he had any intention to start any businessin the petition schedule building. In the cross examination the petitioner admitted that he owns 11 rooms. It has come out in evidence that some of the buildings became vacant recently. If the petitioner had any genuine intention to start the business he could have started the business in any of the vacant building.
>
> 14. Having considered the totality of the evidence and circumstances, this court feels that the need projected by the petitioner is only a ruse to evict the respondent from the petition schedule building. In other words, the petitioner is not able to satisfy that he has any bona fide need to have the petition schedule building for starting the alleged business. This point is thus found against the petitioner."

12. We see no reason to interfere with the above finding of fact by the Rent Control Court, which is confirmed by the Appellate Authority.

13. As far as the prayer for eviction under Section 11(4)(ii) of the Act is concerned, no serious contention was raised before the Appellate Authority. It is noted by the

Appellate Authority in paragraph 8 of the order. But the counsel for the landlord contended before this Court that in the light of the findings in Ext C1 Commission Report, the ingredients of Section 11(4)(ii) of the Act is made out, and the landlord is entitled eviction under Section 11(4)(ii) of the Act also. But the counsel conceded that there is no pleadings in the Rent Control Petition in tune with the report of the Commissioner. Moreover, we perused the commission report also. According to us, even if the findings in Ext C1 report are accepted, there is nothing to show that the tenant uses the building in such a manner as to destroy or reduce its value or utility materially or permanently. In the facts and circumstances, we are not in a position to accept the contentions of the landlord that he is entitled order of eviction under Section 11(4)(ii) of the Act also.

14. This is a revision filed under Section 20 of the Act.

The powers of this Court to entertain a revision under Section 20 of the Act was considered by the Constitutional Bench of the Apex Court in **Hindustan Petroleum Corporation Ltd v. Dilbahar Singh (2014(4)KLT 182).** The 5 Judge Bench of the Apex Court observed that the revisional Court has no jurisdiction to re-appreciate the evidence as if it is an appellate jurisdiction. Paragraphs 32, 33, 39 and 45 of the above judgment are extracted hereunder.

> 32. We are in full agreement with the view expressed in Sri Raja Lakshmi Dyeing Works [M/s. Sri Raja Lakshmi Dyeing Works and Others v. Rangaswamy Chettiar, 1980 (4) SCC 2595 that where both expressions "appeal" and "revision" are employed in a Statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal"and "revision" when used in one Statute conferring appellate power and revisional power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a re - hearing while it is not so in the case of revisional jurisdiction when the same Statute provides the remedy by way of an 'appeal' and so also of a 'revision'. If that were so, the revisional power would become co - extensive with that of the Trial

Court or the subordinate Tribunal which is never the case. The classic statement in Dattonpant [Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval, 1975 (2) SCC 246] that revisional power under the Rent Control Act may not be as narrow as the revisional power under S.115 of the Code but, at the same time, it is not wide enough to make the High Court a second Court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three Rent Control Statutes, the High Court is not conferred a status of second Court of first appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent.

33. Insofar as the 3 - Judge Bench decision of this Court in Ram Dass [Ram Dass v. Ishwar Chander and Others, 1988 KHC 983 : AIR 1988 SC 1422: 1988 (3) SCC 131 : 1988 (2) Punj LR 478] is concerned, it rightly observes that revisional power is subject to well - known limitations inherent in all revisional jurisdictions and the matter essentially turns on the language of theStatute investing the jurisdiction. We do not think that there can ever be objection to the above statement. The controversy centers round the following observation in Ram Dass [Ram Dass v. Ishwar Chander and Others, 1988 KHC 983 : AIR 1988 SC 1422 : 1988 (3) SCC 131 : 1988 (2) Punj LR 478], "...that jurisdiction enables the Court of revision, in appropriate cases, to examine the correctness of the findings of facts also...". It is suggested that by observing so, the 3 - Judge Bench in Ram Dass [Ram Dass v. Ishwar Chander and Others, 1988 KHC 983 : AIR 1988 SC 1422 : 1988 (3) SCC 131 : 1988 (2) Punj LR 478] has enabled the High Court to interfere with the findings of fact by re - appreciating the evidence.

