

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

OP (RC).No. 57 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN RCRP 2/2014 of THE RENT CONTROL
APPELLATE AUTHORITY ,THRISSUR DATED 06.03.2015

PETITIONER(S)/RESPONDENT/ASSIGNEE DECREEHOLDER:

K.B.MOHANDAS AGED 55 YEARS
S/O.KOOLYAT VALAPPIL BALAKRISHNAN
ARANATTUKARA VILLAGE, THRISSUR TALUK, THRISSUR.

BY ADVS.SRI.P.B.KRISHNAN
SRI.SABU GEORGE
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN

RESPONDENT(S)/REVISION PETITIONER/JUDGMENT DEBTOR:

JAYAPRAKASH
S/O.VALIYIL KARAPPAKUTTY, THIRUNELLUR DESOM
MULLASSERY AMSOM, CHAVAKKAD TALUK
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER ANILKUMAR
S/O.PANDARATHIL LAKSHMAMAN, POOVATHOOR DESOM
ELAVALLY DESOM, THIRSSUR, PIN-676122.

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON
22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

kkj

OP (RC).No. 57 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : TRUE COPY OF THE JUDGMENT DT.21-6-2010 IN RCR 188 OF 2004 BEFORE THIS HON'BLE COURT.

EXT.P2 : TRUE COPY OF THE IA 11153/2010 IN RCP 98/1996 BEFORE THE RENT CONTROL COURT, THRISSUR.

EXT.P3 : TRUE COPY OF THE IA 5520/2012 IN IA 11153/2010 IN RCP 98/1996 BEFORE THE RENT CONTROL COURT, THRISSUR.

EXT.P4 : TRUE COPY OF THE EP 1203/14 IN RCP 98/1996 BEFORE THE PRINCIPAL MUNSIF COURT, THRISSUR.

EXT.P5 : TRUE COPY OF THE JUDGMENT DT.14-11-2014 IN OPRC 137/14.

EXT.P6 : TRUE COPY OF THE ORDER DT.17-11-14 IN EP 1203/14 IN RCP 98/1996 BEFORE THE PRINCIPAL MUNSIF COURT, THRISSUR.

EXT.P7 : TRUE COPY OF THE JUDGMENT DT.18-11-14 IN OPC 2709/14.

EXT.P8 : TRUE COPY OF THE IA 23645/14 IN RCP 98/1996 BEFORE THE RENT CONTROL COURT, THRISSUR.

EXT.P9 : TRUE COPY OF THE ORDER DT.6-3-2015 IN RCRP 2/14 ON THE FILE OF THE RENT CONTROL APPELLATE AUTHORITY, THRISSUR.

RESPONDENT(S)' EXHIBITS

NIL

// TRUE COPY //

PA TO JUDGE

**K.SURENDRA MOHAN &
MARY JOSEPH, JJ.**

O.P.(R.C) No.57 of 2015

Dated this the 22nd day of July, 2015

J U D G M E N T

Surendra Mohan, J.

The petitioner herein challenges Exhibit P9 order of the Rent Control Appellate Authority, Thrissur in RCRP No.2 of 2014. The Rent Control Revision was filed by the respondent tenant challenging an order of the Principal Munsiff's Court, Thrissur in E.P.No.1203 of 2014 in RCP No. 98 of 1996 by which, delivery was ordered in respect of the tenanted premises to the petitioner herein. The Appellate Authority has interfered with the order of the Execution Court and has set aside the same. It is the said order that is under challenge in this original petition.

2. The facts of the case are the following:-

RCP No.98 of 1996 was filed by the original landlord before the Rent Control Court, Thrissur seeking eviction of the tenant on grounds of arrears of rent. Though the Rent

control Petition was resisted by the respondent tenant, the same was allowed and an order of eviction was granted. The order was confirmed in appeal. Thereupon, the tenant challenged the same before this Court in RCR No.188 of 2004. During the pendency of the revision, the petitioner herein purchased the rights of the original landlord. Thereafter, he filed I.A.Nos. 1480 of 2008 and 1596 of 2008 before this Court seeking to come on record. The petitions were allowed and he was brought on record as the assignee of the original landlady. Thereafter by Exhibit P1, the order of eviction was confirmed. However, the revision petitioner was granted the liberty to move a petition under section 11 (2)(c) for getting the order vacated. Four months time was also granted for filing such petition. Accordingly, the tenant filed I.A.No.11153 of 2010 under Section 11(2)(c) of the Act. However, according to the petitioner herein, he was not made a party to the petition. Only the original landlords were made parties. Therefore, he had no occasion of

coming to know of the pendency of the said petition. In the above circumstances, he filed E.P.No.1203 of 2014 before the Principal Munsiff's Court, Thrissur seeking execution of the order of eviction. The execution proceedings progressed and delivery was ordered. It was the said order that was under challenge in RCRP No.2 of 2014 at the instance of the respondent tenant.

3. In the meantime, the respondent tenant had filed I.A.No.5520 of 2012 in I.A.No.11153 of 2010 for amending the petition. He had also filed I.A.No.13145 of 2010 for impleading the petitioner herein as a party to the said petition. While so, I.A.No.11153 of 2010 as well as the other petitions filed by the respondent tenant were dismissed for default by the Rent Control Court, Thrissur. I.A.No.16301 of 2014 for restoration, filed by the respondent within time is pending.

4. In the above circumstances, RCRP No.2 of 2014 was considered by the Rent Control Appellate Authority.

The Appellate Authority found that, the order to deliver the property passed by the Execution Court was improper for the reason that, the same was issued before the petition filed by tenant under Section 11(2)(c) of the Act was not finally adjudicated. The same was found to be irregular in view of the direction of this Court contained in RCR No.188 of 2004. Therefore, the Rent Control Appellate Authority has by Exhibit P9 ordered that the Rent Control Court shall consider the petition filed under Section 11(2)(c) of the Act, in accordance with law and dispose of the same at the earliest by giving top priority.

