

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 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

RCRev..No. 274 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCP 1/2013 of RENT CONTROL COURT,
MAVELIKKARA DATED 31.7.2014
REVISION PETITIONER(S)/PETITIONERS:

1. A.RAJENDRA NAIR AGED 57 YEARS
PRANAVAM , M M C WARD 19 NO 338, PONAKAM MURI
THEKKEKARA VILLAGE, MAVELIKKARA TALUK

2. GANGADEVI
W/O.A RAJENDRAN NAIR, PRANAVAM, M M C WARD 19
NO 338, PONAKAM MURI, THEKKEKARA VILLAGE
MAVELIKKARA TALUK

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT(S)/RESPONDENT:

G.SADASIVAN NAIR, AGED 64 YEARS
S/O.C V GOPALAN NAIR, SARASWATHY MANDIRAM, PONKAM MURI
THEKKEKARA VILLAGE, MAVELIKKARA TALUK

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
03-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"C.R."

**P.N. Ravindran &
Babu Mathew P. Joseph, JJ.**

R.C.R. NO.274 of 2015

Dated this the 3rd November, 2015

O R D E R

P.N. Ravindran, J.

The petitioners are the landlords in R.C.P.No.1 of 2013 on the file of the Rent Control Court, Mavelikkara, a petition filed by them for an order evicting the respondent herein from a residential building, under sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short.

2. The petitioners had in the rent control petition averred that, the petition schedule house jointly belongs to them and that excluding two rooms on the southern side, the remaining portion of the house has been let out on rent to the respondent who is none other than the brother-in-law of the first petitioner and the brother of the second petitioner, that the initial entrustment was in the year 2003 for a period of 11 months, but having regard to the relationship between the parties no written agreement was entered into, that when the first petitioner who was employed abroad returned to his native place a demand was made to the respondent to execute a lease deed to continue to occupy the premises, that on such demand the respondent executed a lease deed in the year 2005 undertaking to vacate the

premises on the expiry of the period of 11 months, that the rent agreed upon is Rs.1,000/- per month, that rent at that rate is due after May, 2012 and that the first petitioner, who has lost his employment abroad, bonafide needs the petition schedule building to start a business.

3. Upon receipt of notice, the respondent/tenant entered appearance and filed a counter statement dated 11.7.2013. In paragraph 1 thereof, he denied the entrustment of the petition schedule building to him in 2003 and contended that there is no landlord-tenant relationship between the parties. He also denied and disputed the allegation that the petition schedule building other than two rooms on the southern side, was entrusted to him on a monthly rent of Rs.1,000/- in the year 2003. He further contended that the building is his family house, that he is residing therein ever since his childhood, that it is also his matrimonial home and that he is presently residing therein with his younger daughter. He had also contended that Ext.A12 rent deed dated 29.3.2012 produced along with the rent control petition is a fabricated document, concocted after fabricating his signature and disputed his liability to pay rent.

4. Before the rent control court, the first petitioner examined himself as PW1, the document writer who had prepared some of the

documents produced by the landlords as PW2, one of the attesting witnesses to Exts.A5, A6 and A7 rent deeds as PW3 and the Secretary of Mavelikkara Municipality who produced Exts.X1 to X4 as PW4. The landlords also produced and marked Exts.A1 to A29. The tenant examined himself as DW1 and produced and marked Ext.B1. The rent control court considered the rival contentions and the materials on record and held that the denial of the landlords' title is not bonafide. The rent control court further held that the petition schedule building belongs absolutely to the petitioners and that the contention of the respondent that there is no landlord-tenant relationship is not tenable. The rent control court thereafter proceeded to consider whether the petitioners are entitled to an order of eviction under section 11(2)(b) of the Act and held, relying on Ext.A12 rent deed dated 29.3.2012 that the tenant who has denied his liability to pay rent and has not paid rent after May 2012, is liable to pay rent at the rate of Rs.1,000/- per mensem from June, 2012 to March, 2013, viz. the month immediately preceding the month in which the rent control petition was filed. The rent control court also held that the bonafide need put forward is true and genuine. An order of eviction under sections 11(2)(b) and 11(3) of the Act was accordingly passed on 31.7.2014.