We do not think that the 3 - Judge Bench has gone to that extent in Ram Dass [Ram Dass v. Ishwar Chander and Others, AIR 1988 SC 1422]. The observation in Ram Dass [Ram Dass v. Ishwar Chander and Others, AIR 1988 SC 1422] that as the expression used conferring revisional jurisdiction is "legality and propriety", the High Court has wider jurisdiction obviously means that the power of revision vested in the High Court in the Statute is wider than the power conferred on it under S.115 of the Code of Civil Procedure; it is not confined to the jurisdictional error alone. However, in dealing with the findings of fact, the examination of findings of fact by the High Court is limited to satisfy itself that the decision is "according to law". This is expressly stated in Ram Dass [Ram Dass v. Ishwar Chander and Others, AIR 1988 SC 1422]. Whether or not a finding of fact recorded by the subordinate Court / tribunal is according to law, is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice. Ram Dass [Ram Dass v. Ishwar Chander and Others, 1988 KHC 983 : AIR 1988 SC 1422 : 1988 (3) SCC 131 : 1988 (2) Punj LR 478] does not lay down as a proposition of law that the revisional power of the High Court under the Rent Control Act is as wide as that of the Appellate Court or the Appellate Authority or such power is coextensive with that of the Appellate Authority or that the concluded finding of fact recorded by the original Authority or the Appellate Authority can be interfered with by the High Court by re – appreciating evidence because revisional Court / Authority is not in agreement with the

finding of fact recorded by the Court / Authority below. Ram Dass [Ram Dass v. Ishwar Chander and Others, 1988 KHC 983 : AIR 1988 SC 1422 : 1988 (3) SCC 131 : 1988 (2) Punj LR 478] does not exposit that the revisional power conferred upon the High Court is as wide as an appellate power to re -appraise or re - assess the evidence for coming to a different finding contrary to the finding recorded by the Court / Authority below. Rather, it emphasises that while examining the correctness of findings of fact, the revisional Court is not the second Court of first appeal. Ram Dass [Ram Dass v. Ishwar Chander and Others, 1988 KHC 983 : AIR 1988 SC 1422 : 1988 (3) SCC 131 : 1988 (2) Punj LR 478] does not cross the limits of revisional Court as explained in Dattonpant [Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval, 1975 (2) SCC 246].

39. Rukmini [Rukmini Amma Saradamma v. Kallyani Sulochana and Others, 1993 KHC 874 : 1993 (1) SCC 499 : AIR 1993 SC 1616] holds, and in our view, rightly that even the wider language of S.20 of the Kerala Rent Control Act does not enable the High Court to act as a first or a second Court of appeal. We are in full agreement with the view of the 3 - Judge Bench in Rukmini [Rukmini Amma Saradamma v. Kallyani Sulochana and Others, 1993 KHC 874 : 1993 (1) SCC 499 : AIR 1993 SC 1616] that the word "propriety" does not confer power upon the High Court to re - appreciate evidence to come to a different conclusion but its consideration of evidence is confined to find out legality, regularity and propriety of the order impugned before it. We approve the view of this Court in Rukmini [Rukmini Amma Saradamma v. Kallyani Sulochana and Others, 1993 KHC 874 : 1993 (1) SCC 499 : AIR

1993 SC 1616].

45. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court / First Appellate Authority because on reappreciation of the evidence, its view is different from the Court / Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court / Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court / Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or re - assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a Court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural

illegality or irregularity.

15. In the light of the above authoritative judgment of the Constitution Bench of the Apex Court, we see no reason to interfere with the orders passed by the lower authorities. There is no difference between a revision filed by a tenant and a revision filed by a landlord under Section 20 of the Act. In the light of the facts and circumstances of the case, we see no reason to interfere with the impugned orders.

Therefore, this RCR is dismissed.

Sd/-

A. HARIPRASAD,
JUDGE.

Sd/-

P.V.KUNHIKRISHNAN,
JUDGE

cms