

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. 135 of 2015 (O)

**AGAINST THE ORDER DATED 2.11.15 IN EP 65/15 IN RCP 1/14 OF MUNSIFF COURT,
PERUMBAVOOR**

PETITIONER:

**ABDUL RAHMAN, AGED 54 YEARS,
XVII/939 A, A-Z PLASTICS, NATHEKKATTU ARCADE,
PERUMBAVOOR VILLAGE, PERUMBAVOOR KARA,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.N.MANOJ KUMAR
SMT.JAYASREE MANOJ**

RESPONDENT:

**N.A.KUNJUMHAMMED,
S/O. ABOOBACKAR, NATHEKKATTU VEETIL, CHELAKKULAM KARA,
PATTIMATTOM VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT - 683 562.**

**BY ADVS. SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.S.NITHIN (ANCHAL)**

**THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 13-11-2015,
ALONG WITH OPRC. 136/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 - TRUE COPY OF THE PETITION FILED BY THE RESPONDENT UNDER SECTIONS 11 (2)(b) AND 11(3) OF KERALA BUILDING (LEASE AND RENT CONTROL) ACT, 1965.
- P2 - TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN RCP NO. 01/2014.
- P3 - TRUE COPY OF THE IA NO. 617/2015 FILED UNDER SECTION 12 OF THE ACT.
- P4 - TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO IA NO. 617/2015.
- P5 - TRUE COPY OF THE ORDER DT. 30.07.2015 IN RCP NO. 1/2014 AND CONNECTED CASES.
- P6 - TRUE COPY OF THE EXECUTION PETITION FILED BY THE RESPONDENT.
- P7 - TRUE COPY OF THE NOTICE DT. 24.8.2015 IN EP NO. 65/2015.
- P8 - TRUE COPY OF THE OBJECTION DT. 30.10.2015 FILED BY THE PETITIONER.
- P9 - TRUE COPY OF THE ORDER DT. 02.11.2015 IN EP NO. 65/2015 IN RCP NO. 1/2014 OF THE COURT OF MUNSIF, PERUMBAVOOR.
- P10 - TRUE COPY OF THE RECEIPT DT. 08.7.2015.
- P10(a) - TRUE COPY OF THE RECEIPT DT. 11.09.2015.
- P10(b) - TRUE COPY OF THE RECEIPT DT. 07.11.2015.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

VPV

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

O.P.(R.C.)Nos.135 & 136 of 2015

Dated this the 13th day of November, 2015

JUDGMENT

P.N.Ravindran, J.

A common question arises in these original petitions. They were therefore heard together and are being disposed of by this common judgment.

O.P.(R.C.)No.135 of 2015:

2. The petitioner is the tenant in R.C.P.No.1 of 2014 on the file of the Rent Control Court, Perumbavoor, 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. The landlord had in the petition for eviction filed by him, a copy of which is on record as Ext.P1 in the instant original petition, averred that rent upto and inclusive of November 2013 has been paid. He had in the rent control petition also averred that he bonafide needs the petition schedule building as also the rooms lying adjacent to it for starting a supermarket.

3. Upon receipt of notice, the petitioner herein entered appearance before the rent control court and filed Ext.P2 counter statement dated 24.5.2014 opposing the prayer for eviction. Long

after the tenant entered appearance and filed his counter statement, the landlord filed I.A.No.617 of 2015 under section 12 of the Act praying for an order directing the tenant to deposit arrears of rent for the period commencing from 1.10.2013 till the date of the application within a time limit to be fixed by the rent control court and to strike off his defence in the event of failure. The landlord had in the affidavit filed in support of the said application, a copy of which is on record as Ext.P3, averred that rent at the rate of Rs.5,910/- is due from 1.12.2013. The tenant opposed the said application by filing Ext.P4 objections dated 22.3.2015. He had in paragraph 2 thereof averred that the rent is not in arrears and that the rent is being paid promptly to the manager of the landlord. It appears the landlord had filed similar applications in the connected rent control petitions namely R.C.P.Nos.3 of 2014 and 5 of 2014. The rent control court considered all the three applications jointly and allowed it by a common order passed on 4.4.2015 on the short ground that no objection is seen filed to the application. The order passed by the rent control court on 4.4.2015 under section 12 of the Act on I.A.No.617 of 2015 in R.C.P.No.1 of 2014 on the file of the Rent Control Court, Perumbavoor is extracted below:

"O R D E R

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No objection is seen filed. Heard. Land lord has alleged that, tenant has not paid the rent from the date

of filing of this Rent Control Petition. The RCP was filed on 30.1.2014 monthly rent is ₹.5,910/-. Tenant has not produced any document before the court to show that he has paid the rent after filing the RCP. Hence it is only to be held that tenant has not paid the rent after filing this RCP. It is to be presumed that tenant has admitted that rent from 30.1.2014 is done from the tenant towards Landlord and tenant has not made the payment of the same. In these circumstances, this petition is only to be allowed.

