

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN  
&  
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH**

**TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937**

**RRev..No. 175 of 2015 ()**  
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**AGAINST THE ORDER IN IA 724/13 IN RCA 148/2012 of RENT CONTROL APPELLATE  
AUTHORITY, KOZHIKODE DATED 30.9.2014**

**AGAINST THE ORDER IN RCP 57/2011 of RENT CONTROL COURT, KOZHIKODE DATED  
4.1.2012**

**REVISION PETITIONER/PETITIONER/APPELLANT/RESPONDENT - TENANT:**  
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**CHEENATHKANDI VENU AGED 63 YEARS  
S/O. RARICHAN, KACHERI AMSOM DESOM, KOZHIKODE TALUK.**

**BY ADVS.SRI.A.RANJITH NARAYANAN  
SMT.A.SIMI  
SRI.S.K.SAJU**

**RESPONDENT/RESPONDENT/RESPONDENT/PETITIONER - LANDLORD:**  
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**PUTHIYAMALIYAKKAL HASSAN KOYA, AGED 42 YEARS,  
S/O. ASSAN KOYA HAJI, NAGARAM AMSOM DESOM,  
KOZHIKODE TALUK - 673 001.**

**R1 BY ADVS. SRI.V.V.SURENDRAN  
SRI.P.A.HARISH**

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON  
24-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**vpv**

**P.N.RAVINDRAN & BABU MATHEW P. JOSEPH, JJ.**

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**R.C.R.No.175 of 2015**

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**Dated this the 24<sup>th</sup> day of November, 2015**

**ORDER**

**P.N.Ravindran, J.**

The petitioner is the tenant in R.C.P.No.57 of 2011 on the file of the Rent Control Court, Kozhikode, a petition filed by the respondent/ landlord for an order of eviction under sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as "the Act" for short. The landlord had also prayed for fixing the fair rent of the petition schedule building at ₹2,000/- per mensem. He had averred that the tenant has kept the rent in arrears from March 2008 onwards and that he intends to start a stationery and vegetable shop in the petition schedule building for eking out his livelihood.

2. Upon receipt of notice, the tenant entered appearance and filed a counter statement wherein he admitted the averment in the rent control petition regarding the rate of rent but contended that he has not kept the rent in arrears. The tenant contended that rent upto and inclusive of June 2010 has been paid but receipts have not been issued. He also denied and disputed the need put forward by the landlord and further contended that he is entitled to protection of the

second proviso to section 11(3) of the Act. During the trial of the rent control petition the tenant was absent. Though his counsel was present he was not ready to cross-examine the landlord, who was examined as PW1. The tenant was therefore set exparte. Relying on the uncontroverted testimony tendered by the landlord examined as PW1 the rent control court passed an order of eviction under sections 11(2)(b) and 11(3) of the Act on 4.1.2012. Challenging the order of eviction passed by the rent control court, the tenant filed R.C.A.No.148 of 2012 on the file of the Rent Control Appellate Authority, Kozhikode.

3. When the appeal was called on for hearing on 27.9.2013, learned counsel appearing for the appellant was not present. There was also no representation on his behalf. Consequently, the appeal was dismissed for default. Within the period of limitation prescribed for the purpose, the tenant filed I.A.No.724 of 2013 under Order XLI Rule 19 of the Code of Civil Procedure, praying for an order setting aside the order dismissing the appeal for default and to restore it to file. Learned counsel appearing for the appellant had in the affidavit sworn to by him in support of the application averred that it was on account of the fact that he was himself personally arguing A.S.Nos.36 and 37 of 2006 on the file of the Sub Court, Kozhikode and was involved in the trial of O.S.Nos.330 and 331 of 2009 on the file of the Court of the Principal Munsiff of Kozhikode-II, that he could not be

present on 27.9.2013 when R.C.A.No.148 of 2012 was called on for hearing. The learned counsel had in the affidavit filed by him in support of I.A.No.724 of 2013 also averred that his failure to appear was not willful. He had further averred that though he had entrusted another lawyer to represent him when the case was called on for hearing, the said lawyer omitted to represent him.

