

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 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

RCRev..No. 201 of 2015 ()

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AGAINST THE ORDER DATED 31.7.2015 IN I.A.NOS.54 AND 55 OF 2015  
IN RCA No.13/2013 AND IN RCA NO.13/2013 ON THE FILE OF the  
RENT CONTROL APPELLATE AUTHORITY (DISTRICT JUDGE) KALPETTA AND

AGAINST THE ORDER IN RCP 8/2011 ON THE FILE OF RENT CONTROL  
COURT (MUNSIFF MAGISTRATE), SULTHAN BATHERI DATED 20-03-2013.

REVISION PETITIONERS/APPELLANTS/RESPONDENTS:

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1. DR.VARUN AGED 32 YEARS  
S/O.CHANDRASEKHARAN VAIDYAR, RESIDING AT  
ARUN NIVAS HOUSE  
ERİYAPPALLY POST, PULPALLY AMSOM DESOM  
S BATHERY TALUK
2. DR ARUN AGED 34 YEARS  
S/O.CHANDRASEKHARAN VAIDYAR, RESIDING AT  
ARUN NIVAS HOUSE  
ERİYAPPALLY POST, PULPALLY AMSOM DESOM  
S BATHERY TALUK

BY ADVS.SRI.K.RAKESH ROSHAN  
SRI.MANSOOR.B.H.

RESPONDENTS/RESPONDENTS2-5/LEGAL HEIRS OF LANDLORD :

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1. OMANA VARGHESE, AGED 51 YEARS  
W/O.VARGHESE K M, RESIDING AT KANNAMPARAMBIL HOUSE  
KARTHIKA CONSORNUM HOUSING COLONY, THODUVATTY  
BATHERY POST , SULTHAN BATHERY AMSOM DESOM  
S.BATHERY TALUK
2. TEENA VARGHESE, AGED 29 YEARS  
D/O..VARGHESE K M, RESIDING AT KANNAMPARAMBIL HOUSE  
KARTHIKA CONSORNUM HOUSING COLONY, THODUVATTY  
BATHERY POST , SULTHAN BATHERY AMSOM DESOM  
S.BATHERY TALUK

3. TINTO VARGHESE, AGED 24 YEARS

S/O.VARGHESE K M, RESIDING AT KANNAMPARAMBIL HOUSE  
KARTHIKA CONSORNUM HOUSING COLONY, THODUVATTY  
BATHERY POST , SULTHAN BATHERY AMSOM DESOM  
S.BATHERY TALUK

4. TOJO VARGHESE, AGED 24 YEARS

S/O.VARGHESE K M, RESIDING AT KANNAMPARAMBIL HOUSE  
KARTHIKA CONSORNUM HOUSING COLONY, THODUVATTY  
BATHERY POST , SULTHAN BATHERY AMSOM DESOM  
S.BATHERY TALUK

R1-R4 BY ADV. SRI.JIKKU SEBAN GEORGE

R1-R4 BY ADV. SRI.ARUN AJAY SHANKAR

R1-R4 BY ADV. SRI.N.ANAND

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD  
ON 27-10-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

kp/-

'CR'

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

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R.C.R. No.201 of 2015

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Dated this the 27<sup>th</sup> day of October, 2015

**ORDER**

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

The petitioners are the tenants in R.C.P.No.8 of 2011 on the file of the Rent Control Court, Sulthan Bathery, a petition filed by late K.M. Varghese, the predecessor-in-interest of the respondents herein, 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.

2. The landlord had in the petition for eviction averred that the rent is in arrears ever since the date of entrustment, viz; 17.12.2002 and that he bonafide needs the petition schedule building to start a super market. The tenants entered appearance and filed a counter statement resisting the petition for eviction. Before the rent control court, the landlord examined himself as PW1 and produced and marked Exts. A1 to A3. On the side of the tenants, the first respondent before the rent control court was examined as RW1. The rent control court considered the rival contentions and held that the rent is in arrears from the year 2003 and consequently, the tenants are liable to be evicted under section 11(2)(b) of the Act. The prayer for eviction under section 11(3) of the Act was declined. An order of eviction

under section 11(2)(b) of the Act was accordingly passed on 20.3.2013.

