

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

OP (RC).No. 29 of 2015 (O)

AGAINST THE ORDER IN E.P.120/14 in RCP 28/2010 of MUNSIF COURT, KOCHI
DATED 30.1.2015

PETITIONER(S):

C. S. LAL, AGED 65 YEARS
S/O. LATE SREEDHARAN, SWEET CENTRE, CC 10/1529
THOPPUMPADY, KOCHI TALUK, RESIDING AT CC 13/1046
CHERUVEETIL HOUSE, KARUVELIPPADY, THOPPUMPADY P.O
KOCHI 5

BY ADVS. SRI. C. A. CHACKO
SMT. C. M. CHARISMA

RESPONDENT(S):

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1. GEETHA P KAMMATH, AGED 55 YEARS
W/O. PURUSHOTHAMA KAMMATH, CC 18/478, WATERLAND ROAD
PALLURUTHY, KOCHI TALUK 682 006
 2. SATHEESH C.P KAMMATH, AGED 35 YEARS
S/O. PURUSHOTHAMA KAMMATH, CC 18/478, WATERLAND ROAD
PALLURUTHY, KOCHI TALUK 682 006
 3. SMITHA P KAMMATH, AGED 34 YEARS
D/O. PURUSHOTHAMA KAMMATH, CC 18/478, WATERLAND ROAD
PALLURUTHY, KOCHI TALUK 682 006
 4. SANGEETHA P KAMMATH, AGED 31 YEARS
D/O. PURUSHOTHAMA KAMMATH, CC 18/478, WATERLAND ROAD
PALLURUTHY, KOCHI TALUK 682 006
 5. SANTHA G KAMMATH
W/O. GOVINDA KAMMATH, CC 18/478, WATERLAND ROAD
PALLURUTHY, KOCHI TALUK (DIED)
 6. GEETHA G KAMMATH, AGED 39 YEARS
D/O. K. S. GOVINDA KAMMATH, CC 18/478, WATERLAND ROAD
PALLURUTHY, KOCHI TALUK 682 006
 7. SRIKANTH G KAMMATH, AGED 35 YEARS
S/O. GOVINDA KAMMATH, CC 18/478, WATERLAND ROAD
PALLURUTHY, KOCHI TALUK 682 006

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8. NEENA G KAMMATH, AGED 29 YEARS
D/O.K.S GOVINDA KAMMATH, CC 18/478, WATERLAND ROAD
PALLURUTHY, KOCHI TALUK 682 006
9. RAJAMMA, AGED 55 YEARS
D/O.SREENIVASA KAMMATH AND W/O.RAMESH NAIK
RAJASREE', NEDUVATHOOR POST
NEAR KOZHIKODE PANCHAYAT 673 001

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON
24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF OBJECTION FILED BY PETITIONER IN RCP NO 28/10
EXHIBIT P2 TRUE COPY OF ORDER DATED 29/3/2011 IN RCP NO 28/10
EXHIBIT P3 TRUE COPY OF RCA NPO 6/15 FILED BY PETITIONER
EXHIBIT P4 TRUE COPY OF EP NO 120/14 IN RCP NO 28/10
EXHIBIT P5 TRUE COPY OF OBJECTION FILED IN EP NO 120/14
EXHIBIT P6 TRUE COPY OF ORDER DATED 30/1/2015 IN EP NO 120/2014 IN RCP NO
28/2010 OF MUNSIF COURT, KOCHI

/True copy/

PS to Judge

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

O.P(RC).No.29 of 2015

Dated this the 24th day of February, 2015

JUDGMENT

Antony Dominic, J.

1.Respondents 1 to 8 filed RCP.28/10 before the Rent Control Court, Kochi seeking eviction of the petitioner under section 11(2)(b) and 11(8) of the Kerala Buildings (Lease & Rent Control) Act. In that RCP, the petitioner was set ex parte and finally, Ext.P2 order was passed allowing the RCP. The petitioner, thereupon, filed an application to set aside the order setting him ex parte and that application was rejected by order dated 25.8.2011. After that, the petitioner filed IA.81/13 to set aside Ext.P2 order. That IA was also dismissed by the trial court, in view of the order dated 25.8.2011, dismissing the IA filed to set aside the order setting the petitioner ex parte. Against the order in IA.81/13, the petitioner filed RCA.6/15 along with IA.313/15 seeking stay of execution. No orders have been passed by the appellate authority preventing the execution of Ext.P2. In the mean while, the landlord filed Ext.P4, EP.120/14, before

the Munsiff Court, Kochi, wherein, the petitioner filed Ext.P5 objection contesting the executability of the decree. That objection was dismissed by Ext.P6 order and the property was ordered to be delivered on 27.2.2015. It is at that stage, this original petition is filed challenging Ext.P6 order and for a direction to the execution court to keep in abeyance further proceedings in EP.120/14 in RCP.28/10.

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

3.Reading of Ext.P6, the order passed by the execution court, shows that first contention raised was that Ext.P2 order passed by the Rent Control Court was not executable. However, this has been rejected by the execution court finding that no appeal has been filed against Ext.P2 and that RCA.6/15 filed by the petitioner is only against the order passed by the trial court in IA.81/13, which was filed to set aside Ext.P2.

4. Yet another contention raised by the petitioner before the execution court was that the second judgment debtor was not a party to the Rent Control petition which also has been found against him. These findings of the execution court cannot be said to suffer from any illegality justifying interference in a proceedings under Article 227 of the Constitution of India.

In the aforesaid circumstances, we are not inclined to entertain this original petition. It is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

k kb.