

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE K. BABU

TUESDAY, THE 31ST DAY OF AUGUST 2021 / 9TH BHADRA, 1943

R.C.Rev.NO.229 OF 2020

AGAINST THE JUDGMENT DATED 18.12.2019 IN R.C.A.NO.66 OF 2018

OF OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL
DISTRICT JUDGE), VATAKARA AND THE ORDER DATED 26.02.2018 IN
R.C.P.NO.71 OF 2016 OF THE RENT CONTROL COURT (MUNSIFF),

VATAKARA

REVISION PETITIONER/APPELLANT/1ST RESPONDENT:

T.P.GIREESHBABU

AGED 49 YEARS

S/O. BALAKRISHNAN, "MANGALYA PATU", A.J BUSINESS
CENTRE, OPP. QUEENS HOTEL, OLD BUS STAND,
VATAKARA, KOZHIKODE DISTRICT 673 501

BY ADVS.

U.K.DEVIDAS

SRI.K.K.ANILRAJ

RESPONDENTS/RESPONDENTS 2 TO 6/2ND PETITIONER & 2ND

RESPONDENT:

- 1 JAMEELA
AGED 60 YEARS
W/O. KUZHICALIL ABDURAHIMAN, RESIDING AT JASREENA
MAHAL, PUTHUPPANAM AMSOM DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT 673 105
- 2 RAJEENDRAN,
MANGALYA PATU, A.J BUSINESS CENTRE, OPP. QUEENS
HOTEL, OLD BUS STAND VATAKARA,
KOZHIKODE DISTRICT 673 501

- 3 JASMINE REHIMAN,
AGED 41 YEARS
D/O. LATE K.C ABDURAHIMAN, RESIDING AT JASREENA
MAHAL, PUTHUPPANAM AMSOM DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT 673 105

- 4 JARRISH RAHIMAN,
AGED 41 YEARS
D/O. LATE K.C ABDURAHIMAN, RESIDING AT JASREENA
MAHAL, PUTHUPPANAM AMSOM DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT 673 105

- 5 JASREENA RAHIMAN,
AGED 41 YEARS
D/O. LATE K.C ABDURAHIMAN, RESIDING AT JASREENA
MAHAL, PUTHUPPANAM AMSOM DESOM, VATAKARA TALUK,
KOZHIKODE DISTRICT 673 105

BY ADVS.
SRI.T.H.ABDUL AZEEZ
SRI.K.P.MAJEED
SRI.MOHAMMED SADIQUE.T.A
SHRI.SHANKAR V.

THIS RENT CONTROL REVISION HAVING COME UP FOR
ADMISSION ON 31.08.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

“C.R”

ORDER

Anil K. Narendran, J.

The petitioner is the 1st respondent-tenant in R.C.P.No.71 of 2016 on the file of the Rent Control Court (Munsiff), Vatakara and the appellant in R.C.A.No.66 of 2018 on the file of the Rent Control Appellate Authority (Additional District Judge), Vatakara. The landlords, namely, Shri. Kuzhichalil Abdurahiman and his wife Smt. Jameela (1st respondent herein) filed R.C.P.No.71 of 2016 before the Rent Control Court, under Section 11(3) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965, seeking eviction of the tenant from the petition schedule shop room covered by Ext.A1 kachit dated 02.12.2000. The bona fide need projected in the Rent Control Petition, in order to seek an order of eviction under Section 11(3) of the Act, was that of Shri. Kuzhichalil Abdurahiman and his wife Smt. Jameela for starting jewellery business in the petition schedule shop room and also the adjacent shop room. In the Rent Control Petition, an order of eviction was also sought for under Section 11(4)(i) of the Act, on the ground that the tenant transferred possession of

the petition schedule shop room to the 2nd respondent herein; the alleged sub-tenant, without the knowledge and consent of the landlords, in violation of the terms of Ext.A1 kachit.

2. Before the Rent Control Court, the tenant and the alleged sub-tenant entered appearance and filed a joint counter statement, contending that the 2nd respondent is only an employee of the tenant. They have also denied the bona fide need projected in the Rent Control Petition. On the side of the landlords, Kuzhichalil Abdurahiman was examined as PW1 and Exts.A1 to A5 series were marked. The tenant was examined as RW1. The report and plan of the Advocate Commissioner were marked as Exts.C1 and C2.

3. After considering the pleadings and evidence on record, the Rent Control Court found that the bona fide need projected in the Rent Control Petition under Section 11(3) of the Act is genuine. Since the landlords are not in possession of any other suitable and convenient building for the proposed business, the tenant is not entitled to the benefit of the first proviso to Section 11(3) of the Act. The tenant as RW1 has admitted that he has other source of income. During cross examination, RW1

has admitted that vacant rooms are available in the locality. Therefore, the Rent Control Court found that the tenant is not entitled to protection under the second proviso to Section 11(3) of the Act. On the ground of eviction sought for under Section 11(4)(i) of the Act, the Rent Control Court found that the tenant has transferred possession and exclusive right of the petition schedule shop room to the sub-tenant, after collecting some amount. Therefore, the landlords are found entitled for an order of eviction under Section 11(4)(i) of the Act. Accordingly, the Rent Control Court, by the order dated 26.02.2018, allowed R.C.P.No.71 of 2016 under Section 11(3) and 11(4)(i) of the Act and the tenant was directed to put the landlords in vacant possession of the petition schedule shop room, within two months from the date of order.

4. Challenging the order of eviction granted in R.C.P.No.71 of 2016, the tenant filed R.C.A.No.66 of 2018, before the Rent Control Appellate Authority, Vatakara. During the pendency of that appeal, Kuzhichalil Abdurahiman died and his legal heirs were impleaded as supplemental respondents 3 to 6, by the order dated 19.11.2019 in I.A.No.44 of 2019. The Rent

Control Appellate Authority, by the judgment dated 18.12.2019, dismissed R.C.A.No.66 of 2018, thereby confirming the order of eviction granted by the Rent Control Court under Section 11(3) and 11(4)(i) of the Act.

5. Feeling aggrieved by the judgment of the Rent Control Appellate Authority and also the order of the Rent Control Court, the tenant has filed this Rent Control Revision, invoking the revisional jurisdiction of this Court under Section 20 of the Act.

6. On 29.01.2021, when this Rent Control Revision came up for admission, this Court issued notice on admission by speed post to the respondents.

7. Heard the learned counsel for the petitioner and also the learned counsel for respondents 1 and 3. Despite service of notice, none appears for the 2nd respondent, the alleged sub-tenant, and also for respondents 4 and 5, who are the legal heirs of Kuzhichalil Abdurahiman.

8. The issue that arises for consideration in this Rent Control Revision is as to whether any interference is warranted on the order of eviction granted by the Rent Control Court, under Section 11(3) and 11(4)(i) of the Act, which was confirmed by

the Rent Control Appellate Authority in its judgment 18.12.2019.

9. The bona fide need projected in the Rent Control Petition, to seek an order of eviction under Section 11(3) of the Act, was that of Kuzhichalil Abdurahiman and his wife Jameela, the landlords, for starting Jewellery business in the petition schedule shop room and also the adjacent shop room.

10. Section 11 of the Act deals with eviction of tenants. As per Section 11(1), notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Act. As per the first proviso to Section 11(1), nothing contained in this Section shall apply to a tenant whose landlord is the State Government or the Central Government or other public authority notified under this Act. As per the second proviso to Section 11(1), where the tenant denies the title of the landlord or claims right of permanent tenancy, the Rent Control Court shall decide whether the denial or claim is bona fide and if it records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and such Court may pass a decree for

eviction on any of the grounds mentioned in this Section, notwithstanding that the court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded.

