

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 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

OP (RC).No. 117 of 2015 (O)

RCP 27/2013 of RENT CONTROL COURT, ERNAKULAM

PETITIONER :

MAHESH CHIMMANLAL AGED 42 YEARS
S/O.CHIMANLAL, KAVYA ILLAM, H.NO.284
PALLIKKAVU TEMPLE ROAD, SCHOOLPADY, VADUTHALA.

BY ADV. SRI.DILISH JOHN

RESPONDENT :

RAMESH CHANDAK, AGED 41 YEARS
S/O.BABURAJ CHANDAK, 43/2228, TEMPLE ROAD
1ST FLOOR, SREEPOORNA BUILDING, KADAVANTHRA
ERNAKULAM - 682 015

R BY ADVS. SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON 23-09-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 117 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1.TRUE COPY OF THE ORDER IN OP(RC) NO.131/2014.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

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

O.P.(R.C.).No.117 of 2015

Dated this the 23rd 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.27 of 2013 on the file of the Rent Control Court, Ernakulam. The respondent is the landlord therein. The respondent instituted R.C.P.No.27 of 2013 praying for an order of eviction under section 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. Though notice was served, the petitioner/tenant did not appear before the Rent Control Court, with the result, he was set ex-parte. Later an ex-parte order of eviction was passed on 27.07.2013. After the ex-parte order was passed, the petitioner/tenant filed I.A.No.3835 of 2014 to set aside the order setting him ex-parte followed by I.A.No.3910 of 2014 to condone the delay of 106 days in filing the former application. The respondent/landlord opposed the said application by filing written objections. The Rent Control Court considered the rival contentions and dismissed I.A.Nos.3835 and 3910 of 2014 by order passed on 02.09.2014. Challenging that order, the petitioner/tenant filed R.C.A.No.77 of 2014 before the Rent Control Appellate Authority, Ernakulam. While that appeal was pending, the landlord filed E.P.No.146 of 2014 to execute the ex-

parte order of eviction. The petitioner/tenant thereupon filed O.P. (RC)No.131 of 2014 in this court wherein he prayed for a stay of all further proceedings in the execution petition till R.C.A.No.77 of 2014 is heard and disposed of. O.P.(R.C.)No.131 of 2014 was heard and disposed of by a Division Bench of this court by Ext.P1 judgment delivered on 11.11.2014. Taking note of the concession made by the learned counsel appearing for the landlord that he has no objection in the ex-parte order of eviction being set aside, this court allowed O.P.(R.C.).No.131 of 2014 in the following terms :

"4. When the O.P.(R.C.) came up for hearing, the learned counsel appearing for the respondent/landlord submitted that there is no bona fides on the part of the petitioner/tenant and his only attempt is to protract the matter to the maximum. The learned counsel for the respondent/landlord submitted that though the petitioner/tenant filed a petition for stay before the Appellate Authority, he did not serve a copy of the stay petition to the counsel for the landlord who had filed a caveat before the Appellate Authority. The learned counsel for the landlord submitted that the landlord is prepared to concede for setting aside the exparte order so that the landlord would not be dragged from Court to Court and the tenant would not be entitled to protract the proceedings to the maximum. The learned counsel for the landlord submitted that let the exparte order of eviction passed against the tenant be set aside on condition that the tenant may be directed to deposit the entire arrears of rent at the rate mentioned in the rent deed within a short period and let the tenant file a counter

statement within a stipulated time and get ready for trial of the case.

5. Learned counsel appearing for the petitioner/tenant submitted that the tenant is prepared to co-operate with the trial of the case and his only intention is to put forward his grievances before the Rent Control Court and to contest the case on the merits. It is also submitted that the tenant has no intention to protract the matter. The learned counsel for the tenant also submitted that the tenant is prepared to deposit the entire arrears of rent at the rate stipulated in the rent deed within two months from today. It is submitted that counter statement will be filed within one month from today and that the tenant will get ready for trial of the case on any date on or after 19.1.2015. (emphasis supplied)