5. Challenging the order of eviction passed by the rent control

court, the respondent/tenant filed R.C.A. No.3 of 2015 on the file of the Rent Control Appellate Authority, Mavelikkara. In that appeal he filed I.A.No.24 of 2015 praying for an order staying the execution of the order of eviction. On that application, the rent control appellate authority passed an interim order on 23.7.2015 staying further proceedings pursuant to the impugned order of eviction till the disposal of the appeal, subject to the condition that the tenant should deposit the sum of Rs.10,000/- before the rent control court within one month from 23.7.2015. Upon receipt of notice in R.C.A.No.3 of 2015, the landlords entered appearance and filed I.A.No.339 of 2015 under section 12 of the Act praying for an order directing the appellant in the appeal to pay to them or deposit the sum of Rs.34,000/- being the arrears of rent due for the period commencing from June, 2012 and ending with March, 2015 and in the event of failure to make such deposit or payment, to stop all further proceedings in the appeal and to pass an order directing the appellant to surrender possession of the petition schedule building to them. The first petitioner had, in the affidavit filed by him in support of I.A.No.339 of 2015, averred as follows:

"02) അപ്പീൽ വാദി പട്ടിക കെട്ടിടത്തിന്റെ പ്രതിമാസ വാടക 1000/- രൂപ വെച്ച് 2012 ജൂൺ മാസം മുതൽ 2015 മാർച്ച് മാസം വരെയുള്ള 34 മാസത്തെ വാടകയായ

34,000/- രൂപ കുടിശ്ശിക വരുത്തിയിട്ടുള്ളതും ആയതിനാൽ ടി കുടിശ്ശിക തുകയായ 34,000/- രൂപ എനിക്ക് നേരിട്ട് തരികയോ ബഹുമാനപ്പെട്ട കോടതി മുമ്പാകെ കെട്ടി വയ്ക്കുകയോ ചെയ്യുന്നതിന് അപ്പീൽ വാദിയെ നിർദ്ദേശിച്ച് ഉത്തരവുണ്ടാകുവാനുള്ളതും ടിയാൻ ടി ഉത്തരവ് പാലിക്കാത്ത പക്ഷം അപ്പീൽ തള്ളി പട്ടിക കെട്ടിടം ഒഴിഞ്ഞ് എനിക്ക് കൈവശം വിട്ടു തരുന്നതിന് അപ്പീൽ വാദിയെ നിർദ്ദേശിച്ച് ഉത്തരവുണ്ടാകുവാനുള്ളതും ആയതിലേക്ക് ഇതോടൊപ്പം പ്രത്യേക ഹർജി ബോധിപ്പിക്കുന്നതും ആയത് അനുവദിക്കാനുള്ളതും അല്ലാത്ത പക്ഷം എനിക്ക് അപരിഹാര്യമായ കഷ്ടനഷ്ടത്തിനും സങ്കടത്തിനും ഇട വരുന്നതും."

6. The substance of the aforesaid averments is that the tenant is liable to pay or deposit rent at the rate of Rs.1,000/- per mensem for a period of 34 months commencing from June, 2012 and ending with March, 2015. The respondent herein who is the appellant in the rent control appeal, filed a counter affidavit opposing the application. He contended that he has not admitted before the rent control court or the appellate authority that the rent is in arrears, that a petition under section 12 of the Act will lie only if there is failure to deposit the admitted arrears of rent, that there is no finding by the rent control court that he has admitted that the rent is in arrears as claimed by the petitioners and therefore, the relief prayed for in the application cannot be granted. The rent control appellate authority considered the rival contentions and dismissed I.A.No.339 of 2015 by order passed on 23.7.2015. The operative portion of the said order reads as follows:

"4. In the present case, tenant denied landlord tenant relationship.

As such his case is that no rent is due from him. He claims to be a co-owner in the petition schedule building. The fact that the lower court found otherwise as well as default in payment of rent, does not mean that arrears of rent is admitted. Landlords contended that Ext.A9 will go to show that tenant filed an application for residential certificate before Municipal Secretary, Mavelikara. In that application, he has declared his status as tenant. So this is an admission and as such arrears of rent is to be paid is the contention. Considering this contention, Ext.A9 is one produced by the landlords. Tenant did not admit the said document. Tenant has explanation for submitting said record. This explanation was not accepted by the Rent Control Court and eviction was ordered under 11(2)(b) of the Act. This means that even if on the basis of said document, landlord tenant relationship is found, there is no admission regarding the arrears of rent or quantum of rent. Appeal being continuation of petition, it is to be found that all these matters are still disputed. Only if there is arrears of admitted rent, the section can be invoked by the landlord to stop proceedings in the appeal. In view of the above discussion, application is liable to be dismissed.

In the result application is dismissed. No costs."

The said order is under challenge in this revision petition filed under section 20 of the Act.