3. Aggrieved thereby, the tenants filed R.C.A.No.13 of 2013 on the file of the Rent Control Appellate Authority, Kalpetta. The said appeal was filed on 26.6.2013 with a delay of 68 days. The tenants had therefore filed I.A.No.245 of 2013, to condone the delay in filing R.C.A.No.13 of 2013. After notice on I.A. No.245 of 2013 to condone the delay in filing R.C.A.No.13 of 2013 was issued, the landlord, the sole respondent in R.C.A.No.13 of 2013 and I.A.No.245 of 2013 passed away on 31.8.2013. The appellants did not however take steps to implead the legal heirs of the deceased landlord as parties to R.C.A.No.13 of 2013. I.A.No.245 of 2013 to condone the delay of 68 days in filing R.C.A.No.13 of 2013 was heard and dismissed by the Rent Control Appellate Authority, Kalpetta by order passed on 6.12.2013. Consequently, R.C.A.No.13 of 2013 was dismissed.

4. The tenants thereupon filed R.C.R.No.290 of 2014 in this court joining the deceased landlord as the sole respondent. The said revision petition was admitted and notice ordered to the respondents on 5.11.2014. The notice issued to the respondent landlord from this court on 9.12.2014 with the hearing date fixed as 5.1.2015 was returned with the endorsement that he is no more. Thereafter, to be exact on 15.1.2015, the legal heirs of the landlord (the respondents in

the instant revision petition) filed I.A.No.153 of 2015 in R.C.R.No.290 of 2014, praying that they may be impleaded as additional respondents 2 to 5 therein. That application was heard and allowed by this court by order passed on 22.1.2015. By a separate order passed on the very same day, a Division Bench of this court disposed of R.C.R.No.290 of 2014, after entering a finding that the delay of 68 days in filing R.C.A.No.13 of 2013 should have been condoned, with the following observations/directions:

"3. The only question that arises now for our consideration is whether the delay of 68 days in filing the Rent Control Appeal was satisfactorily explained by the petitioners. Having gone through the material available and also on hearing the parties on either side, we are inclined to think that there was satisfactory explanation for the delay and therefore the delay ought to have been condoned. But, however, there is force in the submission of the learned counsel for the respondents that in the absence of the legal heirs of the deceased 1<sup>st</sup> respondent on the party array, the appeal or the application for condonation of delay could not have been maintained. Therefore, the conclusion of the delay petition shall be subject to the petitioners' filing of applications for bringing the appropriate parties on record in the appeal filed by them.

4. Accordingly, we dispose of this revision directing that subject to the petitioners' filing necessary applications to bring on record the legal heirs of the deceased 1<sup>st</sup> respondent within two weeks from today, the delay in filing RCA No.13/13 will stand condoned. On the filing of the necessary IAs as observed by us, the appellate authority shall consider the same in accordance

with law and if it decides to entertain the appeal, the appellate authority shall also dispose of the appeal on an expeditious basis.”

5. This court had by the said order directed that in the event of the petitioners in R.C.R.No.290 of 2014 (the tenants in R.C.P.No.8 of 2011) filing the necessary applications to bring on record the legal heirs of the deceased landlord, within two weeks from 22.1.2015, the rent control appellate authority shall dispose of the said application in accordance with law. After this court disposed of R.C.R.No.290 of 2014 by order passed on 22.1.2015, the petitioners herein (the tenants) filed I.A.Nos.54 and 55 of 2015 in R.C.A.No.13 of 2013 on the file of the Rent Control Appellate Authority, Kalpetta. The aforesaid applications were filed on 4.2.2015. The relief sought in I.A.No.54 of 2015 was to amend the cause title after impleading the legal representatives of the deceased landlord (the sole respondent in the appeal). The relief sought in I.A.No.55 of 2015 was to implead the legal representatives of the deceased landlord as supplemental respondents 2 to 5 in R.C.A.No.13 of 2013. I.A.No.55 of 2015 was styled as an application filed under Order XXII Rule 4 of the Code of Civil Procedure read with Rule 10 of the Kerala Buildings (Lease and Rent Control) Rules, 1979. I.A.No.54 of 2015 was styled as a petition filed under Order VI Rule 17 of the Code of Civil Procedure. The rent control appellate authority issued notice on the said applications to the

