

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 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

OP (RC).No. 77 of 2015 (O)

PETITIONER/PETITIONER /RESPONDENT:

SIDDIQUE S.M., AGED 51 YEARS
S/O.MOIDEEN , SADIQUE MANZIL
MELODY AMSOM DESOM, PAYYOLI (PO), KOYILANDY TALUK
KOZHIKODE DISTRICT.

BY ADV. SMT.K.DEEPA (PAYYANUR)

RESPONDENT/RESPONDENT/PETITIONER:

MOONNUKUNNAN CHALIL NIZAR
56 YEARS, S/O.BAVA, SURUMA
PAYYOLI(P.O) REP.BY POWER OF ATTORNEY HOLDER
BROTHER M.C.MOIDEEN, 61 YEARS, S/O.BAVA
MOONUKKUNNAN CHALIL, PAYYOLI (P.O)
KOZHIKODE DISTRICT.

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON
19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 77 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF THE PETITION FILED BY THE RESPONDENT HEREIN BEFORE THE RENT CONTROL COURT, PAYYOLI AS R.C.P.NO.11/2014.

EXHIBIT P2 & P2(A): TRUE COPY OF THE PETITION FILED BY THE PETITIONER TO SET ASIDE THE EX-PARTE ORDER AS IA NO.71/2015 ALONG WITH DELAY CONDONATION PETITION AS IA NO.72/2015.

EXHIBIT P3: TRUE COPY OF THE COUNTER FILED BY THE RESPONDENT IN EXT.P-3 & P-2(A).

EXHIBIT P4: TRUE COPY OF E.A.NO.60/2015 IN E.P.NO.10/2015.

EXHIBIT P4(A): TRUE COPY OF THE COUNTER IN E.A.NO.60/2015.

EXHIBIT P5: CERTIFIED COPY OF THE ORDER DATED 17.6.2015 IN IA NO.71/2015.

EXHIBIT P5(A): CERTIFIED COPIES OF THE ORDER DATED 17.6.2015 IN IA NO.72/2015.

EXHIBIT P6: CERTIFIED COPY OF THE ORDER IN E.A.NO.60/2015

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

Original Petition (R.C.) No.77 of 2015

Dated this the 19th day of October, 2015

JUDGMENT

P. N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.11 of 2014, on the file of the Rent Control Court, Payyoli, a petition for eviction filed by the respondent landlord under section 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the "Act", for short. Though notice was served on the tenant, namely, the petitioner herein and he entered appearance through counsel, he did not file a counter statement in spite of repeated adjournments granted in that behalf. Consequently, he was set ex parte on 19.12.2014; evidence on the side of the landlord was recorded; his counsel was heard and an order of eviction was passed on 19.12.2014. The tenant thereafter filed I.A.No.72 of 2015 to set aside the ex parte order of eviction and I.A.No.71 of 2015 to condone the delay of 28 days in filing the former application. The landlord on whom notices of the

aforesaid petitions were served filed written objections resisting the applications. While the I.A.Nos.71 and 72 of 2015 in R.C.P.No.11 of 2014 were pending, the landlord filed E.P.No.10 of 2015 to execute the order of eviction and that delivery was ordered to be effected by 19.06.2015. The tenant thereupon filed E.A.No.60 of 2015 in E.P.No.10 of 2015 in R.C.P.No.11 of 2014 praying that until I.A.Nos.71 and 72 of 2015, filed by him to have the ex parte order of eviction passed by the rent control court set aside, are heard and disposed of, further proceedings in execution may be kept in abeyance. While that application was pending, the rent control court considered I.A.Nos.71 and 72 of 2015 and allowed both the applications by separate orders passed on 17.06.2015. The order passed on I.A.No.71 of 2015 to condone the delay of 28 days in filing I.A.No.72 of 2015 reads as follows:-

“Heard both sides. This petition is allowed on condition that the petitioner shall pay entire arrears of rent and cost of ₹1,500/- on or before 22.06.2015. Otherwise, this petition stands dismissed.”

2. The order passed on I.A.No.72 of 2015 reads as follows:-

"Heard both sides. This petition is allowed on condition that petitioner shall pay entire arrears of rent and cost of ₹1,500/- to the respondent on or before 22.06.2015. Otherwise, this petition stands cancelled automatically."

3. On the very same day, the Rent Control Court, Payyoli, which is also the Court of the Munsiff of Payyoli, passed the following order on E.A.No.60 of 2015 in E.P.No.10 of 2015:-

"The order to delivery of property postponed up to 22.06.2015 on condition that the respondent shall pay the entire arrears of rent with cost of ₹1,500/- on or before 22.06.2015. Otherwise, the shall be dismissed."

4. The instant original petition was thereupon filed on 22.06.2015 challenging the aforesaid orders. The main ground in the instant original petition is that the rent control court/execution court erred in directing the tenant to pay the entire arrears of rent and that the applications should have been allowed on payment of costs. This original petition was admitted and an interim order was passed on 23.06.2015 staying further proceedings in E.P.10 of 2015 in R.C.P.No.11 of 2014 on the file of the Rent Control Court, Payyoli subject to the condition that the petitioner tenant shall deposit the sum of ₹3,00,000/- in the rent control court within two weeks and the

balance amount within a further period of six weeks. The original petition thereafter came up for consideration on 03.08.2015 after service of notice on the respondent landlord and on that day the learned counsel for the petitioner submitted before the Division Bench hearing the original petition that a sum of ₹3,00,000/- has already been deposited and that time is available till 07.08.2015 to deposit the balance amount. The aforesaid submission was recorded and the original petition was adjourned to 10.8.2015. On 10.08.2015, the learned counsel for the petitioner submitted that the time for deposit has not expired, that it will expire only on 18.08.2015 and not on 07.08.2015. In view of that fact, the original petition was adjourned to 19.08.2015. On 19.08.2015 the learned counsel appearing for the petitioner submitted that the condition stipulated by this court in the interim order passed on 23.06.2015 has been complied with. In view of that submission, the interim order earlier passed by this court on 23.06.2015 was extended for a further period of two months. The said order is even today in force.

5. We heard Smt.K.Deepa, the learned counsel appearing for the petitioner. Though the respondent has been served, he has not so far entered appearance. It is evident from the materials on record and the orders passed by this court that the original petition is filed challenging the condition stipulated by the rent control court that the entire arrears of rent should be deposited. In view of the interim order passed by this court, the petitioner has deposited the sum of ₹8,50,000/-. The petitioner has thus virtually complied with the conditions stipulated by the rent control court. In such circumstances, we are of the opinion that the order of eviction passed by the rent control court on R.C.P.No.11 of 2014 on 19.12.2014 can be set aside and the tenant afforded an opportunity to file a counter statement and to adduce evidence in support of his contentions.

6. We accordingly allow the original petition and set aside the ex parte order of eviction passed by the Rent Control Court, Payyoli on 19.12.2014 on R.C.P.No.11 of 2014. The tenant shall file counter statement, if any, in R.C.P.No.11 of 2014 within one month from

today. In the event of the tenant filing a counter statement within one month from today, the rent control court shall try and dispose of the rent control petition afresh within a outer limit of three months from the date on which the tenant files his counter statement. Until such time as the rent control petition is tried and disposed of, further proceedings in E.P.No.10 of 2015 shall be kept in abeyance. Needless to say, in the event of default on the part of the tenant in filing the counter statement within the time limit of one month stipulated as above, it will be open to the rent control court to pass appropriate further orders in the matter, except an order granting further time for filing the counter statement. No costs.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

