

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

OP (RC).No. 64 of 2015 (O)

AGAINST THE JUDGMENT IN RCOP 2/1996 of MUNSIF COURT, PUNALUR

PETITIONER:

DR. P.T.SANTHOSH BABU
JAYABHARATHAM BUNGLOW, PUNALUR.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT:

JAYABHARATHAM NURSING HOME (PVT) LTD.
PUNALUR
REPRESENTED BY ITS MANAGING DIRECTOR DR.P.T.RAJAN BABU
JAYABHARATHAN BUNGLOW, ERUMAPETTI, ARAMPUNNA
PUNALUR, KOLLAM DISTRICT-691502.

BY ADV. SRI.S.SREEKUMAR (SR.)
BY ADV. SRI.P.MARTIN JOSE
BY ADV. SRI.P.PRIJITH
BY ADV. SRI.THOMAS P.KURUVILLA

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON
17-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : TRUE COPY OF THE JUDGMENT DT.15-3-2010 IN RCOP 2/1996 BEFORE THE RENT CONTROL COURT, PUNALUR.

EXT.P2 : TRUE COPY OF THE JUDGMENT DT.12-9-2012 IN RCA 9/2010 BEFORE THE ADDITIONAL RENT CONTROL APPELLATE AUTHORITY, KOLLAM.

EXT.P3 : TRUE COPY OF THE ORDER DT.23-7-2014 IN RENT CONTROL REVISION NO.29/2013 BEFORE THE HON'BLE HIGH COURT OF KERALA, ERNAKULAM.

EXT.P4 : TRUE COPY OF THE PETITION, IA 2573/2014 IN RCOP 2/96 BEFORE THE RENT CONTROL COURT, PUNALUR DT.10-11-2014.

EXT.P5 : TRUE COPY OF THE OBJECTION DT.17-12-2014 IN IA 2573/2014 IN RCOP 2/96 BEFORE THE RENT CONTROL COURT, PUNALUR.

EXT.P6 : TRUE COPY OF THE APPLICATION IA 2572/2014 IN RCOP 2/1996 BEFORE THE RENT CONTROL COURT, PUNALUR DT.10-11-2014.

EXT.P7 : TRUE COPY OF THE OBJECTION DT.17-12-2014 IN IA 2572/14 IN RCOP 2/1996 BEFORE THE RENT CONTROL COURT, PUNALUR.

EXT.P8 : TRUE COPY OF THE ORDER DT.16-3-2015 IN IA 2573/2014 IN RCOP 2/96 BEFORE THE RENT CONTROL COURT, PUNALUR.

EXT.P9 : TRUE COPY OF THE ORDER DT.16-3-2014 IN IA 2572/2014 IN RCOP 2/1996 BEFORE THE RENT CONTROL COURT, PUNALUR.

EXT.P10 : TRUE COPY OF THE APPLICATION IA 2571/2014 IN RCOP 2/96 BEFORE THE RENT CONTROL COURT, PUNALUR DT.10-11-2014.

EXT.P11 : TRUE COPY OF THE OBJECTION DT.17-12-2014 IN IA 2571/2014 IN RCOP 2/96 BEFORE THE RENT CONTROL COURT, PUNALUR.

EXT.P12 : TRUE COPY OF THE ORDER DT.16-3-2015 IN IA 2571/2014 IN RCOP 2/96 BEFORE THE RENT CONTROL COURT, PUNALUR.

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

O. P. (RC) No.64 of 2015

Dated this the 17th day of September, 2015

JUDGMENT

P. N. Ravindran, J.

The petitioner is the tenant in R.C.(O.P.) No.2 of 1996 on the file of the Court of the Rent Controller, Punalur. The trial and disposal of the Rent Control Petition was unusually delayed and it was disposed of only after 14 years by Ext.P1 order passed on 15-03-2010. By that order, the Rent Control Court allowed R.C.(O.P.) No.2 of 1996 and directed as follows:

“In the result, petition is allowed and respondent is directed to put the petitioner in vacant possession of petition schedule room within a period of one month from the date of the judgment. Considering the nature of contention parties are directed to suffer their cost.”

