

IN THE HIGH COURT OF KERALA AT ERNAKULAM

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

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

OP (RC).No. 51 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN RCA 44/2015 of RENT CONTROL APPELLATE
AUTHORITY/DISTRICT COURT,KOZHIKODE

PETITIONER(S):

NALUPURAYIL MEPPAYL ISMAIL, AGED 48 YEARS,
S/O.MUHAMMED, RESIDING AT AHLAM, VATAKARA-3,
KOZHIKODE DISTRICT.

BY ADVS.SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.
SRI.ROVIN RODRIGUES

RESPONDENT(S):

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1. KUNDANCHERI ABOOBACKER HAJI,
S/O.KUNHABDULLA HAJI, KURICHIYARKANDIYIL HOUSE,
IYYANKODE P.O., KAKKATTIL, VATAKARA TALUK,
KOZHIKODE DISTRICT PIN 673 504.
 2. AYISHA AMMED, W/O.K.T.K.MAMMAD HAJI, NAJATH MANZIL,
KUMMANGOD, NADAPURAM P.O., VATAKARA TALUK,
KOZHIKODE DISTRICT, PIN 673 504.
 3. JALEEL, S/O.K.T.K.MAMMAD HAJI, NAJATH MANZIL,
KUMMANGOD, NADAPURAM P.O., VATAKARA TALUK,
KOZHIKODE DISTRICT, PIN 673 504.
 4. THAMEEM, S/O.K.T.K.MAMMAD HAJI, NAJATH MANZIL,
KUMMANGOD, NADAPURAM P.O., VATAKARA TALUK,
KOZHIKODE DISTRICT, PIN 673 504.
 5. SUMAYYA, D/O.K.T.K.MAMMAD HAJI, NAJATH MANZIL,
KUMMANGOD, NADAPURAM P.O., VATAKARA TALUK,
KOZHIKODE DISTRICT, PIN 673 504.
 6. NOUSHAD, S/O.K.T.K.MAMMAD HAJI, NAJATH MANZIL,
KUMMANGOD, NADAPURAM P.O., VATAKARA TALUK,
KOZHIKODE DISTRICT, PIN 673 504.
 7. UMAIBA, D/O.K.T.K.MAMMAD HAJI, NAJATH MANZIL,
KUMMANGOD, NADAPURAM P.O., VATAKARA TALUK,
KOZHIKODE DISTRICT, PIN 673 504.
 8. NOUFAL, S/O.K.T.K.MAMMAD HAJI, NAJATH MANZIL,
KUMMANGOD, NADAPURAM P.O., VATAKARA TALUK,
KOZHIKODE DISTRICT, PIN 673 504.

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 01-04-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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O.P.(RC)No. 51 of 2015

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Dated this the 1st day of April, 2015

J U D G M E N T

ANTONY DOMINIC, J.:

The petitioner is the respondent in R.C.P.No. 94/2012 on the file of the Rent Control Court, Vadakara. He entered appearance and filed Ext.P-2 objections. Thereafter, he remained ex parte. In his absence, the R.C.P. was allowed. An execution petition was also filed. Subsequently, the petitioner filed I.A.Nos1735 and 1736 of 2014 seeking to set aside the ex parte order and to condone the delay of 460 days in submitting the application. These applications were rejected by the Rent Control Court, by Ext.P-3 order. That order is now called in question in R.C.A.No.44/2015 on the file of the Rent Control Appellate Authority, Kozhikode. Along with the R.C.A., he had also filed I.A.No.543/2015 seeking stay of the order allowing the R.C.P. Though the Appellate Authority has issued notice in the appeal, stay was not granted. It is in these circumstances, this Original Petition is filed with the prayer to stay the proceedings in

E.P.No.198/2014 on the file of the Munsiff's Court, Vadakara, till the disposal of Ext.P-4 appeal.

2. We heard the learned counsel for the petitioner and the considered the submissions made. As we have already noticed, this is a case where the petitioner chose to remain ex parte and that resulted in an order against him in the R.C.P. Seeking to set aside the said order, he filed an appeal along with a further application for condonation of delay of 460 days' delay. Reading of Ext.P-3 order passed by the Rent Control Court shows that the Rent Control Court was not satisfied with the explanation offered by the petitioner seeking condonation of the delay. This could have been the reason, which persuaded the Appellate Authority not to pass any order in the I.A. filed along with the R.C.A. An order of stay being a discretionary one, it is essentially the satisfaction of the Appellate Authority, which is relevant for an order in the stay application filed along with an appeal. Having regard to the facts and case pleaded in the application for condonation of delay and vague evidence that was let in, we are not persuaded to think that the view taken by the Appellate Authority in not passing a stay order is a perverse one and requires interference under Article 227 of the Constitution of India.

Therefore, we are not inclined to entertain this Original Petition.
Accordingly, the Original Petition is dismissed.

Sd/-
ANTONY DOMINIC, JUDGE

sd/+
Sd/-
ALEXANDER THOMAS, JUDGE

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P.S. to Judge