

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 12TH DAY OF SEPTEMBER 2023 / 21ST BHADRA, 1945

R.C.REV. NO. 188 OF 2023

(AGAINST THE JUDGMENT DATED 05.08.2023 IN R.C.A NO.7 OF 2021 ON THE FILE OF THE ADDITIONAL DISTRICT JUDGE & RENT CONTROL APPELLATE AUTHORITY, NORTH PARAVUR AND THE ORDER DATED 29.03.2021 IN R.C.P NO.24 OF 2016 ON THE FILE OF THE COURT OF THE RENT CONTROLLER, NORTH PARAVUR)

REVISION PETITIONER/APPELLANT IN RCA/RESPONDENT IN RCP:

SUBEESH

BY ADVS.

R.LAKSHMI NARAYAN

R.RANJANIE

RESPONDENT/RESPONDENT IN RCA/PETITIONER IN RCP:

VICHATHRAN

THIS RENT CONTROL REVISION HAVING COME UP FOR FINAL HEARING ON 08.09.2023, THE COURT ON 12.09.2023 DELIVERED THE FOLLOWING:

ORDER

P.G.Ajithkumar, J.

The respondent in R.C.P No.24 of 2016 before the Rent Control Court (Munsiff), North Paravur is the revision petitioner. Rent Control Court, as per order dated 29.03.2021, stopped further proceedings in the R.C.P under Section 12(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 and directed the petitioner-tenant to surrender vacant possession of the petition schedule room to the respondent-landlord. The petitioner preferred an appeal as R.C.A No.7 of 2021 under Section 18 of the Act before the Rent Control Appellate Authority (Additional District Judge, North Paravur), but it was unsuccessful. Hence, he filed this revision petition under Section 20 of the Act.

2. Heard the learned counsel appearing for the petitioner in detail.

3. The respondent filed R.C.P No.24 of 2016 for eviction under Section 11(2) (b), 11(3) and 11(4)(v) of the Act. In the R.C.P he filed I. A No. 2472 of 2018 under Section

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12 of the Act. Rent from January 2016 at the rate of Rs.6,000/- per month was said to be due. Rent Control Court, accepting that contention of the petitioner, passed an order under section 12(1) of the Act. The petitioner filed R.C.A No.18 of 2019 assailing that order. Such an appeal is not maintainable; however, the Appellate Authority entertained the appeal and modified the order of the Rent Control Court. The petitioner was directed to pay admitted arrears of rent from January 2016 at the rate of Rs.3,000/- per month. The direction of the Appellate Authority was to pay the admitted arrears of rent within five days.

4. The petitioner filed O.P.(R.C) No.28 of 2020 before this Court. The judgment of the Appellate Authority dated 03.02.2020 in R.C.A No.18 of 2019 was confirmed. However, the petitioner was granted two more weeks from the date of receipt of a copy of the judgment to deposit the arrears of rent. The petitioner would state that he obtained a copy of the said judgment on 07.03.2020. Therefore, the obligation of the petitioner was to pay the admitted arrears of rent on or before

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21.03.2020.

5. From the materials on record, it is seen that the entire arrears of rent admitted to be due was not paid by the petitioner on or before 21.03.2020. The petitioner paid Rs.1,31,000/- by 17.03.2020, and later paid an amount of Rs.25,000/-. As per the statement filed by the respondent, an amount of Rs.21,000/- was still due being the arrears of rent till 20.02.2021. An amount of Rs.33,160/- was also claimed towards interest, but the Rent Control Court declined that claim. Thus, the petitioner was bound to pay Rs.21,000/- which was the arrears of rent till 20.02.2021. The petitioner did not pay that amount till 22.03.2021. Instead, he filed I. A. No.4 of 2021 seeking one week more to pay that amount. The matter was adjourned to 29.03.2021, and on finding that the amount was still due and no explanation was offered, the Rent Control Court on that day passed the impugned order under Section 12(3) of the Act.

6. Before the Appellate Authority, the petitioner made a strenuous attempt to apprise that there was sufficient

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reason not to pay the balance amount of Rs.21,000/- within the allowed time. He contended that he filed I.A.No.4 of 2021 seeking one more week to make payment for a justifiable reason, but an order under Section 12(3) of the Act was passed without considering that request. His plea was that there occurred denial of opportunity and hence that order is illegal. The Appellate Authority, by placing reliance on **Narayanan v. Vinod [2004 (3) KLT 995]**, justified the order of the Rent Control Court. It was held that sufficient time was granted to the petitioner to make the payment or to show sufficient cause as contemplated in Section 12(3) of the Act, but he did not. The Appellate Authority held that the petitioner failed to make the payment even on 22.3.2021 and did not offer any explanation till 29.03.2021. By placing reliance on the decision of this Court in **Greenix Ventures Pvt. Ltd. (M/s) v. P. M. Salim [2022 (4) KLJ 311]** the Appellate Authority held that the petitioner was at 'fault' and the Rent Control Court rightly stopped the proceedings under section 12(3) of the Act.

