

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

RP.No. 462 of 2014 (Y) IN WP(C).6993/2014

AGAINST THE JUDGMENT IN WP(C) 6993/2014 DATED 22-05-2014

REVIEW PETITIONER(S)/ADDITIONAL 3RD RESPONDENT:

SUJATHAN
PROPRIETOR, CROWN MARTIME COMPANY, 143
MUNICIPAL PARK BUILDING, MAVELIKKARA-680101.

BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN

RESPONDENT(S)/PETITIONER AND RESPONDENTS 1 & 2:

1. THE KERALA STATE EX-SERVICE LEAGUE
REG.NO.K-77/1992, MAVELIKKARA TOWN UNIT, MAVELIKKARA
ALAPPUZHA DISTRICT-690101
REPRESENTED BY ITS PRESIDENT, S.MURALEEDHARA KAIMAL.
2. THE MAVELIKKARA MUNICIPALITY
REPRESENTED BY ITS SECRETARY, MUNICIPAL BUILDINGS
MAVELIKKARA-690101.
3. THE MAVELIKKARA MUNICIPAL COUNCIL
REPRESENTED BY ITS CHAIRPERSON, MUNICIPAL BUILDINGS
MAVELIKKARA-690101.

R1 BY ADV. SRI.R.RAJASEKHARAN PILLAI
R1 BY ADV. SMT.SABINA JAYAN
R2,R3 BY SRI.RASHEED.C, SC, MAVELIKKARA MUNICIPALITY

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 09-11-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.P.462/2014

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A1:A TRUE COPY OF RENT-DEED DATED 7.11.2005.

ANNEXURE A2:A TRUE COPY OF REPRESENTATION DATED 06.01.2014.

ANNEXURE A3:A TRUE COPY OF PLAINT IN O.S.18/14 BEFORE THE COURT OF
MUNSIFF, MAVELIKKARA.

ANNEXURE A4:A TRUE COPY OF ORDER DATED 11.04.2014 IN I.A.NO.124/14 IN
O.S.18/14 ON THE FILE OF THE COURT OF MUNSIFF,
MAVELIKKARA.

RESPONDENTS' EXHIBITS:NIL

//TRUE COPY//

P.A.TO JUDGE

C.T. RAVIKUMAR, J.

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R.P. No.462 OF 2014

IN

W.P.(C).No.6993 OF 2014

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Dated this the 9th day of November, 2015

ORDER

This review petition is filed seeking to review judgment dated 22.05.2014 in W.P.(C)No.6993 of 2014. The said writ petition was moved by the first respondent in the review petition to redress the grievance regarding non-implementation of Ext.P8 resolution, referred as such in the writ petition, passed by the second respondent. As per the said resolution, a decision was taken to allot the rooms in question to the first respondent/writ petitioner to conduct ECHS polyclinic unit thereon. It is obvious from the judgment sought to be reviewed that this Court disposed of the writ petition taking note of the submissions made by the learned standing counsel appearing for the Municipality to the effect that the rooms in question were leased out to the third

respondent/review petitioner and that, the review petitioner has committed chronic default in payment of the rent. That apart, it was submitted that steps were already taken to evict the third respondent from the rooms in question. It was taking note of all such submissions that this Court disposed of the captioned writ petition holding that it would be open to the respondents 1 and 2 in the writ petition to proceed against the third respondent/review petitioner expeditiously and in accordance with law. It was further directed thereunder that before any such action, notice shall be issued to the third respondent. Further, respondents 1 and 2 herein were directed to consider the claim of the writ petitioner/first respondent herein to put in possession of the said shop rooms subject to the outcome of the action which was directed to be initiated against the third respondent.

2.I have heard the learned counsel for the review petitioner and the learned standing counsel appearing for respondents 2 and 3 and the learned counsel for the first respondent. The learned counsel for

the review petitioner submitted that originally, the review petitioner was made a party to the writ petition pursuant to an order passed by this Court on 1.4.2014 in I.A.No.4229 of 2014 filed by the writ petitioner. It is further submitted that pursuant to the receipt of notice in the writ petition, the third respondent entered appearance. However, the appearance was not duly taken note of when the matter was taken up for hearing. In other words, it is submitted by the learned counsel that though he filed vakalath on behalf of the third respondent, the name of the counsel was not incorporated in the cause list on the appointed date. It was in the said circumstances that the learned counsel could not represent the third respondent and argue the matter. In the judgment dated 22.5.2014, it was observed thus:-

“Despite the issuance of notice the third respondent has not chosen to enter appearance to resist the case.”

3.It is further submitted that, by the time the matter was taken for final hearing, virtually, the third respondent had entered

appearance and the non-representation of the third respondent had occurred only in view of the aforesaid circumstances. Though the learned standing counsel submitted that the third respondent/review petitioner had committed chronic default in payment of rent in respect of the rooms in question and owing to such default from his part steps for evicting him from the rooms were taken, it is submitted by the learned counsel for the third respondent/ review petitioner that such a statement was not true to facts and in fact, pursuant to the receipt of notice of eviction from the rooms in question, the review petitioner instituted O.S.No.98 of 2014 before the Court of Munsiff, Mavelikkara. I.A.No.124 of 2014 was moved in the said suit under Order 39 Rule CPC for temporary injunction against the second respondent herein. The learned counsel drew my attention to paragraph 19 of the order dated 11.4.2014 passed by the civil court in the said I.A, produced as Annexure-A4 in the review petition. It is stated therein thus:-

“If that be so, the court is not in a position to come to a conclusion that the plaintiff defaulted

in payment of rent. Anyhow, the plaintiff as well as defendants ought to be allowed an opportunity to contest the matter on merits for arriving at a conclusion as to whether any rent arrears is due from the plaintiff to the defendant.”

A perusal of the said order would reveal that after taking into consideration Exts.B11 and B12 referred in Annexure-A4, the Civil Court observed thus:-

For the time being, Ext.B11 and Ext.B12 can be relied upon to primarily conclude that the plaintiff hasn't committed any default in paying the rent arrears upto the date made mentioned therein and the same is sufficient to dispose of the petition on hand.”

Based on such consideration, the said I.A was allowed whereby the Municipality or anybody under the Municipality were restrained by an order of temporary injunction from forcefully evicting the plaintiff from the plaint scheduled property till the disposal of the suit otherwise than in due course of law, subject to the conditions specified thereunder. Thus, it is obvious that pursuant to the receipt of

notice of eviction, the third respondent/review petitioner instituted O.S.98 of 2014 and moved I.A.No.124 of 2014 seeking injunction against the second respondent. As per Annexure-A4 order, the Municipality was injuncted from evicting the review petitioner. It is also evident from the said order that taking note of the recital in Exts.B11 and B12, the Civil Court arrived at the conclusion that prima facie it could not be said that the revision petitioner had defaulted in payment of rent. Thus, it is evident that this crucial aspect was not actually brought to the notice of this Court and that apart, what was submitted at the time of disposal of the said writ petition was contrary to the actual state of affairs. In such circumstances, I have no hesitation to hold that the judgment sought to be reviewed is liable to be recalled. I do so. W.P.(C).No.6993 of 2014 is restored into file for fresh disposal, in accordance with law.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010