In the result, I.A. is allowed. Tenant is hereby directed to pay the arrears of rent to Landlord within one month from today or to give vacant possession of the petition schedule room within that period. On failure, Tenant will be evicted from the petition schedule room after expiry of one month."

4. The rent control court thereafter proceeded to try and dispose of R.C.P.No.1 of 2014 and passed Ext.P5 order dated 30.07.2015 granting an order of eviction under sections 11(2)(b) and 11(3) of the Act in R.C.P.No.1 of 2014. By that order, an order of eviction under sections 11(2)(b) and 11(3) of the Act was passed in R.C.P.No.3 of 2014 as well, but in R.C.P.No.5 of 2014 an order under section 11(3) of the Act alone was passed. The rent control court has in paragraph 18 of that order, held as follows:

"18. It is significant to note that, petitioner filed IA 617/2015 on 09/03/2015 for directing the respondent to deposit the rent for the months after filing the RCP. The same was allowed and respondent was directed to deposit the rent for the months after filing the RCP. Thereafter, on 21/05/2015, respondent produced 6 receipts issued by petitioner for payment of rent for the months upto September 2014 and deposited a sum of Rs.23640/- on 21/05/2015, before the court. In considering aforesaid receipts, it is only to be held that, respondent has paid the rent upto the month of September 2014. Rs.23640/- deposited by respondent

before the court on 21/05/2015 can be adjusted towards the rent for the months upto January 2015. Respondent has not produced any document before this court to prove that he has paid rent for the remaining months ie, upto June 2015. Hence, it is clear that now there is arrears of rent due from the respondent towards the petitioner. Hence, petitioner is entitled to get an order of eviction under S.112(b), if the respondent is not paying rent upto the month of June, 2015, within one month from today. This found accordingly, in favour of petitioner."

The substance of the aforesaid finding is that after the rent control petition was filed and after the order under section 12 of the Act was passed on 4.4.2015, the tenant in R.C.P.No.1 of 2014 had deposited the sum of Rs.23,640/- on 21.5.2015 towards arrears of rent for the period upto September 2014. The rent control court also found in the very same order that the tenant in R.C.P.No.3 of 2014 had deposited the sum of Rs.18,342/- on 21.5.2015 towards arrears of rent.

5. Shortly after Ext.P5 order of eviction was passed in R.C.P. No.1 of 2014, the landlord filed E.P.No.65 of 2015 on 4.4.2015 in the Court of the Munsiff of Perumbavoor to execute the order passed by the rent control court under section 12 of the Act on I.A.No.617 of 2015 in R.C.P.No.1 of 2014. In that execution petition, a copy of which is on record as Ext.P6, the landlord has averred that the tenant has not so far filed an appeal from the order allowing I.A.No.617 of 2015. Upon receipt of notice in E.P.No.65 of 2015 in R.C.P.No.1 of 2014, the tenant entered appearance and filed Ext.P8 objections dated

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30.10.2015 contending that he has filed an appeal against Ext.P5 order of eviction passed by the rent control court in R.C.P.No.1 of 2014, that the order passed on I.A.No.617 of 2015 in R.C.P.No.1 of 2014 is not executable, that no amount is payable towards arrears of rent, that the stay petition filed in the appeal filed from Ext.P5 order of eviction passed under sections 11(2)(b) and 11(3) of the Act stands posted for hearing and in such circumstances, the execution petition may be dismissed.

6. The execution court considered the rival contentions and allowed E.P.No.65 of 2015 by Ext.P9 order passed on 2.11.2015 and directed the Amin to take possession of the petition schedule building after breaking open the lock if it is in a locked condition. In passing such an order, the execution court held that as the judgment debtor has no case that he has paid the arrears of rent as directed in the order passed on 4.4.2015 on I.A.No.617 of 2015 in R.C.P.No.1 of 2014, the prayer in E.P.No.65 of 2015 is only to be allowed. Ext.P9 order passed by the rent control court in that regard on 2.11.2015 in E.P.No.65 of 2015 in R.C.P.No.1 of 2014 is under challenge in this original petition filed under Article 227 of the Constitution of India.

