

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

RCCRev.No. 265 of 2015 ()

**AGAINST THE JUDGMENT IN IA 2668/2015 IN RCA 57/2015 of RENT CONTROL APPELLATE
AUTHORITY, THRISSUR DATED 19-09-2015**

**AGAINST THE ORDER IN OP(R.C.) 9/2013 of RENT CONTROL COURT, CHALAKUDY DATED
21-03-2015**

REVISION PETITIONER/APPELLANT/RESPONDENT:

**DILEEP, AGED 35 YEARS,
S/O.MEPULLYVEETIL GOPALAN,
MOTHIRAKKANNI DESOM, PARIYARAM VILLAGE,
CHALAKKUDY THALUK.**

**BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.R.ARUN KRISHNAN**

RESPONDENT(S)/RESPONDENTS/PETITIONERS:

- 1. JASMA ALAVUDHEEN, AGED 48 YEARS
W/O.PALAYAMKOTTUPARAMBIL ALAVUDHEEN
EAST CHALAKKUDY VILLAGE DESOM,
CHALAKKUDY THALUK - 680 001.**
- 2. ABDUL KHADER, AGED 24 YEARS
S/O.PALAYAMKOTTUPARAMBIL ALAVUDHEEN
EAST CHALAKKUDY VILLAGE DESOM, CHALAKUDY THALUK
680 001.**

R1 & R2 BY ADV. SRI.SHEEJO CHACKO

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 18-11-2015,
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.265 of 2015

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Dated this the 18th day of November, 2015

ORDER

P.N.Ravindran, J.

The petitioner is the tenant in R.C.P.No.9 of 2013 on the file of the Rent Control Court, Chalakkudy, a petition filed by the respondents/ landlords for an order of eviction under section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. The landlords had in paragraph 3 of the rent control petition which was filed on 17.12.2013 averred that the petition schedule shop rooms were let out to the tenant on 28.11.2012 on a monthly rent of ₹18,700/-, that it was stipulated therein that on the expiry of the period of 11 months the rent will stand enhanced by 10%, that as per the terms of the entrustment rent was to be paid on the 28th of each month and that rent at the rate of ₹18,700/- per mensem for the period from 28.4.2013 to 28.10.2013 and at the rate of ₹20,570/- per mensem for the period thereafter, viz. the period commencing from 28.10.2013 is due from the tenant.

2. Though notice was served, the tenant did not appear, with the result he was set ex-parte and an order of eviction was passed on 22.1.2014. The tenant thereupon filed I.A.No.517 of 2014 to set aside

the ex-parte order of eviction. That application was allowed and the ex-parte order was set aside on 24.1.2014. Shortly thereafter the tenant filed a counter statement dated 17.7.2014 wherein he denied and disputed the landlord-tenant relationship. As regards arrears of rent, his contention was that rent is in arrears only from the date of institution of O.S.No.730 of 2013 by him in the Court of the Munsiff of Chalakkudy.

3. After the tenant filed his counter statement, the landlords filed I.A.No.2376 of 2014 under section 12 of the Act praying for an order directing the tenant to deposit the sum of ₹3,17,900/- being the arrears of rent due for the period commencing from 28.4.2013 and ending with 28.9.2014. They had in the affidavit filed in support of the application averred that the sum of ₹1,12,200/- is due from the tenant by way of arrears of rent at the rate of ₹18,700/- for the period commencing from 28.4.2013 and ending with 28.10.2013 and that the sum of ₹2,05,700/- is due for the period commencing from 28.11.2013 and ending with 28.9.2014. The above application was filed on 20.9.2014. On the very same day, the rent control court passed the following order on the said application:

"Respondent is directed to pay admitted arrears of rent within two weeks. Call on 06/10/14."

