

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

RCCRev.No. 301 of 2015

AGAINST THE JUDGMENT IN RCA 25/2014 of I ADDL.RENT CONTROL APPELLATE
AUTHORITY,KOLLAM DATED 30-10-2015
(I A NO. 1902/2014 IN RCP NO. 20/12 OF THE PRINCIPAL RENT CONTROL
COURT, KOLLAM DATED 30-6-2014

REVISION PETITIONER/(APPELLANT IN RCA AND PETITIONER IN THE IA
1902/2014):

DASARATH JADHAV, AGED 61 YEARS,
KRISHNA JEWELLERY, M.C.NO.XVIII/2496, MAIN ROAD, KOLLAM
691 001.

BY ADVS.SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL

RESPONDENTS/(RESPONDENTS IN RCA AND IN THE IA 1902/2014):

1. G.NIRMALA
WIFE OF GOPALAKRISHNAN, CHIPPY, SREERANGAM LANE,
THIRUNAKKARA PO, KOTTAYAM 686 001.
2. PAAMPANADHAN, KANNAN PLASTICS & RUBBER STAMP, T.T.R.
BUILDINGS, M.C.2494, MAIN ROAD, KOLLAM 691 001.
3. S.SEKHAR
PROPRIETOR, SUNDARAM STUDIO, M.C.NO.2498, MUKKAM,
DIVISION, ANADAMUKKAM, MAIN ROAD, KOLLAM 691 001.
4. ISSAC MATHEW, V.INSTITUTE ANNEX,
M.C.17/506, CHINNAKKADA, MAIN ROAD, KOLLAM 691 001.

BY ADV. SRI.K.SUBASH CHANDRA BOSE (CAVEATOR)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 14-
12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.N. RAVINDRAN
&
BABU MATHEW P. JOSEPH, JJ.**
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R.C.R. No. 301 OF 2015
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Dated this the 14th day of December, 2015

O R D E R

P.N. Ravindran,J.

The revision petitioner is the tenant in R.C.(OP)No.20 of 2012 on the file of the Rent Control Court, Kollam, a petition filed by the respondents/landlords for an order of eviction under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as the Act for short. R.C.(OP) No.20 of 2012 which was filed on 11.4.2012, was tried along with R.C.(OP) Nos.34, 37 and 43 of 2012 filed in respect of the adjacent shop rooms, as per order passed on I.A.No.4195 of 2012 on 13.3.2013. The aforesaid rent control petitions stood posted on various dates namely 6.6.2012, 13.7.2012, 28.7.2012, 13.9.2012, 22.10.2012, 7.11.2012, 27.11.2012, 17.12.2012, 11.1.2013, 11.2.2013, 21.2.2013 and 13.3.2013. As stated earlier, on 13.3.2013, joint trial of all the four rent control petitions was ordered. The rent control petitions thereafter stood

posted on 6.4.2013, 22.5.2013, 22.6.2013, 1.8.2013, 2.9.2013 and 25.10.2013. On 25.10.2013, they were adjourned to 7.12.2013 for pretrial steps. On 7.12.2013, the rent control petitions were listed for trial on 6.2.2014.

2. On 6.2.2014 when the rent control petitions were taken up for trial, the petitioner herein (the tenant in R.C.(OP)No.20 of 2012) filed I.A. No. 661 of 2014 praying that the trial of the rent control petition may be adjourned to another date. In the affidavit filed in support of the said application which was sworn to by Sri. Alex Thomas, learned counsel appearing for the tenant, he had averred that as the tenant is under treatment for back pain and knee pain, he has not been able to come to court and to testify and that on account of the very same reason he has not been able to give instructions to his counsel. The rent control court dismissed the said application by order passed on 6.2.2014 on the ground that no reasons have been made out to remove the case from the list. Thereupon, the landlord was examined as PW1 and Exts.A1 to A22 produced by him were marked. He was also cross examined by the learned counsel appearing for the tenants in R.C.(OP) Nos.34, 37 and 43 of 2012 and thereafter,

the trial of the cases was adjourned to 12.2.2014. On that day, the landlord examined PWs.2 and 3 who were cross examined by the learned counsel appearing for the tenants in R.C.(OP) Nos.34, 37 and 43 of 2012. Thereupon, evidence on the side of the landlord was closed and the rent control petitions were adjourned to 12.2.2014 for the evidence of the tenants. On that day, the tenants in R.C.(OP) Nos.34 and 43 of 2012 were examined as RWs.1 and 2 and Exts.B1 to B19 were produced and marked. Thereupon, the rent control petitions were adjourned to 17.2.2014 for hearing. On that day there was no sitting and therefore, the rent control petitions were adjourned to 24.2.2014. Learned counsel appearing for the landlord as well as the learned counsel appearing for the tenants in the connected rent control petitions were heard on that day and for further hearing, the rent control petitions were adjourned to 5.3.2014. On that day also arguments were heard and for further arguments, the rent control petitions were adjourned to 15.3.2014. On that day after hearing the arguments on either side, the rent control court posted the cases for orders on 22.3.2014. On 22.3.2014 an order of eviction as prayed for was passed.

