

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

OP (RC).No. 62 of 2015 (O)

AGAINST THE ORDER IN RCP 10/2013 of RENT CONTROL COURT, TVM
DATED 09-01-2015

PETITIONER:

MEENA JOSHY
AGED 45 YEARS, W/O.JOSHY
MEENU'S CARE AND BEAUTY SALOON, KAWDIAR(PO)
KURAVANKONAM, THIRUVANANTHAPURAM.

BY ADVS. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.
SRI.GOVIND PADMANAABHAN
SRI.AJIT G.ANJARLEKAR

RESPONDENTS:

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1. JOJO.P.GEORGE
K.R.A.A5A TC 4/1273, KAWDIAR(PO), KURAVANKONAM
THIRUVANANTHAPURAM.
 2. JANCY JOJO,
W/O.JOJO.P.GEORGE, K.R.A.A5A TC 4/1273, KAWDIAR(PO)
KURAVANKONAM, THIRUVANANTHAPURAM.
- R1, R 2 BY ADV. SRI.S.BALACHANDRAN (KULASEKHARAM)
R1, R 2 BY ADV. SRI.V.R.GOPU
BY ADV. N.J.MATHEWS(AMICUS CURIAE)

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON
26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 62 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:A TRUE COPY OF THE SETTLEMENT AGREEMENT ALONG WITH THE COVERING LETTER DATED 09.12.2013

P2:TRUE COPY OF THE ORDER DATED 09.01.2015 OF THE RENT CONTROL COURT IN RCP NO.10/2013

P3:A TRUE COPY OF THE EXECUTION PETITION FILED BEFORE THE PRINCIPAL MUNICFF COURT, THRIUVANANTHAPURAM IN RCP NO.10/2013

RESPONDENTS' EXTS

EXT.R1(a):- COPY OF PETITION IN RCP 10/13 OF THE RENT CONTROL COURT, THIRUVANANTHAPURAM DT. 2/3/13.

EXT.R1(b):- OBJECTION FILED BY THE COUNTER PETITIONER IN RCP 10/13 BEFORE THE RENT CONTROL COURT, THIRUVANANTHAPURAM DT. 4/11/13.

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**P. N. RAVINDRAN
&
BABU MATHEW P. JOSEPH, JJ.**

O.P.(RC).No.62 of 2015

Dated this the 26th day of October, 2015

JUDGMENT

P. N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.10 of 2013 on the file of the Rent Control Court, Thiruvananthapuram. The respondents herein are the owners of a two storied building bearing door No.T.C.4/1273 (3) and T.C.4/1273(4) of Thiruvananthapuram Corporation. They had let out the cellar portion of the said building, bearing door No.T.C.4/1273(4) and having an area of 1550 Sq. Ft. to the petitioner herein. They had in R.C.P.No.10 of 2013 which was instituted in the Rent Control Court, Thiruvananthapuram on 02.03.2013 prayed for an order evicting the petitioner herein from the said building, under sections 11(3) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965, herein after referred to as the "Act", for short. The petitioner herein is conducting a saloon therein under the name and style "Meenu's Care and Beauty Saloon". The landlords had prayed for an order of eviction so as to enable them to shift the pharmaceutical business being run by the first respondent at Thiruvalla under the name and style "Geo Drug House", to Thiruvananthapuram. The

respondents had averred that the first respondent is running the business at Thiruvalla in a rented building and that the landlord of the said building has demanded vacant possession of the building. The respondents had also averred that they intend to shift the pharmaceutical business to the petition schedule premises which is the cellar portion of the building, the ground floor and the first floor of which is their dwelling house.

2. The landlords had in paragraph 5 of the rent control petition averred that the monthly rent for the petition schedule building agreed to between the parties is ₹25,000/-. They had in paragraph 6 thereof averred that the tenant has paid the sum of ₹1,50,000/- as security. Paragraphs 5 and 6 of the rent control petition are extracted below:

“5. On 15.1.2008 after negotiations the petitioners agreed to give the above furnished petition schedule building on rent to the counter petition on a monthly rent of Rupees 25,000/- (Rupees twenty five thousand only).

6. On 17.1.2008 the counter petitioner executed an agreement in favour of the petitioners and the petitioners received an amount of Rupees 1,50,000/- (Rupees one lakh fifty thousand only) towards advance and security deposit which is refundable to the counter petitioner on termination of tenancy and handing over the vacant possession of the petition schedule building to the petitioners without any arrears of

rent, other charges and damages.”

