

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

RCRev..No. 109 of 2013 ()

AGAINST THE ORDER/JUDGMENT IN RCA 1/2012 of ADDL.DISTRICT COURT-
I,MAVELIKKARA DATED 11-02-2013

AGAINST THE ORDER/JUDGMENT IN RCP 11/2007 of MUNSIF COURT,KAYAMKULAM
DATED 14-02-2012

REVISION PETITIONER(S)/REVISION PETITIONER/ RESPONDENT COUNTER
PETITIONER:

GAYATHRIDEVI
W/O RAMABHADRAM PILLAI, KRISHNA MANDIRAM
KAPPIL MEKKUM MURI, KRISHNAPURAM VILLAGE

BY ADVS.SRI.R.T.PRADEEP
SRI.P.BIJIMON

RESPONDENT(S)/APPELLANT/ PETITIONER:

THULASIBAI
W/O KRISHNAKUTTY, LEKSHMI BHAVANAM
MALAMEL BHAGOM MURI, KEERIKKAD VILLAGE

R1 BY ADV. SRI.JACOB P.ALEX
R1 BY ADV. SRI.JOSEPH P.ALEX

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
26-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

kkj

“C.R.”

**K.SURENDRA MOHAN, J &
MARY JOSEPH, JJ.**

R.C.R. No.109 of 2013

Dated this the 26th day of May, 2015

O R D E R

Surendra Mohan, J.

The revision petitioner tenant challenges an order of the Rent Control Appellate Authority under Section 12(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). The respondent landlady had filed RCP.No.11 of 2007 before the Rent Control Court, Kayamkulam, seeking an order of eviction against the tenant alleging grounds under Section 11(2)(b), 11(3) and 11(4)(v) of the Act. The petition was resisted by the tenant. The matter was tried and the Rent Control Petition was dismissed by the Court. The respondent landlady challenged the order of the Rent Control Court in Rent Control Appeal No.1 of 2012 before the Rent Control Appellate Authority , Mavelikara.

2. During the pendency of the appeal, the landlady filed a petition under Section 12(1) of the Act for a direction to the tenant to deposit the rent in respect of the tenanted premises. On 23.06.2012, the Appellate Authority passed an order directing the tenant to comply with Section 12(1). The matter was then posted to 10.07.2012. Since the rent was not paid, the Appellate Authority directed the respondent to file a statement regarding the arrears on the said date. On 13.07.2012, when the case was called, the petitioner tenant wanted to file a counter statement. The case was adjourned to 28.07.2012 and was thereafter posted for hearing to 30.07.2012. On the said date, the petitioner tenant sought time for filing objections to the statement filed by the landlady. Time was granted. On 06.08.2012, the tenant filed a counter statement denying the liability to pay arrears of rent. On 11.02.2013, the Appellate Authority passed an order under Section 12(3). Thereafter, the order was made final on 04.03.2013. This revision is filed challenging the said order of the Appellate Authority.

3. After this revision was admitted, a direction was issued on 09.01.2014 for payment of the admitted arrears of rent amounting to ₹40,000/-. It is not in dispute that the said amount has been paid.

4. According to the Counsel for the petitioner Sri.R.T.Pradeep, the order of the Appellate Authority is unsustainable and liable to be set aside for the reason that, the authority had not quantified the amount of rent that was to be paid by the tenant. Secondly, the authority had not stipulated a time limit within which the arrears of rent had to be paid. It is contended that, it was imperative for the Appellate Authority to have stipulated the time limit within which the arrears of rent had to be paid or deposited, in accordance with the mandate of sub section 2 of Section 12 of the Act. The necessity of fixing such a time limit has been held to be mandatory by this Court in the decision in **Pochappan Narayanan v. Maniyadan Gopalan** [ILR 1990 (3) Kerala 1105]. Therefore, according to the learned counsel, the order under revision is unsustainable and liable to be set aside.

5. Advocate Jacob P.Alex who appears for the respondent landlady sought to support the order under revision by pointing out that, sufficient time had been granted to the tenant to make the payment. According to the counsel, though initially a direction was issued to comply with sub section 1 of Section 12 on 23.06.2012, she was granted time successively up to 11.02.2013 during which period, she had ample opportunities to pay the arrears of rent if she wanted to do so. It is therefore clear that the tenant was deliberately delaying the payment of arrears of rent thereby attracting the consequences contemplated by Section 12(2) of the Act. According to the learned counsel, the payment made subsequently before this Court would not absolve the tenant of the liability that she had incurred by virtue of her default in not complying with the direction under Section 12(2) of the Act. In sharp contrast to the position under Section 11(2)(b) of the Act, subsequent payment would not absolve the tenant of the liability under Section 12, it is pointed out. Reliance is placed on the decision in **Davy v. Indu** [1999 (3) KLT 434]

in support of the above proposition. The fact that the Appellate authority had not fixed any particular time limit for making the payment or deposit is not of any consequence in the present case, according to the counsel, for the reason that, the tenant had got more time than what is stipulated by the statutory provision. Therefore, it is contended that, the order under challenge is not liable to be set aside.