3. The petitioner herein thereupon filed I.A.No.1902 of 2014 on 21.5.2014 praying that the ex-parte order of eviction passed against him on 22.3.2014 may be set aside and he may be allowed to contest the case on the merits. In the affidavit filed in support of the aforesaid application he had averred as follows:

"3. In the above case, I have filed a detailed objection on 11.02.2013. Subsequently, as per order dated 13.03.2013, this Honourable Court allowed joint trial of the above case along with similar R.C(O.P) Nos.34/2012, 37/2012 & 43/2012. Thereafter, the above case along with the said other cases were listed for joint trial to 06.02.2014.

4. But, unfortunately, I became seriously ill and was laid up from 01.02.2014. Dr.K.Aravindakshan, who is my family doctor and who had treated me, had advised complete bed rest for me till 12.04.2014. Therefore, I could neither meet my lawyer at his office nor give necessary instructions to him for defending me in the above case nor could I be present in court on 06.02.2014 or other near dates for giving evidence. The Medical Certificate dated 18.05.2014 issued by Dr. K. Aravindakshan is produced herewith. Even though I.A.No.661/2014 was filed on my behalf seeking to remove the above case from the list for 06.02.2014, this Honourable Court went ahead with the trial of the above case along with other connected cases. Therefore, an ex-parte order in the above case was passed against me on

22.03.2014.

5. I was not present before this Hon'ble Court on 06.02.2014 only because of the said fact that I was physically indisposed and not in a position to attend court or give evidence. There were absolutely no wilful laches or negligence on my part in defending the said case. If the said case ex-parte order dated 22.03.2014 is not set aside and an order on merit is passed, I will be put to irreparable injury, loss and hardship."

He had further averred in paragraph 6 of the said affidavit that as the ex-parte order of eviction was passed on 22.3.2014, an application to set aside that order ought to have been filed on or before 22.4.2014, but the application is being filed on 21.5.2014 for the reason that the rent control court was closed for the summer vacation from 11.4.2014 to 20.5.2014.

4. The landlord opposed I.A.No.1902 of 2014 by filing a counter statement. In that petition, the tenant was examined as PW1 and the medical certificate produced by him was marked subject to proof as Ext.A1. The rent control court considered the rival contentions and dismissed I.A.No.1902 of 2014 by order passed on 30.6.2014 on the ground that sufficient grounds do not exist to set aside the ex-parte order of eviction. The tenant

carried the matter in appeal by filing R.C.A.No.25 of 2014 on the file of the Rent Control Appellate Authority, Kollam. The appellate authority concurred with the trial court and dismissed the appeal by judgment delivered on 30.10.2015. The tenant has, aggrieved thereby, filed this revision petition.

5. We heard Sri. S. Vinod Bhat, learned counsel appearing for the revision petitioner and Sri. Subhash Chandra Bose, learned counsel appearing for the first respondent/landlord. Notice to the other respondents, who are the tenants in the other connected cases, was dispensed with. Sri. S. Vinod Bhat, learned counsel appearing for the petitioner contended relying on Ext.A1 medical certificate produced along with I.A.No.1902 of 2014 and the averments in the affidavit filed in support thereof that the tenant in R.C.(OP) No.20 of 2012 was not in a position to be present physically in court on 6.2.2014 to tender evidence or to give instructions to his counsel and therefore, the rent control court and the appellate authority erred in holding that sufficient grounds have not been made out to set aside the ex-parte order of eviction passed on 22.3.2014. Relying on the decisions of the Apex Court in **G.P.Srivastava v. R.K.Raizada & Others**[AIR

2000 SC 1221] and **Parimal v. Veena alias Bharti [(2011) 3 SCC 545]**, learned counsel submitted that as the application to set aside the ex-parte order of eviction was filed within time, the discretion should have been exercised in favour of the petitioner, for the reason that his absence was not mala fide or intentional. Learned counsel submitted, relying on the aforesaid decisions that the expression “was prevented by any sufficient cause from appearing” must be liberally construed to enable the court to do complete justice between the parties particularly when no negligence or inaction is imputable to the erring party. Learned counsel contended that the rent control court and the appellate authority have dismissed the application to set aside the ex-parte order of eviction taking a hyper technical view that the petitioner has not produced evidence to prove that he was laid up as pleaded by him in the affidavit filed in support of the application. Learned counsel also submitted that though the rent control court has held out against the petitioner his failure to examine the doctor who issued Ext.A1 certificate, an attempt was made before the rent control appellate authority to reopen the case for the purpose of examining the tenant afresh as also the doctor who

issued Ext.A1 medical certificate, but the request was not at all considered by the rent control appellate authority and those applications were rejected.

