

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 1ST DAY OF APRIL 2022 / 11TH CHAITHRA, 1944

O.P.(RC)NO.72 OF 2022

AGAINST THE ORDER DATED 05.01.2022 IN I.A.NO.2 OF 2021

IN R.C.P.NO.97 OF 2020 ON THE FILE OF THE RENT CONTROL

COURT (MUNSIFF), THRISSUR

PETITIONER:

K.V.SHIRAZ,AGED 50 YEARS,
SYLCON,PKV BUILDING, 1ST FLOOR, NEAR
GOVT.HOSPITAL, MARKET ROAD, ERNAKULAM P.O.,
PIN - 682 011

BY ADVS.
REJI GEORGE
NASEER MOIDU
BINOY DAVIS
SAISANKAR.S

RESPONDENT:

BINNY EMMATTY, AGED 60 YEARS,
S/O EMMATTY JOSEPH, H.NO.8/228,
THRISSUR CORPORATION, ST.THOMAS COLLEGE ROAD,
EAST FORT DESOM, THRISSUR EAST P.O.,
THRISSUR, PIN - 680 005

BY ADVS.
P.G.JAYASHANKAR
P.K.RESHMA (KALARICKAL) (K/875/2014)
REVATHY P. MANOHARAN(K/000669/2014)
S.RAJEEV (K/001711/2019) (K/001711/2019)
SAJANA V.H(K/1174/2021)

THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION
ON 01.04.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

“CR”

Anil K. Narendran, J.

The petitioner is the respondent-tenant in R.C.P.No.97 of 2020 on the file of the Rent Control Court (Munsiff), Thrissur, a petition filed by the respondent herein-landlord under Section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965, seeking eviction of the tenant from the petition schedule building on the ground of arrears of rent. In that Rent Control Petition, the landlord filed I.A.No.2 of 2021, an application under Section 12 of the Act, seeking an order directing the tenant to remit admitted arrears of rent and continue to pay rent for the subsequent period, during the pendency of that eviction proceedings. Despite receipt of notice, the tenant did not appear before the Rent Control Court. On 12.11.2021, the tenant was set exparte. Thereafter, on 20.11.2021, the Rent Control Court allowed I.A.No.2 of 2021, by directing the tenant to pay the admitted arrears of rent within a period of four weeks from that

order, which is one passed under Section 12(1) of the Act. On 14.12.2021, the Rent Control Court recalled that order on noticing that the order dated 20.11.2021 in I.A.No.2 of 2021 was one passed in the absence of the respondent.

2. As borne out from the pleadings in this original petition, on coming to know about the order dated 20.11.2021 of the Rent Control Court in I.A.No.2 of 2021, the tenant filed a copy application for obtaining certified copy of that order. That application was not considered, since none has filed vakkalath for the respondent-tenant in R.C.P.No.97 of 2020. Therefore, a counsel filed vakkalath for the respondent-tenant. On 14.12.2021 the Rent Control Court recalled the order dated 20.11.2021 in I.A.No.2 of 2021, since the same happened to be passed in the absence of the tenant and listed the matter to 21.12.2021, for counter. On 21.12.2021 and thereafter on 03.01.2021 there was no representation for the tenant. On 05.01.2022, the Rent Control Court passed Ext.P4 order, whereby I.A.No.2 of

2021 stands allowed under Section 12(1) of the Act, by directing the tenant to deposit admitted arrears of rent for the period from July, 2019, with 6% interest per annum from the date of default till the date of petition, within a period of four weeks from the date of that order. Though the name of the counsel who filed vakkalath for the tenant is shown in the headnote of Ext.P4 order, a reading of the said order would make it explicitly clear that, on 05.01.2022 the tenant was not represented by counsel and the Rent Control Court passed that order after hearing the counsel for the landlord.