11. As per Section 11(3) of the Act, a landlord may apply to the Rent Control Court, for an order directing the tenant to put the landlord in possession of the building if he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him. As per the first proviso to Section 11(3), the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so. As per the second proviso to Section 11(3), the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business. As per the third proviso to Section 11(3), no landlord whose right to recover

possession arises under an instrument of transfer inter vivos shall be entitled to apply to be put in possession until the expiry of one year from the date of the instrument. As per the fourth proviso to Section 11(3), if a landlord after obtaining an order to be put in possession transfers his rights in respect of the building to another person, the transferee shall not be entitled to be put in possession unless he proves that he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him.

12. In **Adil Jamshed Frenchman v. Sardur Dastur Schools Trust [(2005) 2 SCC 476]** the Apex Court reiterated that, as laid down in **Shiv Samp Gupta v. Dr. Mahesh Chand Gupta [(1999) 6 SCC 222]** a bona fide requirement must be an outcome of a sincere and honest desire in contradistinction with a mere pretext for evicting the tenant on the part of the landlord claiming to occupy the premises for himself or for any member of the family which would entitle the landlord to seek ejection of the tenant. The question to be asked by a judge of facts by placing himself in the place of the landlord is whether in the given facts proved by the material on record the need to

occupy the premises can be said to be natural, real, sincere and honest. The concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. As reiterated in **Deena Nath v. Pooran Lal [(2001) 5 SCC 705]** bona fide requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in praesenti and must be manifested in actual need so as to convince the court that it is not a mere fanciful or whimsical desire.

13. In **Ammu v. Nafeesa [2015 (5) KHC 718]** a Division Bench of this Court held that, it is a settled proposition of law that the need put forward by the landlord has to be examined on the presumption that the same is a genuine one, in the absence of any materials to the contra.

14. In the instant case, as already noticed, the bona fide need projected in the Rent Control Petition was that of Kuzhichalil Abdurahiman and his wife Jameela for starting jewellery business in the petition schedule shop room and also the adjacent shop room. Kuzhichalil Abdurahiman, who was examined as RW1, has deposed that, he and his wife Jameela were employed abroad. In the year 2015, they quit their employment abroad and settled in

their native place. Thereafter, they were sitting idle. PW1 intends to start business in gold ornaments, along with his wife, in the petition schedule shop room and in the adjacent shop room. During cross examination, nothing could be brought out to discredit the version of PW1, as to the bona fide need projected in the Rent Control Petition, for an order of eviction under Section 11(3) of the Act. It has also come out in evidence that the landlords are getting a rental income of Rs.1,47,000/- per month, from buildings let out to tenants.

15. One of the contentions raised by the tenant before the Rent Control Court, the Rent Control Appellate Authority and reiterated before this Court is that, since the landlords have extensive landed property and getting considerable rental income they have no genuine need for vacant possession of the petition schedule shop room for starting jewellery business and therefore, the bona fide need projected in the Rent Control Petition seeking eviction under Section 11(3) of the Act is only a ruse to evict the tenant from the petition schedule shop room.

16. A reading of the provisions under Section 11(3) of the Act makes it explicitly clear that, the landlord can approach the

Rent Control Court seeking an order of eviction, directing the tenant to put the landlord in possession of the building, if he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him. The bona fide need projected in a Rent Control Petition seeking eviction under Section 11(3) of the Act, for own occupation of the landlord or for the occupation by any member of his family dependent on him, need not be for the livelihood of the landlord or any member of his family dependent on him. Therefore, the fact that the landlord is an affluent person is of no consequence, if he proves the bona need for own occupation projected in the Rent Control Petition, for eviction under Section 11(3) of the Act. In **Ismail v. Kesavan [2004 (2) KLT 56]** a Division Bench of this Court, in the context of Section 11(3) of the Act, held that dependency does not mean financial dependency, but dependency for the building which belongs to the landlord. Therefore, the fact that the dependent family member of the landlord is an affluent person is of no consequence, if the landlord proves the bona need projected in the Rent Control Petition for occupation of any member of his family dependent on

him, for eviction under Section 11(3) of the Act.

17. Since the bona fide need projected in a Rent Control Petition seeking eviction of the petition schedule shop room under Section 11(3) of the Act, for starting jewellery business by the landlords need not be for their livelihood, the fact that the landlords, namely, Kuzhichalil Abdurahiman and his wife Jameela have extensive landed property and getting considerable rental income is of no consequence, if they prove the bona need for own occupation projected in the Rent Control Petition. Therefore, we find no merit in the contention of the tenant that, since the landlords have extensive landed property and getting considerable rental income they have no genuine need for vacant possession of the petition schedule shop room and therefore the bona fide need projected in the Rent Control Petition is only a ruse to evict the tenant from the petition schedule shop room.

18. In order to satisfy the requirement of Section 11(3) of the Act, a bona fide need must be an outcome of a sincere and honest desire of the landlord in contradistinction with a mere pretext on the part of the landlord for evicting the tenant, claiming to occupy the premises for himself or for any member of

his family dependent on him. Once, on the basis of the materials on record, the landlord has succeeded in showing that the need to occupy the premises is natural, real, sincere and honest, and not a ruse to evict the tenant from the said premises, the landlord will certainly be entitled for an order of eviction under Section 11(3) of the Act but, of course, subject to the first and second provisos to Section 11(3).

19. In the impugned judgment dated 18.12.2019 in R.C.A.No.66 of 2018, the Rent Control Appellate Authority found that the Rent Control Court in its order dated 26.02.2018 in R.C.P.No.71 of 2016 rightly repelled the objections raised by the tenant against the bona fide need projected by the landlords. Therefore, the Appellate Authority found no valid reasons to interfere with the said finding of the Rent Control Court. The finding to that effect in the judgment dated 18.12.2019 of the Rent Control Appellate Authority and the order of the Rent Control Court dated 26.02.2018 are neither perverse nor patently illegal, warranting interference in exercise of the revisional jurisdiction of this Court under Section 20 of the Act.

20. The learned counsel for the petitioner-tenant argued

that the death of Kuzhichalil Abdurahiman during the pendency of R.C.A.No.66 of 2018 is a subsequent event of such a magnitude as to completely eclipse the bona fide need projected in the Rent Control Petition. However, the Appellate Authority omitted to take into consideration that subsequent event, having fundamental impact on the right of the landlords to get an order of eviction under Section 11(3) of the Act.

21. Per contra, the learned counsel for respondents 1 and 3, the landlords, argued that since the bona fide need projected in the Rent Control Petition was that of Kuzhichalil Abdurahiman and his wife Jameela, the original landlords, for starting Jewellery business in the petition schedule shop room and also the adjacent shop room, the subsequent event, i.e., the death of Kuzhichalil Abdurahiman during the pendency of R.C.A.No.66 of 2018, is not of such a magnitude as to completely eclipse the bona fide need projected in the Rent Control Petition, as rightly found by the Appellate Authority.

22. In **Sheshambal (dead) through LRs. v. Chelur Corporation, Chelur Building [(2010) 3 SCC 470]** the Apex Court was dealing with a case in which the landlords, late Shri K.

