

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

RCRev..No. 290 of 2015 ()

AGAINST THE ORDER IN RCA 19/2014 COURT OF THE RENT CONTROL
APPELLATE AUTHORITY, (DISTRICT JUDGE), KALPETTA DATED 22-09-2015

AGAINST THE ORDER IN RCP 13/2012 of THE COURT OF THE RENT CONTROLLER
(MUNSIFF-MAGISTRATE, SULTHAN BATHERI DATED 22-07-2014

REVISION PETITIONER(S) /APPELLANT/PETITIONER/RESPONDENT:

GEORGE NERAVATH KANDIYIL, AGED 73 YEARS
S/O.VARGHESE, PURAKKADY AMSOM AND DESOM
MEENANGADI P.O., SULTHANBATHERY, WAYANAD.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S) /RESPONDENT/RESPONDENT/PETITIONER:

ABDUL ASEES, AGED 64 YEARS
S/O.AHAMMAD KUTTY, THERACHIYIL HOUSE, MEENANGADI P.O.
PURAKKADY VILLAGE, SULTHAN BATHERY, WAYANAD-673591.

BY ADVS. SRI.N.MANOJ KUMAR (CAVEATOR)
SMT.JAYASREE MANOJ

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
12-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Pn

**K. SURENDRA MOHAN
&
SHAJI P.CHALY, JJ.**

R.C.R.No.290 of 2015

Dated this the 12th day of November, 2015.

ORDER

Surendra Mohan, J.

The tenant is in revision against an order of the Rent Control Appellate Authority of Kalpetta, Wayanad in R.C.A.No.19 of 2014. The Appellate Authority has, as per its order, confirmed the order passed by the Rent Control Court, Sulthan Bathery in I.A.No.341 of 2014 in R.C.P.No.13 of 2012.

2. The Rent Control Petition was filed by the respondent landlord seeking an order of eviction against the tenants alleging grounds 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 sought eviction on the ground that, he wanted to expand the hotel business that he was conducting in another shop room. The tenant is conducting a business in bricks and roof tiles. He contested the *bonafide* need that was put forward by the landlord by filing a counter statement. Thereafter, the case was included in the list for trial and stood posted to 13.01.2014. On the said date, since the revision

petitioner/tenant did not appear, he was set *ex-parte*. Thereafter, on 21.01.2014, an *ex-parte* order of eviction was passed against the tenant.

3. The case of the tenant is that, the *ex-parte* order had been passed for the reason that, his counsel had reported no instructions in the matter. According to him, as soon as he come to know of the *ex-parte* order, he had filed an application to set aside the same on 20.02.2014. However, the Rent Control Court dismissed the said petition finding that, the same was not filed within the time limit prescribed by the Rules. Though the tenant had challenged the said order in R.C.A.No.19 of 2014, the Rent Control Appellate Authority has confirmed the order of the Rent Control Court. The aggrieved tenant is the revision petitioner.

4. According to Adv.Sri.Jacob Sebastian who appears for the revision petitioner, this is a case in which the tenant had no knowledge of the order of eviction that was passed against him *ex-parte*. He had filed the petition to set aside the *ex-parte* order, immediately on getting knowledge of the order. Therefore, no petition for condonation of delay was necessary to accompany the petition to set aside the *ex-parte* order. According to the counsel, the delay has to be calculated from

the date of knowledge and not from the date of the order. It is further contended that, the Appellate Authority is possessed of all the powers of the Rent Control Court, which would include the power to condone the delay, if any, in filing the petition also. In view of the above, the Appellate Authority ought to have condoned the delay. We have also heard Adv.Smt.Jayasree Manoj who appears for the respondent.

5. We notice that, the Rent Control Petition is of the year 2012. The same was included in the list on 13.01.2014, on which date, admittedly the petitioner was not present in court, ready to proceed with the trial. Therefore, he was set *ex-parte* and an *ex-parte* order of eviction was passed on 21.01.2014. Admittedly, no petition to set aside the *ex-parte* order was filed by the revision petitioner, within the time limit prescribed. According to the revision petitioner, his inability to appear in court on 13.01.2014 was due to the fact that, he was sick. He had produced a Medical Certificate before the Rent Control Court, in support his case. We notice from the order of the Rent Control Court that, the court has taken note of the fact that, the Medical Certificate related to the period only from 14.01.2014 to 17.01.2014. Therefore, no Medical Certificate in respect of the crucial date 13.01.2014 was produced by the

petitioner to explain his non-appearance. It was also found that, the petition to set aside the *ex-parte* order was not filed within the prescribed time limit. Admittedly, the said petition was not accompanied by a petition to condone the delay. The above being the factual scenario, we do not find any infirmity in the order passed by the Rent Control Court. The court has considered the contentions of the petitioner and has dismissed the petitions filed by him.

6. The learned counsel for the revision petitioner has taken exception to the finding of the Rent Control Court that, the knowledge of the counsel for the revision petitioner is attributable to the client also. The said presumption does not arise, when the counsel reports no instructions, it is contended. In such a case, there is severance of the lawyer/client relationship, according to the counsel. However, the fact remains that, the revision petitioner had knowledge of the pendency of the Rent Control proceedings and that, he had filed his counter statement disputing the need put forward by the landlord. As a reasonable man, he is expected to pursue the proceedings with due care. Such conduct would include contacting his lawyer and instructing him, at all necessary stages of the litigation. In the present case, the revision

petitioner has not done so. It is for the said reason that, the lawyer had reported no instructions. Therefore, the contention that, the revision petitioner had no knowledge of the *ex-parte* order, cannot be accepted as sufficient to explain the delay in filing the petition.

7. With respect to the other contention that, the Authority is possessed of all the powers of the Rent Control Court, since no petition to condone the delay was filed before the Rent Control Court, that was not a defect which could be cured by filing a petition for condonation of delay before the appellate court. Therefore, we do not find any merit in the said contention also.

8. For the foregoing reasons, we do not find any grounds to admit this revision or to grant any of the reliefs sought for. The same is therefore dismissed.

9. As a last submission, the learned counsel for the petitioner seeks the grant of some time to surrender vacant possession of the building to the landlord. Having considered the contentions of the respective counsel, we are of the opinion that, it is necessary to grant six months time to the revision petitioner to surrender vacant possession of the premises to the landlord. However, such time can be granted

only subject to appropriate conditions.

10. In view of the above, this Rent Control Revision is ordered as under :

1. The Rent Control Revision is dismissed.
2. The revision petitioner/tenant is granted time up to 12.05.2016 to surrender vacant possession of the premises to the landlord on condition that, he swears to an affidavit before the Execution Court in R.C.P.No.13 of 2012 of the Rent Control Court, Sulthan Bathery, within a period of two weeks of the date of receipt of a copy of this order, unconditionally undertaking to surrender vacant possession of the premises to the landlord on or before the said date. It shall be a further condition that, for the grant of such time that the tenant pays the entire arrears of rent to the landlord, if any remaining unpaid, in respect of the tenanted premises and continues to pay the rent in respect thereof, regularly and without default until vacant possession is surrendered, in accordance with the above directions.

Sd/-
K. SURENDRA MOHAN, JUDGE

Sd/-
SHAJI P.CHALY, JUDGE