

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

OP (RC).No. 47 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN RCP 91/2013 of RENT CONTROL COURT, TVM

PETITIONER/COUNTER PETITIONER:

RAJESH AGED 31 YEARS
S/O.SOBHANA, T C 25/1282 ARISTO JUNCTION
THAMPANOOR WARD, THIRUVANANTHAPURAM

BY ADVS.SRI.S.V.PREMAKUMARAN NAIR
SRI.R.T.PRADEEP

RESPONDENT/COUNTER PETITIONER:

P.RAMASUBBU, AGED 52 YEARS
S/O.PERUMAL REDDIAR
NOW RESIDING AT 24/221 SOBHA GARDEN, THYCAUD
THIRUVANANTHAPURAM 695 001

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON
21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC) .No. 47 of 2015 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE PETITION NIL DATED IN R.C.P NO 91/2013
BEFORE RENT CONTROL COURT, THIRUVANANTHAPURAM

EXHIBIT P2 TRUE COPY OF THE ORDER DATED 25-1-2014 IN R.C.P NO 91/2013
BY THE COURT OF ADDITIONAL MUNSIF (RCC) THIRUVANANTHAPURAM

EXHIBIT P3 TRUE COPY OF IA NO 6969/2014 DATED 18-08-2014 FILED BY THE
PETITIONER

EXHIBIT P4 TRUE COPY OF I.A NO 6970/2014 DATED 18-08-2014 FILED BY
THE PETITIONER

EXHIBIT P5 TRUE COPY OF OBJECTION DATED 12-11-2014 BY RESPONDENT TO
IA NO 6970/2014

EXHIBIT P6 TRUE COPY OF ORDER DATED 9-2-2015 IN IA NO 6970/2014 IN
R.C.P 91/2014 BY RENT CONTROL COURT

EXHIBIT P7 TRUE COPY OF ORDER DATED 9-2-2015 IN IA NO 6969/2014 IN
R.C.P 91/2014 BY RENT CONTROL COURT

RESPONDENT(S) ' EXHIBITS NIL

JJ

/TRUE COPY/

P.S. TO JUDGE

K. SURENDRA MOHAN & MARY JOSEPH, JJ.

O.P(RC) NO. 47 OF 2015

Dated this the 21st July, 2015.

JUDGMENT

Surendra Mohan, J.

This original petition is filed challenging Exts.P6 and P7 orders of the Rent Control Court, Thiruvananthapuram in I.A.6970/2014 and I.A.6969/2014.

2. The petitioner is the tenant in RCP 91/2013. The respondent had sought eviction of the tenant under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (the 'Act' for short). In the Rent Control Petition, notice was served on the tenant. However, the tenant did not appear. Therefore, the tenant was set exparte. The landlord filed affidavit. Exts.A1 to A7 documents were marked and as per order dated 25.1.2014 the Rent Control Court granted an order of eviction.

3. Long thereafter, the petitioner filed I.A.6969/2014 to set aside the ex parte order dated 25.1.2014. Since the petition was not filed within time I.A.6970/2014 was filed seeking condonation of delay of 176 days. The reason stated was that, the tenant was laid up with diarrhoea and domestic disorders and therefore he could not file his objections or contest the petitions. The Rent Control Court found that there was no sufficient explanation for the delay and dismissed the petition. According to the counsel for the petitioner this is a fit case in which the tenant is granted an opportunity to urge his contentions on the merits. Therefore it is necessary to give the tenant a chance to contest the matter. We have heard the counsel appearing for the petitioner.

4. Exts.P3 and P4 are copies of the petitions filed by the petitioner. The affidavits filed in support of the said

petitions do not disclose any explanation for the long delay of 176 days that has been occasioned in the present case except for a mere statement that the petitioner was laid up due to diarrhoea or domestic disorders. There is absolutely no explanation for the delay. No evidence also has been let in, in support of the contention that the petitioner was sick and laid up. The impression that one gathers from a reading of the affidavit of the petitioner is that, no acceptable explanation has been put forward to justify the delay that has been caused. In the absence of any explanation for the delay, the Rent Control Court was absolutely right in dismissing the petitions filed. No document has been produced in this original petition also in support of the contention that the petitioner was prevented from contesting the Rent Control Petition due to circumstances beyond his control. Therefore, we do not find any grounds to entertain this original petition

or to grant any of the reliefs sought for.

5. As a last submission, the counsel for the petitioner sought for the grant of some time to vacate the premises. It is submitted that the petitioner is conducting a telephone booth and that some time is required for shifting his business to a suitable premises. Having heard the counsel for the petitioner, we are satisfied that it is necessary to grant time to the tenant up to 31.12.2015, to vacate the premises.

For the foregoing reasons this original petition is dismissed. However, the petitioner is granted time up to 31.12.2015 to surrender vacant possession of the premises to the respondent landlord on condition that he swears to an affidavit before the Rent Control Court, Thiruvananthapuram in RCP 91/2013, unconditionally undertaking to surrender vacant possession of the premises to the landlords on or before 31.12.2015. Such affidavit shall be filed within a

period of two weeks of the date of receipt of a copy of this judgment. It shall be a further condition for the grant of such time that the petitioner shall pay the arrears of rent, if any, remaining unpaid up to date and shall continue to pay rent in respect of the premises, without any delay or default, until vacant possession is surrendered to the landlord.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
MARY JOSEPH
Judge

jj

/True copy/

