



2023/KER/58939

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 4<sup>TH</sup> DAY OF OCTOBER 2023 / 12TH ASWINA, 1945

RCREV. NO. 137 OF 2023

AGAINST THE ORDER DATED 31.01.2022 IN RCP NO.4 OF 2019 OF  
PRINCIPAL MUNSIF COURT, NEDUMANGAD CONCURRING WITH THE  
COMMON JUDGMENT DATED 13.04.2023 IN RCA NO.5 OF 2022 OF  
APPELLATE AUTHORITY (RENT CONTROL), THIRUVANANTHAPURAM

REVISION PETITIONER/APPELLANT/RESPONDENT:

MALLIKA, AGED 60 YEARS,

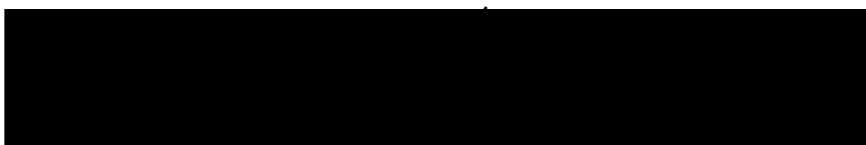


BY ADVS.G.S.REGHUNATH

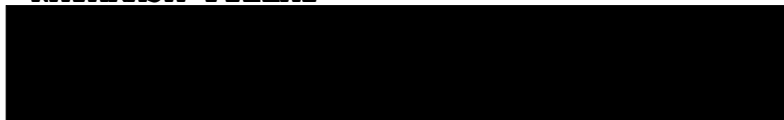
P.C. Haridas

RESPONDENTS/RESPONDENTS/PETITIONERS:

1 SREE MUTHARAMMAN TEMPLE TRUST,



2 NATARAJA PILLAI



BY ADVS.

MANU VYASAN PETER

P.B.KRISHNAN(K/1193/1994)

SABU GEORGE(K/000711/1998)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD  
ON 18.09.2023, ALONG WITH RCRev..153/2023, THE COURT ON  
04.10.2023, DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 4<sup>TH</sup> DAY OF OCTOBER 2023 / 12TH ASWINA, 1945

RCREV. NO. 153 OF 2023

AGAINST THE ORDER DATED 25.03.2019 IN RCP NO.3 OF 2018 OF  
PRINCIPAL MUNSIFF'S COURT, NEDUMANGAD CONCURRING WITH THE  
COMMON JUDGMENT DATED 03.02.2023 IN RCA NO.14 OF 2022 OF  
THE ADDITIONAL RENT CONTROL APPELLATE AUTHORITY,  
THIRUVANANTHAPURAM

REVISION PETITIONER/APPELLANT/RESPONDENTS:

MALLIKA, AGED 60 YEARS

[REDACTED]

BY ADVS.P.C.HARIDAS  
P.S.GOVIND

RESPONDENTS/RESPONDENTS/PETITIONERS:

1 SREE MUTHARAMMAN TEMPLE TRUST, NEDUMANGAD

[REDACTED]

2 NATARAJA PILLAI, AGED 73 YEARS,

[REDACTED]

THIS RENT CONTROL REVISION HAVING COME UP FOR  
ADMISSION ON 18.09.2023, ALONG WITH RCRev..137/2023, THE  
COURT ON 04.10.2023 DELIVERED THE FOLLOWING:

**C.R.****P.B.SURESH KUMAR & P.G.AJITHKUMAR, JJ.**-----  
**R.C.Rev. Nos.137 & 153 of 2023**  
-----**Dated this the 4<sup>th</sup> day of October, 2023****ORDER****P.B.Suresh Kumar, J.**

The petitioner in these revision petitions is one and the same. She was arrayed as the tenant in R.C.P. No.3 of 2018 on the files of the Rent Control Court, Nedumangad instituted by the respondents under Sections 11(2)(b), 11(3) and 11(7) of the Kerala Buildings (Lease and Rent Control) Act (the Act). The subject matter of the said proceedings is a shop room attached to a temple. The petitioner denied the title of the landlord in the said proceedings and contended that the eviction petition is, therefore, not maintainable. The sustainability of the said plea of the petitioner was adjudicated as a preliminary issue and as per order dated 25.03.2019, the Rent Control Court held that the plea is not *bona fide* and that the eviction petition is maintainable. The petitioner had not challenged the said order. The eviction petition was later tried and dismissed on merits.

