

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

OP (RC).No. 92 of 2015 (O)

PETITIONERS/PETITIONERS/Appellant/Respondent

1. BASHARUDHIN AGED 56 YEARS
S/O.KAVUNGAL SAIDU MUHAMMED, NATTIKA AMSOM DESOM
CHAVAKKAD TALUK, THRISSUR DISTRICT.
2. FOUSIYA AGED 46 YEARS
W/O.KAVUNGAL BASHARUDHIN, NATTIKA AMSOM, DESOM
CHAVAKKAD TALUK

BY ADV. SRI.RAJIT

RESPONDENT/RESPONDENT/RESPONDENT/RESPONDENT/PETITIONER:

KUNJIMON, AGED 92 YEARS
S/O.AKATHEPEEDIKAYIL IBRAHIM, NATTIKA AMSOM, DESOM
CHAVAKKAD TALUK, THRISSUR DISTRICT

R BY SRI. SREEKUMAR CHELUR) (B/O)

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON 13-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 92 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:-TRUE COPY OF THE ORDER DTD 28/2/2013 IN RCP NO 66/2008 OF THE RENT CONTROL COURT,CHAVAKKAD

P2:-TRUE TYPED COPY OF THE ORDER DTD 6/2/2015 IN IA NO 3759/2014 IN RCA NO 25/2013

P3:-TRUE COPY OF THE ORDER DTD 6/2/2015 IN RCA NO 25/2013 OF THE IVTH ADDITIONAL RENT CONTROL APPELLATE AUTHORITY

P4:-TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER TO REHEAR THE APPEAL

P5:-TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER TO STAY FURTHER PROCEEDINGS IN EP NO 87/2015

P6:-TRUE COPY OF THE ORDER DTD 7/7/2015 IN IA NO 2442/2015 IN RCA NO 25/2013 OF THE IVTH ADDITIONAL RENT CONTROL APPELLATE AUTHORITY

RESPONDENT(S)' EXHIBITS

NIL

ks

True copy

P.S. (Hr.Gr.)To Judge

**P.N. RAVINDRAN
&
BABU MATHEW P. JOSEPH, JJ.**
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O.P.(RC)No. 92 OF 2015
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Dated this the 13th day of November, 2015

JUDGMENT

P.N. Ravindran,J.

The petitioners are the tenants in R.C.P.No.66 of 2008 on the file of the Rent Control Court, Chavakkad, a petition filed by the respondent/landlord for an order of eviction under sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. Upon receipt of notice, the tenants entered appearance and filed a counter statement resisting the petition for eviction. After trial, the rent control court passed an order of eviction on 28.02.2013 under sections 11(2)(b) and 11(3) of the Act.

2. Challenging the order of eviction passed by the rent control court, the tenants filed R.C.A.No.25 of 2013 on the file of the Rent Control Appellate Authority, Thrissur. The said appeal was presented on 20.05.2013. The tenant had along with the appeal filed I.A.No.2674 of 2013 for an order staying the execution of the order of eviction passed by the rent control court. The appeal was admitted and notice ordered to the respondent/landlord on 23.05.2013. On that day, the

rent control appellate authority also passed an order staying the execution of the order of eviction passed by the rent control court subject to the condition that the tenants shall deposit the sum of Rs.35,400/- within two months. The notices taken out in R.C.A.No.25 of 2013 and I.A.No.2674 of 2013 were served on the landlord by the process server deputed from the rent control appellate authority on 03.08.2013. In the notice served on the respondent/landlord, the date fixed for appearance was 13.08.2013. The respondent/landlord entered appearance through counsel on 13.08.2013. The appeal was thereupon adjourned to 31.10.2013. On that day, it was adjourned to 04.02.2014 and later to 04.04.2014.