Sachindanda Iyer and his wife late Smt. A. Sheshambal Sachindanda Iyer, let out the premises in dispute to the 1st respondent for a period of three years in terms of a lease deed dated 12.04.1983. On the expiry of the lease period the landlords filed R.C.P.No.116 of 1986 before the Rent Control Court, Ernakulam seeking eviction of the tenant on the ground that they required the same for their bona fide personal occupation within the meaning of Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act. The prayer for eviction was opposed by the tenant, *inter alia*, on the ground that the landlords did not require the demised premises and that, the tenant would find it difficult to shift its business to any other premises on account of non-availability of a suitable accommodation. The Rent Control Court eventually came to the conclusion that the landlords had failed to establish their bona fide requirement of the premises. The Rent Control Court found that the landlords had shifted their residence from Cochin and were living with their daughter and son-in-law, who were running a nursing home in that city. Aggrieved by the order passed by the Rent Control Court, the landlords appealed to the Rent

Control Appellate Authority, who affirmed the decision taken by the Rent Control Court, holding that the landlords were residing with their daughter and son-in-law at Ernakulam in a building owned by the landlords. The Appellate Authority also found that the landlords had a cottage at Kodaikanal and that, they being fairly old had no reason to shift back to Ernakulam in search of better medical facilities, especially when their son-in-law was running a nursing home at Coimbatore, where such facilities were available to them. Aggrieved by the order passed by the Rent Control Court and the judgment of the Appellate Authority, the landlords approached the High Court in a revision filed under Section 20 of the Act. During the pendency of the revision Shri K. Sachindanda Iyer passed away on 24.04.1996. The High Court refused to intervene with the concurrent findings recorded by the courts below and accordingly, dismissed the revision petition. Feeling aggrieved, Smt. A. Sheshambal Sachindanda Iyer approached the Apex Court. During the pendency of the Civil Appeal, Smt. Sheshambal passed away. In I.A.No.7 of 2008 filed on 14.11.2008 permission was sought for substitution of her legal heirs on the basis of a will left behind by the deceased, as

per which the property in question has to devolve upon her three daughters, out of which two of the daughters are living in India, one each at Coimbatore and Bihar, and the third daughter is settled in America.

23. In **Sheshambal** the Apex Court noticed that, in the eviction petition the landlords had pleaded their own requirement for the premises to be occupied by them for residential as well as commercial purposes. The eviction petition was totally silent about the requirements of any member of the family of the landlords leave alone any member of their family who was dependent upon them. That being so the parties went to trial before the Rent Control Court on the basis of the case pleaded in the petition and limited to the requirement of the landlords for their personal occupation. Neither before the Rent Control Court nor before the Appellate Authority it was argued that the requirement in question was not only the requirement of the landlords but also that of any other member of their family, whether dependent upon them or otherwise. Not only that, even in the petition filed before the Apex Court the requirement pleaded was that of the deceased widowed landlord and not that

of any member of her family.

24. In **Sheshambal** the Apex Court further noticed that, the legal representatives who now claim to be the family members of the deceased landlords are all married daughters of the deceased couple each one settled in their respective matrimonial homes in different cities and at different places. That none of them was dependent upon the deceased landlord was also a fact undisputed before the Apex Court. Even otherwise, in the social milieu to which we are accustomed, daughters happily married have their own families and commitments, financial and otherwise. Such being the position the Apex Court found it difficult to see how the legal representatives of the deceased landlord can be allowed to set up a case which was never set up before the courts below so as to bring forth a requirement that was never pleaded at any stage of the proceedings. Allowing the legal heirs to do so would amount to permitting them to introduce a case which is totally different from the one set up before the Rent Control Court, the Appellate Authority or even the High Court. The position may indeed have been differentiated if in the original petition the landlords had pleaded their own

requirement and the requirement of any member of their family dependent upon them. In such a case the demise of the landlords or any one of them may have made little difference for the person for whose benefit and bona fide requirement the eviction was sought, who could pursue the case to prove and satisfy any such requirement.

25. In **Sheshambal**, before the Apex Court it was contended on behalf of the appellants that the rights and obligations of the parties get crystallised at the time of institution of the suit so that any subsequent development is not only inconsequential but also wholly irrelevant for determination of the case before the Apex Court. In that context, the Apex Court observed that, while it is true that the right to relief must be judged by reference to the date suit or the legal proceedings were instituted, it is equally true that if subsequent to the filing of the suit, certain developments take place that have a bearing on the right to relief claimed by a party, such subsequent events cannot be shut out from consideration. What the court in such a situation is expected to do is to examine the impact of the said subsequent development on the right to relief claimed by a party

and, if necessary, mould the relief suitably so that the same is tailored to the situation that obtains on the date the relief is actually granted.

26. In **Sheshambal**, the Apex Court noticed that, the above proposition of law is fairly settled by the decision in **Pasupuleti Venkateswarlu v. Motor and General Traders [(1975) 1 SCC 770]**. To the same effect is the decision in **Om Prakash Gupta v. Ranbir B. Goyal [(2002) 2 SCC 256]** where it was declared that although the ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit, yet the court has power to mould the relief in case the following three conditions are satisfied (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In **Hasmat Rai v. Reghunath Prasad [(1981) 3 SCC**

103] it was observed that, if the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him to point out such events, and the court including the appellate court has to examine, evaluate and adjudicate upon the same. To the same effect is the decision in **Baba Kashinath Bhinge v. Samast Lingayat Gavali [(1994) Supp. 3 SCC 698]** where relying upon the decision in **Hasmat Rai** it was held that in a case of bona fide requirement it is necessary to establish that the landlord needs the premises and the need subsists till a decree is passed in his favour. In a case where such need is available at the time of the filing of the petition but becomes extinct by the time the matter attains finality in appeal for revision no decree will be justified. For that purpose, the court should take all the subsequent events into consideration and mould the relief accordingly.

27. In **Sheshambal**, at Para.22 of the decision (SCC page 477), the Apex Court quoted with approval the following passage from the decision in **Baba Kashinath Bhinge** (SCC pages 699-700, para 2) as complete answer to the question raised before it,

which reads thus;

“2. Equally it is settled by this Court in series of judgments and a reference in this behalf would be sufficient by citing **Hasmat Rai v. Raghunath Prasad [(1981) 3 SCC 103]** that in a case of bona fide requirement, *it is always necessary, till the decree of eviction is passed that the landlord should satisfy that the need is bona fide and the need subsists. In a case where the need is available at the time of filing of the petition, but at the time of granting decree it may not continue to subsist, in that event, the decree for eviction could not be made. Similarly pending appeal or revision or writ petition, the need may become more acute.* The court should take into account all the subsequent events to mould the relief. The High Court may not be justified in omitting to consider this aspect of the matter but that does not render the judgment illegal for the subsequent discussion we are going to make.”

(emphasis in original)

28. In **Sheshambal**, the Apex Court noticed that, a similar view was expressed in **Ramesh Kumar v. Kesho Ram [(1992) Supp. 2 SCC 623]** (SCC pages 626-27, para 6), wherein it was held that, the normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law

which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief. Similarly, in **Maganlal Kishanlal Godha v. Nanasaheb Uddhaora Gadewar [(2008) 13 SCC 758]** it was held that, if the litigation keeps extending and number of developments sprouting up during the long interregnum, the court should adopt a pragmatic approach in the matter and determine whether or not the development pending finalisation of the litigation is such as would completely non-suit the party concerned. In **Sheshambal**, the Apex Court observed that the decision in **Maganlal Kishanlal Godha** is no authority for the proposition that subsequent developments having material impact on the rights and obligations of the parties can be ignored by a court simply because such rights and obligations have to be determined by reference to the date on which the litigation was instituted.

