

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

RCRev..No. 161 of 2007 ()

(AGAINST THE JUDGMENT IN RCA 18/2003 of ADDL.RENT CONTROL APPELLATE
AUTHORITY,ALAPPUZHA. DATED 19-01-2006)

(AGAINST THE ORDER IN RCP 16/1994 of RENT CONTROL COURT,ALAPPUZHA
DATED 23-10-2001)

PETITIONER/APPELLANT/PETITIONER:

JAGADAMMA, JAGADA BHAVAN,
ZILLA COURT WARD, ALAPPUZHA.

BY ADV. SRI.B.JAYASANKAR

RESPONDENT(S)/RESPONDENT/RESPONDENT:

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1. PONNAMMA, W/O.LATE GIVINDAN ACHARY,
AMBUJA SADANAM, ZILLA COURT WARD,
ALAPPUZHA.
 2. RAMACHANDRAN, S/O.LATE GIVINDAN ACHARY,
AMBUJA SADANAM, ZILLA COURT WARD,
ALAPPUZHA.
 3. RAJAGOPAL, S/O.LATE GIVINDAN ACHARY,
AMBUJA SADANAM, ZILLA COURT WARD,
ALAPPUZHA.
 4. AMBUJAM, D/O.LATE GIVINDAN ACHARY,
AMBUJA SADANAM, ZILLA COURT WARD,
ALAPPUZHA.
 5. SELVARAJ, S/O.LATE GIVINDAN ACHARY,
AMBUJA SADANAM, ZILLA COURT WARD,
ALAPPUZHA.
 6. RAJALAKSHMY, D/O.LATE GIVINDAN ACHARY,
AMBUJA SADANAM, ZILLA COURT WARD,
ALAPPUZHA.
 7. JAYALAKSHMY, D/O.LATE GIVINDAN ACHARY,
AMBUJA SADANAM, ZILLA COURT WARD,
ALAPPUZHA.

RCR.161/07

8. GEETHA, D/O.LATE GIVINDAN ACHARY,
AMBUJA SADANAM, ZILLA COURT WARD,
ALAPPUZHA.
9. KANNAN, S/O.LATE GIVINDAN ACHARY,
AMBUJA SADANAM, ZILLA COURT WARD,
ALAPPUZHA.

R3 BY ADV. SRI.R.AZAD BABU

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
21-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.161 of 2007

Dated this the 21st day of January, 2015

O R D E R

Antony Dominic, J.

- 1.The petitioner in RCP.No.17/94 on the file of the Rent Control Court, Alappuzha, which was dismissed by order dated 23.10.2001 and which order was confirmed in RCA.No.19/03 on the file of the Rent Control Appellate Authority, Alappuzha, is the revision petitioner.
- 2.The landlord had filed RCP.Nos.15/94, 16/94 and 17/94 on the file of the Rent Control Court, Alappuzha seeking eviction of the respective tenants under section 11(3) of the Rent Control Act. According to the landlord, her children were running a Press by name 'Udaya Press, Alappuzha' in a rented building and that they wanted to shift the press to the petition scheduled building. At the trial court itself, RCP.15/94 was settled. RCP.Nos.16/94 and 17/94 were tried and were dismissed by separate orders. These orders were challenged by the landlord by filing RCA Nos.46/95 and 47/95. By a common

judgment rendered on 10.12.1999, the appellate authority disposed of those appeals finding that there was dearth of pleadings in the petition and in the objections of the tenants. This finding was rendered in the context of the case of the landlord that she needed the entire three rooms in the building for accommodating the Press of her children. Taking note of this, the appellate authority remitted the case by holding thus:

“In the result, both appeals are allowed and the matter is remanded to the lower authority for fresh disposal after giving an opportunity to the appellant to take out a commission to report the actual requirement and the availability of the space. Both sides are at liberty to amend the pleadings and to further evidence if so advised. The appellant is also at liberty to apply for joint trial of both cases, if so chosen. The parties are directed to suffer their respective costs. This judgment would be kept in RCA.46/95 and copy of the same would be kept in the other appeal.”

3. After the case was remitted, though the landlord applied for joint trial of both the RCPs and also took out an advocate commission, who submitted Exts.

C1 and C1(a) report and sketch, she did not get her pleadings amended. Apparently taking advantage of that omission on the part of the landlord, the tenants also did not amend their pleadings. Oral evidence was also not adduced by both sides. The cases were considered by the Rent Control Court, which rendered a common order dated 23.10.2001 dismissing the petitions. In this order, the Rent Control Court faulted the landlord for her failure to amend the pleadings and it was mainly for that reason, the petitions were dismissed. This order was confirmed by the appellate authority by dismissing RCA.18/03 and 19/03.

4.It is stated that the dispute in RCP.16/94, with reference to which RCA.18/03 was filed and which order was challenged in RCR.159/07, also was settled during the pendency of this revision and that settlement is brought on record by filing I.A.No.2644/12.

5. On hearing the learned counsel for the parties, we are inclined to think that the courts below were justified in concluding that taking advantage of the findings of the appellate authority in RCA.46/95 and 47/95, the landlord should have incorporated necessary amendments to her pleadings in the RCPs and that in the absence of such amendment, there was lack of necessary pleadings and therefore, the Rent Control Court and the appellate authority were justified in rejecting the petitions and confirming the said order.

6. However, having regard to the fact that pursuant to the observations made by the appellate authority in the order mentioned above, when the matter was being reconsidered by the Rent Control Court, since the landlord made application for joint trial and also for taking out a commission, we are inclined to think that the omission of the landlord in getting the pleadings amended was not a deliberate one but, as confessed by the counsel before us, was on account of an inadvertent omission or may be even the fault of

the counsel who appeared for the landlord. If that be so, we are inclined to think that the landlord should not be visited with the penalty of dismissal and according to us, an opportunity could still be given to the landlord so that the pleadings can be necessarily amended and this cause of action, to our mind, will not cause any prejudice to the tenants also.

7. In the aforesaid circumstances, we are inclined to remit the matter to the appellate authority for giving the landlord an opportunity to effect necessary amendments and if necessary, to record further evidence. With the above in mind, we set aside the order passed by the Rent Control Appellate Authority, Alappuzha in RCA.19/03 and remit the matter to that authority. It is directed that if an application is made by the petitioner, the appellate authority will allow amendment of the pleadings in the petition and will give an opportunity to the tenants also to amend their pleadings. If the parties ask for opportunity to adduce further

evidence, that will also be considered and appropriate orders passed.

Revision is disposed of with the above directions.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

kkb.

/true copy/

PS to Judge