3. Upon receipt of notice from the rent control court, the tenant entered appearance and filed a counter statement dated 04.11.2013. In paragraph 12 thereof she has averred as follows:

12. Averments in para 5, 6 and 7 are admitted.

She, however, denied and disputed the bona fide need put forward by the landlords and contended that she is entitled to the protection of the second proviso to section 11(3) of the Act. The tenant had in the counter statement filed by her also contended that the petition for eviction is filed as a counter blast to O.S.No.184 of 2013 filed by her in the Court of the Munsiff of Thiruvananthapuram, which in turn was filed apprehending that the landlords will cut off the amenities and forcibly evict her from the petition schedule building.

4. The tenant was set ex-parte on 01.10.2013 for the reason that no counter statement had been filed and the rent control petition was posted to 19.10.2013 for the evidence of the landlords. The tenant thereupon filed I.A.No.7959 of 2013 on 06.11.2013 praying that the order setting her ex-parte may be set aside and the counter statement filed along with it may be received. That application was allowed by order passed on 8.11.2013. On the same day, the rent control court directed both parties to be present for mediation on

23.11.2013. Since there was no sitting on 23.11.2013, the rent control petition was adjourned to 09.12.2013. On 09.12.2013, both parties and their counsel were present in court. Taking note of the fact that there is scope for settlement of the dispute out of court, the parties were referred to mediation and directed to appear before the Nodal Officer, District Mediation Centre, Thiruvananthapuram on the same day and the case was adjourned to 09.01.2014. As directed by the rent control court, the parties and their counsel appeared before the Nodal Officer, District Mediation Centre, Thiruvananthapuram on 09.12.2013. After mediation talks, the tenant agreed to surrender vacant possession of the building before 31st March, 2015. The landlords also agreed to the same. Thereupon, both parties subscribed their signatures to the memorandum of settlement agreement dated 09.12.2013 under section 89 of the Code of Civil Procedure.

5. When the rent control petition was taken up on 09.01.2014, learned counsel on both sides who were present reported that the dispute between the parties has been settled by mediation. The Rent Control Court, Thiruvananthapuram thereupon passed the following order on R.C.P.No.10 of 2013:

“Petitioner and respondent represented. Settled in mediation. Memorandum of agreement received. RCP is closed in terms of memorandum of agreement.”

6. The memorandum of agreement entered into between the parties was to the effect that the tenant will surrender vacant possession of the tenanted premises within 31st March, 2015. When the tenant did not surrender vacant possession of the building, the landlord filed E.P.No.148 of 2015 in the Court of the Principal Munsiff of Thiruvananthapuram on 03.03.2015 for execution of the order of eviction. They had in the execution petition averred that though the tenant had undertaken to surrender vacant possession of the petition schedule building within 31.03.2015, she has not surrendered the petition schedule building. On that petition, the execution court ordered notice to the tenant returnable on 22.05.2015. Though notice was served, the tenant did not appear before the execution court on 22.05.2015. Consequently, the execution court ordered delivery by 28.05.2015. Though the tenant did not appear before the execution court on 22.05.2015, she filed the instant original petition in this court on that day, praying for setting aside Ext.P1 memorandum of settlement agreement dated 09.12.2013 and Ext.P2 order of eviction passed pursuant thereto by the Rent Control Court, Thiruvananthapuram on 09.01.2014, copies of which are produced and

marked as Exts.P1 and P2 respectively.

7. The main ground raised in this original petition is that Ext.P1 memorandum of settlement agreement under section 89 of the Code of Civil Procedure is void ab initio for the reason that it does not conform to the stipulation contained in sub-rule (1) of rule 24 of the Civil Procedure Code (Alternative Dispute Resolution) Rules (Kerala), 2008, framed and issued by this court, hereinafter referred to as the "ADR Rules", for short. It is contended that the signatures of the parties to Ext.P1 agreement have not been attested by their respective counsel or by any of the other persons named in rule 27 of the Kerala Civil Rules of Practice and therefore, the agreement is void ab initio. It is further contended that the rent control court erred in proceeding to act on the said memorandum of settlement without adverting to the fact that the memorandum of settlement is not lawful and therefore, for that reason also, Ext.P2 order is liable to be set aside. The tenant does not however dispute the factum of having entered into Ext.P1 memorandum of settlement agreement. She does not dispute the authenticity and genuineness of the said document or her signature therein. Though she has no case that she was prevailed upon or forced

