

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 17TH DAY OF MARCH 2023 / 26TH PHALGUNA, 1944

RCREV. NO. 135 OF 2021

AGAINST THE JUDGMENT DATED 27.08.2021 IN RCA NO.20 OF
2021 OF THE RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM

ORDER IN IA 8/2021 IN RCP NO.28 OF 2016 DATED 07.04.2021
OF THE RENT CONTROL COURT, ERNAKULAM

PETITIONER/APPELLANT/RESPONDENT/RESPONDENT:

N.M.BASIL, AGED 47 YEARS
S/O. MICHAEL, NANATTU HOUSE, PALLICHALAN ROAD,
PIPELINE, PALARIVATTOM, ERNAKULAM 682 025

BY ADVS.
T.RAMPRASAD UNNI
S.M.PRASANTH
R.S.ASWINI SANKAR
T.H.ARAVIND
M.MANOJKUMAR (CHELAKKADAN)

RESPONDENT/RESPONDENT/PETITIONER/PETITIONER:

THE REGIONAL SPORTS CENTRE, NO ER/17/79, RAJIV
GANDHI INDOOR STADIUM, ELAMKULAM ROAD,
KADAVANTHRA, KOCHI 682 020, REPRESENTED BY ITS
HONORARY SECRETARY S.A.S NAVAZ, AGED 65 YEARS,
S/O. S.A SHAKKOOR, RESIDING AT 10D, SILVAN
HEIGHTS, CHILAVANNUR ROAD, ERNAKULAM, KOCHI
682020

RCR Nos.135 & 136 of 2021

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BY ADVS.
A.BALAGOPALAN
A.RAJAGOPALAN
M.N.MANMADAN
M.S.IMTHIYAZ AHAMMED
P.SEENA

THIS RENT CONTROL REVISION HAVING COME UP FOR
HEARING ON 06.12.2022, ALONG WITH RCRRev..136/2021, THE
COURT ON 17.03.2023 DELIVERED THE FOLLOWING:

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 17TH DAY OF MARCH 2023 / 26TH PHALGUNA, 1944

RCREV. NO. 136 OF 2021

**AGAINST THE JUDGMENT DATED 27.08.2021 IN RCA NO.21 OF
2021 OF THE RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM**

**ORDER IN IA 4/2021 IN RCP NO.28 OF 2016 DATED 22.03.2021
OF THE RENT CONTROL COURT, ERNAKULAM**

PETITIONER/APPELLANT/RESPONDENT/RESPONDENT:

N.M.BAZIL, AGED 47 YEARS
S/O. MICHAEL, NANATTU HOUSE, PALLICHALAN ROAD,
PIPELINE, PALARIVATTOM, ERNAKULAM - 682 025.

BY ADVS.
T.RAMPRASAD UNNI
K.RAMAKUMAR (SR.)
S.M.PRASANATH
R.S.ASWINI SANKAR
T.H.ARAVIND
M.MANOJKUMAR (CHELAKKADAN)

RESPONDENT/RESPONDENT/PETITIONER/PETITIONER:

THE REGIONAL SPORTS CENTRE
NO.ER/17/79, RAJIV GANDHI INDOOR STADIUM,
ELAMKULAM ROAD, KADAVANTHRA, KOCHI - 682 020,
REPRESENTED BY ITS HONORARY SECRETARY S.A.S.
NAVAZ, AGED 65 YEARS, S/O. S.A. SHAKKOOR,
RESIDING AT 10D, SILVAN HEIGHTS, CHILAVANNUR
ROAD, ERNAKULAM, KOCHI - 682 020.

RCR Nos.135 & 136 of 2021

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BY ADVS.
A.BALAGOPALAN
A.RAJAGOPALAN
M.N.MANMADAN
M.S.IMTHIYAZ AHAMMED
P.SEENA
NAMITHA SOBHANA

THIS RENT CONTROL REVISION HAVING COME UP FOR
HEARING ON 06.12.2022, ALONG WITH RCRRev..135/2021, THE
COURT ON 17.03.2023 DELIVERED THE FOLLOWING:

'CR'

ORDER

SHOBA ANNAMMA EAPEN, J.

The tenant in R.C.P.No.28 of 2016 before the Rent Control Court, Ernakulam is the petitioner in these revision petitions. The respondent is the landlord.

2. The rent control petition was filed seeking eviction of the tenant under Section 11(4)(i) and 11(17) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). In the rent control petition, initially, only shop room No.8 situated in front of the Indoor Stadium, Ernakulam was mentioned. Subsequently, on noticing the mistake, the landlord filed I.A.No.4 of 2021 under Section 151 of the Civil procedure Code read with Section 23(j) of the Act, seeking to substitute the expression 'room no.7 & 8' for 'room no.8' in the rent control petition. The tenant filed objection contending that the schedule of the rent control

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petition is silent about shop room No.8 and that the first prayer and the schedule in the rent control petition are not tallying. The said IA was allowed. Subsequently, the landlord filed another petition as IA No.8 of 2021 for correcting the mistake, which was also objected to by the tenant. The Rent Control Court allowed the said IA also. Challenging the orders in IA Nos.4 and 8 of 2021 in RCP No.28 of 2016, the tenant filed appeals as RCA Nos.20 and 21 of 2021. The case of the tenant was that the orders were void and made in violation of the principles of justice and the said orders are not interlocutory orders as they determine and adjudicate the rights of the tenant and hence, are appealable under Section 18 of the Act. The appellate court raised a doubt regarding the maintainability of the appeals and on hearing the tenant and the landlord, it was held that the impugned orders are not appealable since the

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court below has not finally adjudicated the issue and accordingly, the appeals are dismissed by a common judgment. Challenging the impugned judgment, the tenant has come up in revision.

3. We have heard Sri.K.Ramkumar, learned senior counsel for the revision petitioner/tenant, assisted by Sri.T.Ramprasad Unni; and Sri.A.Balagopalan, learned counsel for the respondent/landlord.

4. The learned senior counsel for the revision petitioner/tenant submits that in Section 18 of the Act, it is not mentioned anywhere that an order of interlocutory nature is not appealable, which is significantly present in a number of similar appellate provisions such as the Family Court Act or the Code of Criminal Procedure. It was further argued that the appellate authority has no jurisdiction to introduce a new word in a statute as it will amount to legislating and not interpreting a statute. The learned senior counsel

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further argued that the impugned orders affect the rights of the revision petitioner being the tenant of the building, which will be a serious violation to legal right and it completely alters the cause of action.

5. The learned counsel for the respondent/ landlord submitted that the trial of the rent control petition has not yet started and it was before the pre-trial stage that the correction was carried out and the revision petitioner/tenant has got ample time to controvert the effect of corrections made in the rent control petition. It was further contended that these orders are only interlocutory orders, which will not affect the rights of the tenant and it can be agitated during trial.

6. For a proper appreciation of the case, it is relevant to extract Section 23(1) of the Act, which reads thus:-

"23. Summons etc. - (1) Subject to such conditions and limitations as may be prescribed,

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the Accommodation Controller, the Rent Control Court, and the appellate authority shall have the powers which are vested in a court under the Code of Civil Procedure, 1908(V of 1908), when trying a suit in respect of the following matters:-

- (a) discovery and inspection;
 - (b) enforcing the attendance of witnesses and requiring the deposits of their expenses;
 - (c) compelling the production of documents;
 - (d) examining witnesses on oath;
 - (e) granting adjournments;
 - (f) reception of evidence taken on affidavit;
 - (g) issuing commission for the examination of witnesses and for local inspection;
 - (h) setting aside *ex parte* orders;
 - (i) enlargement of time originally fixed or granted;
 - (j) power to amend any defect or error in orders or proceedings,
- and
- (k) power to review its own order."

7. On a perusal of Section 23(1) of the Act, it is seen that there is no specific provision for correcting the mistakes in the rent control petition. Section 23(1)(j) of the Act adverts to

the power to amend any defect or error in any order or proceedings. As held by one among us [SAE(J)] in **Tomy J. Cherkkott v. M.M. Abdul Sathar** [2023 (1) KLT 192], the Rent Control Court has got inherent powers to pass orders though not specifically enumerated in the Act. Hence, it is clear that the impugned orders passed by the Rent Control Court are with jurisdiction.