6. Per contra, Sri. Subhash Chandra Bose, learned counsel appearing for the landlord submitted that the tenant had no case in the affidavit filed in support of I.A.No.661 of 2014 that he was not in a position to move about, that the only case set out in I.A.No.661 of 2014 is that the tenant is under treatment for back pain and knee pain, that the case put forward in I.A.No.1902 of 2014 was not put forward in I.A.No.661 of 2014 and, therefore, for that reason alone, I.A.1902 of 2014 was liable to be dismissed. Inviting our attention to rule 13(3) of the Kerala Buildings (Lease and Rent Control) Rules, 1979, learned counsel for the landlord submitted that an application to set aside an ex-parte order of eviction has to be filed within 15 days from the date of the order, that the words "15 days from the date of the order" occurring in Rule 13 of the aforesaid Rules has been interpreted by a learned single Judge of this court in **Appukuttan v. Rent Controller [1987(2)KLT 932]** to mean the date of receipt of knowledge of the order. It was submitted that the

tenant has no case in the affidavit filed in support of I.A.No.1902 of 2014 that he was not aware of the ex-parte order of eviction passed on 22.3.2014 or that he came to know about the order only later, that on the terms of rule 13(3) of the aforesaid rules, an application to set aside the ex-parte order of eviction should have been filed on or before 7.4.2014, but it was filed only on 21.5.2014 with a delay of 45 days, that an application to condone the delay in filing I.A.No.1902 of 2014 was not filed and therefore, on that short ground, I.A. No.1902 of 2014 was liable to be dismissed. Referring to the pleadings and the materials on record, learned counsel for the landlord submitted that the rent control petitions were listed for trial on 6.2.2014 by order passed on 7.12.2013, that the tenant who had by then filed a counter statement was therefore aware that the trial of the rent control petitions would commence on 6.12.2014 even on 7.12.2013 and that nothing prevented the tenant from giving timely instructions to his counsel so as to enable his counsel to cross examine the landlord and his witnesses on the commencement of the trial. As regards the tendering of defence evidence, learned counsel for the landlord submitted that the tenant could have even assuming

that he was not in a position to move out of his house filed an application to have him examined on commission, that he had not in I.A.No.661 of 2014 prayed for an adjournment of the trial of the rent control petition by two months, but only prayed that the case may be removed from the list, that he had no case in the affidavit filed in support of the said application that he has been advised bed rest for two months, that even in Ext.A1 medical certificate, the doctor has not advised that he should take bed rest, but had only advised that he should have full house rest and that the alleged ailment of the tenant did not at all prevent him from being examined on commission or from giving instructions to his counsel for the purpose of cross examining the landlord and her witnesses. Learned counsel also submitted that the court house is nearer to the tenant's residence than the residence of the doctor who was allegedly treating him and that the conduct of the tenant and the attendant circumstances disclose that his intention was only to protract the trial of the rent control petitions.

7. We have considered the submissions made at the Bar by learned counsel appearing on both sides. We have also gone

through the pleadings and the materials on record. The B diary in the rent control petitions do not disclose that an order setting the tenant ex-parte was passed. In **Haridas v. Madhavi Amma [1987 (2)KLT 701]** it was held that it is not a condition precedent that the decree or order should be made after declaring the defendant ex- parte under rule 6 of Order IX of the Code of Civil Procedure. In the instant case, it is evident from the materials before us that the tenant did not get an opportunity to participate in the trial of the rent control petition by cross examining the landlord and the landlord's witnesses or by tendering evidence. The short question that arises for our consideration is whether he was prevented by sufficient cause from participating in the trial of the rent control petition on account of reasons beyond his control. The B diary in the case discloses that the rent control petitions were listed for trial on 6.12.2014 pursuant to an order passed on 7.12.2013. Even going by Annexure A1 medical certificate and the case set out in the affidavit filed in support of I.A.No.1902 of 2014, the tenant became seriously ill, even assuming that it is true, only on 1.12.2014. The tenant had filed a counter statement in the rent