29. In **Sheshambal**, the Apex Court further noticed that, the decision in **Kedar Nath Agrawal v. Dhanraji Devi [(2004)**

8 SCC 76] has reiterated the legal position after a detailed review of the case law on the subject. That was also a case where the two landlords seeking eviction of the tenant had passed away during the pendency of the eviction petition and the question was whether the three married daughters left behind by the couple could continue with the same. In the said decision (SCC page 86, para 31) it was observed that, in view of the settled legal position as also the decisions in **Pasupuleti Venkateswarlu [(1975) 1 SCC 770]** and **Hasmat Rai [(1981) 3 SCC 103]** the High Court was in error in not considering the subsequent event of death of both the landlords. It was the power as well as the duty of the High Court to consider the fact of death of the landlords during the pendency of the writ petition. Since it was the case of the tenant that all the three daughters got married and were staying with their in-laws, obviously, the said fact was relevant and material.

30. In **Sheshambal** (SCC page 478, paras 26 and 27), the Apex Court noticed that, the decisions in **Pratap Rai Tanwani v. Uttam Chand [(2004) 8 SCC 490]**, **Gaya Prasad v. Pradeep Srivastava [(2001) 2 SCC 604]**, **Kamleshwar**

Prasad v. Pradumanju Agarwal [(1997) 4 SCC 413], **Shakuntala Bai v. Narayan Das [(2004) 5 SCC 772]**, **G.C. Kapoor v. Nand Kumar Bhasin [(2002) 1 SCC 610]**, **Shantilal Thakordas v. Chimanlal Maganlal Telwala [(1976) 4 SCC 417]** and **Pukhraj Jain v. Padma Kashyap [(1990) 2 SCC 431]** do not lend any support to the proposition that subsequent developments cannot be noticed by the court, especially when such developments have an impact on the right of a party to the relief prayed for. In **Shantilal Thakordas v. Chimanlal Maganlal Telwala [(1976) 4 SCC 417]** the earlier decision rendered in **Phool Rani v. Naubat Rai Ahluwalia [(1973) 1 SCC 688]** was overruled and it was held that the law permitted the eviction of the tenant for the requirement of the landlord for occupation of the land as residence for himself and members of his family and that, such a requirement was both of the landlord and the members of his family so that upon the death of the landlord the right to sue survived to the members of his family. That is not the position in the case on hand.

31. In **Sheshambal**, on the facts of the case on hand, the

Apex Court noticed that, the requirement pleaded in the eviction petition by the landlords was their own personal requirement and not the requirement of the members of their family whether dependent or otherwise. Indeed if the deceased landlords had any dependent member of the family, the Court may have, even in the absence of a pleading assumed that the requirement pleaded extended also to the dependent member of their family. That unfortunately, for the appellants is neither the case set up nor the position on facts. The deceased couple did not have any dependent member of the family for whose benefit they could have sought eviction on the ground that she required the premises for personal occupation. In the light of what have been stated above, the Apex Court held that on the death of the landlords in the original eviction petition their right to seek eviction on the ground of personal requirement for the demised premises became extinct and no order could on the basis of any such requirement be passed at this point of time.

32. The factual matrix and the law laid down by the Apex Court in **Sheshambal**, which we have dealt with in extenso hereinbefore, gives a complete answer to the question as to

whether the subsequent event, i.e., the death of Kuzhichalil Abdurahiman during the pendency of R.C.A.No.66 of 2018, is of such a magnitude as to completely eclipse the bona fide need projected in R.C.P.No.71 of 2016.

33. As already noticed, the bona fide need projected in the Rent Control Petition was that of Kuzhichalil Abdurahiman and his wife Jameela, the original landlords, for starting Jewellery business in the petition schedule shop room and also the adjacent shop room. Before the Rent Control Court, Kuzhichalil Abdurahiman, who was examined as RW1, has deposed that he intends to start business in gold ornaments, along with his wife, in the petition schedule shop room and in the adjacent shop room. It has also come out in evidence that Kuzhichalil Abdurahiman and his wife Jameela were employed abroad. In the year 2015, they quit their employment abroad and settled in their native place. They are getting a rental income of Rs.1,47,000/- per month from buildings let out to tenants.

34. In view of the law laid down by the Apex Court in **Sheshambal** it would be open to a tenant to point out a subsequent event of such a magnitude as to completely eclipse

the bona fide need projected in the Rent Control Petition filed seeking eviction under Section 11(3) of the Act, in which event, the Rent Control Court, including the Appellate Court, has to examine, evaluate and adjudicate upon the same, in order to find out whether such bona fide need no more exists because of the subsequent event.

35. In **Sheshambal** the bona fide need projected under Section 11(3) of the Act was for the personal occupation of the landlords, namely, Sachidananda Iyer and his wife Sheshambal. The Rent Control Court found that the landlords had failed to establish their bona fide requirement of the premises. Aggrieved by that order, the landlords filed appeal before the Rent Control Appellate Authority, which ended in dismissal. The landlord filed Rent Control Revision before this Court. During the pendency of that revision, Sachidananda Iyer passed away. This Court refused to intervene with the concurrent findings recorded by the courts below and accordingly, dismissed the Rent Control Revision. Feeling aggrieved, Sheshambal approached the Apex Court. During the pendency of Civil Appeal, Sheshambal passed away. Her legal heirs were substituted in the party array, on the basis

of a Will left behind by her. As per the said Will, the property in question has to devolve upon her three daughters, out of which two daughters are living in India, one each at Coimbatore and Bihar and the 3rd daughter settled in America.

36. In **Sheshambal** the Apex Court found that the eviction petition was totally silent about the requirements of any member of the family of the landlords leave alone any member of their family, who was dependent on them. Therefore, the legal heirs cannot be allowed to set up a case, which was never set up before the courts below. In **Sheshambal** the Apex Court has made it clear that the position may indeed have been differentiated, if in the original petition the landlords had pleaded their own requirement and the requirement of any member of their family dependent upon them. In such a case, the demise of the landlords or any one of them may have made little difference for the person whose benefits and bona fide requirement, the eviction was sought, who could pursue the case to prove and satisfy any such requirement.

37. In the instant case, the bona fide need projected in the Rent Control Petition was that of Kuzhichalil Abdurahiman

and his wife Jameela to start jewellery business in the petition schedule shop room and also the adjacent shop room. Before the Rent Control Court, Kuzhichalil Abdurahiman, who was examined as PW1, has deposed that he and his wife intend to start business in gold ornaments in the petition schedule shop room and also the adjacent shop room. Since the bona fide need projected in the Rent Control Petition, which stands proved before the Rent Control Court through the oral testimony of Kuzhichalil Abdurahiman, was that of Kuzhichalil Abdurahiman and his wife Jameela to start jewellery business in the petition schedule shop room and also the adjacent shop room, the death of Kuzhichalil Abdurahiman during the pendency of R.C.A.No.66 of 2018, is not a subsequent event of such a magnitude as to completely eclipse the bona fide need projected in the Rent Control Petition. The finding to that effect in the judgment dated 18.12.2019 of the Rent Control Appellate Authority is neither perverse nor patently illegal, warranting interference in exercise of the revisional jurisdiction of this Court under Section 20 of the Act.

38. As per the first proviso to Section 11(3) of the Act,

the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so.