7. We heard Shri B. Krishna Mani, learned counsel appearing for the petitioners. Learned counsel appearing for the petitioners contended that the rent control court has, in the order of eviction passed by it on 31.7.2014, held that that the petitioners are the

landlords of the petition schedule building, that the respondent is the tenant, that the tenant has kept the rent in arrears from June 2012 to March 2013, that the rent control court has also found that the rate of rent payable is Rs.1,000/- per mensem and therefore, as the respondent has not deposited any amount towards arrears of rent after May, 2012, the appellate authority erred in dismissing I.A.No.339 of 2015. Learned counsel contended that as the rent control court has rejected the contention of the respondent that he is not a tenant of the building and has found that the petitioners before the rent control court are the landlords of the building and has also entered a finding to the effect that rent at the rate of Rs.1,000/- per mensem is in arrears from June 2012, the petitioners are entitled to an order under section 12 of the Act for the reason that the tenant has not deposited any amount towards rent. Learned counsel contended that in such circumstances, the appellate authority erred in proceeding on the basis that since the tenant has not made any admission regarding the arrears of rent or the rent payable by him, the landlord cannot invoke section 12 of the Act. Inviting our attention to the decision of a learned single Judge of this Court in **Ali v. Vasudevan** (1989 (2) KLT 223), learned counsel contended that even in a case where the tenant has not admitted the arrears of rent, the court can determine the

actual rent payable under law, that even in a case where there is difference between the actual rent and the arrears of rent admitted by the tenant, an order under section 12 of the Act can be passed and in such circumstances, the impugned order is liable to be set aside and the relief prayed for in I.A.No.339 of 2015 granted.

8. We have considered the submissions made at the Bar by learned counsel appearing for the petitioners. We have also gone through the impugned order, the averments in the rent control petition, the counter statement thereto filed by the respondent and the averments in I.A.No.339 of 2015 and the counter affidavit thereto filed by the respondent. The case set out by the petitioners is that the respondent is their tenant and that rent at the rate of Rs.1,000/- per mensem is in arrear from June, 2012. The tenant disputed the title of the petitioners and also their case that he is their tenant. He thus denied and disputed the landlord-tenant relationship between the parties. The respondent also denied and disputed his liability to pay rent. In short, a reading of the counter statement discloses that the respondent had disowned his liability to pay rent. Overruling his contentions, the rent control court held that the denial of title is not bonafide. The rent control court also held that as the respondent has not paid any amount towards rent and his case is that he is not liable

to pay any amount as rent, the case of the landlords that rent at the rate of Rs.1,000/- is due after May 2012, has to be accepted. An order of eviction was accordingly passed under section 11(2)(b) of the Act. It is relying on the aforesaid finding entered by the rent control court that the petitioners have in I.A.No.339 of 2015 prayed for an order under section 12 of the Act calling upon the tenant to deposit rent at the rate of Rs.1,000/- per month for a period of 34 months commencing from June, 2012 and ending with March, 2015.

9. The petitioners have no case in the affidavit filed in support of I.A.No.339 of 2015 that the respondent has failed to deposit the admitted arrears of rent. The respondent opposed the application contending inter-alia that he has not admitted the jural relationship between the parties and is not liable to pay rent and that the rent control court has not found that any amount is admittedly due by way of rent. It was contended that in such circumstances, section 12 of the Act can have no application. A learned single Judge of this court has, in **Celine Sourunny v. Mary Paul Abrao** (1979 KLT 533) held that the deposit contemplated under section 12 of the Act is not the amount which is found to be due from the tenant after an adjudication of the dispute between the landlord and the tenant as to the actual amount due as rent. It was held that the deposit contemplated in

section 12(1) of the Act is the rent admitted by the tenant, that while acting under section 12 of the Act, the rent control court is not expected to enquire into the case of the landlord regarding arrears of rent, that the object of section 12 is not to provide another ground for eviction in addition to what is provided under section 11 of the Act and that the purpose is to ensure that the tenant does not avail of the pendency of the petition for eviction to evade regular payment of rent which, even according to him, is due to the landlord. The learned Judge also took note of the fact that in a given case, disputes may crop up regarding the calculation of the admitted arrears and in such cases, it is only proper that the rent control court specifies the amount to be deposited and fixes the time for payment of the amount as contemplated in the proviso to section 12(2) of the Act. It was held that in a case where there is dispute regarding the quantum of rent, the correct procedure will be to resolve the dispute before fixing the time for payment of the arrears under the proviso to section 12(2) of the Act.

