

IN THE RENT CONTROL COURT (MUNSIFF) OF HOSDRUG

Present : Sri.Nissam.A., B.Sc. LLB, Munsiff (I/C)

Tuesday, the 31st day of July, 2018/ 9th Sravana, 1940.

RENT CONTROL PETITION No. 01/2018.

Between:

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| <p>1. T.Hussain, aged 54 years,
Son of Mohammad, Residing at Ajanur Kadapuram,
Ajanuar Village of Hosdrug Taluk.</p> <p>2. T.Moosa, aged 49 years,
Son of Mohammad, Residing at Muttumthala,
Super House, Post Kolavayal.</p> <p>3. T.Mumtaz, aged 32 years,
D/o. Abullah.T, Residing at Bekal, Pallikkare
Village of Hosdrug Taluk.</p> | } | Petitioners |
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And

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| <p>Pradeep.B, aged 42 years,
S/o. Karunakaran.A, Ayappa's Tours and Travels,
Puthiyakotta, Hosdrug Village, Kanhangad Post,
Residing at Kalyani Nilayam, Kanhangad Village of
Hosdrug Taluk, Kanahangad South Post.</p> | } | Respondent |
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Petition filed Under Section 11(2) and 11(3) of the Kerala Buildings(Lease and Rent Control) Act 1965 to directing the respondent to surrender vacant possession of the petition schedule room to the petitioners within a time to be fixed by the Court.

Petition presented on : 11.1.2018

Court fee paid : Rs.6/-

L.B.F. Paid : Rs.100/-

This petition coming on 19th day of July, 2018 for final hearing before me in the presence of Sri. Vipin T Jose, Advocate for Petitioners; Respondent being called absent, set exparte, and having stood over to this day for consideration, the court passed the following :

ORDER

This is a petition filed by the petitioners under sections 11(2) & 11(3) of the Kerala Buildings (Lease and Rent Control) Act 1965 (the B.R.C. Act, for short).

2. **A resume of the allegations in the petition are as follows:-**

The petition schedule room belongs to the petitioner. The respondent obtained the same for a monthly rent of Rs.6,000/- (Rupees Six Thousand only) for conducting his business in tours and travels under the name and style “Ayyapa's Tours and Travels” on oral lease in 2016. The respondent also agreed to pay electricity charges for the energy consumed in the shop room in his possession. The respondent is highly irregular in the matter of payment of rent. The respondent paid rent only for the month of April, 2017. The rent from May, 2017 till the date is due. The respondent did not pay the rent of the shop room in spite of repeated requests. The petitioners have caused to send a registered lawyer notice dated 30.11.2017 to the respondent in his shop address and house address requesting to pay arrears of rent from May, 2017 with interest at the rate of 12% per annum. The notice sent to the shop address was returned unclaimed and whereas the notice sent to the house address was received. In inspite of the receipt of the notice, the respondent has not paid the rent or sent any reply to the notice. So the respondent is liable to be evicted under section 11(2) of the Kerala Buildings (Lease and Rent) Control Act, 1965. The petitioner No.2 is intending to start a business of dry fruits, cashew nuts, spices and other similar articles. The petitioner No.2 is not having any other vacant shop room in his possession to start the intending business. The petitioners also are not having any vacant room in their possession. So petitioner No.2 bonafide need the shop room in the occupation of the respondent for his intended business.

3. The respondent is not eking out his livelihood from the income derived from the business conducted in the petition schedule room. Many other suitable rooms are available in the locality if the respondent intends to shift his business. The petitioners have caused to send a registered lawyer notice dated 30.11.2017 to the respondent requesting him to surrender vacant possession of the petition scheduled room for the bonafide need of petitioner No.2. The respondent received the notice sent in his house address while the notice sent to the shop was returned with the endorsement “unclaimed”. The respondent neither sent any reply nor surrendered vacant possession of the petition scheduled room. So the respondent is liable to be evicted under section 11(3) of the Kerala Buildings (Lease & Rent) Control Act, 1965. Hence the petition.

4. Notice served to the respondent. Though the notice served to him, he did not appear before the court and hence his name called and set him exparte.

5. In order to prove the case the 2nd petitioner himself examined as PW1. He produced Exts.A1 to A3 documents.

6. The specific case of the petitioners is that the respondent being a tenant of the petition schedule room kept arrears of rent from May, 2017 till the date at the rate of Rs.6,000/- (Rupees Six Thousand only) per month. The petitioners have caused to sent a registered lawyer notice dated 30.11.2017 to the respondent requesting him to pay arrears of rent from May 2017 with interest at the rate of 12% per annum, which is marked as Ext.A1. The notice sent to the shop address was returned unclaimed and the same is marked as Ext.A3, whereas the notice sent to the house address was received and postal acknowledgment to that effect is marked as Ext.A2. Inspite of the receipt of the notice, the respondent has not paid the rent or sent any reply to the notice.

7. The next case of the petitioners is that the petitioner No.2/PW1 is intending to start a business of dry fruits, cashew nuts, spices and other similar articles in the petition schedule room. The petitioners also are not having any vacant room in their possession. So the petitioner No.2 bonafide need the shop room in the occupation of the respondent for his intended business. PW1 also deposed that the respondent is not eking out his livelihood from the income being derived from the business conducted in the petition schedule room. There are so many suitable vacant rooms are available in the locality to shift the business of the respondent.

8. As the respondent become set exparte in the proceedings, the evidence put forwarded by PW1 stands unchallenged and hence proved. So it is proved that the respondent defaulted the payment of rent from May,2017 and the 2nd petitioner is in bonafide need of petition schedule room for his own occupation. On going through the Exts.A1 to A3 documents it is proved that the petitioner complied with the mandatory conditions as contemplated U/s.11(2) of the Kerala Buildings (Lease & Rent Control) Act 2 of 1965.

9. On going through the pleadings, deposition of PW1 and perusal of the documents produced it is proved that the petitioners were succeeded in proving their case.

10. Considering the facts and circumstances of the case the petitioners are entitled to get an order as stated above and costs of the proceeding from the respondent.

11. In the result, petition is allowed in as follows:-

1. The respondent is directed to surrender the vacant possession of the petition schedule room to the petitioner U/s.11(2) & 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 within one month from this date.
2. Order passed U/s.11(2)(b) is subjected to the provisions of section 11(2) (c) of the Kerala Buildings (Lease & Rent Control) Act.
3. The respondent is directed to pay costs of the proceedings to the petitioners.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court, this the 31st day of July, 2018.

PRESIDING OFFICER,
RENT CONTROL COURT/MUNSIFF(I/C).

APPENDIX OF EVIDENCE

Exhibits marked for Petitioners':-

- A1. 30.11.2017. Office copy of the registered lawyer notice sent to the respondent on behalf of the petitioners.
- A2. 4.12.2017. Postal acknowledgment of the respondent.
- A3. 13.12.2017. Registered letter sent to the respondent returned with the endorsement "unclaimed".

Exhibits marked for Respondent's:- Nil.

Witness Examined for Petitioners':-

PW1. T. Moosa.

Witness Examined for Respondent:- None.

PRESIDING OFFICER,
RENT CONTROL COURT/MUNSIFF.

Typed by : Jayasree.K
Compared by: Sujatha.K

Fair/Order in RCP 1 of 2018

Dated: 31.07.2018