

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

RCRev..No. 210 of 2013 ()

**AGAINST IA 2402/11 IN RCP 5/10 OF RENT CONTROL COURT,
PATHANAMTHITTA DATED 8/2/12**

**AGAINST THE ORDER/JUDGMENT IN RCA 2/2012 of RENT CONTROL APPELLATE
AUTHORITY (DISTRICT COURT),PATHANAMTHITTA DATED 19-02-2013**

REVISION PETITIONER(S)/APPELLANTS:

- 1. BASHEER,
S/O SHAHUL HAMEED, NAJUMATH MANZIL, PERINGALA MURI
KAYAMKULAM VILLAGE.**
- 2. RASHEEDA,
W/O.S.BASHEER, NAJUMATH MANZIL, PERINGALA MURI
KAYAMKULAM VILLAGE.**

**BY ADVS.SRI.K.S.SIVA KUMAR
SRI.C.B.SREEKUMAR**

RESPONDENT(S)/RESPONDENT:

**THOMASKUTTY,
S/O.ABRAHAM, ELANJICKAL HOUSE, ELAKOLLOOR MURI
PRAMADOM VILLAGE, PIN-689691.**

BY ADV. SRI.K.SHAJ

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 07-04-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
=====

R.C.R. No. 210 of 2013
=====

Dated this the 7th day of April, 2015

O R D E R

Antony Dominic, J.

The revision petitioners filed RCP No.5/10 on the file of the Rent Control Court, Pathanamthitta seeking eviction of the respondent tenant invoking grounds under Section 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act. In the RCP, they filed IA No.2402/11 seeking an order under Section 12 of the Act requiring the tenant to deposit the admitted arrears of rent. That IA was dismissed by the Rent Control Court by its order dated 8th of February, 2012. The Rent Control Appellate Authority also dismissed RCA No.2/12 filed by the landlords. This is the background in which the landlords have filed this revision.

2. We heard the learned counsel for the petitioners and the learned counsel appearing for the respondent.

3. The contention raised by the learned counsel for the petitioners is that the Rent Control Court and the appellate authority have proceeded on the basis that though the rent is ₹2,000/- per month and that the arrears claimed is from the month of February,

2008, admittedly, the landlords had received an advance amount of ₹2,25,000/- and that the said amount could be adjusted towards arrears of rent claimed. It is contended that the landlords did not make any admission regarding the acceptance of the advance amount as found by the Rent Control Court and the appellate authority. Therefore, according to the counsel, the orders are untenable. However, we find from the order of the Rent Control Court that it has specifically found that though in the reply notice as well as in the objection, the tenant has mentioned regarding the advance amount, the said claim was not disputed by the landlords. In the appeal also, the appellate authority has recorded the submission of the learned counsel for the petitioners thus in para 6 of the order;

“On behalf of the appellant the learned counsel argued that an amount of ₹2,25,000/- which was paid by way of advance cannot be adjusted towards arrears of rent”.

4. Reading of the above would therefore show that the courts below have concurrently come to a factual finding about the acceptance of the advance amount. Such a factual finding entered into by the courts below about what transpired in court

cannot be upset by us sitting in revision and if at all the petitioners have a case that the said factual findings are incorrect, it was upto them to have sought rectification of the alleged mistake by moving the lower courts. We therefore decline to interfere with the orders passed by the Rent Control Court, which was confirmed by the appellate authority also.

5. Be that as it may, the Rent Control Petition is still pending before the Rent Control Court. According to the landlords, their specific case is that they have not received any advance. Considering the above, we direct that the Rent Control Petition shall be decided by the Rent Control Court untrammelled by its order in IA No.2402/11 and the judgment of the appellate court in RCA No.2/12.

With the above observation, the revision petition is disposed of.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//
PA to Judge