

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

OP (RC).No. 113 of 2015 (O)

AGAINST THE ORDER IN I.A.NO.472/15 IN RCP 16/2014 of COURT OF THE RENT
CONTROLLER/MUNSIFF, VADAKARA DATED 17.07.2015

PETITIONER/RESPONDENT :

MAJEED ALANTEVIDA AGED 55 YEARS
S/O.ALI, PERINGADI PUTHIYA PURAYIL, KOYILANDY VALAPPU
VATAKARA.

BY ADV. SRI.MOHANAN V.T.K.

RESPONDENTS/PETITIONERS:

1. NALUPURAYIL PUTHIYA VALAPPIL PATHUTTI, AGED 50 YEARS
W/O.ABDUL LATHEEF, BAITHUL LUTHFI, VATAKARA-673 101.
2. SHUHAIB, AGED 25 YEARS
S/O.ABDUL LATHEEF, BAITHUL LUTHFI, VATAKARA-673 101.

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 16-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AV

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

O.P.(R.C.).No.113 of 2015

Dated this the 16th day of September, 2015.

J U D G M E N T

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.16 of 2014 on the file of the Court of the Rent Controller/Munsiff, Vatakara. The respondents are the petitioners therein. R.C.P.No.16 of 2014 was dismissed for default on 02.03.2015. Thereupon, the petitioners in the rent control petition filed I.A.No.472 of 2015 to restore the rent control petition to file. The affidavit in support of the said application was sworn to by the second petitioner before the Rent Control Court who is none other than the son of the first petitioner and the person for whose benefit eviction was sought by the landlord under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The petitioner herein opposed the application by filing Ext.P3 objections wherein *inter alia* it was contended that the first petitioner in the rent control petition has not sworn to the affidavit filed in support of the petition and that the application is not maintainable. The court below considered the rival contentions and allowed I.A.No.472 of 2015 by Ext.P4 order passed on 17.07.2015 subject to payment of ₹2,500/- as costs. The said order is under challenge in this revision petition.

2. We heard Sri.V.T.K.Mohan, learned counsel appearing for the petitioner. We have also gone through the impugned order as also the pleadings and the materials on record. Shorn of details, the objection raised by the petitioner/tenant is that as the affidavit sworn to in support of I.A.No.472 of 2015 is one sworn to by the second petitioner, the application is not maintainable. The said contention is in our opinion plainly untenable and without any merit. The second petitioner in I.A.No.472 of 2015 is the second petitioner in R.C.P.No.16 of 2014. He is the son of the first petitioner, the landlord and also the person for whose benefit eviction is sought under section 11(3) the Act.

3. In such circumstances, as the rent control petition was dismissed for default and it was open to any one of the parties or even persons who are not parties to the rent control petition to swear to an affidavit explaining the circumstances in which the rent control petition happened to be dismissed for default, we are of the opinion that nothing turns on the failure of the first petitioner to himself swear to the affidavit. It is evident from the application for restoration of the rent control petition that both the petitioners in the rent control petition had joined as petitioners in the application. We therefore find no reason to hold that the application was not maintainable merely for the reason that the affidavit in support of the application was sworn to by the second petitioner before the

Rent Control Court. On the merits also we are not persuaded to hold that the impugned order is in any way illegal. The court below has by the impugned order granted the petitioners before it, an opportunity to have the rent control petition decided on the merits. The inconvenience if any caused to the tenant has been compensated by award of the sum of ₹2,500/- as costs. In any view of the matter, it cannot be said that disposal of the rent control petition instituted in the year 2014 was being unnecessarily delayed on account of the dilatory tactics of the landlord. That apart, the application for restoration was filed within the period of limitation itself. In such circumstances, in the absence of any material to show that the landlord was acting without any *bonafides*, we are of the opinion that the court below was perfectly right in allowing the application.

The instant original petition in our opinion is without any merit. It fails and is accordingly dismissed in limine.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P.JOSEPH
JUDGE

AV

/True Copy/

P.A to Judge