5. According to Sri.P.B.Krishnan who appears for the petitioner, though this Court had directed in Exhibit P1 order that the tenant was at liberty to file a petition under Section 11(2)(c) to vacate the order passed under Section 11(2)(c) of the Act, no valid petition in compliance with the said direction was filed by the tenant for the reason that, the assignee landlord was not made a party thereto.

Secondly, it is pointed out that, no deposit as contemplated by Section 11(2)(c) of the Act was made along with the petition. What has been claimed therein is the benefit of adjustment of amounts alleged to have been paid earlier. Thirdly, according to the learned Counsel, the petitioner had filed an earlier Interlocutory Application seeking stay of the execution proceedings which was dismissed, which was not pursued thereafter before any higher authority and therefore the order has become final. It is further submitted that, even the interlocutory Application filed under Section 11(2)(c) has been dismissed for default and is no longer pending, though a petition for restoration has been filed. In such circumstances, according to the learned counsel, the Rent Control Appellate Authority exceeded its powers in directing that the execution proceedings would have to await the adjudication that is contemplated by Section 11(2)(c). It is also pointed out that, the Appellate Authority acting on the execution side, had no power or

authority to issue directions on the original side because the petition under Section 11(2)(c) was pending before the Rent Control Court and not the Munsiff's Court. Therefore, according to the counsel, Exhibit P9 order is unsustainable and liable to be set aside.

6. Advocate Sreekumar (Chelur) appears for the respondent tenant. According to the learned Counsel, the petitioner herein had got himself impleaded as an additional respondent only in the Rent Control Revision. Therefore, he was not a party to the Rent Control Petition. The Rent Control Petition was filed by the original landlady. The petition under Section 11(2)(c) was filed by the respondent tenant who was the respondent in the Rent Control Petition. He could array only the parties to the RCP, in his petition. Since he was the respondent, he was not in a position to make the petitioner a party to the same. Therefore, according to the learned Counsel, the omission to make the petitioner herein a party to I.A.No.11153 of 2010 was not

deliberate. However, it was open to the petitioner to have got himself impleaded with the leave of Court, which he did not choose to do. Since this Court had directed that, an enquiry was necessary into the contentions advanced by the parties regarding the payments that were made, according to the learned counsel, such an enquiry could not be foreclosed. The earlier transaction was with the original landlady. Substantial amounts of money had also been paid to her. Since the petitioner had stepped into her shoes, it was for the petitioner to account for such payments and to give adjustment for the same. Therefore, an enquiry under Section 11(2)(c) was absolutely necessary. In view of the above, according to the counsel, it is sufficient that the enquiry is directed to be completed within a stipulated time limit so that the proceedings could be brought to an end one way or the other, in a proper manner.

7. Heard. We notice that, the petitioner herein had purchased the property during the pendency of the Rent

Control Revision. We also notice that, there was an earlier agreement to sell the property to the tenant himself. It is true that, the landlady had obtained an order of eviction under Section 11(2)(b) of the Act. In view of the serious questions that require to be adjudicated, this Court had directed the said disputes to be thrashed out in the petition that the tenant was permitted to file within a period of four months. It is not in dispute that I.A.No.11153 of 2010 was filed before the Rent Control Court within the stipulated time. However, the petitioner herein was not made a party to the said petition. Subsequently, I.A.No.13145 of 2010 was filed by him for impleading him. I.A.No.5520 of 2012 for amendment of the application was also filed. It was at a time that the above petitions were pending that the interlocutory application itself was dismissed for default. It is not in dispute that I.A.No.16301 of 2014 was filed within time for restoration of the interlocutory applications. The said petition is still pending.

8. At the time of hearing, the counsel on both sides fairly agreed that to our suggestion that it is in the best interests of both the parties to see that the proceedings are brought to an end one way or the other after a proper adjudication of the disputes that are subsisting. Therefore, the parties are agreed that I.A.No.11153 of 2010 could be restored on consent, the petitioner could be made an additional party to the said petition and service of notice on the respondents if any, who are remaining unserved could be completed expeditiously so as to ensure that the Rent Control Court considers the issues that arise for consideration, within a stipulated time limit. In view of the above, this original petition is disposed of as follows:-

1. I.A.No.16301 of 2014 in RCP No.98 of 1996 pending before the Rent Control Court, Thrissur is allowed and I.A.No.11153 of 2010 filed by the respondent tenant is restored to file.
I.A.No.13145 of 2010 filed for the purpose of

impleading the petitioner herein as an additional party to I.A.No.11153 of 2010 is also allowed. The respondent is directed to take urgent and effective steps to ensure that service of notice on any of the respondents in I.A.No.11153 of 2010 remaining incomplete, is completed.

2. I.A.No.5520 of 2012, the petition for amendment shall be considered by the Rent Control Court in the light of objections to be filed by the petitioner herein as well as the other respondents therein and appropriate orders shall be passed thereon expeditiously.

3. There shall be a further direction to the Rent Control Court, Thrissur to give priority to I.A.No.11153 of 2010, to complete the enquiry that has been ordered by this Court in Exhibit P1 judgment and to finally dispose of the said Interlocutory Application, as expeditiously as

possible and at any rate within a period of two months of the date of completion of service of notice on all the respondents.

4. All further proceedings in E.P.No.1203 of 2014 shall be kept in abeyance, until final orders are passed by the Rent Control Court, in I.A.No.11153 of 2010 in accordance with law.

**K.SURENDRA MOHAN,
JUDGE**

**MARY JOSEPH
JUDGE**