6. Based on the consensus arrived at between the parties, the order dated 2.9.2014 in I.A.Nos.3835 and 3910 of 2014 is set aside. The exparte order of eviction passed against the petitioner/tenant is also set aside. The petitioner/tenant shall file a counter statement before the Rent Control Court within one month from today. The tenant shall also deposit the entire arrears of rent at the rate stipulated in the rent deed before the expiry of two months from today. The Rent Control Court shall post the Rent Control Petition for trial on any date after 19.1.2015. Both the parties will co-operate with the trial of the Rent Control Petition. The Rent Control Court need not grant any unnecessary adjournment unless the party or parties are unable to appear before Court for reasons beyond their control. The Rent Control Court shall dispose of the case as expeditiously as possible."

2. By that order, this court allowed I.A.Nos.3835 and 3910 of

2014 and set aside the ex-parte order of eviction passed against the petitioner/tenant. This court further directed that the petitioner/tenant shall file a counter statement before the Rent Control Court within one month and deposit the entire arrears of rent at the rate stipulated in the rent deed within two months from 11.11.2014. This court also directed the Rent Control Court to dispose of the case expeditiously.

3. The petitioner did not, for reasons best known to him file a counter statement or deposit the arrears of rent. Instead, he filed I.A.No.773 of 2015 for an order directing the respondent/landlord to produce a copy of the rent deed for the purpose of ascertaining the rent stipulated therein. That application was dismissed by order passed on 29.01.2015. The court below also ordered that the ex-parte order passed on 27.07.2013 shall stand. The petitioner did not challenge that order in time. Instead, he has filed the instant original petition praying for an order seeking a stay of all further proceedings in E.P.No.146 of 2014 pending before the Court of the Principal Munsiff of Ernakulam. When this original petition came up before us for admission hearing on 18.09.2015, Sri.Dilish John, learned counsel appearing for the petitioner submitted that the entire arrears of rent will be deposited within a week from that date. We thereupon passed the following order:

"Admit. Sri.Sunil Nair Palakkat, learned counsel takes

notice for the sole respondent.

There will be an interim order staying delivery in E.P.No.146 of 2014 in R.C.P.No.27 of 2013 on the file of the Court of the Munsiff of Ernakulam, subject to the condition that the petitioner shall deposit a sum of Rs.2,00,000/- (Rupees two lakhs only) in the Munsiff Court, Ernakulam to the credit of the aforesaid execution petition tomorrow itself and a further sum of Rs.5,00,000/- (Rupees five lakhs only) on 22.9.2015.

Call on 23.9.2015. Learned counsel for the petitioner to furnish a set of papers to Sri Sunil Nair Palakkat today itself."

4. When the original petition came up for further hearing today, Sri.T.K.Ananthakrishnan, learned counsel submitted that he is presently appearing for the petitioner and that on account of illness, the petitioner has not been able to deposit the sum of ₹5 lakhs though he has deposited the sum of ₹2 lakhs. The tenant has however not chosen to mention the date on which the sum of ₹ 2 lakhs was deposited. From the conduct of the petitioner and the attendant circumstances, we are satisfied that the tenant is only interested in protracting the disposal of E.P.No.146 of 2014 and thereby prevent the landlord from enjoying the fruits of the order for eviction. It is also evident that he is not interested in depositing the arrears of rent or even filing objections to the rent control petition. In short, the conduct of the petitioner is such that he is not entitled to any further discretion at the hands of this court.

5. It is evident from a reading of Ext.P1 order that the landlord had graciously consented that the ex-parte order passed in

the rent control petition may be set aside, if the arrears of rent is deposited. By reason of that order, R.C.A.No.77 of 2014 filed by the tenant to set aside the ex-parte order became infructuous. The petitioner/tenant who has enjoyed the benefits flowing from Ext.P1 order but did not comply with the conditions stipulated by this court therein, is in our opinion not entitled to any further indulgence from this court.

We accordingly decline jurisdiction and dismiss the original petition. Consequently, we direct the Court of the Principal Munsiff of Ernakulam where E.P.No.146 of 2014 in R.C.P.No.27 of 2014 is pending, to proceed to pass final orders on the execution petition forthwith.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P.JOSEPH
JUDGE

AV