39. In R.C.P.No.71 of 2016, the tenant and the alleged sub-tenant filed joint counter statement, wherein they have not taken any specific plea regarding vacant possession of rooms by the landlords for starting the proposed business, i.e., jewellery business. The tenant, who was examined as RW1, has no case that the landlords are in possession of other vacant rooms suitable for starting the proposed business. PW1 has deposed that there are no other rooms in his possession, suitable for the proposed business. From the assertions made by PW1, the Rent Control Court found that the idea of the landlords is to utilize the petition schedule shop room and the adjacent shop room for the purpose of starting jewellery business.

40. In **M.L. Prabhakar v. Rajiv Singal [(2001) 2 SCC 355]** the Ape Court was dealing with a case in which eviction on the ground of bona fide requirement was sought for under

Section 14(1)(e) of the Delhi Rent Control Act, 1958. In the said decision, the Apex Court relied on the law laid down in **Ram Narain Arora v. Asha Rani [(1999) 1 SCC 141]**, wherein it was held that the question whether the landlord has any other reasonably suitable residential accommodation is a question which is intermixed with the question regarding bona fide requirement. Whether the landlord has any other reasonably suitable residential accommodation is a defence for the tenant. Whether the other accommodation is more suitable than the suit premises would not solely depend upon pleadings and non-disclosure by the landlord. The landlord having another accommodation would not be fatal to the eviction proceedings if both the parties understood the case and placed materials before the court and case of neither party was prejudiced. On the facts of the case on hand, the Apex Court found that, even though the landlord has not mentioned about the other two premises, the material in respect of the other two premises was placed before the Rent Controller as well as before the High Court, thus no prejudice has been caused, and the parties have squarely dealt with this question.

41. In **Vasantha Mallan v. N.S. Aboobacker Siddique and others [2020 (1) KHC 21]** the question that arose before a Division Bench of this Court was whether a landlord is bound to plead under first proviso to Section 11(3) of the Act, the availability of vacant building in his possession and seek to explain special reason for non-occupation of such premises, in a proceeding initiated for eviction of the tenant under Section 11(3) of the Act. The Division Bench held that the initial burden to prove that landlord is in possession of vacant building, if any, is only upon the tenant unless the landlord himself admits any such vacant building to be in his possession. Only when the primary burden of proof in this behalf is discharged by the tenant, the burden shifts to the landlord to show otherwise or that the vacant premises are not suited to his needs. He can successfully discharge his part of the burden by adducing evidence either through his own testimony or others or in any other legal manner. Law does not require the landlord to plead that he is in possession of any vacant building and has special reasons for its non-occupation. It is up to the tenant alone to take up the contention and prove that landlord is in vacant

possession of premises.

42. In **Vasantha Mallan**, relying on the law laid down by the Apex Court in **M.L. Prabhakar [(2001) 2 SCC 355]** the Division Bench held that, it is not incumbent on the landlord to disclose in his pleading availability of vacant building in his possession. The non-disclosure of vacant premises cannot be picked up as a reason or circumstance to doubt the bona fides of the claim of the landlord put forward under Section 11(3) of the Act. The Division Bench made it clear that it is not obligatory for the landlord to disclose in his pleadings the details of the vacant buildings available in his possession. Nor does first proviso to Section 11(3) of the Act insist the landlord to plead that the buildings available in his possession are not sufficient to meet his requirements. These are matters of evidence rather than pleadings. Failure of the landlord to disclose availability of buildings in his possession and plead special reasons for not occupying them, cannot be taken as a valid and legal ground for rejecting the claim of the landlord as not bona fide. What could at the most be said is that it might be a fair and reasonable conduct if the landlord disclosed in his pleadings the details of

buildings in his possession and simultaneously explained the reason for non-occupation of the premises for his alleged needs.

43. In the instant case, as already noticed, in the counter statement filed in R.C.P.No.71 of 2016 the tenant has not taken any specific plea regarding vacant possession of rooms by the landlords for starting the proposed business, i.e., jewellery business. The tenant, who was examined as RW1, has no case that the landlords are in possession of other vacant rooms suitable for starting the proposed business. From the assertions made by PW1 that there are no other rooms in his possession, suitable for the proposed business, the Rent Control Court found that the idea of the landlords is to utilise the petition schedule shop room and the adjacent shop room for the purpose of starting jewellery business.

44. Before the Rent Control Court and also before the Rent Control Appellate Authority, the learned counsel for the tenant pointed out the admission of PW1 that two or three rooms are lying vacant in the 1st floor of the building. The tenant has also raised a contention that the petition schedule shop room and the adjacent shop room are not suitable for starting the proposed

jewellery business. According to the tenant, three other rooms currently occupied by 'Lilly's Fashion', 'Classic Sports' and 'Gifts & Gifts' are suitable to start the proposed jewellery business.

45. In **Sait Nagee Purushotham and Co. Ltd. v. Vimalabai Prabhulal [2005 (8) SCC 252]** the Apex Court held that, it is not the tenant who can dictate the terms to the landlords and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business.

46. The landlord is the best judge of his need or requirement and the manner in which he should conduct his affairs. It is not for the tenant to dictate terms as to which premises will be suitable or not for the proposed business of the landlord, or to advise the landlord what he should do and what he should not do. Neither the tenant nor the court can thrust upon its opinion or wisdom on the landlord and dictate terms in this regard.

47. Therefore, the petitioner-tenant cannot dictate that the landlords should start the proposed jewellery business in the 1st floor of the building, instead of the petition schedule shop

room and the adjacent shop room in the ground floor of that building. The petitioner-tenant has no case that the landlords are in vacant possession of any other shop room in the ground floor of the building, suitable for the proposed jewellery business. As rightly observed by the Appellate Authority, commencing jewellery business in the 1st floor of that building will be inconvenient not only for the landlords but also to their customers. When the idea of the landlords is to utilise the petition schedule shop room and the adjacent shop room on the ground floor of the building, for the purpose of starting jewellery business, and when PW1 has asserted that there are no other suitable rooms in his possession for the proposed business, in the absence of any reliable materials placed on record to show that the landlords are in possession of vacant shop room in the ground floor of the building, suitable for starting the proposed business, the Rent Control Court and the Appellate Authority rightly concluded that the provisions under the first proviso to Section 11(3) of the Act is not attracted and hence the tenant is not entitled to protection under that proviso. The finding to that effect in the judgment dated 18.12.2019 of the Rent Control

Appellate Authority and the order of the Rent Control Court dated 26.02.2018 is neither perverse nor patently illegal, warranting interference in exercise of the revisional jurisdiction of this Court under Section 20 of the Act.

48. As per the second proviso to Section 11(3) of the Act, the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business.