2. The landlord instituted another proceedings



thereafter for eviction of the petitioner as R.C.P. No.4 of 2019 under Sections 11(2)(b), 11(3) and 11(7) of the Act. The petitioner denied the title of the landlord in this proceedings as well, and contended that the eviction petition is not maintainable. The Rent Control Court rejected the said plea as barred by *res judicata* as per order dated 31.01.2022. The petitioner though challenged the said order in R.C.A. No.5 of 2022, the same was dismissed by the Appellate Authority. R.C.R.No.137 of 2023 is preferred by the petitioner against the said decision of the Appellate Authority.

3. After instituting R.C.A. No.5 of 2022, the petitioner challenged the order dated 25.03.2019 in R.C.P No.3 of 2018 also, in R.C.A. No.14 of 2022. There was a delay of 1160 days in filing the said appeal and the petitioner has therefore preferred an application to condone the said delay as well. The Appellate Authority refused to condone the delay in instituting R.C.A.No.14 of 2022. Consequently, R.C.A. No.14 of 2022 was dismissed. It is aggrieved by the said decision of the Appellate Authority that R.C.R. No.153 of 2023 is preferred.

4. Let us first deal with R.C.R. No.153 of 2023. Although the order dated 25.03.2019 in R.C.P. No.3 of 2018 was an appealable order, the petitioner did not challenge the same in appeal on time. Instead, she chose to face the trial of



the eviction petition. Of course, the trial ended in the dismissal of the eviction petition. The only reason stated by the petitioner in the affidavit filed in support of the application to condone the delay in filing the appeal is that the counsel who preferred R.C.A.No.5 of 2022 on her behalf advised her to prefer an appeal against the order dated 25.03.2019 in R.C.P. No.3 of 2018 also, and it is due to the said reason that the delay occasioned. Subsequent legal advice cannot be accepted as a cause, much less any sufficient cause, to condone the delay in instituting a proceedings in terms of Section 5 of the Limitation Act, for if the subsequent legal advice is accepted as the cause to condone the delay in instituting a proceedings, the same would defeat the very object of the Limitation Act, viz, that every remedy should remain alive only till the expiry of the period fixed by the legislature which is a principle founded on public policy. In the said view of the matter, according to us, there is no illegality, irregularity or impropriety in the decision of the Appellate Authority in dismissing the application to condone the delay in filing R.C.A.No.14 of 2022, which culminated in the dismissal of the said appeal.

5. Coming to R.C.R. No.137 of 2023, the learned counsel for the revision petitioner contended that the principles of *res judicata* cannot have any application to the



proceedings under the Act and as such, the order dated 25.03.2019 in R.C.P.No.3 of 2018 does not preclude the petitioner from re-agitating the plea of denial of title in the subsequent proceedings. He relied on the decision of the Division Bench of this court in **Govindan v. Subaida Beevi** 1997 (1) KLT 910, in support of the said contention. It was also contended by the learned counsel that inasmuch as R.C.P. No.3 of 2018 was dismissed on merits, and the order rejecting the plea of denial of title as not *bona fide* has merged with the order dismissing R.C.P. No.3 of 2018, the same does not, at any rate, operate as *res judicata* and preclude the petitioner from re-agitating the issue.