additional respondents sought to be impleaded. They entered appearance and filed a counter statement in I.A.No.55 of 2015 contending that the appeal has abated as against the deceased respondent, but no petition has been filed to set aside abatement and therefore, on that short ground it is liable to be dismissed.

6. The rent control appellate authority considered the rival contentions and dismissed I.A.No.55 of 2015 by order passed on 31.7.2015, on the ground that an application to set aside the abatement consequent on the death of the landlord and to condone the delay in filing the application to set aside abatement have not been filed. Consequently, by a separate order passed on the same day, the rent control appellate authority dismissed I.A.No.54 of 2015 to amend the cause title of the appeal memorandum. By yet another order passed on the same day, the rent control appellate authority dismissed R.C.A.No.13 of 2013 as abated. The aforesaid orders are under challenge in this revision petition filed under section 20 of the Act.

7. We heard Sri. Rakesh Roshan, learned counsel appearing for the petitioners and Sri. N. Anand, learned counsel appearing for the respondents. Sri. Rakesh Roshan, learned counsel appearing for the petitioners contended that Order XXII of the Code of Civil Procedure does not as such apply to proceedings before the rent control court/rent control appellate authority and therefore, the rent control

appellate authority erred in holding that the appeal before it has abated, consequent on the death of the sole respondent therein. Learned counsel also contended that having regard to the fact that the legal heirs of the landlord, viz; the respondents herein had got themselves impleaded as supplemental respondents 2 to 5 in R.C.R.No.290 of 2014 and the said revision petition was disposed of by this court by order passed on 22.1.2015 with them on the party array, the rent control appellate authority erred in holding that R.C.A.No.13 of 2013 has abated as against the additional respondents sought to be impleaded. Learned counsel lastly submitted that the impleadment of additional respondents 2 to 5 in R.C.R.No.290 of 2014 enures to the benefit of R.C.A.No.13 of 2013 as well and therefore, a fresh application to implead the legal heirs of the deceased landlord or to set aside the abatement or to condone the delay in filing an application to set aside abatement were really not necessary and for that reason also, the impugned orders are liable to be set aside. Relying on the decision of a Division Bench of this court in **Leela Radhakrishnan & Others v. Gowrykutty Amma and Others** (ILR 2005 (3) Ker. 174), learned counsel for the petitioners contended that a formal application to set aside the abatement was really not necessary.

8. Per contra, Sri. N. Anand, learned counsel appearing for the respondents submitted that Rule 10 of the Kerala Buildings (Lease and

Rent Control) Rules, 1979 (hereinafter referred to as 'the Rules' for short) as amended stipulates that every application for making the legal representative or legal representatives of a deceased person, party to proceedings under the Act has to be preferred within 30 days from the date of death of the person concerned, that the proviso to the said rule empowers the appellate authority in appropriate cases to condone the delay in filing such an application and therefore, there is no merit or force in the contention raised by the petitioners that a formal application to set aside the abatement is really not called for. Inviting our attention to the decision of a Division Bench of this court in **Sadasivan Chettiar v. Rajendran** (2005 (1) KLT 653), learned counsel for the respondents submitted that by virtue of the provisions contained in section 22 of the Act, the provisions of Order XXII of the Code of Civil Procedure are made applicable to the proceedings under the Act and consequently, the provisions contained in Order XXII of the Code of Civil Procedure regarding abatement are also applicable to proceedings under the Act and therefore, the tenants in the instant case viz; the appellants in R.C.A.No.13 of 2013 were bound to file, besides an application to implead the legal heirs of the deceased landlord, an application to set aside the abatement consequent on his death and also an application to condone the delay in filing the application to set aside the abatement.