3. While matters stood thus, by order No.C3-21/14(1) dated 03.04.2014, the learned Principal District Judge, Thrissur, made over R.C.A.No.25 of 2013 to the IVth Additional District Court, Thrissur. On 04.04.2014, there was no sitting of the Rent Control Appellate Authority, Thrissur. Consequently the appeal was re-posted to 21.07.2014. After R.C.A.No.25 of 2013 was made over to the IVth Additional District Court, Thrissur, it was posted in that court on 21.10.2014. On that day, the landlord filed I.A.No.3759 of 2014 under section 12(3) of the Act praying for an order of eviction on the ground that the tenants have kept the rent in arrears. In the affidavit filed in

support of I.A.No.3759 of 2014, the landlord had averred that the tenants have kept rent at the rate of Rs.600/- per mensem in arrears from 01.07.2008, that the rent control court has found that as on 31.01.2013, the sum of Rs.20,433/- is due towards arrears of rent and interest and that the tenants have not so far deposited any amount towards arrears of rent. When I.A.No.3759 of 2014 came up for consideration on 21.10.2014, the appellate authority ordered notice to the respondent returnable by 15.12.2014. On 15.12.2014 it was adjourned to 05.01.2015 for counter and hearing. On 05.01.2015, the application was adjourned to 07.01.2015. By order passed that day, the rent control appellate authority directed the tenants to deposit the arrears of rent due as on the date of the petition, namely I.A. No. 3759 of 2014 with interest, within four weeks namely on or before 05.02.2015 and to deposit the rent which subsequently accrues within a further period of three weeks. The appellate authority also directed that I.A.No.3759 of 2014 be called on 05.02.2015 for report regarding payment or deposit of the arrears of rent. On 05.02.2015 since no payment was made, I.A.No.3759 of 2014 was adjourned for further orders to 06.02.2015. On that day, the rent control appellate authority passed Ext.P2 order dated 06.02.2015 on I.A.No.3759 of 2014, which reads as follows:

"Respondent has not paid or deposited the arrears of rent as ordered u/s.12(1) & (2) of Act 2/1965, on 7.1.2015. Respondent has also failed to show any cause. So further proceedings in the RCA are stopped and the respondent/tenant (Appellant in RCA) is directed to put the petitioner/landlord in possession of the building. IA is thus allowed u/s.12(3) of the Act 2/1965.(KBLRC) Act."

On the very same day, the appellate authority passed Ext.P3 judgment disposing of R.C.A.No.25 of 2013, which reads as follows:

" Arrears of rent not paid or deposited as ordered in I.A.3759/2014. No cause shown. Orders passed in I.A.3759/14 u/s.12(3) of the Act (vide order on the IA). Further proceedings stopped in RCA and the appellant is ordered to put the respondent/landlord in possession of the petition schedule building."

4. The tenants thereupon filed I.A.Nos.1938 and 1940 of 2015 on 20.05.2015. The relief sought in I.A.No.1940 of 2015 filed under Order XLI Rule 19 of the Code of Civil Procedure was to set aside the order passed on 06.02.2015 dismissing the appeal (R.C.A.No.25 of 2013) for default and to readmit the appeal to file. The relief sought in I.A.No.1938 of 2015 filed under section 5 of the Limitation Act, 1963, was to condone the delay in filing I.A.No.1940 of 2015. The tenants had, in the affidavit filed in support of the aforesaid applications,

averred that R.C.A.No.25 of 2013 was pending before the Court of the Principal District Judge of Thrissur, that later the appeal was made over to the IVth Additional District Court, Thrissur, pursuant to the order passed by the Principal District Judge, Thrissur, that though thereupon his counsel had made enquiries in the office, he was informed that the appeal has not been posted, that the tenants were, therefore, under the impression that they will receive notice regarding the posting and that it was only when the Amin came to effect delivery pursuant to the order passed in the execution petition that they came to know about the order passed by the appellate authority. It was further averred that they are ready to deposit the entire arrears of rent and that there was no wilful default or laches on their part in not appearing in court on 06.02.2015. The said applications came up before the rent control appellate authority on 22.05.2015 and on that day, notice returnable by 07.08.2015 was ordered to the respondent/ landlord. The tenants did not however take steps. The records disclose that on 07.08.2015, there was no sitting and, therefore, the aforesaid applications were posted to 14.09.2015. On 14.09.2015, they were adjourned by notification to 26.10.2015. On 26.10.2015, as there was no sitting, they were reposted to 27.11.2015. The tenants thereupon filed I.A.No.2441 of 2015 to advance the hearing of I.A.No.1940 of