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7. The petitioner is the tenant in R.C.P.No.3 of 2014 on the file of the Rent Control Court, Perumbavoor, 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. The landlord had in the petition for eviction filed by him, a copy of which is on record as Ext.P1 in the instant original petition, averred that rent upto and inclusive of October 2013 has been paid. He had in the rent control petition also averred that he bonafide needs the petition schedule building as also rooms lying adjacent to it for starting a supermarket. Upon receipt of notice, the petitioner herein entered appearance and filed Ext.P2 counter statement dated 24.5.2014 opposing the prayer for eviction. Long after the tenant entered appearance and filed his counter statement, the landlord filed I.A.No.618 of 2015 under section 12 of the Act praying for an order directing the tenant to deposit arrears of rent for the period commencing from 1.11.2013 till the date of the application within a time limit to be fixed by the rent control court and to strike off his defence in the event of failure. The said application was considered along with similar applications filed in the connected rent control petitions namely R.C.P.Nos.1 and 5 of 2014 and allowed by a common order passed on 4.4.2015 on the short ground that no objection is seen filed to the application. The order passed by the rent control court on 4.4.2015 under section 12 of the Act on I.A.No.618 of 2015 in R.C.P.No.3 of 2014 on the file of the Rent Control Court,

Perumbavoor is extracted below:

"O R D E R

No objection is seen filed. Heard. Land lord has alleged that, tenant has not paid the rent from the date of filing of this Rent Control Petition. The RCP was filed on 30.1.2014 monthly rent is ₹.5,910/-. Tenant has not produced any document before the court to show that he had paid the rent after filing the RCP. Hence it is only to be held that tenant has not paid the rent after filing this RCP. It is to be presumed that tenant has admitted that rent from 30.1.2014 is done from the tenant towards Landlord and tenant has not made the payment of the same. In these circumstances, this petition is only to be allowed.

In the result, I.A. is allowed. Tenant is hereby directed to pay the arrears of rent to Landlord within one month from today or to give vacant possession of the petition schedule room within that period. On failure, Tenant will be evicted from the petition schedule room after expiry of one month."

8. The rent control court thereafter proceeded to try and dispose of R.C.P.No.3 of 2014 and passed Ext.P3 order dated 30.07.2015 granting an order of eviction under sections 11(2)(b) and 11(3) of the Act in R.C.P.No.3 of 2014. By that order, an order of eviction under sections 11(2)(b) and 11(3) of the Act was passed in R.C.P.No.1 of 2014 as well, but in R.C.P.No.5 of 2014 an order under section 11(3) of the Act alone was passed. The rent control court has in paragraph 21 of that order, held as follows:

"21. Significantly, respondent has not produced any document before this court to show that he has paid the rent for the petition schedule room upto the date of filing of RCP and there is no arrears of rent. It is significant to note that in the objection to RCP, respondent has no case that, petitioner did not issue receipt for payment of

rent. Moreover, PW1 has categorically deposed that receipts were issued for all the payments of rent by respondent. In the said circumstances, non production of receipt for payment of rent by respondent is fatal to his contention. In other words, it is only to be held that, respondent failed to pay rent for the room from November 2013 as alleged by the petitioner. Another significant fact is that, petitioner filed IA 618/2015 for directing the respondent to pay the rent for the months after filing the RCP. The same was allowed. Thereafter, respondent deposited Rs.18,342/- on 21/05/2015, before the court which is rent for 2 months. Thereafter, there is no payment or deposit. Hence, it is further to be held that there is arrears of rent after filing RCP also and hence, petitioner is entitled to get an order of eviction under S.112(b), if the respondent is not paying rent from the month of November 2013, upto month of June 2015 excluding rent for 2 months, within one month from today. This point is found accordingly in favour of petitioner."

The substance of the aforesaid finding is that after the rent control petition was filed and after the order under section 12 of the Act was passed on 4.4.2015, the tenant in R.C.P.No.3 of 2014 had deposited the sum of Rs.18,342/- on 21.5.2015 towards arrears of rent. The rent control court also found in the very same order that the tenant in R.C.P.No.1 of 2014 had deposited the sum of Rs.23,640/- on 21.5.2015 towards arrears of rent for the period upto September 2014.

