

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

OP (RC).No. 32 of 2015 (O)

**AGAINST THE ORDER/JUDGMENT IN E.A.NO.16/2015 IN E.P.NO.39/2014 IN RCP 7/2011
of RENT CONTROL COURT/MUNSIFF COURT, ATTINGAL**

PETITIONER(S):

**ANIL KUMAR, AGED 50 ,
S/O.SREEDHARAN PILLAI,
SREE S.NIVAS, KUNNUVARAM,
ATTINGAL DESOM & POST,
CHIRAYINKEEZHU TALUK,
THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS.SRI.T.A.SHAJI (SR.)
SRI.SAJAD KHARIM
SMT.NAMITHA JYOTHISH
SRI.V.VINCENT DIDACOSE**

RESPONDENT(S):

- 1. RAHIM, S/O.MUTHALIF, AGED 38,
RAMSIN VILLA, ALAMCODE VILLAGE,
THIRUVANANTHAPURAM DISTRICT PIN 695 611.**
- 2. JASMI RAHIM, W/O.RAHIM,
RAMSIN VILLA, ALAMCODE VILLAGE,
THIRUVANANTHAPURAM DISTRICT PIN 695 611.**

R2 BY ADV. SRI.LIJU. M.P

**THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 04-03-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

O.P.RC.NO.32/2015

APPENDIX

PETITIONER(S)' EXHIBITS

P1. COPY OF THE MEMORANDUM OF APPEAL DTD.13.6.2014 IN R.C.A.No. 30/2014.

P2. COPY OF THE I.A.NO.1863/14 ALONG WITH SUPPORTING AFFIDAVIT
DTD.13.6.14.

P3. COPY OF THE I.A.NO.1862/2014 ALONG WITH SUPPORTING AFFIDAVIT
DTD.13.6.14.

P4. COPY OF THE APPLICATION DTD.30.1.2014, E.A.NO.16/2015 ALONG WITH
SUPPORTING AFFIDAVIT FILED UNDER ORDER 21 RULE 26.

RESPONDENTS' EXHIBITS:

NIL.

sdk+

///True copy///

P.S. to Judge

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

=====

O.P.(R.C.)No. 32 of 2015

=====

Dated this the 4th day of March, 2015

J U D G M E N T

ANTONY DOMINIC, J.:

Heard learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the respondents.

2. The petitioner is aggrieved by the order dated 20th February, 2015 passed by the Munsiff's Court, Attingal, in E.A.No.16/2005 in E.P.No.39/2014 in R.C.P.No. 7/2011.

3. In R.C.P.No.7/2011 an order of eviction was passed against the petitioner. That order was challenged by him in R.C.A.No.30/2014. Along with the R.C.A. he also filed I.A.No. 1862/2014. The R.C.A. and I.A. are pending consideration of the Appellate Authority. In the meanwhile, the landlord filed E.P.39/2014 for executing the order passed by the Rent Control Court. In that E.P., the petitioner/tenant filed E.A.No.16/2015 seeking to stay of further proceedings in the E.P. on the ground that his appeal and stay petition are pending consideration of the Appellate Authority. It is that I.A. was rejected by the impugned

order and hence this original petition.

4. The mere fact that an appeal filed against an order of eviction is pending before the Appellate Authority, a tenant cannot seek to stall the execution proceedings, unless he succeeds in persuading the Appellate Authority to pass an order of stay. If that be so, the execution court cannot be faulted for declining to stay as prayed for. We therefore do not find any illegality or perversity in the order passed by the execution court. The O.P. fails and is dismissed. This shall, however, be without prejudice to the right of the tenant to move the Appellate Authority for stay as prayed for by him in I.A.No.1862/2014.

sdk+

///True copy///

Sd/-
ANTONY DOMINIC, JUDGE
Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge