

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

R C Rev.No. 169 of 2015 ()

AGAINST THE JUDGMENT IN R.C.A NO.18/2015 & I.A NO.727/2015 IN R.C.A
NO.18/2015 DATED 09.07.2015 OF THE RENT CONTROL APPELLATE AUTHORITY,
ALAPPUZHA

AGAINST THE ORDER IN RCP 8/2013 of RENT CONTROL COURT,ALAPPUZHA DATED
17-03-2014

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

M.K.SOMAN AGED 65 YEARS
S/O.KUMARAN, R/A.MUNDAKATHIL, EDATHUA P O
ALAPPUZHA DISTRICT

BY ADVS.SRI.S.SANAL KUMAR
SRI.M.T.SURESHKUMAR
SMT.T.J.SEEMA
SMT.BHAVANA VELAYUDHAN

RESPONDENT(S)/RESPONDENTS/RESPONDENTS/PETITIONERS:

1. VARGHESE CHANDY, AGED 57 YEARS
S/O.MATHAI CHANDY, VARIKKALATHIL HOUSE
CHANGANKARY MURI, EDATHUA P O, EDATHUA VILLAGE
KUTTANADU TALUK, ALAPPUZHA DISTRICT, PIN 689573
2. VALSAMMA , AGED 55 YEARS
W/O.VARGHESE CHANDY, CHANGANKARY MURI, EDATHUA P O
EDATHUA VILLAGE, KUTTANADU TALUK, ALAPPUZHA DISTRICT
PIN 689573
REPRESENTED BY HER POWER OF ATTORNEY HOLDER M J THOMAS
AGED 56 YEARS, S/O.LATE JOSEPH JOSEPH
R/A.MANNARUPARAMBIL HOUSE, EDATHUA MURI
EDATHUA VILLAGE, KUTTANADU TALUK
ALAPPUZHA DIST-689573

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
14-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.Surendra Mohan & Mary Joseph, JJ.

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R.C.R No.169 of 2015

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Dated this the 14th day of July, 2015.

ORDER

Surendra Mohan,J.

Revision petitioner is the tenant in R.C.P No.8 of 2013 on the file of the Rent Control Court, Alappuzha and the appellant in R.C.A No.18 of 2015 before the Rent Control Appellate Authority, Alappuzha. The respondents had filed the Rent Control Petition on the grounds under Section 11(3) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act', for short). According to the landlords, the tenant had taken the building on a monthly rent of Rs.350/-. The landlord requires vacant possession of the building for the purpose of demolishing the same and constructing a large building for the purpose of his son to start a business in building materials.

2. In the Rent Control Petition, though the tenant entered appearance and sought time for filing objections, later, he remained

ex parte and therefore, as per order dated 17.03.2014 the Rent Control Petition was allowed and an order of eviction was granted.

3. The revision petitioner challenged the order of the Rent Control Court in R.C.A No.18 of 2015. However, the Rent Control Appeal was also not filed within the time stipulated. Therefore, I.A No.727 of 2015 was filed along with the Rent Control Appeal seeking condonation of a delay of 460 days. The application for condonation of delay was opposed by the respondent. It was pointed out that sufficient opportunities had been given to the tenant to file objections. After having taken time on a number of occasions it was represented on one particular posting date that the objections had been filed. Later on, it was found that no objections had been filed, as submitted. Therefore, the matter was posted for evidence. The tenant did not appear on the said date. Therefore, the Rent Control Court had passed an order of eviction. It was contended that there were no grounds to condone the long delay in filing the appeal.

4. According to Adv.Sri.S.Sanal Kumar, the learned counsel who appears for the petitioner, this is a case in which the tenant has

a very good case on the merits. The contention of the tenant, according to the learned counsel, is that, the tenant had been put in possession of an extent of $\frac{1}{2}$ cent of land as per Ext.A1 document on condition that he paid ground rent in respect thereof. Ext.A1 was executed in favour of his maternal uncle. Subsequently, Ext.A1 was renewed by Ext.A2. Later on, according to the learned counsel, the maternal uncle had abandoned the business. It was thereafter that, by Ext.A3 rent deed the tenant was put in possession thereof. Since the tenancy arrangement was in respect of land and not in respect of any building, it is contended by the learned counsel that the Rent Control Court lacked jurisdiction to pass the order of eviction. The denial of an opportunity to put forward the case of the tenant would result in irreparable injury and loss to the tenant, according to the learned counsel. Therefore, he seeks the indulgence of this Court and an interference in revision with the order of the Appellate Authority refusing to condone the delay.