9. Learned counsel for the respondents submitted that as the period of limitation prescribed for filing an application to implead the legal representatives of the deceased respondent in R.C.A.No.13 of 2013 is 30 days from the date of death of the respondent viz; 30 days from 31.8.2013, on the failure of the appellants in the appeal to file such an application, by operation of law viz; Order XXII Rule 4(3) of the Code of Civil Procedure, the appeal before the rent control appellate authority abated and that no order of court in that regard was necessary. Learned counsel further submitted that once the appeal abates, the remedy of the appellants is to have the abatement set aside by recourse to Order XXII Rule 9(2) of the Code of Civil Procedure and if an application to set aside the abatement is not filed within the period of 60 days from the date of abatement, as stipulated in Article 121 of the Limitation Act, 1963, there occurs delay in filing such an application and in that event, an application under section 5 of the Limitation Act, 1963 to condone the delay in filing the application to set aside abatement will also have to be filed. Learned counsel submitted that when a case has abated for non-impleadment of the legal representatives in time, the court has no inherent power to implead the legal representatives. Learned counsel also invited our attention to the decision of the Apex Court in **Union of India v. Ram Charan** AIR 1964 (SC) 215 in support of the aforesaid proposition.

10. Learned counsel for the respondents further submitted that the landlord who was the sole respondent in R.C.A.No.13 of 2013 passed away on 31.8.2013, that the period of 30 days stipulated in Rule 10 of the rules to file an application to implead his legal heirs expired on 30.9.2013, that as an application to implead his legal representatives had not been filed by then, the appeal abated and therefore, an application to set aside the abatement ought to have been filed within 60 days from 30.9.2013, in terms of the stipulations contained in Article 121 of the Limitation Act, 1963. Learned counsel further submitted that the period of 60 days stipulated in Article 121 of Limitation Act, 1963 to file an application to set aside the abatement consequent on the death of the landlord expired on 29.11.2013, that such an application was not filed in the instant case and therefore, after 29.11.2013, an application to condone the delay in filing the application to set aside abatement should also have been filed. Learned counsel submitted that it was only on 4.2.2015 that the tenants filed I.A.No.55 of 2015 to implead the legal heirs of the deceased landlord, that no application to set aside the abatement consequent on the death of the landlord or an application to condone the delay of 1 year and 7 days in filing the application to set aside the abatement had been filed in the instant case and therefore, the rent control appellate authority was perfectly justified in dismissing

I.A.No.55 of 2015 to implead the legal representatives of the deceased landlord and consequently dismissing the appeal as abated.

11. Referring to the decision of the Division Bench in **Leela Radhakrishnan & Others v. Gowrykutty Amma and Others** (supra) learned counsel for the respondents submitted that the said decision turned on the peculiar facts of that case, that in the said case the only defect was that an application to set aside the abatement had not been filed, but an application to condone the delay in filing the impleading petition had been filed, that no objection was raised to the effect that an application to set aside the abatement has not been filed before the application to implead the legal heirs of the deceased tenant was allowed after condoning the delay and in such circumstances, as the application to condone delay in filing the application to implead the legal heirs of the deceased tenant had been allowed, it was held that the impugned judgment cannot be set aside on the ground that a formal application to set aside the abatement had not been filed. Learned counsel submitted that a reading of the judgment in **Leela Radhakrishnan & Others v. Gowrykutty Amma and Others** (supra) will show that it was on the ground that no objection had been taken to the impleadment of the legal heirs of the tenant after condoning the delay in filing such an application, that such a view was taken and that the said decision does not lay down the proposition that

an application to set aside abatement is not required to be filed in cases where an application to implead the legal heirs of the deceased tenant or landlord is not filed within the period of 30 days stipulated in Rule 10 of the rules.