10. The issue again arose for consideration in **Ali v. Vasudevan** (1989 (2) KLT 223). The landlord in that case had in the petition for eviction averred that the monthly rent of the building is Rs.630/- and that the tenant has kept the rent in arrears from 17.9.1984. The

tenant had in the counter statement filed by him admitted the rate of rent. His only contention was that the landlord refused to accept the rent when it was sent by money order. While the rent control petition was pending, the tenant deposited the sum of Rs.6,300/- being the rent in arrears for a period of 10 months commencing from 17.9.1984. Later he deposited a further sum of Rs.1,260/- on 21.3.1986 as rent for two months. As the rent for the subsequent period was not paid, the landlord filed an application under section 12 of the Act. In that application the tenant raised a contention that his liability is only to deposit the rent calculated as per section 8(2) of the Act, meaning thereby the fair rent for the premises. The rent control court repelled the said contention and directed him to deposit the rent which he had admitted. The appellate authority allowed the appeal filed by the tenant. The landlord's revision petition was dismissed by the revisional authority. Allowing the original petition filed by the landlord, K.T. Thomas, J. (as His Lordship then was) held that if the tenant makes a clear admission about the rate of rent or the quantum of arrears of rent, there is no difficulty. But when he does not expressly admit the same, then it is open to the court to find it out from the implied admissions. It was held that if a tenant, without expressly admitting either the rate of rent or the quantum of arrears of rent as stated in

the application avoids saying anything about it in his counter, the rent control court will be justified in treating such omission as amounting to an admission of the fact averred in the application, so far as the rent part is concerned. The learned Judge held that the court cannot overlook his pleadings and tell him that his legal obligation to deposit is only that much of rent arrears as found or fixed as per section 8(2) of the Act irrespective of his pleadings. The learned Judge also held that what is imposed by section 12(1) of the Act is the obligation to deposit arrears of rent admitted by the tenant to be due, whereas what is envisaged in section 11(2)(c) of the Act (if the tenant wants to get the benefit of that clause) is to deposit the actual arrears of rent and that in determining the quantum of actual arrears of rent, the court can legitimately exercise the adjudicatory process in order to determine the actual rent payable under law. The learned Judge further held that the benefit of section 11(2)(c) of the Act can be availed of by a tenant only by depositing the actual arrears of rent and for discharging the obligation of the tenant under section 12(1) of the Act, he need not necessarily deposit the actual arrears of rent.

11. In our considered opinion, there is nothing in **Ali v. Vasudevan** (supra) which militates against the view taken by the learned Judge in **Celine Sourunny v. Mary Paul Abrao** (supra).

Section 12 of the Act does not stipulate that a tenant who has filed an appeal challenging the order of eviction passed under section 11(2)(b) of the Act, has to deposit the actual arrears of rent found to be due by the rent control court. All that section 12 of the Act stipulates is that no tenant shall be entitled to prefer an appeal under section 18 of the Act against any order made by the rent control court on an application for eviction unless he has paid or pays to the landlord or deposits with the appellate authority all arrears of rent admitted by the tenant to be due in respect of the building upto the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the appellate authority. The stipulation can only be understood to mean, as held by this court in the aforesaid decisions, the arrears of rent admitted by the tenant to be due. The wordings in section 12(1) of the Act cannot be interpreted to hold that the arrears of rent found to be due by the rent control court when it passed the order of eviction under section 11(2)(b) of the Act, should be deposited. If that had been the intention of the Legislature, it would have been so stated. The tenant in the instant case has not admitted his liability to pay any amount by way of rent to the landlords. He had in fact disputed the landlord-tenant relationship between the parties

and contended that he is not liable to pay any amount by way of rent to the petitioners herein. It is the finding on that issue which is the subject matter of the appeal. If the respondent succeeds in the appeal, his liability to pay rent will disappear. In such circumstances, we are not persuaded to hold that in a petition under section 12(1) of the Act, the rent control appellate authority can conduct a roving enquiry to determine whether any rent is in arrears. It is only in a case where the tenant admits either in his counter statement or in his deposition or by his conduct that he is liable to pay rent at the contract rate or at some other rate which is discernible from the pleadings and the materials on record that the landlord can invoke the benefit of section 12(1) of the Act and pray for an order in terms thereof. In the instant case, it is relying on the order of eviction passed under section 12(1) of the Act that the landlord has prayed for such an order. A reading of the affidavit filed in support of I.A. No.339 of 2015 discloses that what the landlord has prayed for is an order directing the respondent to pay to him or deposit in the appellate authority, the arrears of rent found to be due by the rent control court and not the rent admitted by the tenant to be due. The application under section 12 of the Act was in our opinion, not maintainable and was rightly dismissed by the appellate authority.

For the reasons stated above, we hold that there is not merit in the instant revision petition. It fails and is accordingly dismissed. But having regard to the relationship between the parties and the points arising for consideration and the further fact that the rent control petition was filed on 12.4.2013, we deem it appropriate, even while dismissing the revision petition, to direct the Rent Control Appellate Authority, Mavelikkara to hear and dispose of R.C.A.No.3 of 2015 expeditiously and in any event before 31.3.2016. Needless to say, it will be open to the petitioners to move the appellate authority for appropriate modification of the interim order passed on I.A.No.24 of 2015 in R.C.A.No.3 of 2015.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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