Since 6.10.2014 was a holiday, the application was adjourned to

9.10.2014. On that day the tenant filed I.A.No.2530 of 2014 praying for enlargement of time to deposit the admitted arrears of rent. In the affidavit filed in support of the said application, the tenant did not dispute or deny the averment in the affidavit filed by the landlords in support of I.A.No.2376 of 2014 that the sum of ₹3,17,900/- is due from him towards arrears of rent for the period commencing from 28.4.2013 and ending with 28.9.2013. The only ground put forward by the tenant in I.A.No.2530 of 2014 was that as the business is at a loss, he was not in a position to pay the rent in time. He had, however, vaguely averred that he is not liable to pay the amount claimed in I.A.No.2376 of 2014. The rent control court considered the said application and allowed it by order passed on 15.10.2014. By that order, the rent control court enlarged the time for payment of the admitted arrears or rent by one month from 15.10.2014. Such an order was passed having regard to the stipulation in sub-section (2) of section 12 of the Act that the time for payment of the admitted arrears shall not be less than four weeks. The tenant was not satisfied with that order. He thereupon filed O.P.(R.C.)No.146 of 2014 in this court challenging that order which was produced and marked as Ext.P6 therein and prayed for an order allowing him to remit the arrears of rent in six equal monthly installments or in the alternative, to grant him five months time to pay the entire arrears.

4. O.P.(R.C.)No.146 of 2014 was heard and disposed of by a Division Bench of this court after notice to the landlord by judgment delivered on 21.11.2014. By that judgment, this court granted the tenant four months time from 21.11.2014 to deposit the admitted arrears of rent subject however to the condition that he shall deposit the sum of ₹1,00,000/- on or before 20.12.2014. The operative portion of the judgment delivered by this court in 21.11.2014 in O.P. (RC) No.146 of 2014 reads as follows:

"Taking into account the facts and circumstances of the case, we think it appropriate to grant four months' time from today to the tenant to deposit the admitted arrears of rent. However, the tenant shall deposit a sum of Rupees one lakh on or before 20.12.2014 and he shall deposit the entire balance admitted arrears of rent on or before the expiry of the aforesaid four months. If the tenant fails to comply with the condition to deposit a sum of Rupees one lakh on or before 20.12.2014, the extension of time granted by us as per this judgment would stand recalled automatically. The order dated 15.10.2014 in I.A.No.2530 of 2014 is modified to the above extent."

5. Pursuant to the said order, the tenant deposited the sum of ₹1,00,000/- on 20.11.2014. He deposited a further sum of ₹1,00,000/- on 20.3.2015. The records in O.P.(RC) No.146 of 2014 disclose that immediately thereafter, viz., on 24.3.2015, the tenant had filed I.A.No. 4526 of 2015 in O.P.(R.C.)No.146 of 2015 praying for enlargement of the time limit stipulated by this court in the judgment delivered on 21.11.2014 by a further period of two months from 23.3.2015. The

records disclose that when R.C.P.No.9 of 2013 came up for consideration before the rent control court on 20.12.2014, after taking note of the payment of the sum of ₹1,00,000/- made that day, the rent control court directed the tenant to pay the entire balance amount on or before 20.3.2015, the date on which the period of four months stipulated by this court would expire. The rent control court also directed the petition to be called on 20.3.2015. In view of the fact that payment had not been made by the time the rent control petition was called on for hearing on 20.3.2015, the rent control court passed an order on I.A.No.2376 of 2014, striking off the defence of the tenant. Consequently, the rent control court passed an order directing the rent control petition to be called on 21.3.2015. On that day, relying on the affidavit filed by the tenant in lieu of chief examination and the documents produced along with it, which were marked as Exts.A1 to A4, an order of eviction under section 11(2)(b) of the Act was passed.

6. As stated earlier, the tenant had on 24.3.2015 filed I.A. No.4526 of 2015 in O.P.(R.C.)No.146 of 2014 praying for enlargement of the time limit stipulated by this court in the judgment delivered on 21.11.2014 in O.P.(R.C.)No.146 of 2014. However in the affidavit dated 23.3.2015 sworn to by him in support of the said application he had not referred to the aforesaid facts, except the fact that the sum of ₹1,00,000/- was paid on 20.3.2015. I.A.No.4526 of 2015 in O.P.

