

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 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

RCRev..No. 247 of 2015 (C)

AGAINST THE JUDGMENT IN RCA 2/2014 OF THE RENT CONTROL APPELLATE
AUTHORITY, MAVELIKKARA DATED 09-07-2015

AGAINST THE ORDER IN RCP 2/2010 OF THE RENT CONTROL COURT,
MAVELIKKARA DATED 11-07-2014

PETITIONER/APPELLANT/RESPONDENT:

P.N.SIVADASAN, AGED 58 YEARS,
S/O. NANU, DIVYADAS BHAVANAM, ARANOOTTIMANGALAM MURI
VETTIYAR VILLAGE, MAVELIKKARA.

BY ADVS. SRI.K.JAYAKUMAR (SR.)
SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENT/RESPONDENT/PETITIONER:

P.C.ALEXANDER, AGED 56 YEARS
S/O. LATE CHANDA PILLAI
PALAMOOTTIL KOLLASSERIL HOUSE, NADAKKAVU MURI
MAVELIKKARA, PIN-688578.

BY ADV. SRI.RINNY STEPHEN CHAMAPARAMPIL (CAVEATOR)
BY ADV. SRI.V.V.ASOKAN (SR.)
BY ADV. SMT.ASHA ELIZABETH MATHEW

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
06-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R.No.247 of 2015

Dated this the 6th day of October, 2015

ORDER

P. N. Ravindran, J.

The petitioner is the tenant in R.C.P.No.2 of 2010 on the file of the Rent Control Court, Mavelikkara, 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 in R.C.P.No.2 of 2010 averred that rent at the rate of ₹500/- per day is in arrears from 01-12-2007. He had also averred that he bona fide needs the petition schedule shop room for his own occupation to start a cold-storage and ice cream parlour.

2. On receipt of notice, the tenant entered appearance and filed a counter statement wherein, after denying and disputing the bona fide need put forward by the landlord, he contended in paragraph 9 thereof that rent up to February, 2010 (the month in which the Rent

Control Petition was filed) has been paid to the landlord. He also disputed the averment in the rent control petition that rent has been paid only up to 30-11-2007. He, however, did not dispute the rate of rent, viz. ₹500/- per day.

3. While the rent control petition was pending, the landlord filed I.A.No.124 of 2011 under section 12 of the Act praying for an order directing the tenant to deposit the admitted arrears of rent which was then estimated to be ₹1,58,000/- and to continue to pay the rent until the termination of the proceedings before the rent control court and to pass an order of eviction in the event of failure to deposit the arrears of rent within the time limit stipulated by the court. The tenant opposed the application by filing a written objection wherein he reiterated the stand taken in the counter statement filed in the rent control petition. Taking note of the fact that the tenant had admitted that rent has been paid only up to February, 2000 and he had thereby admitted non-payment of rent for the period thereafter, by order

passed on 17-02-2011 on I.A.No.124 of 2011 in R.C.P.No.2 of 2010, the rent control court directed the tenant to deposit arrears of rent from February, 2010 till 17-02-2011 at the rate of ₹500/- per day, within fifteen days and to continue to deposit the rent subsequently becoming due, in the rent control court on the due dates. The rent control court also directed that in the event of failure to deposit the admitted arrears of rent, the tenant will not be entitled to contest the proceedings and will be liable to be evicted forthwith under section 12 of the Act.

4. The tenant carried the matter in appeal by filing R.C.A.No.4 of 2011. By judgment delivered on 25-11-2011, the appellate authority concurred with the rent control court and dismissed the appeal. The appellate authority, however, granted the tenant four weeks' time from 25-11-2011 to deposit the admitted arrears of rent, viz., at the rate of ₹500/- per day from February, 2010. The rent control court as well as the appellate authority repelled the contention of the tenant that he had deposited the sum of ₹6,00,000/- as security. Though the tenant

filed R.C.R.No.47 of 2012 in this court challenging the aforesaid orders, it was dismissed by order passed on 03-02-2012 by a Division Bench of this court. The Division Bench, however, granted to the tenant, on the request made by his counsel, two months' time to deposit the arrears of rent and to avail the statutory remedy.

5. The tenant did not however deposit the arrears of rent within the time limit stipulated by this court in R.C.R.No.47 of 2012. The rent control court thereupon passed a conditional order of eviction on 11-04-2012. The very next day, viz., 12-04-2012, the tenant filed I.A.No.680 of 2012 seeking permission to deposit the sum of ₹2,00,000/- and for time to pay the balance amount. The rent control court dismissed the said application by order passed on 13-04-2012. On the same day, the tenant filed I.A.No.683 of 2012 after depositing the sum of ₹1,00,000/- and prayed for time to deposit the balance amount which according to the tenant was only ₹64,500/-. That application was also dismissed by order passed on 13-04-2012.

Consequently, by a separate order passed on 13-04-2012, the rent control court made the conditional order of eviction passed by it on 11-04-2012 absolute.

6. The tenant carried the matter in appeal by filing R.C.A.No.2 of 2012 on the file of the Rent Control Appellate Authority, Mavelikkara. The appellate authority allowed R.C.A.No.2 of 2012 by judgment delivered on 31-05-2013 and remanded the matter to the rent control court for the purpose of considering the question whether the tenant is entitled to exemption from payment of rent on the days on which the shop was closed on account of hartals and at the instance of the municipality. The rent control appellate authority, however, directed the tenant to deposit the arrears of rent that fell due after 13-04-2012, within one month from 31-05-2013. The tenant had in the meanwhile, deposited the sum of ₹2,00,000/- on 12-04-2012, the sum of ₹1,00,000/- on 16-04-2012, the sum of ₹1,00,000/- on 08-07-2013, the sum of ₹70,000/- on 30-07-2013 and the sum of ₹21,500/- on

14-08-2013. He had also paid the sum of ₹25,000/- in cash directly to the landlord. The tenant had thus deposited, during the pendency of R.C.P.No.2 of 2010, the sum of ₹5,16,500/-. In view of that matter, though the Rent Control Appellate Authority, Mavelikkara had in R.C.A.No.2 of 2014 directed the rent control court to consider the petition filed under section 12 of the Act afresh, the rent control court proceeded to dispose of the rent control petition itself after trial, instead of passing a fresh order under section 12 of the Act. By order passed on 11-07-2014 in R.C.P.No.2 of 2010, the prayer for eviction under section 11(2)(b) of the Act was repelled by the rent control court, after entering a finding that in view of the payment made during the pendency of the proceedings, arrears of rent payable as on the date of the petition stands discharged. The rent control court, however, proceeded to enter a finding in paragraphs 78 and 79 of its order that the tenant is liable to pay a total sum of ₹6,03,500/- towards arrears of rent for the period commencing from February, 2010 (the month

previous to the month in which the rent control petition was filed) till June, 2014. The rent control court also held that the landlord will be entitled to interest on the arrears of rent. The rent control court, however, upheld the claim for eviction under section 11(3) of the Act. An order of eviction was accordingly passed under section 11(3) of the Act.

7. Challenging the order of eviction passed under section 11(3) of the Act, the tenant filed R.C.A.No.2 of 2014 on the file of the Rent Control Appellate Authority, Mavelikkara. Along with the appeal he also filed I.A.No.380 of 2014 praying for an order staying the execution of the order of eviction. An unconditional order of stay was passed therein on 07-08-2014. The landlord thereupon filed I.A.No.589 of 2014 under section 12 of the Act wherein he prayed for an order directing the tenant (the appellant in the R.C.A.No.2 of 2014) to deposit the sum of ₹6,03,500/- being the arrears of rent. The landlord had in the affidavit filed in support of the application contended that the rent control court

has held that the tenant is liable to pay the sum of ₹6,03,500/- as rent for the period commencing from February, 2010 and ending with June, 2014 and that for the period thereafter rent at the rate of ₹500/- per day is due from the tenant. The tenant opposed the application by filing written objections dated 27-11-2014 wherein in paragraph 3, he contended that as the order impugned in the appeal was passed on 11-07-2014, the landlord is entitled to arrears of rent only for the period thereafter and that he is willing to deposit the same. He also denied and disputed the averment in the affidavit filed by the landlord in support of I.A.No.589 of 2014 that as on the date of the application, he was entitled to receive the sum of ₹6,03,500/- from the tenant.

8. Before the rent control appellate authority passed orders on I.A.No.589 of 2014, the landlord filed O.P.(RC)No.19 of 2015 in this court under Article 227 of the Constitution of India, joining the tenant as the respondent. The landlord had in the said original petition prayed for a direction to the tenant to deposit the entire arrears of rent as on

date before the Rent Control Appellate Authority, Mavelikkara. He had also prayed for an order directing the Rent Control Appellate Authority, Mavelikkara, to pass orders on I.A.No.589 of 2014 and also in the stay petition within a time limit to be fixed by this court. O.P.(RC)No.19 of 2015 was admitted and notice ordered to be served on the tenant who was the sole respondent therein by special messenger. Notice was served on him and he appeared through counsel. O.P.(RC)No.19 of 2015 thereafter came up for hearing before a Division Bench of this court on 26-02-2015. During the course of the hearing, learned counsel appearing for the tenant offered to pay the entire arrears of rent due as quantified by the rent control court and to continue to pay the rent till the termination of the proceedings. Taking note of the said submission and the request made by the learned counsel for the tenant for time to pay the arrears of rent in four instalments, this court disposed of O.P.(RC)No.19 of 2015 by judgment delivered on 26-02-2015 in the following terms:-

“The petitioner is the landlord and the respondent is the tenant. Petitioner sought eviction of the respondent by filing RCP No.2/10 on the file of the Rent Control Court, Mavelikkara. In that petition, he relied on Section 11(3) and 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act. By its order dated 11th of July, 2014, the Rent Control Court allowed eviction under Section 11(3). The tenant filed RCA No.2/14 before the Rent Control Appellate Authority, Mavelikkara challenging the order of the Rent Control Court. In that RCA, the tenant filed IA No.380/14 seeking stay of the order passed by the Rent Control Court and the Court passed an unconditional order of stay on 7/8/14. The petitioner thereupon filed IA No.589/14 seeking to modify the stay order by imposing condition requiring the tenant to pay the arrears of rent. No orders are passed on that I.A. It is at that stage, this OP is filed seeking an order requiring the tenant to remit the entire arrears of rent and also to direct the Rent Control Appellate Authority to pass orders on IA No.589/14 mentioned above.

2. We heard the learned counsel for the petitioner/landlord and the learned counsel appearing for the respondent/tenant.

3. When the matter was taken up, learned counsel for the respondent himself offered to pay the entire arrears of rent as quantified by the Rent Control Court and also to continue to pay the rent till the termination of the proceedings. His only request was that he should be allowed to pay the arrears of rent in four instalments.

Now that the learned counsel for the tenant himself has agreed to make payment of the arrears of rent as above and also to continue to pay the rent, we record the submission made and dispose of the OP with the following directions;

(1) That the tenant shall pay the entire arrears of rent as quantified by the Rent Control Court in four equal monthly instalments.

(2) The first instalment shall be paid on or before 15/3/15 and the subsequent instalments shall be paid on or before the 15th of every succeeding month.

(3) The tenant will pay the subsequent rent also along with the payments to be made as above and shall continue to pay the rent till the termination of the proceedings."

