

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

OP (RC).No. 11 of 2015 (O)

**(I.A.NO.4078/2014 IN R.C.A.NO.88/2014 OF RENT CONTROL APPELLATE COURT,
THRISSUR)**

PETITIONER(S):

1. **BASHEER ABOOBACKER, AGED 33 YEARS,
S/O.ABOOBACKER, KADAPURATHAKATH,
ANAMKUNNATH HOUSE, HOUSE NO.5/188,
CHANDAPPADI, PONNANI TALUK.**
2. **SIRAJUDHEEN, AGED 40 YEARS,
S/O.PALLIVALAPIL SAINUDHEENKUTTY,
HAMEEDA MANZIL, HOUSE NO.34/271,
PONNANI NAGARAM P.O.**

**BY ADVS.SRI.M.P.SHAMEEM AHAMED
SRI.A.I.FAISAL
SRI.S.K.SAJU
SRI.A.RANJITH NARAYANAN
SRI.K.H.SREENATH**

RESPONDENT(S):

1. **SHAMSUDHEEN, AGED 42 YEARS,
S/O.KUNHIMUHAMMED HAJI,
CHALIL HOUSE, ANCHANGADI P.O.,
KADAPPURAM, TRICHUR 6820514.**
2. **SUHARIDA SHAMSUDHEEN, AGED 36 YEARS,
W/O.SHAMSUDHEEN, CHALIL HOUSE, ANCHANGADI P.O.,
KADAPPURAM, TRICHUR 6820514.**

R1 BY ADV. SRI..RAJIT (CAVEATOR)

**THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 02-02-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

O.P.(R.C.)No. 11/2015.

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1. COPY OF THE LEASE AGREEMENT DTD.22.9.11.
- P2. COPY OF THE SETTLEMENT TERMS DTD.1.11.2012.
- P3. JUDGMENT OF THIS COURT IN O.P.R.C.9/14 DTD.11.4.2014.
- P4. COPY OF THE ORDER DTD.19.8.2014 IN IA.NO.6067/12 IN RCP 117/12 BY THE RENT CONTROL COURT.
- P5. COPY OF THE ORDER DTD.7.10.2014 BY THE RENT CONTROL COURT IN I.ANO.6067/12 IN RCP NO.117/2012.
- P6. COPY OF THE ORDER DTD.21.1.2015 BY RENT CONTROL APPELLATE AUTHORITY IN I.A.NO.4078/2014 IN RCA 88/2014.
- P7. COPY OF THE REPORT OF THE VILLAGE OFFICER DTD.13.6.13.
- P8. COPY OF THE REPORT DTD.26.6.14 BY THE ASSISTANT ENGINEER, PWD.
- P9. COPY OF THE COUNTER STATEMENT DTD.29.5.13.

RESPONDENT(S)' EXHIBITS:

NIL.

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P.S. to Judge

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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O.P(R.C.) No.11 of 2015

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Dated this the 2nd day of February, 2015

J U D G M E N T

ANTONY DOMINIC, J.:

This original petition is filed by the appellants in R.C.A.No. 88/2014 on the file of the 1st Additional Rent Control Appellate Authority, Thrissur, challenging the order passed in I.A.No. 4078/2014, by which, stay of the order passed by the Rent Control Court has been granted, subject to payment of Rs. 20 lakhs to the landlords.

2. We heard the learned counsel for the petitioners and considered the submissions made.

3. On facts, what we notice is that the respondents herein filed R.C.P.No.117/2012 under Sec.11(2) of the Rent Control Act and contending that the building in question has been let out to the petitioners herein for a monthly rent of Rs.1,85,000/- and that the rent has not been paid for the previous three years. It is seen that the landlords had filed I.A.No.6067/2013, in which, the court had passed order under Sec. 12 of the Act requiring the petitioners to

deposit the admitted arrears of rent. That order was not complied with. Therefore, Ext.P-5 order under Sec.12(3) was passed, requiring the tenants to give vacant possession of the building to the landlords. It is this order which is challenged in R.C.A.No. 88/2014 filed by the petitioners. In that R.C.A. stay order has been passed in I.A.No. 4078/2014 with the aforesaid condition, which order is under challenge in this original petition.

4. The first contention raised by the learned counsel for the petitioners is that the building could not so far be occupied or made use of by the tenants for the reason that the building is not complete in all respects and therefore, according to him, there is no rent in arrears. It is also pointed out that in such circumstances Sec.12, which applies to cases of admitted arrears of rent, itself was inapplicable. However, these contentions are matters which may be germane for the purposes of R.C.A.No. 88/2014, which is now pending consideration of the Appellate Authority and therefore it is premature for the petitioners to urge these contentions before this Court and, that too, in this petition.

5. Insofar as the order passed in I.A.No.4078/2014 is

concerned, this order is passed on the premise that monthly rent is Rs.1,85,000/- and that there has been default for the last three years. The order also shows that when the case is taken up on the request of both sides, the petitioners themselves had expressed their willingness to make deposit of a portion of the amount due. It was taking note of all these facts, the Rent Control Appellate Authority has granted stay on payment of Rs.20 lakhs, which is only a portion of the amount claimed by the landlords. This order, in our view, does not suffer from any perversity or want of jurisdiction justifying interference in a proceedings under Art. 226 of the Constitution of India. Therefore, we decline to entertain this original petition. Accordingly, the original petition is dismissed.

6. The learned counsel for the petitioners submits that the petitioners are willing to deposit the amount in court, instead of paying the amount to the landlords. If the petitioners are desirous of obtaining such a modification, we leave it open to them to move the Appellate Authority itself seeking modification of the order passed by it.

7. Considering the fact that the order impugned was

passed at the stage when the delivery was due, we direct that subject to the petitioners filing the application for modification, if any, to Ext.P-6 order on or before 4.2.2015, the stay ordered therein will continue till 8.2.2015 and its continuance or otherwise will depend upon the orders to be passed by the Appellate Authority.

Original Petition is disposed of as above.

Sd/-

ANTONY DOMINIC, JUDGE

Sd/-

ALEXANDER THOMAS, JUDGE

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P.S. to Judge