(R.C.)No.146 of 2014 came up for consideration before the Division Bench of this court on 6.4.2015. Taking note of the submission made by the learned counsel appearing for the petitioner therein that the rent control court has passed an order of eviction and that the tenant proposes to file an appeal, the Division Bench disposed of I.A.No.4526 of 2015 in O.P.(R.C.)No.146 of 2014 by the following order:

"The learned counsel for the petitioner submitted that on 21.3.2015, the Rent Control Court disposed of the R.C.P. itself ignoring the fact that the time granted by this Court had not expired. The learned counsel for the petitioner submitted that the tenant would be challenging the order passed by the Rent Control Court in appeal. Leaving open the right of the petitioner to raise all his contentions in appeal, which he may prefer, the I.A. is disposed of."

7. The tenant did not however file an appeal challenging the order of eviction passed by the rent control court on 21.3.2015 in time. Instead, he filed an appeal, R.C.A.No.57 of 2015, on 13.7.2015 with a delay of 84 days. Along with the said appeal, he filed I.A. No.2668 of 2015 to condone the delay of 84 days in filing the appeal. In the affidavit filed in support of the application, he had averred that the amount claimed in the notice issued by the landlords towards arrears of rent was ₹1,12,000/-, that the averment in the rent control petition which was filed on 17.12.2013 is that the rent is in arrears

from 28.4.2013 and that he has discharged the said liability on 20.3.2013. He had further averred that on the date on which R.C.P. No.9 of 2013 was disposed of, the rent was not in arrears. He had further averred that as the rent was not in arrears and the entire arrears of rent has been paid, he was under the belief that an appeal need not be filed. The tenant had further averred that he is however constrained to file an appeal in view of E.P.No.455 of 2015 filed by the landlords to execute the order of eviction.

8. The landlords opposed the said application by filing objections. It was contended that the amount due from the tenant towards arrears of rent is ₹3,87,367/-, that the order passed by this court on 6.4.2015 on I.A.No.4526 of 2015 in O.P.(R.C.)No.146 of 2014 discloses that the tenant was aware of the fact that an appeal has to be filed from the order of eviction passed by the rent control court and therefore, the explanation offered by him cannot be accepted. The appellate authority considered the rival contentions and dismissed I.A.No.2668 of 2015 in R.C.A.No.57 of 2015 by order passed on 19.9.2015. The appellate authority held that the explanation offered by the tenant does not constitute sufficient cause to condone the delay of 84 days in filing the appeal. Consequently, R.C.A.No.57 of 2015 was rejected as barred by limitation. The tenant has, aggrieved thereby, filed this revision petition.

9. We heard Sri.K.R.Arun Krishnan, learned counsel appearing for the petitioner and Sri.Sheejo Chacko, learned counsel appearing for the respondents. We have also gone through the pleadings and the materials on record including the judges papers in O.P.(R.C.)No.146 of 2014 and the lower court records, which have been called for. It is evident from the materials before us that the tenant had admittedly paid towards arrears of rent, the sum of ₹1,00,000/- on 20.12.2014 and a likesum of ₹1,00,000/- on 20.3.2015. The second payment namely the payment of ₹1,00,000/- on 20.3.2015 was one made only after the defence of the tenant was struck off by order passed on I.A.No.2376 of 2014. The rent control petition was tried and disposed of thereafter on 21.3.2015 and an order of eviction was passed. The learned counsel appearing for the tenant had, when I.A.No.4526 of 2015 in O.P.(R.C.)No.146 of 2014 had come up for consideration before this court, submitted that the tenant intends to challenge the order passed by the rent control court in appeal. Such an appeal was however filed only on 13.7.2015 with the delay of 84 days. The appellate authority declined to condone the said delay on the ground that the explanation offered does not merit acceptance. The explanation offered was that as the entire arrears of rent has been paid, he was under the impression that an appeal need not be filed, but in view of the landlords filing a petition to execute the order of

eviction, it has become necessary for him to file an appeal.

