

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

RCRev..No. 334 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN RCA 2/2013 of RENT CONTROL APPELLATE
AUTHORITY, TIRUR DATED 28-10-2015

AGAINST THE ORDER/JUDGMENT IN RCP 8/2010 of RENT CONTROL
COURT, PARAPPANANGADI DATED 15-12-2012
REVISION PETITIONER(S)/RESPONDENTS 1 TO 10/PETITIONERS:

1. MANHAMMATIL SAITHALAVI HAJI
S/O.ALASSN HAJI, MANHAMMATIL HOUSE
TRIKKULAM AMSOM DESOM, TIRURANGADI TALUK

2. MANHAMMATIL ABDUL AZEEZ
S/O.ALASSAN HAJI, -DO-

3. AHISHAKUTTY
W/O.(L) MUHAMMED .DO.

4. SAKEENA
D/O.(L)MUHAMMED -DO-

5. FAISAL
S/O.(L)MUHAMMED -DO-

6. SHOULATH
D/O.(L)MUHAMMED -DO-

7. FASEELA
D/O.(L)MUHAMMED -DO-

8. ABDUL RAHOOF
S/O.(L)MUHAMMED -DO-

9. ABOOBACKER
S/O.NARIMUKKIL MUHAMMED (L) -DO-

10. UMMER ALI
S/O.NARIMUKKIL MUHAMMED (L) -DO-

BY ADV. SMT.N.DEEPA

RESPONDENT(S)/APPELLANT & OTHER RESPONDENTS/RESPONDENTS IN THE RCP:

1. MANARIKKAL ABDUAHIMAN ,
S/O.ABOOBACKER HAJI, TRIKKULAM AMSOM DESOM
TIRURANGADII TALUK, PIN 676306

2. ABBAS
S/O.THOOBIL MOIDUTTY, THOOMBIL HOUSE, CHULLIPPARA
TIRURANGADI AMSOM, VENNIYUR DESOM.

3. SARA UMMA
W/O.CHEKKU -DO-

4. ABDUL GAFOOR
S/O.CHEKKU -DO-

5. KHALID
S/O.CHEKKU -DO-

6. HAMEED
S/O.CHEKKU -DO-

7. KHADEEJA
D/O.CHEKKU -DO-

8. SALMA
D/O.CHEKKU -DO-

9. SUMMAYYA
D/O.CHEKKU -DO-

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
14-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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

R.C.R.No.334 of 2015

Dated this the 14th December, 2015

O R D E R

P.N. Ravindran, J.

The petitioners are the landlords in R.C.P.No.8 of 2010 on the file of the Rent Control Court, Parappanangadi, a petition instituted by them for an order evicting the tenants under sections 11(2)(b), 11(3), 11(4)(i), 11(4)(iii) and 11(4)(v) of the Kerala Buildings (Lease & Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. In the rent control petition as originally instituted there were only three respondents. While the rent control petition was pending, the second respondent therein passed away and his wife and children were impleaded as supplemental respondents 4 to 10.

2. Though notice was served on all the respondents, only respondents 1, 2 and 3 appeared through counsel. Respondents 4 to 10 did not appear, with the result they were set ex-parte. When the case was called on for trial on 8.8.2012, learned counsel appearing for respondents 1 and 3 reported no instructions. Thereupon, the ex-parte evidence of the landlords was recorded and an order of eviction was passed on 8.8.2012. The third respondent before the rent control court thereupon filed I.A.No.1772 of 2012 under Order IX Rule 13 C.P.C. praying that the ex-parte order of eviction passed on 8.8.2012

may be set aside. Along with that application, he had also filed I.A.No.1771 of 2012 to condone the delay of 18 days in filing the former application. He had in the affidavits filed in support of both the applications averred that he was laid up from 2.7.2012 to 3.9.2012 and that was the reason why he could not be present on 8.8.2012. He had also produced along with the affidavit filed in support of I.A.No.1771 of 2012 a medical certificate to prove his averment that he was laid up. The rent control court accepted the averments in I.A.No.1771 of 2012 and condoned the delay of 18 days in filing I.A.No.1772 of 2012. However, the rent control court dismissed I.A.No.1772 of 2012 by order passed on 15.12.2012 on the ground that there is no reliable evidence to prove the reason for non appearance on 8.8.2012. Aggrieved thereby, the third respondent in R.C.P.No.8 of 2010 filed R.C.A.No.2 of 2013 on the file of the Rent Control Appellate Authority, Parappanangadi. By judgment delivered on 28.10.2015 the appellate authority set aside the impugned order as also the ex-parte order of eviction passed by the rent control court and remanded R.C.P.No.8 of 2010 for fresh trial and disposal. The landlords have, aggrieved thereby, filed this revision petition under section 20 of the Act.

3. Heard Smt. N. Deepa, learned counsel appearing for the

petitioners. Perused the impugned judgment. After hearing learned counsel appearing for the petitioners, we are not satisfied that the landlords have made out any ground warranting interference with the impugned judgment. The impugned judgment discloses that consequent on the learned counsel appearing for respondents 1 and 3 before the rent control court reporting no instructions, the ex parte evidence of the landlords was taken and an order of eviction was passed. In the light of the decisions of the Apex Court, the rent control court ought to have, in the event of the learned counsel reporting no instructions, issued notice to respondents 1 and 3 so as to enable them to engage another counsel. Though the third respondent before the rent control court filed an application to set aside the ex-parte order of eviction accompanied by an application to condone the delay of 18 days in filing the former application, the rent control court declined to set aside the ex-parte order of eviction even after condoning the delay of 18 days in filing the said application. The reasons stated in both the applications was that the third respondent was advised bed rest during the period from 2.7.2012 to 3.9.2012. That explanation was accepted for the purpose of condoning the delay, but for the purpose of setting aside the ex-parte order of eviction it was not accepted. It was in the background of these facts that the

appellate authority exercised its discretion in favour of the third respondent and set aside the ex-parte order of eviction. After going through the impugned judgment and after hearing learned counsel appearing for the petitioners, we are not persuaded to hold that the appellate authority has improperly exercised the jurisdiction vested in it.

We therefore find no good grounds to entertain the challenge to the impugned judgment. The revision petition fails and it is accordingly dismissed. However, having regard to the fact that the rent control petition was instituted in the year 2010, we deem it appropriate to direct the Rent Control Court, Parappanangadi to try and dispose of R.C.P.No.8 of 2010 after notice to the respondents/tenants expeditiously and in any event, before the closure of the civil courts for the summer vacation of 2016.

Registry to communicate a copy of this order.

(P.N. Ravindran, Judge.)

(Babu Mathew P. Joseph, Judge.)

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