5. We have gone through the judgment of the Appellate Authority as well as the order declining to condone the delay. We

notice that the Appellate Authority has referred to the facts of the present case in detail. The Appellate Authority has noticed that the tenant had availed a number of chances for the purpose of filing of objections. Finally on 18.10.2013, it was represented before court that, the objections were being filed. Therefore, the case was adjourned to 27.11.2013. On the said date, since there was no sitting, the case was adjourned to 13.01.2014. It was noticed on the said posting date that, no objections had been filed as represented on 18.10.2013. Therefore, the tenant was set ex parte and the case was posted to 17.03.2014. It was only on the said date that the ex parte order of eviction was passed. It is clear from the posting dates referred to above that, the tenant was not pursuing the matter with the diligence expected of him. After the representation on 18.10.2013 that objections were being filed, it was only on 13.01.2014 that it was noticed that no objections had been filed. Almost three months had elapsed in between. We further notice that, after the petitioner was set ex parte, the order of eviction was passed only on 17.03.2014. Therefore, there was sufficient time gap

for the petitioner to have taken necessary steps to set aside the order declaring him ex parte and to have filed his objections, had he been serious in contesting the matter. That was not done. It is also worth noticing that even the Rent Control Appeal was not filed within time. The same was filed with a delay of 460 days. Apart from a statement that the petitioner was a diabetic patient and that the communication issued by the lawyer had not reached him etc., which are not specific, there is no sufficient explanation for the long delay that has been occurred in the present case.

6. The learned counsel has placed reliance on the decision of the honourable Supreme Court in *Manoharan v Sivarajan* (2013(4) KLT 828) to contend that in the matter of condonation of delay, liberal approach is necessary to be adopted. The learned counsel has taken considerable strain to put across the contention that, at the most what will happen if the delay is condoned and the matter is heard, is only that an adjudication on the merits would take place. At the same time, a refusal to condone the delay would result in a meritorious case being thrown out. We keep in mind the said

principle, but, then, the fact remains that, a person who seeks condonation of delay should be able to offer “sufficient explanation” for the delay that has been caused. In the present case, there is no sufficient explanation for the long delay that has been caused. The indication from a perusal of the posting dates in the present case is that the petitioner was not at all serious in pursuing the matter. There is no explanation as to why the petitioner did not contact his lawyer and enquire about the progress of the case, at any time during the period of the enormous delay. Therefore, we find no illegality, impropriety or irregularity in the order of the Appellate Authority refusing to condone the delay.

7. Though the counsel for the petitioner has taken up a contention that Exts.A1 to A3 are documents that question even the jurisdiction of the Rent Control Court that passed the order under challenge, we are not satisfied that, we should consider the said documents in this revision as the said documents were not produced before the Rent Control Court. If the petitioner had a serious contention on the basis of the said documents, he would have

certainly put forward the same before the appropriate forum. The said documents do not appear to have been produced before the Appellate Authority also. We do not want to consider the said documents that are produced for the first time in revision. It is also worth noticing that Exts.A1 and A2 are in favour of the petitioner's maternal uncle and not in favour of the petitioner. The learned counsel for the petitioner has taken up a contention that no plan or building permit as required by Section 11(4)(iv) of the Act had been produced before the Rent Control Court. A perusal of the order of the Rent Control Court shows that, the order of eviction has been granted under Section 11(3) and 11(4)(v) of the Act and not not under Section 11(4)(iv). Therefore, the omission to produce the plan and building permit also is not consequential. For the foregoing reasons, we find no grounds to admit this revision. The same is therefore dismissed.

8. The learned counsel for the petitioner seeks the grant of some time to surrender vacant possession of the tenanted premises to the landlord. Having heard the counsel for the petitioner, we are

satisfied that it is necessary to grant time up to 31.12.2015 to surrender vacant possession of the premises.

This revision is accordingly dismissed. However, the petitioner is granted time up to 31.12.2015 to surrender vacant possession of the premises to the landlord on condition that he swears to an affidavit before the Execution Court in R.C.P No.8 of 2013 undertaking to surrender vacant possession of the premises to the landlord on or before 31.12.2015 within a period of two weeks of the date of receipt of a copy of this order. It shall be a further condition for the grant of such time that, the tenant pays to the landlord the arrears of rent, if any remaining unpaid, and continues to pay the rent in respect of the premises regularly and without any default, until vacant possession of the premises is surrendered to the landlord.

Sd/-
K. Surendra Mohan, Judge.

Sd/-
Mary Joseph, Judge.

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