9. By the said judgment, this court directed the tenant to pay the entire arrears of rent as quantified by the rent control court in the order passed on 11-07-2014 in R.C.P.No.2 of 2010 in four equal monthly instalments. The first of such instalments was to be paid on or before 15-03-2015 and the subsequent instalments were to be paid on or before the 15th of every succeeding month. The tenant was also directed to pay the subsequently accrued rent along with the aforesaid payment and to continue to pay rent till the termination of the proceedings.

10. Notwithstanding the directions issued by this court, the tenant deposited only the sum of ₹66,250/- in the rent control court on 16-03-2015. He also filed I.A.No.260 of 2015 with a prayer to accept the said amount. In the affidavit filed in support of the said application, he had averred that arrears of rent due and payable is only ₹2,65,000/- and that the sum of ₹66,250/- represents 1/4th of the said amount. The

appellate authority adjourned the said application to 04-04-2015. The landlord however filed an application to advance the hearing of the application. Accordingly, the hearing of the application was advanced to 21-03-2015. On that day, it was heard and orders were passed on 24-03-2015 whereby the tenant was directed to deposit the sum of ₹1,50,875/- being $\frac{1}{4}^{\text{th}}$ of the amount of ₹6,03,500/- on or before 28-03-2015. The tenant did not deposit the said amount. He did not also deposit the balance rent which according to him was payable. With the result, when R.C.A.No.2 of 2014 came up for consideration, it was adjourned to 10-04-2015 having regard to the fact that the payment of the next instalment was due on 15-04-2015. On 10-04-2015, R.C.A.No.2 of 2014 was adjourned to 20-05-2015. On 20-05-2015 as the second instalment had not been paid and the third instalment which was due on 15-05-2015 had not been paid, the appeal was adjourned to 15-06-2015, the date on which the last instalment was to be paid. On 15-06-2015 as the tenant had not paid any further amount towards arrears of rent, R.C.A.No.2 of 2014 was adjourned to 16-06-2015. On that day the tenant filed an affidavit

dated 16-06-2015 wherein in paragraph 3, he stated that he has no objection to the landlord adjusting and appropriating the sum of ₹6,00,000/- from out of the security deposit of ₹6,40,000/- made by him. He has also averred that in the alternative, if the landlord is not willing to make such adjustment, the sum of ₹6,40,000/- should be paid to him before he is evicted from the petition schedule building.

11. Since the tenant had not paid the admitted arrears of rent, when R.C.A.No.2 of 2014 came up for consideration before the appellate authority on 17-06-2015, it directed issue of show cause notice returnable by 02-07-2015, calling upon the tenant to show cause why the proceedings shall not be stopped and an order of eviction passed under section 12 of the Act. Since there was no sitting on 02-07-2015, the appeal was notified for hearing to 06-07-2015. On 06-07-2015, the tenant submitted that he has already filed an affidavit on 16-06-2015 and it may be treated as his explanation. R.C.A.No.2 of 2014 was thereupon adjourned to 07-07-2015 for hearing. On that day, the parties were heard and orders reserved. By judgment delivered on 09-07-2015, which is impugned in the instant revision petition, the

appellate authority stopped all further proceedings in the appeal and directed the tenant to put the landlord in possession of the petition schedule building. The appellate authority also observed that in the event of failure, it will be open to the landlord to get vacant possession of the petition schedule building through the execution court.

12. We heard Sri.K.Jaya Kumar, learned senior counsel appearing for the petitioner and Sri.V.V.Asokan, learned senior counsel appearing for the respondent. Sri.K.Jaya Kumar, learned senior counsel appearing for the petitioner contended with particular reference to the observations and findings in paragraphs 78 and 79 of the order passed by the rent control court on 11-07-2014 in R.C.P.No.2 of 2010 that the rent control court had no jurisdiction to make the observations contained therein or to enter the findings arrived at by it therein under section 12 of the Act for the reason that it had by the very same order held that an order of eviction under section 11(2) of the Act cannot be passed. Learned senior counsel contended that with the passing of the order declining an order of eviction under section 11(2)(b) of the Act, the rent control court became functus officio, that the rent control