12. Referring to the contention of the learned counsel appearing for the tenants that the impleadment of the legal representatives of the deceased landlord by this court in R.C.R.No.290 of 2014 would enure to the benefit of R.C.A.No.13 of 2013 as well, learned counsel contended that on the terms of the order passed by this court in R.C.R.No.290 of 2014, the tenants cannot put forward such a contention. Learned counsel submitted that this court had in the order disposing of R.C.R.No.290 of 2014 specifically directed that the tenant should file the necessary applications to bring on record the legal heirs of the deceased landlord on the party array on R.C.A.No.13 of 2013 within two weeks from 22.1.2015 and therefore, the tenants cannot now contend that it was not necessary for them to file a separate application to bring on record the legal heirs of the deceased landlord as parties to R.C.A.No.13 of 2013 or that they are not required to file an application to set aside the abatement or to condone the delay in filing such an application.

13. We have considered the submissions made at the Bar by the learned counsel appearing on either side. We have also gone through

the pleadings and the materials on record, including the judges papers in R.C.R.No.290 of 2014. The landlord who was the sole respondent in R.C.A.No.13 of 2013 passed away on 31.8.2013. The application to condone the delay in filing R.C.A.No.13 of 2013 was dismissed by the rent control appellate authority on the merits and also on the ground that the legal heirs of the deceased landlord have not been impleaded in the appeal and the application to condone the delay. On a revision petition filed by the tenants as R.C.R.No.290 of 2014 in this court, the said order was interfered with and it was held that the explanation offered for the delay of 68 days in filing R.C.A.No.13 of 2013 deserves be accepted. However, having regard to the fact that the tenants had not taken steps to bring on record the legal heirs of the landlord in R.C.A.No.13 of 2013, this court observed that the condonation of delay in filing the appeal will be subject to the tenants filing appropriate applications in the appeal to bring on record the legal heirs of the deceased landlord. The tenants were also directed to file appropriate applications within two weeks from 22.1.2015. It was after the aforesaid order was passed that the tenants filed I.A.No.55 of 2015 to implead the legal heirs of the deceased landlord as also I.A.No.54 of 2015 to suitably amend the cause title of the appeal memorandum. The aforesaid applications were filed on 4.2.2015 within the period of two weeks stipulated by this court. Having regard to the terms of the

order passed by this court on 22.1.2015 in R.C.R.No.290 of 2014, the tenants cannot be heard to contend that as the legal representatives of the deceased landlord were already on the party array in R.C.R.No.290 of 2014, a separate application to bring on record his legal heirs in R.C.A.No.13 of 2013 is not really necessary. In the light of the order passed by this court in R.C.R.No.290 of 2014, the tenants cannot in our opinion be heard to raise such a contention. We accordingly overrule the contention raised by the tenants that in view of the fact that the legal heirs of the landlord were on the party array in R.C.R.No.290 of 2014, it was not necessary for them to take further steps to bring on record the landlord's legal heirs in R.C.A.No.13 of 2013.

14. That takes us to the question whether the tenants were required to file, in addition to I.A.No.55 of 2015, separate applications to set aside the abatement consequent on the death of the landlord as also an application to condone the delay in filing such an application. Learned counsel appearing for the tenants relies on the decision of a Division Bench of this court in **Leela Radhakrishnan & Others v. Gowrykutty Amma and Others** (supra) to contend for the position that an application to set aside the abatement is not really necessary. We are afraid, the said contention is without any merit. The issue that arose for consideration before the Division Bench in **Leela**