6. Heard. A perusal of the records of the Appellate Authority shows that, the initial order that was passed in this case on 23.06.2012 only directed the tenant to comply with Section 12(1). It is true that, the tenant had been granted time thereafter on a number of occasions. However, the order of the Appellate Court cannot be accepted as one passed in compliance with the requirements of section 12 of the Act. Section 12(2) mandates that, the deposit that is contemplated by Section 12(1) shall be made within "such time" as the Court may fix, provided that the time limit shall not be less than four weeks from the date of order. The above position has been

accepted and reiterated by a Division Bench of this Court in

Pochappan Narayanan v. Maniyadan Gopalan (Supra).

Malimath,CJ speaking for the Division Bench has in paragraph 6 of the said judgment held as follows:-

Sub-section (2) deals with the time and manner in which the deposit contemplated by sub-section (1) is required to be made. It provides that the deposit under sub-section (1) has to be made within the time to be fixed by the court for that purpose. The first period to be fixed by the court cannot be less than four weeks from the date of the order and the time to be fixed for the subsequently cannot be less than two weeks. The deposit is required to be accompanied by the fee prescribed for service of notice to be issued to the landlord as per sub-section (4) of section 12 of the Act and the amount is to be deposited in the manner prescribed under the rules framed under the Act. Sub-section (3) deals with the consequences flowing as a result of the failure on the part of the tenant to pay or deposit the admitted rent. When the tenant fails to pay or deposit the admitted rent, as provided in sub-sections (1) and (2), the Rent Control Court or the Appellate Authority, as the case may be, will be required to ask the tenant to show cause why all further proceedings should not be stopped and an order made directing the tenant to put the landlord in possession. When such an opportunity is afforded to the tenant, he is entitled to show if there is sufficient cause for his failure to pay the amount or deposit the rent as provided in sub-

sections (1) and (2) of the Act. If the Rent Control Court or the Appellate Authority is satisfied that there is sufficient cause for not making the payment or deposit within time, he will not make any order stopping further payments and directing the tenant to put the landlord in possession. If, however, he is not satisfied about the cause shown an order has to be made of stopping all further proceedings and directing the tenant to put the landlord in possession. Sub-section (4) deals with the manner in which the amount deposited has to be dealt with and paid to the landlord.

It is clear from the above that, fixation of a time limit for making the payment or depositing the amount is a necessary precondition for attracting the other consequences that are stipulated by Section 12(3) of the Act. To the same effect is the dictum in **Sidharthan v. Hassankutty Haji** [1994(2) KLT 419] where another Division Bench of this court has followed the dictum in the above decision. In view of the above binding dicta, it has to be held that in the present case, the order under challenge cannot be sustained.

7. There is another reason why the order under revision cannot be sustained. In the present case, the

landlady's Rent Control Petition had been dismissed by the Rent Control Court and the Rent Control Appeal was filed by the landlady. In such cases, a petition under Section 12 (1) is not maintainable at the instance of the landlord. The above is clear from a reading of the provision itself. It has been held by a Division Bench of this Court in **Mody v. Jose** [2007(3) KLT 338] as follows:-

Plain reading of S.12(1) shows that it will be applicable if tenant is contesting an application under S.11 before the Rent Control Court or appeal proceedings are initiated by the tenant under S.18 of the Act against any order on its application. Therefore an order under S.12 by the appellate authority is permissible only if tenants file an appeal under S.18 of the Act against any order passed on the application made under S.11. Hence it is clear that in an appeal proceedings against an order dismissing the eviction application, the landlord has no right to file petition under S.12.

8. In the light of the above, it has to be held that the petition filed by the landlady in the present case under Section 12(1) itself was not maintainable. Therefore, the order passed by the Appellate Authority without noticing that the petition itself was not maintainable cannot be

sustained.

In view of the above, this revision is allowed. The order of the Rent Control Appellate Authority in Rent Control Appeal 1 of 2012 in Mavelikara is set aside. The Rent Control Appellate Authority is directed to take up the appeal expeditiously, considering the fact that it has been pending for a long time and to finally dispose of the same on the merits, as expeditiously as possible and at any rate within a period three months of the date of appearance of the parties before the Court. The Registry is directed to transmit the records of the case urgently to the Rent Control Appellate Authority for the purpose of complying with the above direction. The parties shall appear before the Rent Control Appellate Authority on 15.06.2015, without any further notice.

Sd/-
K.SURENDRA MOHAN,
JUDGE

Sd/-
MARY JOSEPH
JUDGE