8. The issue that arises for consideration is whether the impugned interim order is appealable under section 18 of the Act. Section 18 of the Act reads as follows:

*18. **Appeal.**-(I) (a) The Government may, by general or special order notified in the Gazette, confer on such officers and authorities not below the rank of a Subordinate Judge the powers of appellate authorities for the purposes of this Act in such areas or in such classes of cases as may be specified in the order.*

(b) Any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the thirty days aforesaid, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on

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the appeal;

(3) The appellate authority shall send for the records of the case from the Rent Control Court and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either directly or through the Rent Control Court, shall decide the appeal.

Explanation.—The appellate authority may, while confirming the order of eviction passed by the Rent Control Court, grant an extension of time to the tenant for putting the landlord in possession of the building.

(4) The appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent. (5) The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court, shall be final and shall not be liable to be called in question in any Court of law, except as provided in section 20."

Section 18 says that any person aggrieved by an order passed by the Rent Control Court may prefer an appeal within 30 days from the date of such order.

9. The learned senior counsel for the revision petitioner/tenant, in support of his contentions, relied on the judgments in **K.S.Das v. State of Kerala** [1992 (2) KLT 358(LB)]; **Thomas v. Bijo Thomas** [2021 (6) KLT 196]; **Ernakulam Wholesale District Co operative Store E.122 v. Subramanyam** [2014 (3) KLT 478]; **Raghunath Rai Bareja and**

another v. Punjab National Bank and others [(2007) 2 SCC 230]; **The Central Bank of India Ltd. v. Gokal Chand** [AIR 1967 SC 799].

10. The learned counsel for the respondent relied on the judgments in **Thankamony Amma v. Omana Amma** [2019 (4) KLT 361 (SC)]; **Addissery Raghavan v. Cheruvalath Krishnadasan** [2020 (3) KLT 605 (SC)]; **Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh** [2014 (4) KLT 182 (SC)], which deal with the scope of revisional jurisdiction of the High Court while entertaining a revision.

11. In **K.S.Das** (*supra*), the question referred to the Larger Bench by a Full Bench was, whether an appeal lies to a Division Bench under Section 5(i) of the Kerala High Court Act, 1958, against an interlocutory order in a writ petition, while the main writ petition is pending and if so, what are the circumstances under which or the types of cases in which such an appeal would lie?

12. In **K.S.Das** (*supra*), the decision of the

Apex Court in **Madhu Limaye vs. The State Of Maharashtra** [AIR 1978 SC 47] and the concept of intermediate orders were considered. After elaborate consideration, it was held by the Full Bench of this Court that appeal is maintainable against an interlocutory order, provided it is a final order on the miscellaneous petitions in the sense that it is not an *ad interim* order and if the order substantially affects or touches upon substantial rights of the parties or are matters of moment or matters which would cause real legal prejudice to the parties, even though the parent original proceedings is alive.

13. In **Thomas** (*supra*), this Court held that the expression '*ad interim*' only means 'in the meantime' or 'temporarily'. The expression '*ad interim*' is understood in legal parlance as an order, which would operate till the hearing of the matter. Usually, *ad interim* orders are passed *ex parte* in interlocutory applications, pending

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disposal of the main proceedings, though it can also be passed when the opposite side is present, if the Court does not have time to hear the matter and feels that it is necessary to grant an interim order pending hearing of the matter to protect the interest of one of the parties to the proceedings.

14. In **Ernakulam Wholesale District Co operative Store** (*supra*), it was held that an order passed by the Rent Control Court, summarily rejecting an application under S.11(3) of the Act, is an order, which is capable of being challenged in an appeal under S.18(1)(b) of the Act. It was also held that if the order affects the rights or liabilities of the parties or puts an end to the proceedings or forbids a party from raising a contention in any other proceedings or forecloses at least some of the issues arising in the case, such orders can be challenged before the appellate authority. In **Ernakulam Wholesale District Co operative Store** (*supra*), the judgment rendered in

Sumathi v. **Devasan** [1991 (1) KLT 453] was considered. In **Sumathi** (*supra*), it was held by this Court as follows:-

".....it is clear that any order of whatever nature made by the Rent Control Court is not made appealable under S.18 merely because it is an order passed by the Rent Control Court. The expression "an order" cannot be construed as making each and every order, interlocutory or otherwise, appealable. S.18 comprehends only such orders as affect the rights or liabilities of parties. Orders pertaining to matters merely of procedure or evidence or are steps in the proceedings are not appealable. An interlocutory order to be appealable, must vitally affect the right to relief, or defence of a party, if the matter were to proceed to trial on that basis."

