

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

OP (RC).No. 119 of 2015 (O)

PETITIONER/JUDGMENT DEBTOR:

HARI, AGED 61 YEARS
S/O.SANKARAN, KUNNAPPILLIL HOUSE, CHERAYI
PALLIPPURAM VILLAGE, KOCHI TALUK.

BY ADV. SRI.P.K.SAJEEV

RESPONDENT/DECREE HOLDER:

PREMANAND
S/O.SADANANDAN, NINDASTALATH HOUSE
KUZHUPPILLY MURI, KUZHUPPILLY VILLAGE, PIN-682 012
REP. BY HIS POWER OF ATTORNEY HOLDER DR.SALINI.

R1 BY ADV. SRI.J.JULIAN XAVIER
R1 BY ADV. SRI.FIROZ K.ROBIN

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON
12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1.TRUE COPY OF THE APPLICATION IN IA NO.1287/2015 IN RCP NO.1/2014 ON THE FILES OF THE RCC, NORTH PARAVUR.

EXT.P2.TRUE COPY OF THE COUNTER IN IA 1287/2005 IN RCP 1/2014.

EXT.P3.TRUE COPY OF THE APPLICATION IN IA 1288/2015 IN RCP 1/2014.

EXT.P4.TRUE COPY OF THE COUNTER IN IA 1288/2005 IN RCP 1/2014

EXT.P5.TRUE COPY OF THE APPLICATION IN EA NO.266/2015 IN EP 155/2014 IN RCP 1/2014 ON THE FILE OF THE MUNSIFF COURT, NORTH PARAVUR.

EXT.P6.TRUE TYPEWRITTEN COPY OF THE PROCEEDINGS DATED 23/9/2015 IN EA 266/2015 IN EP 155/2014 IN RCP NO.1/2014 WRITTEN IN THE 'A' DIARY.

RESPONDENT'S EXTS.

EXT.R(1):- TRUE COPY OF THE ORDER DATED 23/6/14 IN RCP NO.1/2014 OF THE RENT CONTROL COURT NORTH PARAVUR.

EXT.R(2):- TRUE COPY OF THE EXECUTION PETITION DATED 23/08/2014 FILED BY THE RESPONDENT HEREIN BEFORE THE RENT CONTROL COURT.

EXT.R(3):- TRUE COPY OF THE OBJECTION DATED 07/11/2014 FILED BY THE PETITIONER.

EXT.R(4):- TRUE COPY OF THE ORDER DATED 8/12/2014 IN EA NO.258/2014 IN EP NO.155/2014 IN RCP NO.1/2014.

EXT.R(5):- TRUE COPY OF THE ORDER DATED 8/12/2014 IN EA NO.259/2014 IN EP NO.155/2014 IN RCP NO.1/2014.

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

O.P.(RC) No.119 of 2015

Dated this the 12th day of October, 2015

JUDGMENT

P. N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.1 of 2014 on the file of the Rent Control Court, North Paravur. The respondent landlord instituted R.C.P.No.1 of 2014 praying for an order of eviction under sections 11(2)(b), 11(3) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the "Act", for short. Though the tenant was served and he entered appearance through counsel, he did not file a counter statement. Consequently, he was set ex parte. On application filed by the landlord, an Advocate Commissioner was appointed to inspect the petition schedule building for the purpose of ascertaining whether the tenant has used the building in such a manner as to destroy or reduce its value or utility materially and permanently. Relying on the testimony tendered by the wife and power of attorney holder of the landlord who was examined

as PW1 and Ext.C1 report submitted by the Advocate Commissioner, the rent control court held that the tenant has reduced the value and utility of the petition schedule building materially and permanently. The rent control court also held that rent is in arrears from 05.02.2013 and that the bona fide need put forward, namely, additional space for the Homoeo Clinic run by the landlord's wife in the adjacent room is true and genuine. The rent control court accordingly passed an order of eviction on 23.06.2014.

