

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

OP (RC).No. 139 of 2015 (O)

AGAINST EP 109/2015 IN RCP 7/2013 OF MUNSIFF COURT, HOSDURG

PETITIONER/RESPONDENT:

**CHOOORATHOTTATHIL KADAVATH PURAYIL SHOWKATHALI, AGED 51 YEARS
S/O.M.P.AHAMED, KADANGOD, CHERUVATHUR
HOSDURG TALUK, ROYAL GLASS EMPORIUM, BUS STAND
CHERUVATHUR, KASARGOD DT.**

**BY ADVS.SRI.ABDUL RAOOF PALLIPATH
SRI.K.R.AVINASH (KUNNATH)**

RESPONDENT/APPELLANT:

**PADINHARE VEETIL KUNHAMBU, AGED 87 YEARS
S/O.LATE CHERIYA AMMA, LIC AGENT, NEAR BUS STAND
CHERUVATHUR PO, HOSDURG TALUK, KASARGOD-671 313.**

BY ADV. SRI.A.ARUNKUMAR

**THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON 16-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

vpv

P.N.RAVINDRAN & ALEXANDER THOMAS, JJ.

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O.P.(R.C.)No.139 of 2015

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Dated this the 16th day of December, 2015

JUDGMENT

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.7 of 2013 on the file of the Rent Control Court, Hosdurg, a petition filed by the respondent/ landlord for an order of eviction under section 11(2)(b) 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 and filed a counter statement when the case was called on for trial, the learned counsel appearing for the tenant reported no instructions. Thereupon, exparte evidence on the side of the landlord was recorded and an order of eviction was passed on 17.01.2015.

2. The tenant thereupon filed I.A.No.1477 of 2015 to set aside the exparte order of eviction accompanied by an application to condone the delay of 117 days in filing the application to set aside the exparte order of eviction. Though the delay in filing I.A.No.1477 of 2015 was condoned, I.A.No.1477 of 2015 was dismissed by order passed on 30.10.2015. In the meanwhile, the execution court

ordered delivery in E.P.No.109 of 2015 in R.C.P.No.7 of 2013. It was at that stage that the instant original petition was filed on 16.11.2015 praying for an order directing the execution court to keep further proceedings in E.P.No.109 of 2015 in R.C.P.No.7 of 2013 in abeyance till the petitioner is able to file an appeal from the order passed by the rent control court on 30.10.2015, dismissing I.A.No.1477 of 2015 in R.C.P.No.7 of 2013 and move the appellate court for appropriate interim orders.

3. When this original petition came up before a Division Bench of this court on 17.11.2015, while admitting the original petition, this court passed the following interim order:

"Admit. Issue urgent notice returnable in ten days to the respondent. There will be an interim order staying further proceedings in E.P.No.109 of 2015 in R.C.P.No.7 of 2013 on the file of the Court of the Munsiff of Hosdurg for a period of one month, subject to the condition that the petitioner shall within two weeks from today deposit the sum of Rs.50,000/- in the execution court for payment to the landlord. Needless to say, in the event of default, this order of stay shall stand recalled and it will be open to the execution court to proceed to execute the order of eviction. In the event of the petitioner depositing the sum of Rs.50,000/- within the time limit stipulated above and producing proof of such payment, the Rent Control Court, Hosdurg shall issue a certified copy of the order passed on 30.10.2015 on I.A.No.1477 of 2015 in R.C.P.No.7 of 2013, within two days from the date of production of the receipt evidencing the aforesaid payment, to learned counsel appearing for the tenant subject of course to production of the requisite stamps."

4. When the original petition came up for further hearing today, learned counsel on both sides submitted that the tenant has, as directed by this court, deposited the sum of Rs.50,000/- and on such deposit being made, certified copy of the order passed by the rent control court on 30.10.2015 on I.A.No.1477 of 2015 in R.C.P.No.7 of 2013 was issued. The learned counsel appearing for the tenant also submitted that thereafter an appeal was filed and the appellate authority has passed an interim order staying further proceedings in execution of the order of eviction passed by the Rent Control Court, Hosdurg in R.C.P.No.7 of 2013.

Such being the situation, we are of the opinion that no further orders are called for in this original petition. It is accordingly closed as infructuous.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
ALEXANDER THOMAS
JUDGE

/true copy/

P.A. To Judge