6. We do not find any merit in the arguments advanced by the learned counsel for the petitioner. First of all, as already noticed, the plea of denial of title was considered as a preliminary issue in R.C.P. No.3 of 2018 and the order dated 25.03.2019 was passed holding that the same is not *bona fide*. It was thereafter that the eviction petition was tried and dismissed on 17.08.2019 by a separate order. The order dated 25.03.2019 being an appealable order, the petitioner could have certainly challenged the said order before the dismissal of R.C.P.No.3 of 2018. Insofar as the petitioner has not adopted the said course, it can be very much inferred that the



petitioner has consciously decided not to challenge the said order. There is, therefore, no substance in the argument that the petitioner was precluded from challenging the said order.

7. As regards the applicability of the principles of *res judicata*, it is true that it was held by this Court in **Govindan** (*supra*) that in the light of the provision contained in Section 15 of the Act which enables the Rent Control Court to reject summarily, applications under Sub-sections (2), (3), (4), (5), (7) or (8) of Section 11 which raises between the same parties substantially the same issues as have been finally decided or purports to have been finally decided in a former proceedings under the Act, general principles of *res judicata* will apply to the proceedings under the Act only to the extent and subject to the conditions incorporated or indicated in Section 15 of the Act and not *in toto*. But, it is seen that later, after referring to Section 15 of the Act, the Apex Court in **C.V. Rajendran v. N.M. Muhammed Kunhi**, (2002) 7 SCC 447, held that a question which is agitated by a party to a proceedings under the Act at one stage of the proceedings cannot be re-agitated at a later stage of the proceedings. One of the questions considered by the Full Bench of this Court in **Bharathi v. Vinod S. Sivasudha**, 2007 SCC OnLine Ker 116, was whether a finding on the plea of denial of title taken by the



tenant in a proceedings for eviction on the basis of which the parties to an eviction petition were relegated to civil court, would preclude the landlord in the proceedings from re-agitating the said issue in a subsequent proceedings under the Act. After referring to the decision of the Apex Court in **C.V. Rajendran** (*supra*), the Full Bench held that the landlord cannot re-agitate in the subsequent proceedings the issue relating to the plea of denial of title taken by the tenant who suffered an adverse order in the earlier proceedings. In a recent judgment rendered by the Division Bench in **Vannatham Veetil Moidu v. Vannatham Veetil Yoonus**, 2022 (6) KLT OnLine 1078, of which one of us was a party, it was held that the tenant in a proceedings under the Act who suffered an adverse order on the plea of denial of title of the landlord which was tried as a preliminary issue, if it becomes final, cannot re-agitate the said issue in appeal or revision preferred against the subsequent order granting eviction. In the light of the decision of the Apex Court in **C.V. Rajendran**, the decision of the Full Bench in **Bharathi** and the decision of the Division Bench in **Vannatham Veetil Moidu**, it has to be held that the findings rendered in earlier proceedings or in earlier stages of the same proceedings on issues arising between the parties to a proceedings under the Act, which are





germane for consideration, cannot be re-agitated by the parties. We take this view also for the reason that Section 15 of the Act does not appear to be a provision which enables a party to a proceedings under the Act who suffered an adverse order on an issue in an earlier proceedings or at an earlier stage of the same proceedings, to re-agitate the said issue. On the other hand, according to us, the spirit of Section 15 of the Act which is founded on a principle of issue estoppel, is that a party who suffered an adverse order on a germane issue shall not be permitted to re-agitate the same.

In the said view of the matter, on the facts of the present case, we hold that the finding rendered on the plea of denial of title taken by the tenant in R.C.P.No.3 of 2018 would bind the petitioner and she is precluded from re-agitating the issue in R.C.P.No.4 of 2019. There is, therefore, no illegality, irregularity or impropriety in the decision of the Appellate Authority which is impugned in R.C.R.No.137 of 2023. The rent control revisions are accordingly dismissed.

Sd/-

**P.B.SURESH KUMAR, JUDGE.**

Sd/-

**P.G.AJITHKUMAR, JUDGE.**