9. Shortly after Ext.P5 order of eviction was passed in R.C.P.No.3 of 2014, the landlord filed E.P.No.66 of 2015 on 4.4.2015 in the Court of the Munsiff of Perumbavoor to execute the order passed by the rent control court under section 12 of the Act on

I.A.No.618 of 2015 in R.C.P.No.3 of 2014. In that execution petition, a copy of which is on record as Ext.P4, the landlord had averred that the tenant has not so far filed an appeal from the order allowing I.A. No.618 of 2015. Upon receipt of notice in E.P.No.66 of 2015 in R.C.P. No.3 of 2014, the tenant entered appearance and filed objections contending that he has filed an appeal against Ext.P3 order of eviction passed by the rent control court in R.C.P.No.3 of 2014, that the order passed on I.A.No.618 of 2015 in R.C.P.No.3 of 2014 is not executable, that no amount is payable towards arrears of rent, that the stay petition filed in the appeal filed from Ext.P3 order of eviction passed under sections 11(2)(b) and 11(3) of the Act stands posted for hearing and in such circumstances, the execution petition may be dismissed.

10. The execution court considered the rival contentions and allowed E.P.No.66 of 2015 by Ext.P6 order passed on 2.11.2015 and directed the Amin to take possession of the petition schedule building after breaking open the lock if it is in a locked condition. In passing such an order, the execution court held that as the judgment debtor has no case that he has paid the arrears of rent as directed in the order passed on 4.4.2015 on I.A.No.618 of 2015 in R.C.P.No.3 of 2014, the prayer in E.P.No.66 of 2015 is only to be allowed. Ext.P6 order passed by the rent control court in that regard on 2.11.2015 in E.P.No.66 of 2015 in R.C.P.No.3 of 2014 is under challenge in this

original petition filed under Article 227 of the Constitution of India.

11. We heard Smt.Jayasree Manoj, learned counsel appearing for the petitioners in these original petitions and Sri.P.B.Krishnan, learned counsel appearing for the common respondent. We have also gone through the impugned judgment and the pleadings and the materials on record. The pleadings and the materials on record disclose that though there is no dispute regarding the rate of rent payable in respect of the petition schedule premises, the tenants had not admitted in their counter statement that any amount is due by way of arrears. Though the landlord had filed separate applications in R.C.P. Nos.1 and 3 of 2014 under section 12 of the Act alleging that the rent is in arrears from 1.12.2013, the tenants filed objections to the effect that the rent is not in arrears and that rent till the date on which the objections were filed has been paid to the manager of the landlord. However on the short ground that objections have not been filed to the aforesaid applications, the rent control court passed an order, which we have extracted above, on 4.4.2015 on I.A.No.617 of 2015 in R.C.P.No.1 of 2014, I.A.No.618 of 2015 in R.C.P.No.3 of 2014 and I.A.No.619 of 2015 in R.C.P.No.5 of 2014.

12. The rent control court did not however pass a further order under section 12(3) of the Act after calling upon the tenants to show cause why, as the said direction has not been complied with, further

proceedings in the appeals shall not be stopped and an order of eviction passed. Instead, the rent control court proceeded to try and dispose of the rent control petitions on the merits and passed Ext.P5 final order on 30.7.2015 granting an order of eviction under sections 11(2)(b) and 11(3) of the Act in R.C.P.Nos.1 and 3 of 2014 and an order of eviction under section 11(3) of the Act in R.C.P.No.5 of 2014. In that order, the rent control court also found that though the tenant in R.C.P.No.1 of 2014 has deposited rent upto January 2015, he has not produced any document to prove payment of rent for the remaining months namely upto June 2015 and therefore, the landlord is entitled to get an order of eviction under section 11(2)(b) of the Act if the tenant is not paying rent upto June 2015 within one month from 30.7.2015. Similarly in R.C.P.No.3 of 2014, the rent control court held that if the tenant is not paying rent from November 2013 upto June 2015 excluding the rent for two months which was deposited on 21.05.2015, within one month from 30.7.2015, the landlord will be entitled to an order of eviction under section 11(2)(b) of the Act. It was thereafter that the tenants filed E.P.No.65 of 2015 to execute the order passed under section 12 of the Act in R.C.P.No.1 of 2014 and E.P.No.66 of 2015 to execute the order passed under section 12 of the Act in R.C.P.No.3 of 2014. The tenants opposed the said application contending that the order passed by the rent control court on 4.4.2015

under section 12 of the Act is not an executable order, that the amount claimed in the execution petitions is not due by way of arrears and therefore, no order can be passed in the execution petitions. The execution court overruled the said contentions on the ground that as the tenants have not paid the rent within the time limit stipulated in the order passed on 4.4.2015 under section 12 of the Act, they are liable to be evicted. Consequently, the Amin was directed to deliver possession of the petition schedule buildings to the landlord after breaking open the lock if the rooms are in a locked condition.

