

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 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

OP (RC).No. 132 of 2015 (O)

I.A. No. 6984 of 2015 in RCP No.159 of 2010 OF THE RENT CONTROL COURT,
ERNAKULAM

PETITIONER:

VIJAYAKUMAR PADAMSHI, S/O. PADAMSHI VELGI,
AGED 61 YEARS, RESIDING AT V/669, PANCHASEEL BUILDING,
GUJARATHI ROAD,
KOCHI.

BY ADVS.SRI.D.NARENDRANATH
SRI.M.HARISHARMA

RESPONDENTS:

1. P.V.ANTONY, S/O. P.A. VARGHESE
AGED 55 YEARS, RESIDING AT PULIKKAL HOUSE
WATER FRONT ENCLAVE, CHILAVANNUR, KOCHI - 20.
2. M/S. SWASTHIK SWEET HOUSE,
BLDG. NO. XXXIX/4444 & 4445, M.G. ROAD, ERNAKULAM
KOCHI.
3. JITHENDRAKUMAR PADAMSKHI,
S/O. P.A. VARGHESE, AGED 55 YEARS
RESIDING AT 31/615, KACHAPPALLY ROAD, VYTTILA, KOCHI-19.

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OPRC 132/2015

APPENDIX:

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE ORDER PASSED BY THE RENT CONTROL COURT,
ERNAKULAM IN RCP 159/2010 DATED 28.10.2010.

EXT.P2: TRUE COPY OF E.P. NO. 99 OF 2015 RCP NO. 1599/2010 ON THE FILE OF
THE PRINCIPAL MUNSIF COURT, ERNAKULAM.

EXT.P3: TRUE COPY OF I.A. NO. 6984/2015 IN RCP 159/2010 ON THE FILE OF
THE RENT CONTROL COURT, ERNAKULAM.

RESPONDENTS' EXTS: NIL

True copy

P.S. (Hr.Gr.)To Judge

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

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O.P.(RC) No. 132 of 2015

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Dated this the 2nd day of November, 2015

JUDGMENT

P.N. Ravindran,J.

The petitioner is the second respondent in R.C.P.No.159 of 2010 on the file of the Rent Control Court, Ernakulam, a petition filed by the first respondent herein for eviction of the tenants (namely the petitioner and respondents 2 and 3 herein) from the tenanted premises, 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. After trial, by order passed on 22.05.2012, the Rent Control Court ordered eviction under section 11(2)(b) of the Act. The prayer for eviction under section 11(3) was declined. The Rent Control Court further directed that the tenants can deposit the entire arrears of rent from February 2010 till August 2010 at the rate of Rs.18,191/- per mensem together with interest @6% per annum from the due, the sum of Rs.1874/- towards service tax and the costs of the proceedings within one month under section 11(2)(c) in order to have the order

passed under section 11(2)(b) of the Act vacated. The Rent Control Court also declared that the landlord is entitled to realize the sum of Rs.1,04,269/- (the deficit stamp duty and penalty paid by him on Ext.A5 rent deed) from the tenants as costs.

2. Challenging the order declining to grant an order of eviction under section 11(3) of the Act, the landlord filed R.C.A.No. 44 of 2012 on the file of the Rent Control Appellate Authority, Ernakulam. The said appeal was dismissed by judgment delivered on 28.03.2014. Challenging that judgment, the landlord has filed R.C.R.No.169 of 2014 in this court and it is pending. After the landlord filed R.C.R.No.169 of 2014 in this court, the tenants filed I.A.No.6984 of 2015 before the Rent Control Court, Ernakulam praying for an order enlarging the time to deposit the amount awarded as costs till 30.09.2015 or till such time as the court deems fit and proper. Such relief was sought for on the averment that though pursuant to the order passed by the Rent Control Court, the arrears of rent along with interest (undisclosed amount) was deposited on 21.06.2012, due to a bona fide mistake, the costs awarded by the Rent Control Court was omitted to be deposited. In the affidavit filed in support of the said application, the second respondent before the Rent Control Court has averred that such an omission happened only on account of the fact

that he understood and was advised that the amount required to be deposited is the arrears of rent along with interest. The said application which was filed on 03.09.2015, now stands posted to 04.11.2015 for counter and hearing.

3. This original petition is filed contending that as the Court of the Principal Munsiff of Ernakulam where E.P.No.99 of 2015 is pending has posted the execution petition for hearing to 09.11.2015 unless I.A.No.6984 of 2015 is expeditiously heard and disposed of, an order for delivery is likely to be passed, thereby resulting in serious prejudice to the tenants. When this original petition came up for hearing today in the afternoon session, we directed the learned counsel for the petitioner to serve a copy of the original petition on Sri. S. Vinod Bhat, learned counsel appearing for the landlord in R.C.R.No.169 of 2014. Accordingly, a copy of the original petition was served on Sri S.Vinod Bhat. We thereafter heard the learned counsel appearing on both sides. The apprehension entertained by the tenants is that unless I.A.No.6984 of 2015 in R.C.P.No.159 of 2010 is expeditiously heard and disposed of, it will cause serious prejudice to them in opposing the relief sought in E.P.No.99 of 2015. It is not in dispute that I.A.No.6984 of 2015 is presently stands posted for hearing to 04.11.2015 and that the landlord who is the sole respondent therein has filed objections to

the said petition. The prayer in the said petition is to enlarge the time to deposit the amount directed to be paid by the Rent Control Court in the order of eviction passed by it under section 11(2)(b) of the Act. It is only if the relief prayed for is granted that the tenants can apply to have the order of eviction set aside invoking the power under section 11(2)(c) of the Act. Necessarily, therefore the Rent Control Court will have to decide whether the extension of time sought for should be granted or not. In such circumstances, as the landlord has already filed an execution petition to execute the order of eviction passed under section 11(2)(b) of the Act, we deem it appropriate to dispose of the original petition with the following directions:

a) The Rent Control Court, Ernakulam, where I.A.No.6984 of 2015 in R.C.P.No.159 of 2010 is pending, shall hear and dispose of the said application on the next hearing date, 4.11.2015, if the landlord who is the respondent therein has already filed a counter affidavit. If the landlord has not filed counter affidavit so far, the Rent Control Court shall hear and dispose of the application within a week from 04.11.2015. If the first respondent herein who is the landlord in R.C.P.No.159 of 2010 has not so far filed objections to I.A.No.6984 of 2015, he shall file such objections within one week from today.

b) The Rent Control Court shall after orders are passed on

I.A.No.6984 of 2015 issue certified copies to learned counsel on both sides if applied for on the day the copy is applied for.

c) Until such time as orders are passed on I.A.No.6984 of 2015 in R.C.P.No.159 of 2010, further proceedings in E.P.No.99 of 2015 in R.C.P.No.159 of 2010 on the file of the Court of Principal Munsiff of Ernakulam shall stand stayed.

Sd/-

**P.N. RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

ks.

True copy

P.S. (Hr.Gr.)To Judge

**P.N. RAVINDRAN
JUDGE**

**BABU MATHEW P. JOSEPH
JUDGE**

ks.

