

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

RCRev..No. 127 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 17/2013 of THE RENT CONTROL
APPELLATE AUTHORITY, KALPETTA

AGAINST THE ORDER/JUDGMENT IN RCP 2/2011 of THE RENT CONTROL COURT,
SULTHAN BATHERI

REVISION PETITIONER(S)/APPELLANT/PETITIONER/RESPONDENT:

C.K.SHAJAN AGED 49 YEARS
S/O.VELAYUDHAN, BEENACHI, SULTHANBATHERY AMSOM
BEENACHI P.O, SULTHANBATHERY TALUK, WAYANAD DISTRICT

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S)/RESPONDENT/RESPONDENT/PETITIONER:

T.S.JOSEPH, AGED 57 YEARS
S/O. SAMUVEL, THAYYIL VEEDU, BEENACHI
SULTHANVATHERY AMSOM, DESOM, BEENACHI P.O
SULTHANBATHERY TALUK, WAYANAD DISTRICT PIN 673 592

R1 BY ADV. SRI.A.V.JAMES

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
08-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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**K.SURENDRA MOHAN &
MARY JOSEPH, JJ.**

R.C.R. No.127 of 2015

Dated this the 8th day of July, 2015

O R D E R

Surendra Mohan, J.

The tenant is the revision petitioner. The respondent landlord had filed RCP No.2 of 2011 before the Rent Control Court, Sulthanbathery seeking an order of eviction against the tenant under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act' for short). The tenanted shop room is part of a line building with four shop rooms. The landlord is in occupation of one of the shop rooms from which he is conducting a small tea shop and bakery. The tenant is in occupation of one of the shop rooms. The need alleged is that, the son of the landlord wants to start a business in automobile accessories. The need was resisted by the Revision Petitioner tenant.

2. The Rent Control Petition was included in the list

for trial on 06.11.2012. On the said date, the tenant was not present. Therefore, the Rent Control Court proceeded ex parte and passed an order of eviction against the tenant. Later on, the tenant filed I.A.No.90 of 2013 for setting aside the ex parte order. According to the tenant, the wife of his brother in law had to be admitted to the hospital for a surgery on 06.11.2012. He had to attend hospital on the said date, in connection with the said surgery. His wife was a bystander. It was alleged that, he obtained a certified copy of the ex parte order of the Rent Control Court only on 09.01.2013. Therefore, according to him, there was no delay in filing the petition to set aside the ex parte order. The tenant examined himself as PW1 and Exhibit A1 Medical Certificate was also marked on his side. On an appreciation of the evidence on record, the Rent Control Court found that the explanation of the tenant was not acceptable. He had admitted in the box that he had come to know of the ex parte order on 20.11.2012 itself. Therefore,

calculated from the date of knowledge, there was delay in filing the petition to set aside the ex parte order, it is held. The Rent Control Court also found fault with the tenant for the reason that there was no evidence regarding his relationship with the patient, about which he had spoken of. Exhibit A1 Medical Certificate does not show the relationship between the petitioner and the person who had undergone the surgery. It has further been found that, the petitioner was not the bystander, but that it was his wife, who was the bystander. Therefore, the petition was dismissed. The Appellate Authority has confirmed the dismissal of the petitioner's application.

3. This revision had come up before us on 09.06.2015. Since there was a caveat, we directed the counsel for the petitioner to serve a copy of the revision on the Caveator. Thereafter, we issued notice on admission to the respondent on 10.06.2015. Advocate A.V.James entered appearance for the respondent on 30.06.2015.

4. Heard. It is true that Exhibit A1 Medical Certificate does not disclose the relationship of the person who had undergone the Laparoscopic surgery on 06.11.2012, with the petitioner. However, he has sworn to the fact that the patient was the wife of his brother in law and that his wife was the bystander. The petitioner cannot be found fault with for having accompanied his wife to the hospital when the wife of his brother in law was undergoing a surgical procedure. We notice that the tenant has already filed his counter statement in the Rent Control Petition. It is true that, the tenant appears to have come to know of the ex parte order on 20.11.2012. It appears that he had waited to obtain a certified copy of the order, to file the petition. According to the learned Counsel for the petitioner, he had done so on the basis of the advice of his lawyer. The explanation is plausible. No instance of the tenant trying to protract the proceedings has been brought to our notice. The Rent Control Petition is of the year 2011

and it had been included in the list on 06.11.2012. Because of the pendency of the proceedings from which this revision has been filed, the Rent Control Petition has been kept pending for a period of three years. However, considering the fact that the tenant is seriously contesting the Rent control Petition, we feel that it is necessary to provide an opportunity to the tenant to contest the Rent Control Petition on the merits. However, such an opportunity can be provided only on terms.

5. In view of the above, we accept the explanation offered by the Revision Petitioner for his absence on 06.11.2012 and for the delay in filing the application to set aside the ex parte order, in spite of the infirmities noticed by the Rent Control Court as well as the Appellate Authority. The tenant shall be entitled to contest the Rent Control Petition only on terms, which is fixed at ₹5000/-.

This Rent Control Petition is therefore allowed on the following terms:-

- (i) The ex parte order passed by the Rent Control Court, Sultanbathery in RCP No.2 of 2011 on 19.11.2012 is set aside, on condition that the petitioner pays an amount of ₹5000/- (Rupees five thousand only) to the landlord within a period of two weeks of the date of receipt of a copy of this judgment and produces a memo before the Rent Control Court. If the landlord refuses to receive the amount, the petitioner may seek further orders from the Rent Control Court regarding the manner in which the amount should be paid.
- (ii) If the amount of costs directed to be paid as above is paid within the time stipulated, the Rent Control Court shall list RCP No.2 of 2011 on an early date considering that the same is of the year 2011 and shall finally dispose of the same, as expeditiously as possible at any

rate within a period of six months of the date of receipt of a copy of this judgment.

(iii) It is made clear that, if the costs stipulated above is not paid, the tenant shall forfeit the benefit of the above directions.

**K.SURENDRA MOHAN,
JUDGE**

**MARY JOSEPH
JUDGE**

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