49. In **Ammeer Hamsa v. Ramabhadran and another [2019 (2) KHC 465]** a Division Bench of this Court held that, it is trite law that both limbs under the second proviso to Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act are conjunctive and the burden of proof is on the tenant. Thus, the legal position has been settled by a long line of decisions and the courts below have rightly placed reliance upon those decisions. Vide: **Narayanan Nair v. Pachumma [1980 KLT 430]**, **Prasannan v. Haris [2005 (2) KLT 365]**, **Vineethan v.**

Fathima and others [2016 (1) KHC 631]. In view of the legal position well settled by the aforesaid decisions, the landlord is not required to plead or prove other sources of income of the tenant. That apart, income is a fact which remains exclusively in the knowledge of each person only and another person cannot adduce evidence to prove income. Merely on the reason that the landlord has stated that the tenant has other sources of income and he is not mainly depending upon the income from the business carried on in the tenanted premises, for his livelihood and he failed to prove so, the tenant cannot escape from the burden of proof cast on him under the first limb of the second proviso to Section 11(3) of the Act. Where the statutory provision itself explicitly imposes the burden of proof on a party to the lis, there cannot be any variation whatever be the pleadings of the other party in that respect. The second proviso to Section 11(3) is an exception to the principal provision, granting protection to the tenant. When the second proviso itself imposes the burden of proof on the tenant, the question whether the landlord has pleaded or proved the facts constituting the said proviso is insignificant and irrelevant. Even if the landlord

pleaded so, the burden of proof will not be shifted to him. Since the second proviso to Section 11(3) is an exception to the principal provision, which would dis-entitle the landlord to get the order of eviction under Section 11(3), the burden of proof, under the said proviso is always on the tenant and unless the burden of proof under the second proviso is discharged satisfactorily, the tenant is not entitled to get protection under the said proviso to Section 11(3) of the Act.

50. In the joint counter statement filed in R.C.P.No.71 of 2016, the tenant contended that the income derived from the business conducted in the petition schedule shop room is the main source of income and he is depending upon the said income for his livelihood. In the said counter statement, it is contended further that, the alleged sub-tenant, the 2nd respondent herein, who is an employee of the tenant, is also depending upon the income from the petition schedule shop room for his livelihood.

51. In **Tellicherry W. Co-operative Society v. Safiya Beebi Umma [2002 (3) KLT 863]** a Division Bench of this Court reiterated the law laid down by a learned Single Judge in **A.V. Kammath v. Chandran [1989 (1) KLT 473]** that there is

no privity of contract between the landlord and a sub-tenant. The sub-tenant cannot in his own right question the right of the landlord to recover possession. The legal position of a sub-tenant, being as stated above, the sub-tenants cannot, in their own right claim the benefit of the second proviso to Section 11(3) of the Act. Nor can they challenge the order of eviction passed under Section 11(4)(iii) of the Act, on the ground that they are not possessed of any building sufficient for their business.

52. In so far as the petitioner-tenant is concerned, no documents were placed on record before the Rent Control Court to prove his income derived from the business conducted in the petition schedule shop room and that, the income derived from the said business is his main source of income and he is depending upon that income for his livelihood. The tenant who was examined as RW1, admitted during cross examination, that he was in Gulf for about 10 years. Recently he returned to his native place. For the last one and half years he is in the native place. RW1 admitted that he owns a building and a house, which are let out. According to RW1, he has availed bank loan for that

building and the rental income is being utilised for repaying the loan amount. However, no documents were placed on record to prove the rental income of RW1 and also his liability towards repayment of the loan amount. RW1 has also admitted his other sources of income.

53. Regarding non-availability of suitable building in the locality for carrying out the business conducted in the petition schedule shop room, RW1 during cross examination, admitted that a building, namely, Gokulam Tower, is situated about 250 meters away from the petition schedule shop room in which vacant rooms are available. According to RW1, the locality where petition schedule shop room is situated is very famous for textile business and there are no suitable rooms in the immediate vicinity and shifting to a far away place will affect his business adversely. The evidence let in by RW1 would show that he has not made any effort to find out a vacant room in the locality to shift the business conducted in the petition schedule shop room.

54. It is well settled that both limbs under the second proviso to Section 11(3) of the Act are conjunctive and the burden of proof is on the tenant. When the petitioner-tenant

miserably failed to prove that he is depending for his livelihood mainly the income derived from any business carried on in the petition schedule shop room and that, there is no other suitable building available in the locality to carry on such business, as rightly found by the Rent Control Court and the Appellate Authority, the petitioner-tenant is not entitled to protection under the Second proviso to Section 11(3) of the Act. The finding to that effect in the judgment dated 18.12.2019 of the Rent Control Appellate Authority and the order of the Rent Control Court dated 26.02.2018 is neither perverse nor patently illegal, warranting interference in exercise of the revisional jurisdiction of this Court under Section 20 of the Act.

55. In R.C.P.No.71 of 2016, order of eviction was also sought for under Section 11(4)(i) of the Act alleging that the petitioner-tenant had sub-let the petition schedule shop room to the 2nd respondent herein; the alleged sub-tenant.

56. As per Section 11(4)(i) of the Act, a landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building, if the tenant after the commencement of this Act, without the consent of the

landlord, transfers his right under the lease or sub-lets the entire building or any portion thereof if the lease does not confer on him any right to do so. As per the proviso to Section 11(4)(i), an application under this clause shall not be made for the first time in respect of one and the same tenancy unless the landlord has sent a registered notice to the tenant intimating the contravention of the said condition of the lease and the tenant has failed to terminate the transfer or the sub-lease, as the case may be, within thirty days of the receipt of the notice or the refusal thereof. As per Explanation to Section 11(4)(i), where on the partition of a joint family or of the rights of co-tenants, or on the dissolution of a firm, the right of the joint family or the co-tenants or the firm under a lease is vested in a member of the joint family, or a co-tenant or a partner, as the case may be, whether by act of parties or otherwise, no transfer by the tenant of his right under the lease shall be deemed to have taken place within the meaning of this clause.

57. In the joint counter filed in R.C.P.No.71 of 2016, the petitioner-tenant and the 2nd respondent; the alleged sub-tenant, contended that the 2nd respondent is only an employee of the

tenant. When the Advocate Commissioner, who submitted Ext.C1 report and Ext.C2 plan, inspected the petition schedule shop room, 2nd respondent alone was found in that shop room. Though, RW1 contended that he is having accounts showing payment of salary to his employees, including the 2nd respondent herein and that, he has no difficulty in producing such documents, for reasons best known to him, RW1 has not chosen to produce any such documents either before the Rent Control Court or before the Appellate Authority. According to RW1, there are four employees in his establishment. However, RW1 admitted that he is not maintaining any muster roll.

58. Though RW1 contended that the trade licence is in his name, no documents were produced either before the Rent Control Court or before the Appellate Authority to substantiate the said fact. In Ext.C1 report, the Advocate Commissioner observed that the trade licence was in the name of RW1 and the name of the establishment is 'SRG Collections'. However, the period of licence had expired even before the Commissioner visited the premises. RW1 has even admitted that the 2nd respondent herein is in possession of the petition schedule shop

room.

59. PW1 gave evidence in support of the alleged sub-lease. According to PW1, on enquiry with the 2nd respondent herein, he himself disclosed the sub-lease. The name of the shop started by the tenant was 'SRG Collections'. About seven years back the tenant closed down the shop and transferred possession to the sub-tenant. Thereafter, the sub-tenant started the shop under the name 'Mangalyapattu'. When the Advocate Commissioner inspected the petition schedule shop room, the name of the business was 'Mangalyapattu'. According to RW1, the name of the business is 'SRG Mangalyapattu'. However, no such name board was seen by the Advocate Commissioner. RW1 admitted that the change in the name of business brought out as above was not mentioned in Ext.A5 reply notice dated 23.08.2016.

60 In **Bharath Sales Ltd. v. Life Insurance Corporation of India [(1998) 3 SCC 1]** the Apex Court held that sub tenancy or subletting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive

possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sublet had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub lease. It may be paid in cash or

in kind or may have been paid or promised to be paid. It may have been paid in lump-sum in advance covering the period for which the premises is let out or sublet or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sublet.