2. The tenant did not challenge the order of eviction by filing an appeal. He did not also file an application to set aside the ex parte order of eviction within time. After the order of eviction attained finality, the landlord filed E.P.No.155 of 2014 to execute the order of eviction. After serving notice on the tenant, the execution court passed an order on 23.09.2015 directing delivery of the petition schedule building on 28.09.2015. The tenant had in the meanwhile, filed I.A.Nos.1287 and 1288 of 2015 in R.C.P.No.1 of 2014 for setting aside the ex parte order of eviction passed therein after condoning the delay

of 335 days in filing I.A.No.1287 of 2015. The said applications now stand posted to 13.11.2015 after service of notice on the landlord. The tenant had simultaneously, filed E.A.No.266 of 2015 in E.P.No.155 of 2014 for an order staying all further proceedings in execution of the order of eviction until the disposal of I.A.Nos.1287 and 1288 of 2015. By order passed on 23.09.2015, the execution court dismissed the said application. Hence, this original petition under Article 227 of the Constitution of India challenging the said order and praying for an order directing the execution court to keep all further proceedings in E.P.No.155 of 2014 in R.C.P.No.1 of 2014 in abeyance till the disposal of I.A.Nos.1287 and 1288 of 2015 by the Rent Control Court, North Paravur.

3. This original petition was admitted and notice ordered to the respondent on 25.09.2015. On that day, this court also passed an order staying delivery in execution of the order for eviction passed in R.C.P.No.1 of 2014 on the file of the Rent Control Court, North Paravur. The said order is even today in force. Though this court had

by order passed on 05.10.2015 directed both parties to appear on 08.10.2015 for mediation talks, the mediation talks did not take place.

4. We heard Sri.P.K.Sajeev, learned counsel for the petitioner and Sri.Julean Xavier, learned counsel for the respondent. We have also gone through the pleadings and the materials on record. The main relief sought in this original petition is to set aside the order passed by the execution court declining to adjourn the delivery of the property pending disposal of the applications filed by the tenant to set aside the ex parte order of eviction as also to condone the delay in filing the said application. Though the learned counsel appearing for the respondent landlord opposes grant of the said relief, having regard to the fact that the relief sought in I.A.Nos.1287 and 1288 of 2015 will be rendered meaningless if delivery of the petition schedule building is given over to the landlord, we are of the opinion that the proper course will be to advance the hearing of the I.A.Nos.1287 and 1288 of 2015 from 13.11.2015 to an early date and direct the parties to appear through their counsel on that day and further direct the rent control court to

dispose of the said application expeditiously. It is not in dispute that the landlord has already entered appearance and filed objections to I.A.Nos.1287 and 1288 of 2015. Such a course of action will not cause any prejudice to the landlord and the tenant will get an opportunity to pursue the relief sought in I.A.Nos.1287 and 1288 of 2015. We accordingly, dispose of this original petition with the following directions:-

The Rent Control Court, North Paravur shall advance the hearing of I.A.Nos.1287 and 1288 of 2015 in R.C.P.No.1 of 2014 to 19.10.2015. The petitioner and the respondent shall appear through counsel without fail on that day before the rent control court. The rent control court, shall within two weeks from 19.10.2015 hear and dispose of I.A.Nos.1287 and 1288 of 2015. Until such time as orders are passed on I.A.Nos.1287 and 1288 of 2015, delivery of property in execution of the order of eviction passed by the Rent Control Court, North Paravur in R.C.P.No.1 of 2014 shall stand deferred. In the event of failure on the part of the tenant to appear through counsel on

19.10.2015 or if he does not co-operate with the hearing and disposal of the applications filed by him, the order of stay shall stand recalled. We make it clear that we have not expressed any opinion on merits of the rival contentions put forward by the tenant in I.A.Nos.1287 and 1288 of 2015 or by the landlord or in the counter affidavits filed by him in the said applications and that the rent control court will be free to arrive at its own conclusions and findings having regard to the pleadings and the materials on record.

Registry to communicate a copy of this judgment forthwith.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

