

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. 126 of 2015 (O)

E.P.56/15 IN RCP 64/13 OF RENT CONTROL COURT, ALAPPUZHA
RCA 22/15 OF RENT CONTROL APPELLATE AUTHORITY, ALAPPUZHA

PETITIONER/JUDGMENT DEBTOR:

RIYAS, AGED 40 YEARS
S/O.ABDUL KAREEM, ANIL NIVAS, NAVAROJIPURAYIDOM
LAJANATH WARD, ALAPPUZHA.

BY ADVS. SRI.SIRAJ KAROLY
SRI.R.PARAMESWARA IYER

RESPONDENT/DECREE HOLDER:

MOHAMMED NAZER,
S/O.MOHAMMED SALI, AREEPURATH HOUSE, KAKKAZHAM
AMBALAPPUZHA.P.O, ALAPPUZHA DISTRICT.

R1 BY ADV. SRI.K.ANAND (SR.)
R1 BY ADV. SMT.LATHA ANAND

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

OP (RC).No. 126 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS

P1 TRUE COPY OF PETITION FILED BY THE RESPONDENT

P2 TRUE COPY OF COUNTER FILED BY THE PETITIONER BEFORE THE RENT CONTROL COURT,ALAPPUZHA

P3 TRUE COPY OF ORDER IN RCP 64/2013

P4 TRUE COPY OF THE APPEAL MEMORANDUM FILED AND PENDING BEFORE THE RENT CONTROL APPELLATE AUTHORITY

P5 TRUE COPY OF THE DELAY CONDITION PETITION FILED BY THE PETITIONER ALONG WITH EX.P4

P6 TRUE COPY OF THE EXECUTION PETITION FILED BY THE RESPONDENT

P7 TRUE COPY OF THE APPLICATION AS EA 250/2015 FILED BY THE PETITIONER DATED 14.10.2015.

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

O.P.(RC)No.126 of 2015

Dated this the 13th day of November, 2015

JUDGMENT

P. N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.64 of 2013 on the file of the Rent Control Court, Alappuzha, 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.

2. Upon receipt of notice, the tenant entered appearance and filed a counter statement resisting the petition for eviction. After trial, by order passed on 29.11.2014, the rent control court ordered eviction under sections 11(2)(b) and 11(3) of the Act. The tenant did not file an appeal in time. Consequently, the landlord filed E.P.No.56 of 2015 on the file of the Court of the Principal Munsiff, Alappuzha to execute the order of eviction. The execution petition was filed in the second week of March, 2015. Since no appeal was filed in time challenging the order of eviction passed by the rent control court, when the execution petition came up for consideration on 14.10.2015, the execution court ordered delivery. The tenant thereupon filed E.A.No.250 of 2015

praying for a review of the said order and thereafter filed the instant original petition on 16.10.2015 praying for quashing the order passed by the execution court on 14.10.2015 ordering delivery. The petitioner has averred that challenging the order of eviction passed by the rent control court on 29.11.2014, he has filed R.C.A.No.22 of 2015 with a delay of 121 days in filing the appeal and that the said application stands posted to 04.11.2015. The petitioner has in this original petition, besides challenging the order of eviction passed by the rent control court on 29.11.2014 also prayed for an order directing the rent control appellate authority to consider and pass orders on the application filed by him to condone the delay of 121 days in filing R.C.A.No.22 of 2015 in a time bound manner and to dispose of the appeal itself expeditiously.

3. The respondent has been served and he has entered appearance through counsel. Heard learned counsel on both sides. Perused the records. Shorn of details what the petitioner tenant wants is an expeditious disposal of the application filed by him to condone the delay of 121 days in filing R.C.A.No.22 of 2015 and the appeal itself, in the event of the delay being condoned, in an expeditious manner. He has also prayed for an order keeping in abeyance the execution of the order of eviction passed by the rent control court until such time as the

appeal is heard and disposed of.

4. It is not in dispute that the application to condone the delay in filing R.C.A.No.22 of 2015 has not so far been disposed of. It is stated that the application which stood posted to 04.11.2015 has since been adjourned to next month. It is also not in dispute that the execution court has by order passed on 14.10.2015 ordered delivery. In such circumstances, as the tenant has filed an appeal though belatedly, challenging the order of eviction, we are of the opinion that the proper course will be to dispose of this original petition with a direction to the Rent Control Appellate Authority, Alappuzha to consider and pass orders on the application filed by the tenant to have the delay of 121 days in filing R.C.A.No.22 of 2015 condoned and depending on the outcome of the said application, to consider the stay petition, if any, filed therein in a time bound manner and by directing the execution court to keep in abeyance the execution of the order of eviction until such time as orders are passed on the application to condone the delay in filing R.C.A.No.22 of 2015. We accordingly dispose of the original petition with the following directions:

- (i) The Rent Control Appellate Authority, Alappuzha shall

advance the hearing of the application filed by the appellant in R.C.A.No.22 of 2015 to condone the delay of 121 days in filing the said appeal, to 23.11.2015.

- (ii) The petitioner and the respondent shall appear through counsel on that day before the Rent Control Appellate Authority, Alappuzha.
- (iii) The respondent landlord shall file his objections, if any, to the application to condone the delay by 23.11.2015.
- (iv) The Rent Control Appellate Authority shall hear learned counsel on both sides and pass appropriate orders on the application to condone the delay within one week from 23.11.2015.
- (v) Depending on the outcome of the application to condone the delay in filing R.C.A.No.22 of 2015, the Rent Control Appellate Authority shall within one week from the date on which orders are passed on the application to condone delay, take up R.C.A.No.22 of 2015 and the application for stay accompanying it and pass appropriate orders thereon.
- (vi) Until such time as orders are passed on the application to

condone the delay in filing R.C.A.No.22 of 2015 and depending on its outcome, on the petition for stay filed therein, execution of the order of eviction passed by the Rent Control Court, Alappuzha in R.C.P.No.64 of 2013 shall be kept in abeyance.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE