

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

OP (RC).No. 141 of 2015 (O)

AGAINST THE ORDER/JUDGMENT IN RCA 30/2013 of ARENT CONTROL APPELLATE
AUTHORITY, ALAPPUZHA

PETITIONER(S):

SUMESH CHANDRAN AGED 34 YEARS
S/O. V.CHANDRA DAS, ALLEPPEY TILE WORLD
SANATHANAPURAM P.O KAITHAVANA, PAZHAVEEDU VILLAGE
ALAPPUZHA DISTRICT, PIN - 688 003.

BY ADVS.SRI.C.S.MANU

SRI.S.K.PREMRAJ
SRI.T.B.SIVAPRASAD
SRI.V.S.PREJITH
SMT.NEETHU.K.SHAJI
SRI.C.Y.VIJAY KUMAR

RESPONDENT(S):

1. SARASWATHY AMMA
AGED ABOUT 70 YEARS, W/O.THE LATE RAVEENDRAN NAIR
KALATHIL VEEDU, KALARCODE, PAZHAVEEDU
ALAPPUZHA, PIN - 680 003.

2. RAJEEV
AGED ABOUT 40 YEARS, S/O. THE LATE RAVEENDRAN NAIR
KALATHIL VEEDU, KALARCODE, PAZHAVEEDU
ALAPPUZHA, PIN - 680 003.

3. RAJESH
AGED ABOUT 38 YEARS, S/O. THE LATE RAVEENDRAN NAIR
KALATHIL VEEDU, KALARCODE, PAZHAVEEDU
ALAPPUZHA, PIN - 680 003.

R1,R2 BY ADV. SRI.S.SANAL KUMAR
R1,R2 BY ADV. SRI.M.T.SURESHKUMAR
R1,R2 BY ADV. SMT.T.J.SEEMA
R1,R2 BY ADV. SMT.BHAVANA VELAYUDHAN
R1,R2 BY ADV. SMT.SMITHA PHILIPOSE

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON 25-11-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (RC).No. 141 of 2015 (O)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 - TRUE COPY OF R.C.A NO.30 OF 2013 FILED BY THE PETITIONER BEFORE THE RENT CONTROL APPELLATE AUTHORITY, ALAPPUZHA (HON'BLE DISTRICT COURT, ALAPPUZHA)

P2 - TRUE COPY OF THE ORDER DATED 26.9.2013 IN IA NO.1046 OF 2013 ISSUED BY THE RENT CONTROL COURT, ALAPPUZHA TO THE PETITIONER

P3 - TRUE COPY OF IA NO.1348 OF 2015 ON THE FILES OF ADDITIONAL SESSIONS' COURT-II ALAPPUZHA.

P4 - TRUE COPY OF THE E.A.NO.276 OF 2015 DATED 15.10.2015 FILED BY THE PETITIONER BEFORE RENT CONTROL COURT, ALAPPUZHA.

P5 - TRUE COPY OF THE E.A.NO.275 OF 2015 DATED 15.10.2015 FILED BY THE PETITIONER BEFORE RENT CONTROL AUTHORITY, ALAPPUZHA.

EXT.P6-TRUE COPY OF THE ORDER DATED 18.12.2013 IN IA NO.1046/2013 IN RCA NO.30 OF 2013 OF RENT CONTROL APPELLATE AUTHORITY, ALAPPUZHA.

RESPONDENTS' EXTS:

NIL

// TRUE COPY//

P.S. TO JUDGE

**P.N. Ravindran &
Babu Mathew P. Joseph, JJ.**

O.P.(R.C.)No.141 of 2015

Dated this the 25th November, 2015

JUDGMENT

P.N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.56 of 2011 on the file of the Rent Control Court, Alappuzha, a petition filed by the respondent/landlord for an order of eviction under sections 11(3) and 11(4)(ii) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. Though after service of notice the tenant appeared, he did not file a counter statement resisting the petition for eviction. Consequently, he was set ex-parte and an order of eviction was passed on 16.10.2012. The tenant thereupon filed I.A.No.3302 of 2012 under Order IX Rule 13 of the Code of Civil Procedure to set aside the ex-parte order of eviction. The said application was filed with a delay of 16 days. Though an application to condone the delay was not filed initially, the tenant later filed I.A.No.2552 of 2013 to condone the delay of 16 days in filing I.A.No.3302 of 2012. The landlord opposed the said applications by filing a counter statement. The rent control court considered the rival contentions and dismissed I.A.Nos.3302 of 2012 and 2552 of 2013 by a common order passed on 26.9.2013.

2. The tenant carried the matter in appeal by filing R.C.A.No.30

of 2013 on the file of the Rent Control Appellate Authority, Alappuzha. The said appeal was admitted and notice ordered to the respondent/landlord on 18.12.2013. Upon receipt of notice, the respondent/landlord entered appearance through counsel on 24.2.2014. The appeal was thereafter adjourned for hearing to 22.5.2015. In the meanwhile, the landlord who was the sole respondent in the appeal passed away on 1.7.2014. Thereupon, learned counsel appearing for him filed a memo dated 10.7.2014 before the appellate authority on 11.7.2014 after serving a copy thereof on the learned counsel appearing for the appellant/tenant to the effect that the respondent passed away on 1.7.2014. The appellant/tenant thereupon filed an application under Order XXII Rule 4 C.P.C. to implead the legal heirs of the respondent/landlord as additional respondents 2 to 4 in the appeal along with applications to set aside the abatement consequent on the death of the respondent/landlord and to condone the delay of 103 days in filing the application for setting aside the abatement. The appellate authority returned the said applications as defective on 20.11.2014 for the reason that the age of the persons sought to be impleaded as additional respondents 2 to 4 is not mentioned in the applications. The applications were not represented in time. They were represented only on 10.6.2015 and were numbered as I.A.Nos.640, 649 and 651 of 2015. The appellate authority did not

issue notice on the said applications, to the additional respondents sought to be impleaded when they came up for consideration on 3.7.2015. Instead, the applications were adjourned for objection and hearing to 3.8.2015 and on 3.8.2015 they were again adjourned for objection and hearing to 10.8.2015. On 10.8.2015 since there was no representation on behalf of the learned counsel for the appellant, the appeal and the applications were adjourned to 22.8.2015. On 22.8.2015 they were adjourned to 31.8.2015. On 31.8.2015, in view of the request made by learned counsel on both sides, the appeal and the applications were adjourned to 9.9.2015. It appears, in the meanwhile the legal representatives of the landlord who were sought to be impleaded as additional respondents 2 to 4 had, without entering appearance in the appeal, filed separate objections to I.A.Nos.640, 649 and 651 of 2014. Objections to I.A.Nos.640 and 649 of 2014 were filed on 4.7.2015 and objections to I.A.No.651 of 2014 was filed on 7.8.2015. On 9.9.2015 when the appeal and the aforesaid applications were called on for hearing, learned counsel appearing for the appellant was not present. There was also no representation on his behalf. Consequently, R.C.A.No.30 of 2013 was dismissed for default on 9.9.2015. The order passed by the appellate authority on 9.9.2015 reads as follows:

“No representation for the appellant. Appeal is dismissed for

default.”

Consequently, the appellate authority dismissed I.A.No.640 of 2014. The order passed by the appellate authority dismissing I.A.No.640 of 2015 on 9.9.2015 reads as follows:

“Appeal is dismissed for default. Hence, this petition is also dismissed.”

However, the order passed on I.A.No.649 of 2014 reads as follows:

“No representation. This petition is dismissed for default.”

The same is the order passed on I.A.No.651 of 2014 as well.