court has not entered a finding that the tenant has admitted his liability to pay the sum of ₹6,03,500/- and therefore, an order under section 12 of the Act could not have been passed for non-payment of the said sum of ₹6,03,500/-. Referring to the judgment delivered on 26-02-2015 by a Division Bench of this court in O.P.(RC) No.19 of 2015, learned senior counsel submitted that the concession in paragraph 3 thereof is a wrong concession on a question of law and therefore, it is not binding on the tenant. Learned counsel also invited our attention to the decisions of the Apex Court in ***Uptron India Ltd. v. Shammi Bhan and another [(1998) 6 SCC 538]*** and ***Central Council for Research in Ayurveda & Siddha and another v. Dr.K.Santhakumari [(2001) 5 SCC 60]*** in support of the said contention. Referring to the decision of the Apex Court in ***Chinnamma v. Gopalan [1995 (2) KLT 755 (SC)]***, the learned senior counsel appearing for the tenant submitted that section 12 of the Act cannot apply to a proceeding which is already over under section 11(2)(b) of the Act; that an order under section 12 of the Act can be passed only during the pendency of the proceedings under section 11 and

therefore, the rent control court had no jurisdiction or authority to make the observations contained in or enter the findings arrived at by it in paragraphs 78 and 79 of the order dated 11-07-2014. Learned senior counsel submitted that in such circumstances, as the tenant has not admitted the contention of the landlord that the sum of ₹6,03,500/- was due and payable by way of arrears of rent, the appellate authority could not have passed the impugned judgment and directed the tenant to surrender vacant possession of the petition schedule building to the landlord.

13. Per contra, Sri.V.V.Asokan, learned senior counsel appearing for the respondent landlord submitted that the concession made by the tenant through his counsel, which is referred to in paragraph 3 of the judgment delivered by the Division Bench of this court on 26-02-2015 in O.P.(RC)No.19 of 2015 is not a wrong concession on a question of law, that it was a concession on a question of fact and therefore, the tenant cannot contend that no reliance can be placed on the judgment delivered by the Division Bench of this court or its effect watered down. Referring to the affidavit sworn to by the tenant on 16-06-2015,

the learned senior counsel appearing for the respondent submitted that the tenant had in the said affidavit agreed that the sum of ₹6,00,000/- from out of the security deposit of ₹6,40,000/- stated to have been made by him can be adjusted and appropriated towards arrears of rent payable to the landlord, that thereby, the tenant has virtually admitted that the sum of ₹6,00,000/- is due and payable by way of arrears of rent, that the contention of the tenant that a sum of ₹6,40,000/- was deposited by way of security was repelled by this court in R.C.R.No.47 of 2012 and therefore, the tenant cannot contend that the arrears of rent payable by him is secured. Learned senior counsel also submitted that even assuming that there was a security deposit, the said amount is not liable to be taken into account for the purpose of section 12 of the Act, that the security deposit, if any, made by the tenant is not liable to be adjusted against the admitted arrears of rent payable in respect of the petition schedule building, that the case put forward by the tenant in the objections filed by him to I.A.No.124 of 2011 was that the landlord is entitled to receive rent only from the date on which the rent control appeal was filed and not for the period

prior to it and it is therefore clear that the real intention of the tenant is to evade payment of the admitted arrears of rent. Learned senior counsel submitted that in such circumstances, no interference is called for with the impugned judgment.

14. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through the pleadings and materials on record including the judges papers in O.P.(RC)No.19 of 2015 and R.C.R.No.47 of 2012. It is evident from the order passed by this court in R.C.R.No.47 of 2012 on 03-02-2012 that the rent control court and the appellate authority had in the first instance, in a proceeding under section 12 of the Act repelled the contention of the tenant that he had made a security deposit of ₹6,40,000/-. This court had by the said order granted to the tenant at his request, two months' time to deposit the arrears of rent then due which was quantified at ₹500/- per day from February, 2010 onwards. The order passed by the rent control court on 17-02-2011 on I.A.No.124 of 2011 in R.C.P.No.2 of 2010 has thus attained finality. The tenant does not also dispute the rate of rent. Though at a subsequent

stage, the rent control court passed a fresh order of eviction under section 12 of the Act consequent on the failure of the tenant to deposit the entire arrears of rent at the aforesaid rate for the period commencing from February, 2010 and ending with June, 2014 and the said conditional order was made absolute, the tenant did not deposit the entire arrears of rent at the aforesaid rate. Consequently, an order of eviction was passed on 13-04-2012 under section 12 of the Act. Though the appeal therefrom filed by the tenant as R.C.A.No.2 of 2012 was allowed by judgment delivered on 31-05-2013 and the rent control court was directed to consider the matter afresh for the purpose of considering the question whether the tenant is entitled to exemption from payment of rent on hartal days and the days on which the shop was closed down according to the orders issued from the municipality, the rent control court did not dispose of the proceedings under section 12 afresh. Instead, it disposed of the rent control petition itself by order passed on 11-07-2014. In the order, it had entered a finding to the effect that as on the date of the order the sum of ₹6,03,500/- was due by way of arrears of rent for the period commencing from

February, 2010 and ending with June, 2014. It was that amount which was described as arrears of rent by the landlord in the application filed by him as I.A.No.589 of 2014 in R.C.A.No.2 of 2014. The objection raised by the tenant to the said application was that he is liable to pay rent at the rate of ₹500/- per day only from the date on which R.C.A.No.2 of 2014 was filed. When the matter reached this court at the instance of the landlord in O.P.(RC)No.19 of 2015, it was conceded on his behalf that he will pay the arrears of rent as quantified by the rent control court (meaning thereby the arrears of rent as quantified by the rent control court in the final order passed by it on 11-07-2014) and continue to pay rent till the termination of the proceedings. He also requested for an opportunity to pay the said arrears in four instalments. That request was granted and he was directed to pay the amount determined by the rent control court as arrears of rent in four equal monthly instalments commencing from 15-03-2015 and ending with 15-06-2015. The tenant has admittedly not paid the said amount. He has also not paid the rent that fell due after July, 2014. He has in the affidavit filed by him on 16-06-2015, which according to him is also

his answer to the show cause notice issued under section 12 of the Act, agreed that the landlord may adjust the sum of ₹6,00,000/- towards arrears of rent from out of the security deposit of ₹6,40,000/-, which he has really not made. Having regard to the conduct of the tenant and the attendant circumstances, we are not persuaded to accept the contention of the tenant that the concession made by his counsel on his behalf which is referred to in paragraph 3 of the judgment delivered by the Division Bench of this court on 26-02-2015 in O.P.(RC)No.19 of 2015, is an erroneous concession on a question of law. The concession was, in our opinion, a concession on a question of fact. The tenant had through his counsel offered to pay the entire arrears of rent due as quantified by the rent control court and to continue to pay rent till the culmination of the proceedings. We therefore, find no merit or force in the contention of the tenant that he is not bound to pay the arrears of rent as quantified by the rent control court. It is evident from the conduct of the tenant and also from the averments in the counter affidavit filed by him in I.A.No.589 of 2014 as also his affidavit dated 16-06-2015, that he does not dispute the quantification of the arrears

of rent by the rent control court. It is evident that his intention is only to delay the payment of arrears of rent. We therefore, concur with the rent control appellate authority that the tenant has not shown sufficient cause as to why an order of eviction under section 12 of the Act after stopping all further proceedings in the appeal shall not be passed.

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

Sd/-
P. N. RAVINDRAN
JUDGE

Sd/-
BABU MATHEW P. JOSEPH
JUDGE

kns/-

//TRUE COPY//

P.A. TO JUDGE