2. Aggrieved thereby, petitioner filed R.C.A.No.9 of 2010 on the file of the Additional Rent Control Appellate Authority, Kollam. By Ext.P2 judgment delivered on 12-09-2012, the Rent Control Appellate Authority concurred with the Rent Control Court and dismissed the appeal. The appellate authority did not, however, deem it fit to grant the petitioner time to deposit the arrears of rent due as on that date. The petitioner carried the matter in revision before this court by filing

R.C.R.No.29 of 2013. By Ext.P3 order passed on 23-07-2014, a Division Bench of this court dismissed R.C.R.No.29 of 2013. The operative portion of the judgment of this court in R.C.R. No.29 of 2013 reads as follows:

“21. On the basis of evidence on record, the Rent Control Court and the Appellate Authority concluded that the landlord has succeeded in making out a case for ordering eviction under Section 11(2)(b) of the Act. Such finding of the authorities below cannot be said to be erroneous or perverse, warranting interference of this Court under Section 20 of the Act. We find absolutely no illegality, irregularity or impropriety in the finding to that effect in the impugned order and judgment.

In the result, the Rent Control Revision is dismissed.
No order as to costs.”

3. The petitioner did not file an application under section 11(2)(c) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the “Act”, for short, to have the order of eviction vacated within thirty days from 23-07-2014. Instead, he deposited the sum of ₹23,360/- stated to be the amount due by way of arrears of rent, interest and costs in the execution court where E.P.No.62 of 2012 was pending. The correctness of the quantification has not so far been determined. He also filed I.A.No.2573 of 2014 on 10-11-2014 before the Rent Control Court with the following prayers:

“For the reasons stated in the accompanying affidavit it is humbly prayed that this honourable court may be pleased to order to allow the petitioner to deposit the arrears of rent of ₹23,360/- before this honourable court as

contemplated in S.11(2)(c) of Lease & Rent Control Act-1965 and to order to vacate the Judgment dated 15-3-10 passed in this case.”

4. Simultaneously the petitioner filed I.A.No.2572 of 2014 to condone the delay in filing I.A.No.2573 of 2014. It appears that he had also filed I.A.No.2571 of 2014 for staying the execution of the order of eviction. The respondent landlord opposed the said applications by filing separate counter affidavits. In the counter affidavit filed in I.A. No.2573 of 2014, a copy of which is on record as Ext.P5, the landlord contended that on what basis, the sum of ₹23,360/- has been arrived at is not stated. He also contended that the application is not maintainable. In the counter affidavit filed in I.A. No.2572 of 2014, a copy of which is on record as Ext.P7, he raised similar contentions. He contended that there is also no explanation for not depositing the arrears of rent within 30 days from this court's order, namely, 23-07-2014. The Rent Control Court considered the rival contentions and dismissed I.A.No.2573 of 2014 by Ext.P8 order passed on 16-03-2015. By Ext.P9 order passed on the same day, the Rent Control Court dismissed I.A.No.2572 of 2014. By yet another order passed on the same day, namely, Ext.P12, the Rent Control Court dismissed I.A. No.2571 of 2014. The aforesaid orders are under challenge in this original petition filed under Article 227 of the Constitution of India.

5. The main ground raised in the instant original petition is that

the impugned orders have been passed mechanically and without application of mind. It is also contended that the finding entered by the Rent Control Court that the tenant has not shown sufficient cause for not making the deposit within the time limit stipulated in section 11(2)(c) of the Act, is erroneous. Incidentally, it is also contended that the Rent Control Court has got ample powers under section 11(2)(c) of the Act to grant further time.

6. We heard Sri.B.Krishna Mani, learned counsel for the petitioner and Sri.P.Martin Jose, learned counsel for the respondent. We have also gone through the pleadings and the materials on record.