13. In our opinion, the order passed by the rent control court on 4.4.2015 under section 12 of the Act as also the order passed by the execution court on 2.11.2015 in E.P.No.65 of 2015 in R.C.P.No.1 of 2014 and E.P.No.66 of 2015 in R.C.P.No.3 of 2014 are not sustainable in law and are liable to be set aside. An order under section 12 of the Act stopping the proceedings and directing the tenant to put the landlord in possession, can be passed only in a case where the tenant has admitted that the rent is in arrears and that too after following the procedure prescribed under section 12(3) of the Act. In the instant case, the tenants have not admitted that the rent is in arrears. They had also filed objections to the petitions filed by the landlord under section 12(2) of the Act. On the erroneous premise that the tenants have not filed objections, the rent control court passed an order under

section 12 of the Act. Even assuming that objections had not been filed, as the tenants had not admitted that any amount is due by way of arrears, an order under section 12 of the Act could not in our opinion have been passed. Even assuming that such an order could have been passed, an order of eviction would have followed only after the tenant was called upon to show cause in terms of sub-section (3) of section 12 of the Act. In the case on hand, such a procedure was not followed. Therefore, the order passed by the rent control court on 4.4.2015 on I.A.No.617 of 2015 in R.C.P.No.1 of 2014, I.A.No.618 of 2015 in R.C.P.No.3 of 2014 and I.A.No.619 of 2015 in R.C.P.No.5 of 2014 cannot be sustained. Such an order cannot in our opinion be said to be lawful or valid and consequently put in execution. We are therefore of the considered opinion that notwithstanding the failure of the tenants to file separate appeals challenging the order passed on 4.4.2015 under section 12 of the Act on I.A.No.617 of 2015 in R.C.P.No.1 of 2014, I.A.No.618 of 2015 in R.C.P.No.3 of 2014 and I.A.No.619 of 2015 in R.C.P.No.5 of 2014, the landlord should not be allowed to execute the said order.

14. That apart, it is evident from the order of eviction passed by the rent control court on 30.7.2015 that the rent control petition itself has been disposed of on the merits. The order of eviction is under challenge in appeals before the appellate authority and the appeals are

pending. The proper course in such circumstances will be to set aside the impugned orders as also the order passed by the Rent Control Court, Perumbavoor on 4.4.2015 on I.A.No.617 of 2015 in R.C.P.No.1 of 2014, I.A.No.618 of 2015 in R.C.P.No.3 of 2014 and I.A.No.619 of 2015 in R.C.P.No.5 of 2014 and direct the rent control appellate authority where the appeals from the final order of eviction passed by the rent control court are pending, to expeditiously hear and dispose of the appeals in a time bound manner. We accordingly dispose of these original petitions with the following directions:

The orders passed by the Rent Control Court, Perumbavoor on 4.4.2015 on I.A.No.617 of 2015 in R.C.P.No.1 of 2014, I.A.No.618 of 2015 in R.C.P.No.3 of 2014 and I.A.No.619 of 2015 in R.C.P.No.5 of 2014 shall stand set aside and the said petitions shall stand dismissed. Consequently, E.P.No.65 of 2015 in R.C.P.No.1 of 2014 and E.P.No.66 of 2015 in R.C.P.No.3 of 2014 on the file of the Munsiff of Perumbavoor shall stand struck off. Needless to say, the orders passed therein shall also stand set aside. It will be open to the landlord to file appropriate applications under section 12 of the Act before the Rent Control Appellate Authority and in the event of such applications being filed, the Rent Control Appellate Authority shall dispose of the said applications within two months from the date on which they are filed. The Rent Control Appellate

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Authority shall also pass final orders on the stay petitions if any filed in the appeals arising from R.C.P.Nos.1, 3 and 5 of 2014, within one month from the date of receipt of a copy of this judgment.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

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