to enter into the said memorandum of settlement agreement, she has in paragraph 7 of the original petition averred that she was not aware of Ext.P2 order, that she was under the impression that since O.S.No.184 of 2013 instituted by her in the Court of the Munsiff of Thiruvananthapuram is pending, the rent control petition is also pending and that she realised the fraud practised by the respondents (landlords) only when she received notice in the execution petition filed by them to execute the order of eviction passed in R.C.P.No.10 of 2013. The petitioner has also averred that all the disputes between the parties were not resolved in Ext.P1 memorandum of settlement agreement and that as the suit between the parties is pending, it is evident that she has signed the agreement under a mistaken impression as a result of the fraud practised by the respondents. The respondents have entered appearance through counsel. The first respondent has also filed a counter affidavit on 30.06.2015 on his own behalf and on behalf of the second respondent, his wife, opposing the grant of the reliefs prayed for in the original petition.

8. We heard Sri.Shinod G.P., learned counsel appearing for the petitioner and Sri.S.Balachandran, learned counsel appearing for the

respondents. We also heard Sri.N.J.Mathews, learned counsel of this court who was appointed as Amicus Curiae by order passed on 08.10.2015. Sri.Shinod G.P., learned counsel appearing for the petitioner contended, inviting our attention to the ADR Rules more particularly rules 20, 21, 22, 24 and 25 thereof, that by virtue of the said rules, a party to the memorandum of settlement agreement is disabled from leading the evidence to prove what transpired in the mediation; that the mediator is also not liable for anything bona fide done or omitted to be done and that rule 24 of the ADR Rules is a self contained code regarding the matters in respect of which it applies. Learned counsel submitted that rule 24 stipulates that the signatures of the parties shall be attested by their respective counsel or by any of the authorities mentioned in rule 27 of the Civil Rules of Practice, Kerala; that it is only such an agreement which can be forwarded to the court where the case is pending; that in the instant case, the signatures of the petitioner and respondents herein occurring in the memorandum of settlement agreement have not been attested by their counsel or by any of the authorities mentioned in rule 27 of the Civil Rules of Practice, Kerala and therefore, the said memorandum of

settlement agreement could not have been accepted and acted upon by the rent control court. Inviting our attention to rule 25 of the ADR Rules, learned counsel for the petitioner submitted that the court below could have recorded Ext.P1 memorandum of settlement agreement only if it was lawful, that in the instant case, it cannot be said to be lawful for the reason that the signatures of the parties have not been attested by their counsel or any of the authorities mentioned in rule 27 of the Civil Rules of Practice, Kerala and therefore, Ext.P2 order passed by the rent control court, disposing of the rent control petition in terms of the memorandum of settlement agreement is liable to be set aside. Learned counsel also submitted that as the ADR Rules is a complete code and rule 24 thereof stipulates the manner in which an agreement has to be signed by the parties and verified by their respective counsel, only an agreement which satisfies the terms thereof can be accepted and acted upon. Learned counsel also submitted that the stipulations in rule 24 are mandatory and that an agreement which does not satisfy the requirement of the rule cannot be accepted and acted upon. Learned counsel placed before us for our consideration the decisions of the Apex Court in **Satya Narain v.**

Dhuja Ram and others (1974 SC 1185) and **Mackinon Mackenzie and Company Ltd. v. Mackinon Employees Union (2015 SC 1373)** as well as the decisions of this court in **Mini Sreedharan Nair v. Valsalakumari [1996 (2) K.L.J. 606]** and **Dr.A.Mohammed v. Nalakath Soopy [1997 (1) K.L.J. 618]** in support of his contention.

9. Per contra, Sri.S.Balachandran, learned counsel appearing for the respondents contended that the stipulations in rule 24 of ADR Rules to the effect that the signatures of the parties to the agreement shall be attested by their respective counsel or by any of the parties mentioned in rule 27 of the Civil Rules of Practice, Kerala is not mandatory, but directory; that the consequences of non-compliance with the aforesaid stipulation are not mentioned in the rule; that in the instant case, the petitioner has no case that she has not subscribed her signature to Ext.P1 memorandum of settlement agreement or that she had signed the memorandum of settlement agreement without understanding its contents or that she was misled by someone into signing the memorandum of settlement agreement and therefore, as the petitioner does not dispute the authenticity and genuineness of her signature, nothing turns on the failure of her counsel or the counsel

