

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE PIUS C.KURIAKOSE  
&  
THE HON'BLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 21ST DAY OF AUGUST 2012/30TH SRAVANA 1934

RCCRev..No. 292 of 2012 (C)

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RCA.53/2010 of II ADDL.DISTRICT COURT & RENT CONTROL APPELLATE AUTHORITY,  
ERNAKULAM  
RCP.31/2008 of III ADDL.MUNSIFF & RENT CONTROLLER, ERNAKULAM  
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REVISION PETITIONER/APPELLANT/RESPONDENT:  
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A.K.AJAYAN  
AGED 59 YEARS, SON OF KRISHNAN  
RESIDING AT ARACKAL HOUSE, KARUVELIPADY  
NOW RESIDING AT V/471-A,(VARANATTU HOUSE  
MOLATHU ROAD, UNICHIRA, THRIKKAKKARA P.O.  
PIN - 682 021)

BY ADV. SRI.P.K.RAVINDRAN PUZHANKARA

RESPONDENT/RESPONDENT/PETITIONER:  
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DR.V.C.MANOJ  
AGED 43 YEARS, SON OF V.N.C.NAIR  
RESIDING AT V/471-A (VARANATTU HOUSE, MOLATHU ROAD  
UNICHIRA,THRIKKAKKARA P.O., PIN - 682 021  
NOW RESIDING AT'LAKSHMI', SUB JAIL ROAD  
ALUVA - 682001.

BY ADV. SRI.M.K.DILEEPAN(CAVEATOR)

BY ADV. SRI.DEEPAK T.NEDUNGADAN  
BY ADV. SMT.P.SUMITHRA

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON  
21-08-2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PIUS C. KURIAKOSE &  
A. V. RAMAKRISHNA PILLAI, JJ.

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R. C. R No.292 of 2012  
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Dated this the 21<sup>st</sup> day of August, 2012

**ORDER**

*Ramakrishna Pillai, J*

The tenant is in revision.

2. The respondent sought eviction of the revision petitioner from the tenanted premises which is a residential building under Section 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act hereinafter referred to as the "Act" alleging that he needs the building for the residence of himself and his family consisting of his wife and child as he is employed in a private hospital at Ernakulam and his wife has joined in St.Teresa's College to attend evening class. The claim was resisted by the revision petitioner contending that the need alleged is not bona fide. The Rent Control Court after raising proper points for trial permitted both sides to adduce evidence. On the basis of the

evidence consisting of the oral evidence of PW1 and RW1 as well as Exts.A1 to A14, the Rent Control Court ordered eviction as prayed for. Though the revision petitioner took the matter before the Rent Control Appellate Authority it was not successful. Thus he has come up in revision.

3. We have heard the learned counsel for the revision petitioner and the learned counsel for the respondent. We have also perused the impugned judgment and the order of the Rent Control Court.

4. Both the courts found that the revision petitioner is liable to be evicted under both the grounds as the revision petitioner seeks his remedy under Section 11(2)(c). We see no reason to reverse the finding entered into by the Appellate Authority under Section 11(2)(b), as the revision petitioner can seek his remedies under Section 11(2)(c).

5. Regarding eviction under Section 11(3), we find from the oral testimony of PW1 that he is in dire need of the petition schedule premises which is a residential building. It has come out in evidence that the residential building has

been handed over to the revision petitioner on a specific understanding that he would surrender the vacant possession within two years. The respondent is a Doctor who is now working in a private hospital at Cochin city. It has also come out in evidence that his wife has joined a private college in Cochin as she has to attend the contact classes. His only child is admitted to Bhavan's Aadarsh Vidhya Bhavan at Kakkanad which is very near to the petition schedule building.

6. On a consideration of the entire facts and circumstances of the case, we are of the view that the claim put forth by the respondent is bona fide. There is nothing on evidence to show that the respondent is having any other building in the locality which is suited to his requirement. The question whether the revision petitioner is entitled to get the protection of the second proviso does not arise for consideration in this case as the tenanted premises is a residential building. So on the basis of the totality of the evidence now placed on record, we are of the view that both

the courts below were perfectly justified in ordering eviction under Section 11(3). Hence, we see no reason to interfere with the impugned judgment as it does not suffer from any illegality, irregularity or impropriety. We decline jurisdiction under Section 20 of the Act. Accordingly the revision fails and the same will stand dismissed.

7. When our decision was made known to the learned counsel for the revision petitioner he requested that the revision petitioner be given time up to 31<sup>st</sup> December, 2012. The learned counsel for the respondent was of the opinion that time till the end of November, 2012 be given. However, taking all the relevant circumstances, we are of the view that the revision petitioner can be given time up to 31<sup>st</sup> December, 2012 to surrender the vacant possession subject to the following conditions:-

a) The revision petitioner shall file an affidavit before the execution court within one month from today undertaking to surrender vacant possession of the tenanted premises on or before 31/12/12.

b) The revision petitioner shall discharge all the existing arrears and shall continue to pay charges for use and occupation at the current rent rate till the actual surrender is made.

c) Execution proceedings shall be kept in abeyance till 31/12/12.

It is hereby made clear that the revision petitioner shall get the benefit of time granted as above only if he files the affidavit on time and honours the undertakings contained therein.

Sd/-  
PIUS C. KURIAKOSE  
JUDGE

Sd/-  
A. V. RAMAKRISHNA PILLAI  
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