3. Challenging the order dated 05.01.2022 of the Rent Control Court in I.A.No.2 of 2021 in R.C.P.No.97 of 2020, the petitioner-tenant is before this Court in this original petition, invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

4. On 23.03.2022, when this original petition came up for admission, this Court issued notice on

admission to the respondent. The petitioner was also permitted to take out notice to the respondent through his counsel before the Rent Control Court, Thrissur, where R.C.P.No.97 of 2020 is pending consideration.

5. The respondent has filed a counter affidavit opposing the reliefs sought for in this original petition.

6. Heard the learned counsel for the petitioner-tenant and also the learned counsel for the respondent-landlord.

7. The issue that arises for consideration in this original petition is as to whether any interference is warranted on Ext.P4 order dated 05.01.2022 of the Rent Control Court in I.A.No.2 of 2021 in R.C.P. No.97 of 2020, which is one issued by the Rent Control Court invoking the provisions under Section 12(1) of the Act.

8. Section 12 of the Act deals with payment or deposit of rent during the pendency of proceedings for eviction. As per Section 12(1), no tenant against whom an application for eviction has been made by a landlord under Section 11, shall be entitled to contest the

application before the Rent Control Court under that Section, or to prefer an appeal under Section 18 against any order made by the Rent Control Court on the application, unless he has paid or pays to the landlord, or deposits with the Rent Control Court or the Appellate Authority, as the case may be, all arrears of rent admitted by the tenant to be due in respect of the building up to 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 Rent Control Court or the Appellate Authority, as the case may be. As per Section 12(2), the deposit under sub-section (1) shall be made within such time as the court may fix and in such manner as may be prescribed and shall be accompanied by the fee prescribed for the service of notice referred to in sub-section (4). As per the proviso to Section 12(2), the time fixed by the court for the deposit of the arrears of rent shall not be less than four weeks from the date of the order and the time

fixed for the deposit of rent which subsequently accrues due shall not be less than two weeks from the date on which the rent becomes due. As per Section 12(3) of the Act, if any tenant fails to pay or to deposit the rent as aforesaid, the Rent Control Court or the Appellate Authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building. As per Section 12(4), when any deposit is made under subsection (1), the Rent Control Court or the Appellate Authority, as the case may be, shall cause notice of the deposit to be served on the landlord in the prescribed manner, and the amount deposited may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him to the Rent Control Court or the Appellate Authority in that behalf.

9. The liability of a tenant under Section 12(1) of the Act, against whom an application for eviction has been made by a landlord under Section 11, or who

prefer an appeal under Section 18 of the Act, against any order made by the Rent Control Court on an application made by a landlord under Section 11, is limited to all arrears of rent admitted by the tenant to be due in respect of the building, up to the date of payment or deposit, and he shall continue to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the Appellate Authority, as the case may be.

10. The object of the provisions of Section 12(1) of the Act is to deny the defaulting tenant the right to contest the application for eviction before the Rent Control Court, or to prefer an appeal under Section 18 of the Act against any order made by the Rent Control Court on an application made by a landlord under Section 11, unless he pays to the landlord, or deposits with the Rent Control Court or the Appellate Authority, as the case may be, all arrears of rent admitted by him to be due in respect of the building, up to 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 Rent Control Court or the Appellate Authority, as the case may be.

11. Section 12(2) of the Act enjoins a tenant to deposit the admitted rent under sub-section (1), within such time as the court may fix and in such manner as may be prescribed. The time fixed by the court for the deposit of the arrears of rent and the time fixed for the deposit of rent which subsequently accrues due shall not be less than that specified in the proviso to Section 12(2). As per the statutory mandate of Section 12(1), on an application filed by the landlord under Section 12, the Rent Control Court or the Appellate Authority, as the case may be, has to order payment or deposit of arrears of rent admitted by the tenant to be due in respect of the petition schedule building, up to the date of payment or deposit and the tenant shall also be directed to continue to pay or deposit any rent which

may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the Appellate Authority, regardless of the relief sought for in that application.