appearing for the landlords to attest the signatures of the respective parties occurring in Ext.P1 agreement. Learned counsel also submitted that none of the authorities mentioned in rule 27 of the Civil Rules of Practice have a duty or obligation to attest the signatures of the parties to a litigation and therefore, for that reason also, it cannot be said that failure to comply with the stipulation regarding attestation of the signatures of the parties in rule 24 of the ADR Rules vitiates Ext.P1 agreement or Ext.P2 order. As regards rule 25 of the ADR Rules, learned counsel submitted that the question whether the memorandum of settlement agreement is lawful or not, has to be determined with reference to section 23 of the Contract Act, 1873 and not with reference to the stipulation in rule 24 of the ADR Rules that the signatures of the parties to the memorandum of settlement agreement should be attested by their respective counsel or by any one of the authorities mentioned in rule 27 of the Civil Rules of Practice, Kerala. Inviting our attention to Ext.R1(b) counter statement filed by the tenant in R.C.P.No.10 of 2013, more particularly paragraph 12 thereof as also the averment in paragraph 5 of the rent control petition, a copy of which is produced and marked as Ext.R1(a), learned counsel for the

respondents/landlords submitted that the tenant has admitted the averment in the rent control petition that the advance paid was only ₹1,50,000/-, but in the instant original petition, the tenant has made an attempt to contend that the building was let out to her father after accepting a security deposit of ₹5,00,000/-, but as insisted by the landlord at the time of entrustment, the amount deposited by the tenant as security was shown as ₹1,50,000/- in the agreement. Learned counsel submitted that in the event of the tenant surrendering vacant possession of the building, the landlords are ready to deposit in the execution court, for payment to the petitioner, the sum of ₹1,50,000/- deposited by her father as security.

10. Sri.N.J.Mathews, learned amicus curiae submitted that even in Order XXIII Rule 3 of the Code of Civil Procedure, there is no stipulation to the effect that the signatures of the parties to the litigation should be attested by their counsel; that the Apex Court has held interpreting the aforesaid rules that the memorandum of compromise can be signed by the counsel appearing for the parties; that it is not necessary that it should contain the signatures of the parties themselves and therefore, it cannot be said that the failure of

the lawyers appearing for the parties or the other authorities mentioned in Rule 27 of the Civil Rules of Practice, Kerala to attest the signatures of the parties to the memorandum of settlement agreement would render it unlawful. The learned amicus curiae submitted that the consequences of the failure of the counsel appearing for the parties or the authorities mentioned in Rule 27 of the Civil Rules of Practice, Kerala to attest the signatures of the parties to the memorandum of settlement agreement are not mentioned in the rules and therefore, the rule can only be directory and not mandatory.

11. We have considered the submissions made at the Bar by learned counsel on either side as also the submissions made by learned amicus curiae. We have also gone through the impugned judgment and the lower court records. The records disclose that the tenant was earlier set ex parte. The application filed by her as I.A.No.7959 of 2013 for setting aside the ex parte order was allowed and the parties were thereafter referred to mediation. The fact that both parties appeared before the Nodal Officer, Thiruvananthapuram Mediation Centre and that after mediation talks were held, Ext.P1 agreement was entered into between the parties, are not in dispute.

The tenant has no case that she was prevailed upon or compelled to subscribe her signature to Ext.P1. She has however vaguely averred that she affixed her signature to Ext.P1 memorandum of settlement agreement under a mistaken impression as a result of the fraud practised by the respondents. She has further averred that she was not aware of Ext.P2 order and that she was under the impression that since O.S.No.184 of 2013 instituted by her before the Court of the Munsiff of Thiruvananthapuram is pending, the rent control petition is also pending. As stated earlier, the petitioner does not dispute her signature in Ext.P1 agreement. She has no case that she is not familiar with the language in which it is written. She has not in O.S.No.184 of 2013 prayed for any relief other than a permanent prohibitory injunction restraining the defendants and their agents from cutting off the electricity and water connection to the tenanted premises or from withholding the amenities enjoyed by her or from disturbing her peaceful residence in the tenanted premises. She has not prayed for a decree allowing her to realise any amount from the landlord, though in the plaint she has averred that her father had at the time of entering into agreement deposited with the landlord the sum of ₹5,00,000/- as

security. O.S.No.184 of 2013 is even today pending. Having regard to the admitted fact that the parties had entered into Ext.P1 agreement whereby the tenant had agreed to surrender vacant possession of the petition schedule building within 31.03.2015, the reliefs prayed for in the suit, have become infructuous by efflux of time. The tenant had, on the terms of Ext.P1 agreement which she has admittedly entered into, no right to continue to reside in the plaint schedule property beyond 31.03.2015. Nothing therefore really survives for consideration in O.S.No.184 of 2013 thereafter.

