

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

RSA.No. 523 of 2004 (D)

AGAINST THE JUDGMENT IN AS 112/2000 of ADDL.SUB COURT, KOTTAYAM
DATED 22.09.2003

AGAINST THE JUDGMENT IN OS 673/1997 of PRINCIPAL MUNSIF COURT,
KOTTAYAM DATED 30.09.1999

APPELLANT-RESPONDENT-DEFENDANT:

M.C.ALEXANDER, S/O. V.A.CHACKO
MAMPAZHASSERIL HOUSE, VADAVATHOOR, KOTTAYAM.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

RESPONDENTS-APPELLANTS-PLAINTIFF:

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1. ACHAMMA JOSEPH, W/O. LATE JOSEPH,
PALATHINKAL HOUSE, T.B.ROAD, KOTTAYAM.
 2. P.J.ISSAC, S/O.LATE JOSEPH,
PALATHINKAL HOUSE, NOW RESIDING AT, A2.244
JANAKAPURI, NEW DELHI-58.

R1 & R2 BY ADVS. SRI.M.J.JOSEPH
SRI.JOSEKUTTY MATHEW

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD
ON 29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.BHAVADASAN, J.

Regular Second Appeal No.523 OF 2004

Dated this the 29th day of July, 2015.

J U D G M E N T

A very narrow question arises for consideration in this second appeal. At the time when Section 5 of Buildings (Lease & Rent Control) Act was struck down as unconstitutional, the landlords used to approach court for fixation of fair rent.

2. The same thing happened in the case on hand also. The trial court dismissed the suit while the lower appellate court interfered with the matter and fixed fair rent. While the matter was pending before this Court, Section 5(1) of the Act was re-introduced and as per the decision in **Edger Ferus** vs. **Abraham Ittycheria** (2004 (1) KLT 767), parties will have to approach the Rent Control Court for necessary reliefs. In paragraph 17 of the above decision, it was held as follows:

“17. Under such circumstance both the C.R.Ps would stand dismissed. Review Petition is disposed of restoring S.5(1) to the Rent Control Act and landlord and tenant can approach the Rent Control

Court under S.5(1) of Act 2 of 1965 for fixation of fair rent, and the jurisdiction of Civil Court would stand ousted".

In the light of the above decision, the impugned order cannot survive. The parties will have to approach the Rent Control Court. The judgment and decree of the lower court is set aside and the parties are given liberty to approach the Rent Control Court for appropriate reliefs.

This Regular Second Appeal is disposed of as above.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A. to Judge.