12. As already noticed hereinbefore, the object of the provisions of Section 12(1) of the Act is to deny the defaulting tenant the right to contest the application for eviction before the Rent Control Court, unless he pays to the landlord, or deposits with the Rent Control Court, all arrears of rent admitted by him to be due in respect of the building, up to 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 Rent Control Court.

13. In the instant case, the petitioner-tenant has not chosen to contest the Rent Control Petition by filing counter. The tenant has not even filed an application to set aside the order dated 11.02.2021 in R.C.P.No.97 of 2020, whereby he was set exparte. On 04.12.2021, the

Rent Control Court recalled the order dated 12.11.2021 in I.A.No.2 of 2021, since the same happened to be passed in the absence of the tenant. However, the order dated 12.11.2021 in R.C.P.No.97 of 2020, whereby the tenant was set exparte, is not yet recalled. When the tenant has not chosen to contest R.C.P.No.97 of 2020 and continues to be exparte, the Rent Control Court committed a manifest error in passing an order in I.A.No.2 of 2021, invoking the provisions under Section 12(1) of the Act.

14. In **K.V.S. Ram v. Bangalore Metropolitan Transport Corporation [(2015) 12 SCC 39]** the Apex Court held that, in exercise of the power of superintendence under Article 227 of the Constitution of India, the High Court can interfere with the order of the court or tribunal only when there has been a patent perversity in the orders of the tribunal and courts subordinate to it or where there has been gross and manifest failure of justice or the basic principles of natural justice have been flouted.

15. In **Sobhana Nair K.N. v. Shaji S.G. Nair [2016 (1) KHC 1]** a Division Bench of this Court held that, the law is well settled by a catena of decisions of the Apex Court that in proceedings under Article 227 of the Constitution of India, this Court cannot sit in appeal over the findings recorded by the lower court or tribunal and the jurisdiction of this Court is only supervisory in nature and not that of an appellate court. Therefore, no interference under Article 227 of the Constitution is called for, unless this Court finds that the lower court or tribunal has committed manifest error, or the reasoning is palpably perverse or patently unreasonable, or the decision of the lower court or tribunal is in direct conflict with settled principles of law.

16. Viewed in the light of the law laid down in the decision referred to supra, we find no reason to sustain Ext.P4 order dated 05.01.2022 in I.A.No.2 of 2021 in R.C.P.No.97 of 2020, since the Rent Control Court committed a manifest error while passing such an order, invoking the provisions under Section 12(1) of the Act.

In the result, this original petition is allowed by setting aside Ext.P4 order dated 05.01.2022 in I.A.No.2 of 2021 in R.C.P.No.97 of 2020.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

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APPENDIX OF O.P. (RC)NO.72 OF 2022

PETITIONER'S EXHIBITS:

- Exhibit P1 A TRUE COPY OF R.C.P. NO. 97/2020
DATED 05.11.2020 FILED BY THE
RESPONDENT BEFORE THE RENT CONTROL
COURT, THRISSUR.
- Exhibit P2 A TRUE COPY OF I.A. NO. 2/2021 IN
R.C.P. NO. 97/2020 DATED 21.10.2021
FILED BY THE RESPONDENT BEFORE THE
RENT CONTROL COURT, THRISSUR.
- Exhibit P3 A STATEMENT PREPARED BY THE
PETITIONER SHOWING THE POSTING DATES
AND THE PROCEEDINGS ON EACH POSTING
DATE OF R.C.P. NO. 97/2020 ON THE
FILE OF THE RENT CONTROL COURT,
THRISSUR AS PUBLISHED IN THE OFFICIAL
WEBSITE OF THE DISTRICT COURTS (E-
COURTS) .
- Exhibit P4 TRUE COPY OF ORDER DATED 05.01.2022
PASSED BY THE RENT CONTROL COURT,
THRISSUR IN I.A.NO.2/2021 IN
R.C.P.NO.97/2020 .

RESPONDENT'S EXHIBITS: NIL.