3. In view of the dismissal of the appeal and the applications referred to above, the legal representatives of the landlord who had by then got themselves impleaded as additional petitioners in E.P.No.3 of 2013 pressed for orders on the execution petition. In view of the fact that the appeal filed by the tenant was dismissed for default, when the execution petition came up for consideration on 12.11.2015, the execution court ordered delivery to be effected by 26.11.2015 and directed the execution petition to be posted on 27.11.2015. The tenant had in the meanwhile filed I.A.No.1348 of 2015 under Order XLI Rule 19 C.P.C. praying that the order dismissing the appeal for default may be set aside and the appeal re-admitted to file. He had also filed E.A.No.275 of 2015 in E.P.No.3 of 2013 to advance the hearing of E.P.No.3 of 2013 and E.A.No.276 of 2015 praying for stay of further

proceedings in E.P.No.3 of 2013 until I.A.No.1348 of 2015 in R.C.A.No.30 of 2013 is heard and disposed of. Instead of advancing the hearing of the execution petition, the execution court posted the aforesaid applications, viz. E.A. Nos.275 and 276 of 2015 to 26.11.2015. The instant original petition was thereupon filed on 19.11.2015 praying for the following relief:

“Direct the Munsiff's Court, Alappuzha to keep in abeyance all further proceedings in E.P.No.3 of 2013 on its file, pending disposal of Ext.P4 application for re-admission of the appeal.”

4. We heard Shri S.K.Premraj, learned counsel appearing for the petitioner and Shri S. Sanalkumar, learned counsel appearing for the respondent. We have also gone through the pleadings and the materials on record including the records relating to R.C.A.No.30 of 2013. The records disclose that R.C.A.No.30 of 2013 was dismissed for default by order passed on 9.9.2015. Consequent on the dismissal of the appeal, the applications filed by the tenant to implead the legal representatives of the deceased landlord and to set aside the abatement consequent on the death of the landlord and to condone the delay in filing the application to set aside the abatement were also dismissed. It is not in dispute that the tenant has filed I.A.No.1348 of 2015 praying that the order dismissing the appeal may be set aside and the appeal re-admitted to file. It is also not in dispute that in R.C.A.No.30 of 2013 the appellate authority had passed an interim

order on 18.12.2013 staying the execution of the order of eviction passed by the rent control court. The said order was in force till 9.9.2015 when the appeal was dismissed for default. Such being the situation, we are of the opinion that pending disposal of I.A.No.1348 of 2015 in R.C.A.No.30 of 2013 on the file of the Rent Control Appellate Authority, Alappuzha, further proceedings in E.P.No.3 of 2013 in O.P. (RC) No.56 of 2011 on the file of the Court of the Principal Munsiff of Alappuzha should be kept in abeyance, as otherwise the very purpose of filing I.A.No.1348 of 2015 will be defeated. We accordingly dispose of this original petition with the following directions:

The Rent Control Appellate Authority, Alappuzha shall take up for consideration I.A.No.1348 of 2015 in R.C.A.No.30 of 2013 and pass appropriate orders thereon expeditiously and in any event, before closure of the court for Christmas vacation of 2015. Depending upon the outcome of I.A.No.1348 of 2015, the rent control appellate authority shall pass consequential orders on I.A.Nos.640, 649 and 651 of 2015 in R.C.A.No.30 of 2013. This shall be done within two weeks from the date on which the civil courts reopen after the Christmas vacation of 2015. The appellate authority shall, subject to the outcome of the aforesaid applications, hear and dispose of R.C.A.No.30 of 2013 expeditiously and in any event, before 29.2.2016. Until such time as orders are passed as directed above, further proceedings in E.P.No.3

of 2013 on the file of the Court of the Principal Munsiff of Alappuzha shall be kept in abeyance. Needless to say, if the additional respondents have already entered appearance through counsel by filing vakalathnama, it will be open to the appellate authority to dispense with issuance of notice to them. We make it clear that we have not expressed any opinion on the merits of the rival contentions in any of the aforesaid applications or in the appeal and that the appellate authority will be free to arrive at its own conclusions and findings having regard to the pleadings and the materials on record. The appellate authority shall take note of the fact that as the applications for impleading, to set aside the abatement and to condone the delay in filing the application to set aside the abatement were numbered only after they were re-presented in the month of June, 2015, the applications should be numbered as applications of the year 2015. The appellate authority shall ensure that appropriate corrections are carried out in the originals of the aforesaid applications.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

kav/