61. In **Unni Vacco v. Thankamma Gregory [2003 (2) KLT 459]** a Division Bench of this Court held that, it is true that with regard to the question of sub-lease, there should be an exclusive possession by the alleged sub-lessee. But as stated in many cases, the transaction is between the lessee and sub-lessee. When a person other than the tenant is found to be in the building, the burden is on the tenant to show that there is no sub-lease or transfer of possession. On the facts of the case on hand, the Division Bench found that the tenant has not discharged the burden. Both the courts found that the sub-lease

is proved. The tenant, even though had tried to argue on the basis of the licence, the mere fact that the licence is in the name of the tenant cannot ignore the possibility of another person being in possession. The Commissioner has visited the property and he has filed a report. His evidence is relevant. There is nothing wrong in accepting the report of the Commissioner and on the basis of it, the other evidence adduced in the case, one can come to the conclusion that the tenant has not been successful in establishing that respondents 2, 3 and 4 are not in exclusive possession. The Division Bench noticed that the evidence of RW1, the Secretary of Kerala High Court Bar Association also shows that the second respondent is conducting a hotel in his own name.

62. In **Jacob v. Pradeep Naik [2009 (2) KHC 53]** a Division Bench of this Court held that in order to establish a ground for eviction under Section 11(4)(i) of the Act it is not necessary to show that exclusive possession of the tenanted building has been unauthorisedly transferred to the alleged sub-lessee and also to establish that there is landlord tenant relationship between the tenant and the alleged sub-lessee. A

careful reading of Section 11(4)(i) will show that what is made objectionable and a ground for eviction under that sub-section is transfer of the tenant's rights under the lease without the consent of the landlord or subletting of the entire building or any portion thereof unless authorised in that regard by the terms of the lease. The ingredients of unauthorised subletting and transfer of tenant's rights under the lease necessary under Section 11(4) (i) are in the alternative and are not cumulative. Subletting being a clandestine arrangement between the tenant and the sub tenant the terms which will be known of them only, if it were to be insisted that the landlord will have to establish a landlord-tenant relationship between the tenant and the sub-tenant, for succeeding in a petition wherein the ground under Section 11(4) (i) is invoked, the task of the landlord will be extremely difficult. This is why the Legislature has provided the ingredients of the sub-section in the alternative. Here again, it is not necessary that the transfer of the tenant's rights under the lease should be in respect of the entire building. It is sufficient that the tenant transfers his rights under the lease in respect of a portion of the building. The most important right under the lease from the

tenant's point of view is the right to possess and enjoy the building. This is why transfer of possession of the building is always understood in the context of the ground under Section 11(4)(i) as transfer of right under the lease entailing liability for eviction of the tenant if such transfer is unauthorised.

63. In **Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar [(2010) 1 SCC 217]** the Apex Court summarised the legal position regarding the essence of sub-letting, mode of its proof and onus of proof, as follows;

"The legal position that emerges from the aforesaid decisions can be summarised thus:

- (i) In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established (one) parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.
- (ii) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to sub-letting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out

the real nature of transaction entered into by the tenant.

- (iii) The existence of deed of partnership between the tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.
- (iv) If the tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.
- (v) Initial burden of proving sub-letting is on the landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.
- (vi) In other words, initial burden lying on the landlord would stand discharged by adducing prima facie proof of the fact that a party other than the tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted."

64. In **Celina Coelho Pereira** the Apex Court held that if the purpose of constituting partnership by the tenant is ostensible and a deed of partnership is drawn to conceal the real transaction of subletting in a given case, the court may be required to tear the veil of partnership to find out the real nature of transaction entered into by the tenant and in such circumstances the evidence let in by the landlord cannot be ignored on the ground that there is some variance between pleading and proof. In such a case the rule of *secundum allegata et probata* is not strictly applicable as the tenant cannot be said to have been put to any prejudice.

65. In **Usman K.S. v. Vidyavathi @ Vidya Kalesan and others [2014 (1) KHC 830]** a Division Bench of this Court held that, as held by the Apex Court in **Celina Coelho Pereira**, the initial burden of proving sub-lease is on the landlord, and once it is discharged by him, the tenant will have to explain the presence of the alleged tenant in the premises, and he will have to prove that it is not a case of sub-lease. On the facts of the case on hand, the Division Bench found that, parting with possession of the tenanted premises is well proved. The tenant

has admitted that his brother Ummer has been conducting business there for years. Even in a case where the tenant has admitted some partners in his business, the court will have to enquire and find out whether the said partnership is ostensible, and some deed of partnership is drawn to conceal the real transaction of sub-letting. For the purpose of coming to the right finding, "the Court may tear the veil of partnership to find out the real nature of the transaction entered into by the tenant".

The Division Bench held that, sub-lease is a secret arrangement or clandestine arrangement made between the tenant and the sub-tenant. While creating such a relationship of sub-lease, they will take all care and precaution not to create any document or circumstance, which will come to the notice of the landlord. On a perusal of the case records, the Division Bench could not find anything to show that the tenant's brother Ummer is his partner, or that he is only his employee, or that he would simply help him as brother. The tenant has admitted the active presence of his brother conducting business in the tenanted premises under a different name, and there is nothing to show that the tenant has active control or dominion over the said business. It has come

out in evidence that the tenant's brother Ummer has another business concern by name 'M/s.SRD Logistics' in another building in the same locality. The Division Bench observed that, in normal circumstances two persons cannot have business under the same name and style in the same locality. This fact itself, will prove that the business by name 'M/s.SRD Logistics', in fact, belongs to the tenant's brother Ummer. When the alleged sub-tenant has his own business by name 'M/s.SRD Logistics' in another building in the same locality, it is impossible to believe that the business in the tenanted premises under the said name and style belongs to the tenant. When all the above facts are considered together, and when the active presence of the tenant's brother conducting business in the tenanted premises, otherwise than as an employee or partner, is well proved, and rather admitted, the only finding possible under the law is that he has been conducting business there as a sub-tenant. Therefore, the Division Bench found that the two authorities below have come to the right finding under Section 11(4)(i) of the Act, and accordingly confirmed the said finding.

66. In the instant case, PW1 gave evidence in support of

the alleged sub-lease. According to PW1, on enquiry, the 2nd respondent, the alleged sub-tenant, himself disclosed the sub-lease. The Advocate Commissioner, who submitted Ext.C1 report has reported that, at the time of inspection, the 2nd respondent, the alleged sub-tenant, alone was found in the petition schedule shop room. PW1 has deposed that the name of the shop started in the petition schedule shop room by the tenant was 'SRG Collections', which was closed down about seven years back. The tenant transferred possession of the said shop to the 2nd respondent, the alleged sub-tenant. Thereafter, he started the shop under the name 'Mangalyapattu'. At the time of inspection of the Advocate Commissioner, the name of the shop was 'Mangalyapattu'. Though, RW1 has deposed that the name of the business is 'SRG Mangalyapattu', the Advocate Commissioner has not seen any such name board. RW1 has admitted that the change in the name of business, brought out as above, was not mentioned in Ext.A5 reply notice dated 23.08.2016.