2015, accompanied by I.A.No.2442 of 2015 wherein they prayed for an order staying further proceedings in E.P.No.87 of 2015 in R.C.P.No.66 of 2008. The aforesaid applications, I.A.Nos.2441 of 2015 and 2442 of 2015 were filed on 29.06.2015. I.A.No.2442 of 2015 was taken up for consideration on 30.06.2015. On that day notice was ordered to the respondent therein and the application was posted to 02.07.2015 for counter and hearing. On 02.07.2015 as there was no sitting, the application was reposted to 04.07.2015. On 02.07.2015, the landlord filed objections to I.A.No.2442 of 2015 resisting the application. On 04.07.2015, I.A.No.2442 of 2015 was heard and it was adjourned to 07.07.2015 for orders. By Ext.P6 order passed on 07.07.2015, the rent control appellate authority dismissed I.A.No.2442 of 2015 and held that as the arrears of rent has not been deposited, an order under section 12(3) of the Act was passed and, therefore, the tenants cannot be heard to contend that they are now ready to pay the arrears of rent. The rent control appellate authority also held that I.A.Nos.1938 of 2015 and 1940 of 2015 have been filed on the premise that the appeal was dismissed for default. Ext.P6 order is under challenge in this original petition filed under Article 227 of the Constitution of India wherein the petitioners pray for an order directing the rent control appellate authority to reconsider I.A.No.3759 of 2014

in R.C.A.No.25 of 2013 with notice to them. The principal contention raised in the instant original petition is that notice of I.A.No.3759 of 2014 was not served on the tenants before Exts.P2 and P3 orders were passed.

5. We heard Sri. Rajit, learned counsel appearing for the petitioners and Sri. G.Sreekumar (Chelur), learned counsel appearing for the respondent. We have also gone through the pleadings and the materials on record including the records which were called for from the Rent Control Appellate Authority, Thrissur. The records disclose that R.C.A.No.25 of 2013 was filed on 20.05.2013 before the Rent Control Appellate Authority, Thrissur. The appeal was made over to the IVth Additional District Court, Thrissur pursuant to the order passed by the Principal District & Sessions Judge, Thrissur on 03.04.2014. It was thereafter that the landlord filed I.A.No.3759 of 2014 under section 12 (3) of the Act for an order directing the tenants to surrender possession of the petition schedule building for non-payment of rent. The said application was filed on 21.10.2014. The original of the said application does not show that a copy thereof was served on Sri. K.H.Abdul Samad, learned counsel appearing for the appellants in R.C.A.No.25 of 2013. The records also do not contain a memo to the effect that a copy of the aforesaid application was served on him.

Evidently that was the reason why notice was ordered on the said application to the respondents, namely the appellants in the appeal. The records do not show that the landlord had taken steps to serve notice of the application on the respondents namely the appellants in R.C.A.25 of 2013. There is also no material to show that notice on I.A.No.3759 of 2014 was served on the appellants in R.C.A.No.25 of 2013 either by post or by the process server deputed from the court below. Notwithstanding this fact, on the ground that a counter statement has not been filed, the rent control appellate authority allowed I.A.No.3759 of 2014 by order passed on 07.01.2015. The rent control appellate authority has in passing that order proceeded on the basis that the tenants have not disputed the averments in the affidavit filed in support of I.A.No.3759 of 2014 and that the rent control court has found that the sum of Rs.20,433/- is due by way of arrears of rent. The rent control appellate authority also proceeded on the basis that the tenants have not referred to any payment after 28.02.2013. In that view of the matter, the rent control appellate authority directed the tenants, namely the appellants before it, to deposit the arrears of rent with interest as on the date of the petition within four weeks (namely on or before 05.02.2015) and the rent subsequently accruing within a further period of three weeks. Since the said order was not

complied with, the rent control appellate authority passed Ext.P2 order dated 06.02.2015 stopping further proceedings in R.C.A.No.25 of 2013 and directing the tenants (the appellants in the appeal) to put the landlord in possession of the building. On the very same day, the appellate authority passed Ext.P3 judgment in R.C.A.No.25 of 2013.