10. The Apex Court has in **Chinnamma v. Gopalan** [1995 (2) KLT 755] held that to get an order of eviction passed under section 11 (2) (b) of the Act vacated, the tenant need deposit only the rent due at the time of the notice and not the entire arrears of rent upto the date of the petition or the rent which accrues thereafter during the pendency of the proceedings. The landlords had in Ext.A2 notice dated 7.10.2013 issued to the tenant alleged that rent at the rate of ₹18,700/- per mensem is due from 28.4.2013. He had by that notice also called upon the tenant to surrender vacant possession of the tenanted premises on 28.10.2013 when the period of 11 months computed from the date of entrustment expires. Going by the terms of Ext.A2 notice, six months' rent at the rate of ₹18,700/- namely ₹1,12,200/- was in arrears. Rent for the period commencing from 28.9.2013 and ending with 28.10.2013 fell due thereafter. Going by the decision of the Apex Court in **Chinnamma v. Gopalan** [supra] in the event of an order of eviction being passed under section 11(2)(b) of the Act, the tenant was liable to deposit only the said sum of ₹1,12,200/- to have the order of eviction passed under section 11(2) (b) of the Act vacated. However in the instant case, on account of the proceedings initiated under section 12 of the Act, the tenant was called upon to deposit a larger sum namely the sum of ₹3,17,900/-. Out of

the said amount, he has admittedly deposited the sum of ₹2,00,000/- in two installments namely the sum of ₹1,00,000/- on 20.12.2014 and a likesum on 20.3.2015, the day immediately preceding the date on which an order of eviction was passed by the rent control court. It is not in dispute that, contending that rent at the rate of ₹18,700/- per mensem is due for the period commencing from 28.4.2013 and ending with 28.10.2013 and rent at the rate of ₹20,570/- is due for the period commencing from 28.10.2013 and ending with 28.5.2014 and further contending that they bonafide need the petition schedule building for the second petitioner landlord, the landlords have instituted R.C.P.No.6 of 2014 in the Rent Control Court, Chalakkudy. The said petition is even today pending.

11. Having regard to the facts stated above, we are of the opinion that the case put forward by the tenant that he was under a misconception as to whether an appeal should be filed or not, cannot be said to be a plea invented to suit the occasion. In the light of the decision of the Apex Court in **Chinnamma v. Gopalan** [supra], all that the tenant need do to have the order of eviction passed under section 11(2)(b) of the Act set aside under section 11(2)(c) is to deposit the arrears of rent due as on the date of the notice issued under section 11(2)(a) of the Act. He need not deposit the arrears of rent that has accrued thereafter. However in the instant case, by an

order of court passed under section 12 of the Act, he was directed to deposit the arrears that fell due thereafter also. Such being the situation, the appellate authority ought to have in our opinion accepted the explanation offered by the tenant and condoned the delay of 84 days in filing the appeal. We accordingly hold that the impugned order dismissing I.A.No.2668 of 2015 in R.C.A.No.57 of 2015 and the consequential judgment dismissing the appeal as time barred should be set aside, the delay in filing R.C.A.No.57 of 2015 condoned and the appeal restored to file for hearing and disposal on the merits. There is also yet another reason why we are of the opinion that the delay in filing the appeal should be condoned. The learned counsel appearing for the tenant had during the course of arguments submitted that he will deposit the sum of ₹1,17,900/- being the balance amount payable in terms of the order passed by the rent control court on I.A.No.2736 of 2014, within two months from today.

For the reasons stated above, we allow this revision petition, set aside the order passed by the Rent Control Appellate Authority, Thrissur on 19.9.2015 in I.A.No.2668 of 2015 in R.C.A.No.57 of 2015, allow the said application, condone the delay of 84 days in filing R.C.A.No.57 of 2015 and restore R.C.A.No.57 of 2015 to file, subject to the condition that the tenant shall within two months from today deposit in the rent control court for payment to the landlords, the sum

of ₹1,17,900/- and file a memo in that regard before the Rent Control Appellate Authority, Thrissur. This shall be done not later than 18.01.2016. The landlords and the tenant shall also appear through counsel before the Rent Control Appellate Authority, Thrissur on that day. The rent control appellate authority shall in the event of the tenant producing proof of payment of the sum of ₹1,17,900/-, take steps to hear and dispose of the appeal on the merits expeditiously and in any event before the closure of the civil courts for the summer vacation of 2016. Needless to say, in the event of default on the part of the tenant to deposit the sum of ₹1,17,900/- within the time limit stipulated above, the application to condone the delay shall stand dismissed and the order dismissing I.A.No.2668 of 2015 in R.C.A. No.57 of 2015 and the consequential order rejecting R.C.A.No.57 of 2015 shall stand restored.

Sd/-

**P.N.RAVINDRAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

/true copy/

P.A. To Judge