".....though S.18 (1) (b) is wide in its terms, an appeal does not lie unless the order in question is finally disposing of the proceedings or is one which affects the rights or liabilities of the parties. It will depend on the nature of the order in a given case, as to whether it is appealable or not. Each case will depend on its own facts. Thus an order admitting or refusing to admit documents will not normally be appealable, but such an order receiving documents in evidence after the trial started was held appealable by Ratnavel Pandian, J. in Habib Khan v. Arogya Mary shanthi Lucien 1981 (II) MLJ 298. It is true that every order does affect the rights of parties in one sense or other. But that will not make it an order subject to appeal. Apart from the final orders, only those orders which virtually put an end to the proceedings or make it practically impossible for the affected party to get effective relief or to set up or substantiate a defence are rendered appealable. Refusal to try and decide a particular point as

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a preliminary issue is not such an order affecting the rights of any party. Such an order is not therefore appealable. As stated earlier everything depends on the nature of the particular order and its impact on the rights or liabilities in issue in the proceedings."

15. In **Raghunath Rai Bareja** (*supra*), it was held that the literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language.

16. Facts and circumstances of the cases referred to above have no co-relation with the facts of the present case.

17. Taking into consideration the entire facts and arguments placed on record, it has to be decided in this case whether the orders impugned are orders, which affect the rights and liabilities of the party. Interlocutory orders may be purely procedural order or orders, which affect or touch upon the substantial rights or liabilities of the parties or are matters of moment, though the main

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case is not disposed of.

18. In **Central Bank of India** (*supra*), the Apex Court considered the scope of Sec.38(1) of the Delhi Rent Control Act. Sec.38(1) of the said Act reads as follows:

"An appeal shall lie from every order of the Controller made under this Act to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the Official Gazette."

The object of s. 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of s. 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under ss. 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by

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appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an interlocutory order passed under s. 37(2) is an order passed under the Act and is subject to appeal under s. 38(1) provided it affects some right or liability of any party. Thus, an order of the Rent Controller refusing to set aside an ex parte order is subject to appeal to the Rent Control Tribunal."

19. In the present case, the trial of the case has not yet started. The revision petitioner/tenant has sufficient time or opportunity to rebut the corrections carried out or can even contest the merits of the case. The order passed does not shut down the doors of the revision petitioner/tenant from adducing evidence. If the tenant is aggrieved by the final order to be passed by the Rent Control Court, an appeal lies to the appellate authority and the tenant can raise the correction allowed as a ground of objection in his appeal from the final order in the main proceeding. The respondent being

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the landlord, has got the right to file petition for eviction of the tenant from the petition schedule rooms. Before the trial started, the landlord filed petitions for corrections and the Rent Control Court found it necessary to pass such orders to protect the interests of the petitioner in the rent control petition, and accordingly, the Rent Control Court allowed the same. As far as the rent control petition is concerned, the eviction of the tenant depends mainly on the need put forward by the landlord and on the evidence adduced by the parties. Mere correction of room number does not affect the interests of the parties nor it could be said to be a final order passed by the court enabling the affected person to file an appeal. As said earlier, the rent control petition is in the pre-trial stage and the tenant is free to raise all contentions in the rent control petition. The orders impugned are not orders, which affect or touch upon the substantial rights or liabilities of

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the parties. If the parties have sufficient grounds to object to the petition for eviction, they are free to raise those grounds in the rent control petition itself. We follow the judgment in **Thomas v. Bijo Thomas** [2021 (6) KLT 196] and we hold that the said orders are only ad interim orders and are not appealable under Section 18 of the Act.

Accordingly, the rent control revisions are dismissed.

Sd/-

A. MUHAMED MUSTAQUE

JUDGE

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-