

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

RRev..No. 146 of 2015 ()

**AGAINST THE JUDGMENT IN RCA 42/2012 of RENT CONTROL APPELLATE AUTHORITY/V
ADDITIONAL DISTRICT COURT, ERNAKULAM DATED 10.4.2015.**

**AGAINST THE ORDER/JUDGMENT IN RCP 152/2011 of III ADDL.MUSIFF COURT,
ERNAKULAM (RENT CONTROL) DATED 14.12.2011**

REVISION PETITIONER/APPELLANT/RESPONDENT:

**P.P.MOIDEEN KOYA
AGED 54 YEARS, PUTHENPEEDIYAKKAL, MOORIYAD P.O
CHALAPURAM, CALICUT 673 002, NOW AT ROOM NO.313
4TH FLOOR, D.D.VYAPAR BHAVAN, KADAVANTHARA
COCHIN-682 020.**

BY ADV. SRI.L.RAJESH NARAYAN.

RESPONDENT/RESPONDENT/PETITIONER:

**AGNES MICHAEL
AGED 57 YEARS, W/O.VARGHESE SAMUEL
KARAMUNDAKKAL HOUSE, PONEKKARA, KOCHI 682 026.**

**R1 BY ADV. SRI.BABU CHERUKARA
R1 BY ADV. SRI.SEVI VARGHESE**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 25-09-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VPV

P.N.RAVINDRAN & K. RAMAKRISHNAN, JJ.
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R.C.R.No.146 of 2015
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Dated this the 25th day of September, 2015

ORDER

K. Ramakrishnan, J.

The counter petitioner in R.C.P.No.152 of 2011 on the file of the Rent Control Court, Ernakulam is the revision petitioner herein. The respondent filed an application for eviction under sections 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter called "the Act"), seeking eviction of the revision petitioner from petition schedule building on the ground of bonafide need and also acquisition of another reasonable building by the tenant in the same locality. The respondent did not appear inspite of notice issued and an ex-parte decree was passed by the Rent Controller granting the relief ordering eviction under sections 11(3) and 11(4)(iii) of the Act. Aggrieved by the same, the revision petitioner filed R.C.A.No.42 of 2012 before the Rent Control Appellate Authority, Ernakulam on the ground that there was no proper service of notice and he came to know about the passing of the ex-parte order of eviction only when he received notice in the execution proceedings. In the appeal, an application was filed by the respondent to receive additional documents and after considering the additional documents as well as

the submissions made by both sides, the Rent Control Appellate Authority came to the conclusion that he had knowledge about the proceedings even before namely on 14.3.2012 and the appeal was filed on 27.6.2012, which is barred by limitation and on that ground dismissed the appeal. The Appellate Court also found that he ought to have filed an application under section 23(h) of the Act to set aside the ex-parte order and an appeal against an ex-parte order is not maintainable under section 18 of the Act. Aggrieved by the same, the present revision has been filed by the revision petitioner.

2. Heard both sides.

3. The counsel for the revision petitioner submitted that he had knowledge about the proceedings only when he received notice in the execution proceedings and also on verification of the records it is found that notice was not properly served and it was served to one Manu who has nothing to do with the revision petitioner. Further none of grounds alleged in the eviction petition has been established by the landlord and the the Rent Controller was not justified in passing an order of eviction on those grounds and these aspects were not considered by the Appellate Authority.

4. On the other hand, the counsel for the respondent submitted that notice was served on him. Further the revision petitioner was aware of the proceedings when he filed written statement in the suit

filed by him against forceful eviction in which it was specifically mentioned that an ex-parte order of eviction was passed on 14.12.2011. So he was aware of the proceedings and the appeal is filed out of time. So the court below was perfectly justified in dismissing the appeal.

5. The only ground alleged by the petitioner in the appeal memorandum was that there was no proper service of notice. Though the appellate court has observed that an appeal against an ex-parte order is not maintainable under section 18 of the Act and the remedy of the petitioner is to apply under section 23(h) of the Act to set aside the ex-parte order, the observation made by the court below is not sustainable as every order passed by the Rent Controller is an appealable order. Even an ex-parte order can be challenged by the respondent if on the basis of the materials available no such order could be possible but not on the question of sufficiency of the reason for his non-appearance before that court. Further in this case it is seen from the lower court records that notice was served on the employee of the revision petitioner, one Bibin and there is no case that he was not authorised to receive the notice and it was personally served on the employee by the process server. But in the appeal memorandum it was mentioned that it was served to one Manu, who had nothing to do with the revision petitioner. That appears to be not

correct. Further it is seen from the additional document produced by the respondent in the appeal that in the suit filed by him against the forceful eviction as O.S.No.677 of 2011, Annexure B written statement was filed by the landlord/respondent in which it was specifically mentioned about the ex-parte order of eviction passed in R.C.P.No.152 of 2011 and that written statement was filed on 3.3.2012. So it cannot be said that he was not aware of the passing of the order which prevented him from filing the appeal or an application to set aside the exparte order within time. So under the circumstances, the court below was perfectly justified in dismissing the appeal on the ground that it was barred by limitation and no interference is called for invoking the revisional jurisdiction under section 20 of the Act. Hence the revision lacks merits and the same is liable to be dismissed. We do so.

In the result, the revision is dismissed. The counsel for the revision petitioner prays six months time to vacate the premises. Considering the circumstances, we are inclined to grant six months time to the revision petitioner to vacate the premises on condition that the petitioner shall file an affidavit before the execution court that he will vacate the premises within six months as directed by this court without raising any objection and also on further condition that he shall deposit the entire arrears of rent as on the date of surrender before

that court within that period and he shall not induct any third parties in the petition schedule building. He shall deposit the entire arrears of rent along with the undertaking affidavit to be filed before that court as due till that date and continue to deposit the arrears for six months period fixed by this court on the expiry of every month and the undertaking will have to be filed within a period of two weeks from today. If the undertaking is not filed and arrears of rent till that date is not paid or deposited, within the time specified by this court, the benefit given to the revision petitioner will not be available and the execution court is liberty to proceed with the execution in accordance with law.

Office is directed to communicate this order to the court below at the earliest.

Sd/-
P.N.RAVINDRAN
JUDGE

Sd/-
K. RAMAKRISHNAN
JUDGE

/true copy/

P.A. To Judge

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