6. In view of the aforesaid orders, the tenants initially filed I.A.No.1940 of 2015 praying that the order dismissing the appeal for default may be set aside and the appeal re-admitted to file. While that application was pending, delivery was ordered in E.P.No.87 of 2015 filed by the landlord. Thereupon, the tenants filed I.A.No.2442 of 2015 praying for stay of further proceedings in E.P.No.87 of 2015, but it was dismissed by Ext.P6 order. It is evident from the materials before us that before Ext.P2 order was passed, stopping further proceedings in R.C.A.No.25 of 2013 and directing the tenants to put the landlord in possession of the petition schedule building, the procedure prescribed in section 12(3) of the Act was not followed. The B diary discloses that I.A.No.3759 of 2014 was filed on 21.10.2014. On that day notice was ordered to the respondents therein namely the appellants in R.C.A.No.25 of 2013. The landlord did not, as stated earlier, take steps to serve notice on the respondents. If a copy of I.A.No.3759 of 2014 had been served on the learned counsel appearing for the

appellants/tenants, it was not necessary to serve notice on them. There is also no material to show that a copy of I.A.No.3759 of 2014 was served on the learned counsel appearing for the appellants/tenants. It was without noticing these facts that the rent control appellate authority passed the order dated 07.01.2015 and directed payment of the arrears of rent within 4 weeks. Even assuming that there was non-compliance with the said order, an order stopping the proceedings under section 12(3) of the Act could have been passed only after the tenants are given an opportunity to show cause why such an order should not be passed. In the instant case, the said procedure was not complied with. From the materials on record, we are satisfied that before I.A.No.3759 of 2014 was allowed by order passed on 07.01.2015 and the consequential orders evidenced by Exts.P2 and P3 were passed, the tenants/appellants had not been served with notice of I.A.No.3759 of 2014 and afforded an opportunity to file their objections to I.A. No. 3759 of 2014. In that view of the matter, we are of the opinion that the orders passed by the rent control appellate authority on 07.01.2015 and 06.02.2015 on I.A.No.3759 of 2014 and the judgment delivered by it on 06.02.2015 disposing of R.C.A.No.25 of 2013 and Ext.P6 order passed by the rent control appellate authority on 07.07.2015 dismissing I.A.No.2442 of

2015 should be set aside and the rent control appellate authority directed to reconsider I.A.No.3759 of 2014 and pass appropriate orders therein after affording the appellants in R.C.A.No.25 of 2013 (the respondents in I.A.No.3759 of 2014) an opportunity to file their objections to the said application.

For the reasons stated above, we allow this original petition, set aside the orders passed by the Rent Control Appellate Authority, Thrissur on 07.01.2015 and 06.02.2015 on I.A.No.3759 of 2014 in R.C.A. No. 25 of 2013 and the judgment delivered by the Rent Control Appellate Authority on 06.02.2015 in R.C.A.No.25 of 2013 and restore R.C.A.No.25 of 2013 and I.A.No.3759 of 2014 to file. The rent control appellate authority shall dispose of I.A.No.3759 of 2014 afresh expeditiously and in any event within one month from the date of receipt of a copy of this judgment. The parties shall appear through counsel before the Rent Control Appellate Authority, Thrissur on 21.12.2015. The tenants shall file their objections, if any, in I.A.No.3759 of 2014 positively on 21.12.2015. Registry shall in order to enable the tenants to file their objections to I.A.No.3759 of 2014, furnish to the learned counsel appearing for the tenants in this court (the petitioners herein) a photostat copy of I.A.No.3759 of 2014 excluding the endorsements therein. We make it clear that we have

not expressed any opinion on the merits of the rival contentions in I.A.No.3759 of 2014 and that it is for the rent control appellate authority to pass appropriate orders in the matter, having regard to the pleadings and the materials on record. For the very same reasons, Ext.P6 order passed by the rent control appellate authority on 07.07.2015 on I.A.No.2442 of 2015 shall also stand set aside and further proceedings in E.P.No.87 of 2015 shall be kept in abeyance until the disposal of R.C.A.No.25 of 2013.

Sd/-

**P.N. RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

ks.

True copy

P.S. (Hr.Gr.)To Judge