4. The respondent/landlord opposed the said application by filing a counter statement contending that the averments in the affidavit filed in support of I.A.No.724 of 2013 have been made to suit the occasion. He also contended that rent at the rate of ₹1,000/- per mensem is in arrears from March 2008 onwards and that as on 31.10.2013, the sum of ₹68,000/- is due. The rent control appellate authority considered the rival contentions and dismissed I.A.No.724 of 2013 by order passed on 30.9.2014. The tenant has, aggrieved thereby, filed this revision petition under section 20 of the Act.

5. We heard Sri.A.Ranjith Narayanan, learned counsel appearing for the petitioner and Sri.V.V.Surendran, learned counsel appearing for the respondent. We have also gone through the impugned order and the relevant records including the proceedings paper/B Diary maintained by the rent control appellate authority. It is evident from the materials before us that the tenant did not participate in the trial of the rent control petition, with the result, an exparte order of eviction

was passed. It is that exparte order of eviction which was challenged in R.C.A.No.148 of 2012. The proceedings paper disclose that as and when the appeal stood posted for hearing, the tenant's counsel was seeking repeated adjournments. The B Diary discloses that the appeal stood posted for hearing after receipt of the lower court records on 20.6.2013, 19.7.2013, 2.8.2013, 3.9.2013, 6.9.2013, 13.9.2013, 25.9.2013 and 27.9.2013. The records were received pursuant to the order passed by the appellate authority on 21.5.2013, shortly thereafter. When the appeal was called on for hearing on 27.9.2013, learned counsel appearing for the appellant/tenant was not present and the appeal was dismissed for default. It was that order which was sought to be set aside by filing I.A.No.724 of 2013. It is evident from the proceedings paper that it was on account of the failure of the learned counsel appearing for the appellant/tenant to appear and argue the appeal that the appeal happened to be dismissed for default. As the presence of the appellant in person was not necessary for a disposal of the appeal, the appellant cannot be said to be responsible for the omission on the part of the counsel in not getting ready to argue the appeal. In such circumstances, as it was on account of the counsel's omission that the appeal happened to be dismissed for default, we are of the opinion that the appellant should be afforded an opportunity to have the appeal heard and decided on the merits. It is

implicit from the counter statement filed by the tenant himself that he has not paid rent after June 2010. The case set out by the landlord is that rent is in arrears from March 2008. Apart from vaguely contending that rent upto June 2010 has been paid, the tenant has not produced any evidence to prove such payment. In such circumstances, we are of the opinion that the tenant should, as a condition to have the appeal restored to file and heard and decided on the merits, deposit in the rent control court for payment to the landlord, the entire arrears of rent for the period commencing from March 2008 and ending with 30.11.2015, calculated at the rate of ₹1,000/- per mensem and a further sum of ₹7,000/- towards costs.

We accordingly allow the revision petition, set aside the order passed by the Rent Control appellate Authority, Kozhikode on 30.9.2014 dismissing I.A.No.724 of 2013 in R.C.A.No.148 of 2012 and restore the said application to file, subject to the condition that the tenant shall on or before 23.12.2015 deposit before the Rent Control Appellate Authority, Kozhikode the sum of ₹1,00,000/- comprising of the sum of ₹93,000/- being the arrears of rent for the period commencing from March 2008 and ending with November 2015 (both months inclusive) and the sum of ₹7,000/- awarded to the landlord as costs. Upon such deposit being made, the rent control appellate authority shall pass revised orders on I.A.No.724 of 2013, allowing the

application for restoration. In the event of default in complying with the aforesaid stipulation as regards the deposit of the sum of ₹1,00,000/-, this order shall stand recalled and the impugned order shall stand confirmed. In the event of the tenant depositing the sum of ₹1,00,000/- as directed above, it will be open to the landlord to withdraw the same unconditionally. The rent control appellate authority shall in the event of the tenant complying with the aforesaid direction, hear and dispose of R.C.A.No.148 of 2012 on the merits expeditiously and in any event before 29.2.2016. Having regard to the fact that the landlord has filed E.P.No.50 of 2015 to execute the order of eviction passed in R.C.P.No.57 of 2011, we deem it appropriate to direct that consideration of the execution petition shall be deferred until the disposal of R.C.A.No.148 of 2012. The parties shall appear before the Rent Control appellate Authority, Kozhikode through counsel on 23.12.2015.

Sd/-  
**P.N.RAVINDRAN**  
**JUDGE**

Sd/-  
**BABU MATHEW P. JOSEPH**  
**JUDGE**  
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**P.A. To Judge**