

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

RCRev..No.237 of 2015 (D)

AGAINST THE JUDGMENT IN RCA 29/2012 of RENT CONTROL APPELLATE
AUTHORITY, ERNAKULAM DATED 10.04.2015

AGAINST THE ORDER IN RCP 124/2009 of III ADDL.M.C. EKM (RENT CONTROL)
DATED 16-01-2012

REVISION PETITIONER/APPELLANT/RESPONDENT:

MATHEW CYRIAC, AGED 54 YEARS
S/O.C.J.KURIAKOSE, CHENNOTH HOUSE, NO.PJRA-39
NEW KALAVATH ROAD, PALARIVATTOM, COCHIN - 25.

BY ADVS. SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA

RESPONDENT/RESPONDENT/PETITIONER:

SMT.INDIRA CHACKO, AGED 69 YEARS
W/O.LATE V.J.CHACKO, NEDUMTHAKIDIYIL HOUSE
NO.32/2327 PALARIVATTOM
PIN - 682 025 EDAPPALLY SOUTH VILLAGE, KANAYANNUR.

BY ADV. SRI.BIJU ABRAHAM (CAVEATOR)
BY ADV. SRI.C.K.PRASAD
BY ADV. SMT.K.T.DIVYAMOL

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
29-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R.No.237 of 2015

Dated this the 29th day of October, 2015

ORDER

P. N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.124 of 2009 on the file of the Rent Control Court, Ernakulam, 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. Though the tenant entered appearance and filed a counter statement, he was set ex parte on 19.10.2010 and the ex parte order of eviction was passed on 22.10.2012. The tenant thereupon filed I.A.No.7497 of 2010 and I.A.No.7594 of 2011 to condone the delay of 12 days in filing the former application. The applications were heard and dismissed by the rent control court by a common order passed on 16.01.2012. Challenging the order passed by the rent control court dismissing I.A.Nos.7497 of 2010 and 7594 of 2011 in R.C.P.No.124 of 2009, the

tenant filed R.C.A.No.29 of 2012 on the file of the Rent Control Appellate Authority, Ernakulam. While the said appeal was pending, the landlord filed I.A.No.5231 of 2012 in R.C.A.No.29 of 2012 under sections 12(1) and 12(3) of the Act for an order directing the tenant to pay or deposit the sum of ₹4,61,804/- stated to be the rent in arrears and continue to pay the rent until the disposal of the appeal. The appellate authority allowed the said application by order passed on 10.04.2015 on the ground that the tenant has not filed objections to the statement of arrears of rent filed by the landlord. By that order, further proceedings in R.C.A.No.29 of 2012 were stopped and the tenant was directed to surrender vacant possession of the tenanted premises to the power of attorney of the landlord. Consequently, R.C.A.No.29 of 2012 was also disposed of with a similar direction. The aforesaid order/judgment are under challenge in this revision petition.

2. We heard Sri.P.Martin Jose, learned counsel for the petitioner and Sri.C.K.Prasad, learned counsel appearing for the respondent at length. After hearing learned counsel appearing on both sides, we are

of the opinion that the impugned order/judgment are liable to be set aside on two short grounds. The impugned order discloses that it was without following the procedure prescribed in section 12(3) of the Act that the appellate authority stopped all further proceedings in the appeal and directed the tenant to surrender vacant possession of the tenanted premises. The impugned order/judgment are therefore, liable to be set aside on that short ground. The appeal in which the impugned order was passed arises from an order passed by the rent control court declining to set aside an ex parte order of eviction passed by it in the rent control petition. The appeal before the rent control appellate authority was not from an order of eviction passed under section 11 of the Act. A Division Bench of this court has in **Sulaiman Sahib v. Mohemmed Moosa [2003(2) KLT 1058]** held that the landlord is not entitled to file an application under section 12 of the Act in an appeal which emanates from proceedings under rule 13(3) of the Kerala Buildings (Lease and Rent Control) Rules, 1979. The same view was reiterated by another Division Bench of this court in **Mohammed**

Shameer v. Ashokan [2015(1) KLT 396]. The Division Bench held that though appeals lie under section 11 of the Act against a variety of orders passed by the rent control court, the appeal referred to under section 12(1) of the Act is an appeal against an order under section 11 of the Act and in other appeals, no order can be passed by the appellate authority under section 12 of the Act. Such being the situation, we are of the considered opinion that I.A.No.5231 of 2012 in R.C.A.No.29 of 2012 was not maintainable before the appellate authority. The relief prayed for therein, could not therefore have been granted. The impugned order/judgment are therefore, liable to be set aside for that reason as well.

3. We accordingly allow the revision petition, set aside the order of eviction passed by the Rent Control Appellate Authority, Ernakulam on 10.04.2015 on I.A.No.5231 of 2012 in R.C.A.No.29 of 2012 as also the judgment delivered on 10.04.2015 in R.C.A.No.29 of 2012 and restore R.C.A.No.29 of 2012 to file. The Rent Control Appellate Authority, Ernakulam shall dispose of R.C.A.No.29 of 2012 afresh on

the merits after affording both sides an opportunity to put forward their rival contentions. Having regard to the fact that the appeal was filed in the year 2012, the rent control appellate authority shall endeavour to dispose of the appeal within one month from today. In order to enable the rent control appellate authority to act as directed above, the parties shall appear through counsel before the Rent Control Appellate Authority, Ernakulam on 16.11.2015. Until such time as R.C.A.No.29 of 2012 is heard and disposed of, further proceedings in execution of the order of eviction passed by the Rent Control Court, Ernakulam, in R.C.P.No.124 of 2009 shall be kept in abeyance. No costs.

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