12. It is also relevant in this context to note that the tenant had come forward with the instant original petition only after she received notice in the execution petition. She did not take timely steps to challenge Ext.P1 memorandum of settlement agreement before the rent control court itself by filing an appropriate application. She did not also challenge Ext.P2 order in appeal and raise in that appeal, a contention to the effect that Ext.P1 memorandum of settlement agreement should not have been accepted and acted upon. If Ext.P1 agreement had not been entered into, as the pleadings on both sides had been completed, the rent control petition would have been

disposed of by the rent control court in the ordinary course before 31.03.2015. It was only after enjoying the full period of 18 months within which time she had undertaken to surrender the petition schedule building that she moved this court by filing the instant original petition contending that as the signatures of the parties to Ext.P1 agreement have not been attested by their respective counsel, it is not a lawful agreement and should not have been accepted or acted upon by the rent control court.

13. In our considered opinion, the contentions raised in the original petition are without any merit. Unlike the statutes governing the filing of election petitions which mandates that election petitions shall be accompanied by an affidavit in the manner prescribed and also sets out the consequences of non compliance, rule 24 of the ADR Rules does not stipulate that in the event of failure on the part of the lawyers appearing on both sides to verify the signatures of the parties, the agreement cannot be considered as lawful. We are therefore of the opinion that the stipulation in rule 24 in that regard cannot be said to be mandatory. The rule is only intended to ensure that the parties are not impersonated and that the parties themselves affix their signature.

The intention behind the stipulation in rule 24 to the effect that the signatures of the parties to the mediation settlement agreement shall be attested by their respective counsel or by any of the authorities mentioned in Rule 27 of the Civil Rules of Practice, Kerala is to ensure that the parties do not, later on raise a dispute that the signature occurring in the agreement is not theirs. As stated earlier, the petitioner has no case that the signature occurring in Ext.P1 is not her signature. She has no case that her signature in Ext.P1 is a forgery. She does not dispute the terms and stipulations contained in Ext.P1 memorandum of settlement agreement. She has no case that she has not undertaken to surrender vacant possession of the petition schedule building within 31.03.2015. In short, there is nothing on record to show that the petitioner was unaware of the contents of Ext.P1 memorandum of settlement agreement or of its effect. Though rule 27 of the Civil Rules of Practice, Kerala enumerates and sets out the persons who are competent to verify the signatures of the executants of the memorandum of settlement agreement, no law which obliges or compels the said authorities to attest the signature of a party to the memorandum of settlement agreement, was brought to our notice. In

the absence of any right in the petitioner and a corresponding duty on the part of the persons enumerated in rule 27 of the Civil Rules of Practice, Kerala, we are not persuaded to hold that the stipulation in rule 24 is mandatory. Though the learned counsel appearing for the petitioner invited our attention to a circular dated 08.06.2015 issued by the Kerala State Mediation and Conciliation Centre to the effect that the stipulation in rule 24 of the ADR Rules read with rule 27 of the Civil Rules of Practice, Kerala is mandatory, we find nothing in the circular which militates against the interpretation placed by us on rule 24. The circular is based on the rule and any interpretation placed on the rule will necessarily apply to the circular as well. The circular issued by the Kerala State Mediation and Conciliation Centre does not bind us and cannot be relied on to decide whether rule 24 is mandatory or directory. We therefore, find no merit in the said contention as well.

14. It is evident from the stand taken by the petitioner tenant that her attempt is only to cling on to possession of the tenanted premises. The rent control petition was instituted in the year 2013. More than 22 months have passed after Ext.P2 order of eviction was passed. It is evident from the conduct of the petitioner and the

attendant circumstances that her attempt is to somehow delay the execution of Ext.P2 order of eviction passed pursuant to Ext.P1 memorandum of settlement agreement lawfully entered into between the tenant and the landlord. The Original Petition is, in our opinion, without any merit. It fails and is accordingly dismissed. No costs.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kp/- & kns/-

//TRUE COPY//

P.A. TO JUDGE