7. Ext.P1, the order of eviction in the instant case, was passed on 15-03-2010. By that order, the tenant was directed to put the landlord in possession of the petition schedule building within one month from the date of receipt of a copy of that judgment, after entering a finding that the rent in respect of the petition schedule room is in arrears from August, 1993 and that no proof is forthcoming regarding any payment. The Rent Control Court also took note of the fact that the tenant does not have a case that he was promptly paying the rent. The Rent Control Appellate Authority did not, when it dismissed the appeal, enlarge the time fixed, invoking section 11(2)(c) of the Act. This court also did not enlarge the time to deposit the entire arrears of rent, when it dismissed R.C.R. No.29 of 2013. A tenant can apply to have the order

of eviction under section 11(2)(b) of the Act vacated, only if he deposits the entire arrears of rent due with interest and costs of the proceedings within one month or within such further period as the Rent Control Court may in its discretion allow. R.C.R.No.29 of 2013 was dismissed by this court on 23-07-2014. The tenant himself has in paragraph 4 of Ext.P4 affidavit filed by him in support of I.A. No.2573 of 2014 and paragraph 4 of Ext.P6 affidavit filed by him in support of I.A. No.2572 of 2014 stated that he was legally entitled to get the judgment of this court vacated by depositing the arrears of rent with interest and costs of the proceedings within one month from the date of the judgment of this court. In that affidavit, he has also contended that the date of the judgment of this court has to be reckoned for the purpose of computing the period of one month stipulated in section 11 (2)(c) of the Act. The petitioner did not, in spite of that stand taken by him in the affidavit choose to make the deposit of arrears of rent with interest and costs within one month from 23-07-2014. The petitioner admittedly received the certified copy of Ext.P3 order passed by this court on the revision petition, on 01-09-2014. He did not make the deposit within one month from that date. The deposit was made only on 23-10-2014. In the affidavits filed in support of I.A. Nos.2572 and 2573 of 2014, namely, Exts.P4 and P6 respectively, the petitioner has not given any explanation as to the reason why he did not make the

deposit within one month from 23-07-2014 or within one month from 01-09-2014, the date on which he received the certified copy of Ext.P3 order. In the absence of any explanation from the side of the petitioner for not depositing the arrears of rent with interest and costs, the Rent Control Court was perfectly justified in dismissing I.A. Nos.2572 and 2573 of 2014.

8. A Full Bench of this court has in **Karthyayani v. S.N.D.P. Sakha Yogam [2004(3) KLT 524 (F.B.)]** held, interpreting section 11(2)(c) of the Act, that the discretion conferred on the Rent Control Court has to be judiciously exercised; that such discretion has to be exercised reasonably and lawfully and not mechanically and that the tenant has necessarily to show sufficient reasons which would enable the Rent Control Court to grant further time. In the instant case, as held by the Rent Control Court, the petitioner has not given any explanation as to why he did not make the deposit within the time limit stipulated in section 11(2)(c) of the Act. In short, there is no acceptable explanation from him as to the reason why the arrears of rent with interest and costs was not deposited within the time limit stipulated in section 11(2)(c) of the Act. Though an attempt was made to contend that an application was filed on the execution side in the Munsiff's Court, Punalur, the fact remains that the Munsiff's Court, Punalur, is also the Rent Control Court. The petitioner cannot, therefore, contend

that it was because of the fact that he had filed an application on the execution side, namely the Munsiff's Court, Punalur, that he was prevented from moving an application within the time limit in the Rent Control Court. The details of the application stated to have been filed on the execution side are not forthcoming. We are therefore, not persuaded to hold that the petitioner has shown sufficient cause for not depositing the arrears of rent with interest and costs within one month from 23-07-2014. In any case, there is no explanation as to why within one month from 01-09-2014, when he admittedly received a certified copy of Ext.P3 order of this court, the arrears of rent was not deposited.

We accordingly hold that there is no merit in the challenge to the impugned orders. The original petition fails and is dismissed.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

