

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

OP (RC).No. 84 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN EP 77/2015 of PRL.M.C.,ERNAKULAM

PETITIONER(S)/RESPONDENT:

T.M.MISHAJ AGED 30 YEARS
S/O.MURALI, MAYA GLASS AND PLYWOOD
POTTAKUZHY, ELAMAKKARA P.O.,ERNAKULAM - 682 026

BY ADVS.SRI.C.S.MANU
SRI.S.K.PREMRAJ

RESPONDENT/PETITIONER:

E.A.ANTONY
AGED 82 YEARS, S/O.ANTHAPPAN, EACHARANGATTU HOUSE
POTTAKUZHY, ELAMAKKARA P.O.,ERNAKULAM - 682 026

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON
10-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN OP(RC) 84/2015

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE RENT CONTROL PETITION IN RCP NO:52 OF 2014
SUBMITTED BY THE RESPONDENT BEFORE RENT CONTROL COURT, ERNAKULAM

EXT.P2: -DO- OF THE OBJECTION FILED BY THE PETITIONER IN RCP
NO:52/2014 BEVORE RENT CONTROL COURT, ERNAKULAM

EXT.P3: -DO- OF THE ORDER DT.24.1.2015 PASSED BY THE RENT CONTROL
COURT, ERNAKULAM

EXT.P4: -DO- OF THE APPEAL MEMORANDUM IN RCA 40/2015 ON THE FILES OF
THE DISTRICT COURT, ERNAKULAM (RENT CONTROL APPELLATE AUTHORITY)

EXT.P5: A TRUE COPY OF THE I.A.NO:4108/2015 FOR CONDONATION OF DELAY
SUBMITTED BY THE PETITIONER BEFORE DISTRICT COURT,ERNAKULAM (RENT
CONTROL APPELLATE AUTHORITY)

EXT.P6: -DO- OF THE I.A.NO:4109/2015 FOR STAY SUBMITTED BY THE
PETITIONER BEFORE DISTRICT COURT, ERNAKULAM (RENT CONTROL APPELLATE
AUTHORITY)

EXT.P7: -DO- OF THE E.A.NO:262/2015 FILED UNDER ORDER XXI RULE 26
SUBMITTED BY THE PETITIONER BEFORE PRINCIPAL MUNSIFF'S COURT,
ERNAKULAM

/TRUE COPY/

P.S.TO JUDGE

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

O.P.(R.C) No.84 of 2015

Dated this the 10th day of July, 2015

J U D G M E N T

Surendra Mohan, J.

The tenant has filed this original petition seeking the issue of appropriate directions for keeping in abeyance the delivery that has been ordered by the Principal Munsiff's Court, Ernakulam in E.P.No.77 of 2015 in RCP No.52 of 2014. The Rent Control Petition was filed by the respondent landlord for an order of eviction alleging grounds under Section 11(2)(b) and Section 11(3) of the Kerala Buildings (Lease and Rent) Control Act, 1965 (hereinafter referred to as 'the Act' for short). The petitioner has already filed his objections in the Rent Control Petition. While so, the respondent filed a petition seeking a direction from the Court for payment of the admitted arrears of rent under Section 12 of the Act. Exhibit P3 order has been passed for the reason that, the

petitioner had not complied with the said direction issued under Section 12 of the Act. The contention of the counsel for the petitioner is that, the petitioner's lawyer had not informed him of the order passed by the Rent Control Court. On coming to know of the order, he has filed RCA No.40 of 2015 challenging the same. The Rent Control Appeal is pending before the Rent Control Appellate Authority, Ernakulam. Since there was delay in filing the appeal, the same stands posted for return of notice on 22.07.2015.

2. In the meantime, the respondent landlord had filed EP No.77 of 2015 before the Munsiff's Court, Ernakulam for execution of the order of eviction. In the said proceedings, according to the learned counsel, delivery has been ordered to be effected on 10.07.2015, that is today. The counsel for the petitioner seeks a breathing time, until the Rent Control Appeal filed by the petitioner is finally disposed of by the Appellate Authority.

3. Heard. We notice from Exhibit P3 order of the

Rent Control Court that, the petitioner had been granted sufficient time to pay the admitted arrears of rent. The time initially fixed had been extended and the learned Rent Controller has noted that, on the date to which the Rent Control Petition had been posted, a representation was made that the payment was being made on the said date. Thereafter, though time was sought again, the request was rejected and the order of eviction was passed. However, since the petitioner has challenged the order in RCA No.40 of 2015, we do not want to say anything further on the above aspects. We also notice that, the Rent Control Appeal is out of time and that a petition for condonation of delay has been filed. It is for the Appellate Authority to take a decision as to whether the delay in the case should be condoned or not. The question of granting a stay of execution proceedings would arise only in the event of the Appellate Authority deciding to condone the delay and to take the appeal on file. However, since the Rent Control

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Petition is of the year 2014, we are of the opinion that, it is necessary to grant time to the petitioner until a final decision is taken by the Rent Control Appellate Authority on the delay condonation petition. However, for getting the benefit of the time that we are granting, the petitioner would have to deposit the entire admitted arrears of rent by 13.07.2015.

This original petition is accordingly disposed of with the following directions:-

1.The delivery ordered by the Munsiff's Court, Ernakulam in E.P.No.77 of 2015 in RCP No.52 of 2014 shall stand adjourned by a period of three weeks from today on condition that the petitioner deposits the entire admitted arrears of rent before the Execution Court on or before 13.07.2015.

2.The Rent Control Appellate Authority, Ernakulam is directed to take up I.A.No.4108 of 2015 In RCA No.40 of 2015, to hear both parties and pass final orders thereon, as

expeditiously as possible and at any rate before 28.07.2015.

If the Appellate Authority decides to condone the delay and take the appeal on file, it shall be open to the said authority to pass appropriate interim orders of stay of the execution proceedings in E.P.No.77 of 2015.

3. We make it clear that we have not entered any findings on the sustainability of the order against which the RCA has been filed. Therefore, in the event of the appeal being entertained, the same shall be considered untrammelled by any of the observations made hereinabove,.

**Sd/-
K.SURENDRA MOHAN,
JUDGE**

**Sd/-
MARY JOSEPH
JUDGE**

kkj

/True copy/