

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 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

OP (RC).No. 114 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN OS 564/2012 of MUNSIF COURT, THIRUVALLA
PETITIONER(S):

S.PECHIMUTHU AGED 55 YEARS
S/O.SUDALAI, KANNAMALA HOUSE, MUTHUS HAIR STYLE
NEAR PRIVATE BUS STAND, MALLAPPALLY VILLAGE
MALLAPPALLY TALUK

BY ADV. SRI.R.GIREESH VARMA

RESPONDENT(S):

MARY THOMAS
W/O.THOMAS PHILIP, KANNAMALA HOUSE
MALLAPPALLY VILLAGE, MALLAPPALLY TALUK.

BY ADV. SRI.SATHISH NINAN
BY ADV. SRI.SANTHOSH MATHEW
BY ADV. SRI.JENNIS STEPHEN

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON 01-10-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 114 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

P1- TRUE COPY OF THE PLAINT IN OS NO.564/2012 ON THE FILES OF THE
MUNSIFF'S COURT , THIRUVALLA
P2- TRUE COPY OF THE ORDER IN IA NO.3367/2012 IN OS 564/12 ON THE FILES
OF THE UNSIFFS COURT, THIRUVALLA
P3- TRUE COPY OF THE RENT CONTROL PETITION NO.8/13
P4- TRUE COPY OF THE E.P. NO.12/2015 IN RCP NO.8/13
P5- TRUE COPY OF THE APPLICATION TO SET ASIDE THE EX PARTE ORDER IA
963/2015
P6- TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER FOR GETTING
THE DELAY CONDONED
P7- TRUE COPY OF THE PETITION TO RESTORE THE APPLICATION FOR SETTING
ASIDE THE EX PARTE ORDER IA 2569/15
P8- TRUE COPY OF THE EA NO.16/2015 FILED UNDER ORDER 21 RULE 26 OF CPC
FOR STAY

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY //

P.S. TO JUDGE

**P.N. Ravindran &
Babu Mathew P. Joseph, JJ.**

O.P.(R.C.) No.114 of 2015

Dated this the 1st October, 2015

JUDGMENT

P.N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.8 of 2013 on the file of the Rent Control Court, Thiruvalla. The respondent is the landlord therein. The respondent/landlord had, in R.C.P.No.8 of 2010, prayed for an order of eviction under section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965. Though notice was served on the petitioner herein and he had entered appearance through counsel, he did not file a counter statement in the Rent Control Petition. He did not also participate in the proceedings thereafter. For that reason he was set ex-parte and an ex-parte order of eviction was passed on 11.12.2014. The petitioner/tenant did not file an application to set aside the order setting him ex-parte within time. He, however, filed an application as I.A. No.963 of 2015 on 9.3.2015 to set aside the ex-parte order of eviction, accompanied by I.A. No.964 of 2015 to condone the delay of 56 days in filing the former application. The said applications stood posted on 21.7.2015 for the objections of the landlord. When the applications were called on for hearing on 21.7.2015,

learned counsel for the petitioner did not appear, with the result, the said applications were dismissed for default on that day. The petitioner thereupon filed I.A. Nos.2569 and 2570 of 2015 on 12.8.2015 praying that the order dismissing I.A. Nos.963 of 2015 and 964 of 2015 for default on 21.7.2015 may be set aside. It appears that in the meanwhile, in E.P.No.12 of 2015 filed by the landlord to execute the ex-parte order of eviction, delivery was ordered on 23.7.2015 and the Amin was directed to effect delivery on 11.8.2015. Delivery was also effected pursuant to that order, on 21.8.2015. The instant original petition was thereupon filed on 15.9.2015 praying for an order directing the Rent Control Court, Thiruvalla to consider and pass orders on I.A.Nos.2569 and 2570 of 2015 in R.C.P.No.8 of 2013 within two weeks and to further direct the respondent/landlord to keep the petition schedule building in tact till a decision is taken on I.A.Nos.2569 and 2570 of 2015 and I.A.Nos.963 and 964 of 2015.

2. Heard Shri R. Gireesh Varma, learned counsel for the petitioner and Shri Sathish Ninan, learned counsel for the respondent. Perused the records. We have also gone through the report called for by this court from the execution court, viz. the Court of the Munsiff of Thiruvalla. The report submitted by the execution court discloses that delivery was ordered on on 23.7.2015 in E.P.No.12 of 2015 in R.C.P.No.8 of 2013 by the Court of the

Munsiff of Thiruvalla. By that order, the Amin was directed to effect delivery on 11.8.2015. The Amin went over to the petition schedule building to deliver it to over to the landlord. It was then noticed that the judgment debtor is not in station and that the building is locked. The landlord thereupon filed E.A.No.80 of 2015 in E.P.No.12 of 2015 in R.C.P.No.8 of 2013 to allow the Amin to break open the lock of the shop room. That application was allowed and delivery was directed to be effected on 21.8.2015. Delivery was accordingly effected on 21.8.2015 and a report to that effect was filed on 22.8.2015. Thereupon E.P.No.12 of 2015 in R.C.P.No.8 of 2013 was also closed.

3. The report submitted by the exertion court which is also the Rent Control Court discloses that notice was ordered on 13.8.2015 on I.A. Nos.2569 of 2015 and 2570 of 2015 which were filed on 12.8.2015. The petitioner has not so far taken steps on the said applications. It is also stated that the aforesaid applications stand posted for return of notice, on 21.10.2015. In such circumstances, we are of the opinion that the only course open for this court will be to direct the Rent Control Court, Thiruvalla where I.A.Nos.2569 of 2015 and 2570 of 2015 in R.C.P.No.8 of 2013 are pending, to dispose of the said applications expeditiously, and in any event, within two weeks from 21.10.2015. In order to enable the Rent

Control Court, Thiruvalla to act as directed above, both the parties shall appear through counsel before that court on that day. Notwithstanding the fact that delivery of the petition schedule building has been effected, we also deem it appropriate to injunct the respondent/landlord from demolishing the petition schedule building which was the subject matter of R.C.P.No.8 of 2013, until the Rent Control Court passes orders on I.A. Nos.2569 of 2015 and 2570 of 2015. Thereafter, the rights of the parties will be governed by the orders to be passed by the Rent Control Court. We also deem it appropriate to record the submission made by the learned counsel appearing for the respondent that a portion of the petition schedule building has already been demolished after delivery was effected by the Amin on 21.8.2015.

The original petition is disposed of in the above terms. Registry to communicate a copy of this judgment to the Rent Control Court.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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