**Radhakrishnan & Others v. Gowrykutty Amma and Others**

(supra) was whether in the absence of any objection to the application for impleadment being allowed by the rent control appellate authority after condoning the delay in filing such an application, even in the absence of an application to set aside the abatement, the landlord can in appeal, canvass the correctness of the order impleading the legal heirs of the deceased landlord. Taking note of the fact that there was no challenge to the order allowing the application to implead the legal representatives of the deceased landlord and the order condoning the delay in filing such an application in the appeal, this court held that the landlords cannot in a revision petition arising from the appellate order contend that as an application to set aside the abatement had not been filed, the legal heirs have not been validly impleaded. The contention of the landlords that the appeal filed by the tenants had abated, was accordingly rejected.

15. It is evident from a reading of the decision in **Leela Radhakrishnan & Others v. Gowrykutty Amma and Others** (supra) that it was having regard to the peculiar facts of the case that the Division Bench held that the landlords cannot raise a plea that the appeal has abated. The issue raised by the petitioners is in our opinion squarely covered against them by the decision of the Division Bench of this court in **Sadasivan Chettiar v. Rajendran** (supra) wherein the

question whether an application to set aside abatement is required to be filed was considered by the Division Bench of this court. After an analysis of the relevant statutory provisions including rule 10 of the rules, the Division Bench held that if an application to implead the legal representatives of a deceased party is not made within 15 days which was the period stipulated in rule 10 of the rules prior to its amendment, the proceedings will abate and in that event, an application to set aside the abatement will have to be filed. The Division Bench also held that if within the period of limitation prescribed for the purpose, viz; 60 days, an application to set aside the abatement is not filed, a further application to condone the delay in filing such an application will also have to be filed.

16. In the light of the binding decision of the Division Bench of this court in **Sadasivan Chettiar v. Rajendran** (supra) with which we concur, we are of the opinion that the tenants in the instant case were bound to file, besides an application to implead the legal representatives of the deceased landlord, an application to set aside the abatement consequent on his death as also an application to condone the delay in filing the application to set aside the abatement. The tenants in the instant case should be deemed to be aware of the fact that the landlord is no more atleast on the date on which the rent control appellate authority declined to condone the delay in filing the

appeal, by order passed on 6.12.2013. The order of this court in R.C.R.No.290 of 2014 also obliges them to take steps to bring on record the legal heirs of the landlord by filing the necessary applications. The tenants were therefore bound to file, besides an application to implead the legal representatives of the deceased landlord, an application to set aside the abatement consequent on the death of the landlord as also an application to condone the delay in filing such an application. For reasons best known to them, they chose to file only an application to implead the legal representatives of the deceased landlord accompanied by an application to amend the cause title after such impleadment. Though the legal heirs of the landlord who were sought to be impleaded as additional respondents in R.C.A.No.13 of 2013 had filed a counter affidavit dated 17.3.2015 opposing the application contending that an application to set aside the abatement has not been filed, the tenants did not even thereafter take steps to file an application to set aside the abatement consequent on the death of the landlord as also an application to condone the delay in filing such an application.

17. The impugned order discloses that the rent control appellate authority has dismissed I.A.No.55 of 2015 on the short ground that the tenants have not chosen to file an application to set aside the abatement as also an application to condone the delay in filing such an

application. In view of the decision of the Division Bench of this court in **Sadasivan Chettiar v. Rajendran** (supra), we are of the opinion that on the facts of this case, no exception can be taken to the said order. It was consequent on the dismissal of I.A.No.55 of 2015 that R.C.A.No.13 of 2013 was dismissed as abated. No exception can therefore be taken to the said order as well. Having regard to the admitted facts and the inferences that flow therefrom, no conclusion other than the one arrived at by the rent control appellate authority was possible in the facts and circumstances of the case.

For the reasons stated above we hold that there is no merit in the instant revision petition. It fails and is accordingly dismissed.

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

sd/-  
**BABU MATHEW P. JOSEPH**  
**JUDGE**

kp/-

True copy

P.A. To Judge.