67. When a person other than the tenant is found in the petition schedule shop room, at the time of inspection by the Advocate Commissioner, the burden is on the tenant to show that

there is no sub-lease or transfer of possession in favour of the alleged sub-tenant. RW1 could not explain the presence of the alleged sub-tenant in the petition schedule shop room. By the oral testimony of PW1 and also Ext.C1 report of the Advocate Commissioner, the landlord was able to discharge the initial burden of proving sub-letting of the petition schedule shop room in favour of the alleged sub-tenant and that, a third party is in exclusive possession of the tenanted premises and that, the tenant has no legal possession of that premises. Thereafter, the onus shifted to the tenant to prove the nature and occupation of the alleged sub-tenant and that, the tenant continues to hold legal possession of the tenanted premises. RW1 miserably failed to prove the nature of occupation of the petition schedule shop room by the alleged sub-tenant and that, the tenant continues to hold legal possession of the tenanted premises. Viewed in the light of the law laid down in the decisions referred to supra, conclusion is irresistible that the landlord has succeeded in proving that the tenant has sub-let the petition schedule shop room to the 2nd respondent, the alleged sub-tenant. Therefore, the Rent Control Appellate Authority rightly confirmed the finding

of the Rent Control Court that there is sub-letting of the premises by the petitioner-tenant and as such, the landlords are entitled for an order of eviction under Section 11(4)(i) of the Act. The finding to that effect in the judgment dated 18.12.2019 of the Rent Control Appellate Authority and the order of the Rent Control Court dated 26.02.2018 is neither perverse nor patently illegal, warranting interference in exercise of the revisional jurisdiction of this Court under Section 20 of the Act.

68. Section 20 of the Kerala Buildings (Lease and Rent Control) Act deals with revision. As per sub-section (1) of Section 20, in cases, where the appellate authority empowered under Section 18 is a Subordinate Judge, the District Court, and in other cases the High Court, may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such order in reference thereto as it thinks fit. As per sub-section (2) of Section 20 of the Act, the costs of and incident to all proceedings before the High Court or District Court under sub-

section (1) shall be in its discretion.

69. In **Rukmini Amma Saradamma v. Kallyani Sulochana [(1993) 1 SCC 499]**, the scope of revisional powers of the High Court under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 came up for consideration before the Three-Judge Bench of the Apex Court. While considering whether the High Court could have re-appreciated entire evidence, the Apex Court held that, even the wider language of Section 20 of the Act cannot enable the High Court to act as a first or a second court of appeal. Otherwise, the distinction between appellate and revisional jurisdiction will get obliterated. Hence, the High Court was not right in re-appreciating the entire evidence both oral or documentary in the light of the Commissioner's report. The High Court had travelled far beyond the revisional jurisdiction. Even by the presence of the word 'propriety' it cannot mean that there could be a re-appreciation of evidence. Of course, the revisional court can come to a different conclusion but not on a re-appreciation of evidence; on the contrary, by confining itself to legality, regularity and propriety of the order impugned before it.

70. In **T. Sivasubramaniam v. Kasinath Pujari [(1999) 7 SCC 275]** the Apex Court held that, the words 'to satisfy itself' employed in Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 no doubt is a power of superintendence, and the High Court is not required to interfere with the finding of fact merely because the High Court is not in agreement with the findings of the courts below. It is also true that the power exercisable by the High Court under Section 25 of the Act is not an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the courts below. But where a finding arrived at by the courts below is based on no evidence, the High Court would be justified in interfering with such a finding recorded by the courts below.

71. In **Ubaiba v. Damodaran [(1999) 5 SCC 645]** the Apex Court considered the exercise of revisional power by the High Court, under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, in the context of an issue as to whether the relationship of landlord-tenant existed or not. It was urged that whether such relationship existed would be a jurisdictional

fact. Relying on the decision in **Rukmini Amma Saradamma** it was contended that, however wide the jurisdiction of the revisional court under Section 20 of the Act may be, it cannot have jurisdiction to re-appreciate the evidence and substitute its own finding upsetting the finding arrived at by the appellate authority. The Apex Court held that, though the revisional power under Section 20 of the Act may be wider than Section 115 of the Code of Civil Procedure, 1908 it cannot be equated even with the second appellate power conferred on the civil court under the Code. Therefore, notwithstanding the use of the expression 'propriety' in Section 20 of the Act, the revisional court will not be entitled to re-appreciate the evidence and substitute its own conclusion in place of the conclusion of the appellate authority. On examining the impugned judgment of the High Court, in the light of the aforesaid ratio, the Apex Court held that the High Court exceeded its jurisdiction by re-appreciating the evidence and in coming to the conclusion that the relationship of landlord-tenant did not exist.

72. In **Hindustan Petroleum Corporation Limited v. Dilbahar Singh [(2014) 9 SCC 78]** a Five-Judge Bench of the

Apex Court considered the revisional powers of the High Court under Rent Acts operating in different States. After referring to the law laid down in **Rukmini Amma Saradamma** the Apex Court reiterated that even the wider language of Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 does not enable the High Court to act as a first or a second court of appeal. The Constitution Bench agreed with the view of the Three-Judge Bench in **Rukmini Amma Saradamma** 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.

73. In **Thankamony Amma v. Omana Amma [AIR 2019 SC 3803 : 2019 (4) KHC 412]** considering the matter in the backdrop of law laid down in **Rukmini Amma Saradamma, Ubaiba** and **Dilbahar Singh** the Apex Court held that the findings rendered by the courts below were well supported by evidence on record and could not even be said to be perverse in any way. The High Court could not have re-appreciated the evidence and the concurrent findings rendered by the courts

below ought not to have been interfered with by the High Court while exercising revisional jurisdiction.

74. Viewed in the light of the law laid down in the decisions referred to supra, it cannot be said that the order of eviction passed by the Rent Control Court, which now stands confirmed by the Appellate Authority, is either perverse or patently illegal or it suffers from any legal infirmity, warranting interference under Section 20 of the Act. Therefore, we find no reason to interfere with the order of eviction concurrently passed by the authorities below.

75. The learned counsel for the petitioner-tenant would submit that considering the situation prevailing in the country on account of Covid-19 pandemic the tenant may be given at least three months' time to give vacant possession of the petition schedule shop room.

76. The learned counsel for respondents 1 and 3 would submit that the tenant has not paid monthly rent for the last two years and in case this Court is granting time to the tenant to give vacant possession of the petition schedule shop room, the tenant shall be directed to clear the entire dues towards arrears of rent

and continue to pay the monthly rent for the remaining period, without any default.

77. The learned counsel for the tenant would submit that the tenant is prepared to clear the entire dues towards arrears of rent, within a time limit that may be fixed by this Court and he shall continue to pay the monthly rent for the remaining period, without any default, till he gives vacant possession of the petition schedule rooms to the landlord.

78. In such circumstances, this Rent Control Revision Petition is dismissed declining interference on the impugned order of the Rent Control Court and the judgment of the Rent Control Appellate Authority; however by granting three months' time to the petitioner-tenant, to surrender vacant possession of the petition schedule shop room to the respondents 1 and 3 to 5; the landlords, considering the situation prevailing in the Country on account of COVID-19 pandemic, subject to the following conditions:

- (i) The respondent-tenant in the Rent Control Petition 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 he will surrender vacant possession of the petition schedule shop room to the petitioners-landlords within three months from the date of this order and that, he shall not induct third parties into possession of the petition schedule shop room;

- (ii) The respondent-tenant in the Rent Control Petition shall deposit the entire arrears of rent as on date, before the Rent Control Court or the Execution Court, as the case may be, within four weeks 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, in the event of the respondent-tenant in the Rent Control Petition 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 schedule room will stand cancelled automatically and the petitioners-landlords will be at liberty to proceed with the execution of the order of eviction.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

K. BABU, JUDGE

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