control petition on 13.3.2013. During the interval of the time that had elapsed between 7.12.2013 and 1.2.2014, he could have given instructions to his counsel regarding the trial of the rent control petition which was to commence on 6.2.2014. Even assuming that he was really laid up with effect from 1.2.2014, his physical presence in the rent control court on 6.2.2014 or on any other day thereafter was not necessary for the purpose of cross examining the landlord and the landlord's witnesses. If at all his presence was required, it was only for the purpose of tendering defence evidence. If as alleged by him he was incapable of moving out of his house, he could have got himself examined on commission by filing an appropriate application. The tenant has no case that he was totally bed ridden and incapacitated. The ailment referred to in Ext.A1 is 'Vatharaktham'. The tenant has no case either in the affidavit filed by him in support of the application or in the affidavit filed by him in lieu of chief examination that he was not in a position to move out of his house. The tenant did not for reasons best known to him take recourse to such an action. In such circumstances as the physical presence of the tenant was not required on 6.2.2014 and nothing

prevented his counsel from cross examining the landlord and the landlord's witnesses on that day and on the next posting date namely 7.2.2014 and nothing prevented the tenant from filing an application to get himself examined on commission, we are of the opinion that the tenant cannot be heard to contend that he was prevented by sufficient cause from participating in the trial of the rent control petition.

8. That apart, the tenant has no case that he was not aware of the order passed by the rent control court on 22.3.2014. In the affidavit filed in support of I.A.No.1902 of 2014, his contention is that he need file an application to set aside the ex-parte order of eviction only within a period of 30 days from the date of the order, in terms of Article 123 of the Limitation Act. He has no case that he became aware of the order passed by the rent control court on 22.3.2014 only later. Going by the stipulations contained in rule 13 of the Kerala Buildings (Lease and Rent Control) Rules, 1979 as interpreted by this court in **Appukuttan v. Rent Controller [1987(2)KLT 932]**, he ought to have filed an application within 15 days from the date of the order namely 22.3.2014. The said period of 15 days expired

on 7.4.2014. The application to set aside the ex-parte order of eviction was filed on 21.5.2014 with a delay of 45 days. The tenant did not however file an application to condone the delay of 45 days in filing I.A.No.1902 of 2014. His stand is that the time prescribed for filing an appeal is 30 days from 22.3.2014, that the said period expired on 22.4.2014 which fell during the summer vacation of 2014 and therefore, it is enough that an application is filed on the day the court reopens after the summer vacation. Learned counsel appearing for the tenant contended relying on Ext.A1 medical certificate that even assuming that the period of limitation expired on 7.4.2014 as the tenant was advised rest from 1.2.2014 to 12.4.2014 by which time the civil court closed for summer vacation for 2014, even assuming that there was a delay of 45 days in filing an application, the delay ought to have been condoned in view of the fact that the application to set aside the ex-parte order of eviction was filed on the day the civil courts reopened after the summer vacation.

9. It is evident from the materials before us that though Ext.A1 was marked subject to proof, such proof was not forthcoming as the doctor who issued Ext.A1 was not examined.

Ext.A1 does not state that the petitioner was advised bed rest or that he should not move out of his house. All that is stated is that he has been advised house rest and treatment. Apart from the *ipse dixit* of the tenant, no material has been placed before us to show that the tenant was incapacitated from moving out of his house or from giving timely instructions to his counsel. No material is produced before us to show that the tenant could not have through any of his near relations filed an application to get himself examined on commission. There is also no explanation as to why during the interval of time that had elapsed between 7.12.2013 and 6.2.2014, he had not given instructions to his counsel. In such circumstances, we are not persuaded to hold relying on Ext.A1 that the tenant has shown sufficient cause for his failure to participate in the proceedings before the rent control court. It is also relevant in this context to note that the tenants in R.C.(OP) Nos.34 and 37 of 2012 were evicted on 27.11.2015 in execution of the order of eviction. Though the tenant in R.C.(OP) No.43 of 2012 had filed an appeal against the order of eviction and the said appeal was dismissed and he has filed R.C.R No.317 of 2015 in this court, when the said revision

petition came up for admission hearing before this court on 3.12.2015, this court did not deem it appropriate to admit the revision petition. Orders are awaited on the said revision petition. In such circumstances, we are of the opinion that no grounds have been made out to interfere with the impugned order. The revision petition fails and it is accordingly dismissed.

After the revision petition was dismissed, learned counsel appearing for the petitioner/tenant prayed for six months' time from today to surrender vacant possession of the building. Learned counsel for the landlord/respondent opposed the said request. However, having regard to the fact that the petitioner has been running a business in the petition schedule premises, we grant him six months' time from today to surrender vacant possession of the petition schedule shop room to the landlord. No costs.

**Sd/-
P.N. RAVINDRAN
JUDGE**

**Sd/-
BABU MATHEW P. JOSEPH
JUDGE**

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True copy

P.S.(Hr.Gr.)To Judge