7. The learned counsel appearing for the petitioner would submit when I.A. No.4 of 2021 was filed seeking one week more time to make payment; even on disallowing that request, another opportunity should have been given before passing an order under Section 12(3) of the Act. It is contended that inasmuch as the Rent Control Court did not grant such an opportunity, the order under Section 12(3) of the Act became illegal. The learned counsel further would submit that during the pendency of the appeal, entire arrears of rent, including the rent due during the pendency of the appeal, was also paid and hence the appeal ought to have been allowed.

8. 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

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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. The obligation is not merely dependent on an order under Section 12(1) of the Act, but it is statutory. Therefore, even in a case in which the relief sought for in an application filed under Section 12 of the Act is confined to payment or deposit of admitted arrears of rent up to the date of application or up to the date of order to be passed in that application, the Rent Control Court or the Appellate Authority, as the case may be, is statutorily bound to pass an order directing the tenant to pay or deposit admitted arrears of rent up to the date of payment or deposit and continue to pay or deposit rent which may subsequently become due, until termination of that proceedings. Section 12(2) of the Act enjoins a tenant to deposit the admitted rent

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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 shall not be less than that specified in the proviso to Section 12(2). If the tenant fails to make the payment as per such direction or to show cause, the obvious consequence is an order under Section 12(3) of the Act.

9. In **Ramkumar J. v. Ashok Jacob [2022 (1) KHC 495]** a Division Bench of this Court after referring to the law laid down in **Narayanan v. Vinod [2004 (3) KLT 955]** which was affirmed by a Full Bench in **Shaji M. v. SNDP Sakhayogam No.610, Alappuzha and another [2020 (2) KLT 866]** held that before passing an order under Section 12(3) of the Act, the Rent Control Court or the Appellate Authority, as the case may be, should normally adjourn the hearing of the case to a date beyond the date fixed for payment or deposit of admitted rent, thereby allowing reasonable time to the tenant to show sufficient cause for not

paying or depositing the admitted rent, if he has committed default in payment of the same, within the time limit stipulated in the order passed under Section 12(1) and (2). Such an opportunity to be afforded to the tenant to show sufficient cause is not an empty formality. The principles of natural justice would mandate that the Rent Control Court or the Appellate Authority should afford such an opportunity to the tenant before passing an order under Section 12(3).

10. What shall be the nature of the opportunity and the time to be afforded to the tenant to show cause before passing an order under Section 12(3) of the Act was considered in **Suvarna v. Ibrahimkutty and others [2021 (6) KHC 250]**. It was held that it is not for the Rent Control Court or the Appellate Authority to issue any separate notice to the tenant to enable him to show sufficient cause for not depositing the admitted arrears of rent. When the time fixed for the deposit of arrears of rent runs out and the tenant has not deposited the same, the Rent Control Court or the Appellate Authority, as the case may be, is not expected to

pass an order of ejectment of the tenant forthwith. But, on the date stipulated for effecting such payment, the tenant becomes fully aware that, unless sufficient cause is shown for the default committed, the consequence is the stoppage of the proceedings and direction to put the landlord in possession of the building under Section 12(3) of the Act. There is no necessity to alert the tenant by issuing any specific notice in this regard.

11. As pointed out above, the obligation of the petitioner was to pay or deposit the admitted arrears of rent, which was precisely quantified by the Appellate Authority as per the judgment dated 03.02.2020 in R.C.A No.18 of 2019. The period for such payment was two weeks from the date of receipt of a copy of the judgment dated 25.02.2020 of this Court in O.P (RC) No.28 of 2020. That period was admittedly till 21.03.2020.

12. Indisputably, the entire arrears of rent admitted to be due was not paid before that date. The matter was prolonged. The fact that the respondent landlord claimed

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interest, which was declined by the Rent Control Court, is not an excuse for not making the rent in arrears. His obligation to pay the rent then in arrears before 21.03.2020 as per the judgment in O.P.(RC) No.28 of 2020 remained unfulfilled. The proceedings, however, continued and Rs.21,000/- was due as on 22.03.2021. That amount was not paid till 22.03.2021. True, the petitioner filed I.A No.4 of 2021 seeking one week more time. But he did not make payment of that amount even by 29.3.2021 or furnish any explanation for not making the payment. Therefore, the petitioner cannot have a valid contention that he was denied an opportunity to offer his explanation for the nonpayment of the arrears of rent. In the light of the law laid down in **Ramkumar J.** and **Suvarna** (supra), we find no infirmity to the order dated 29.03.2021 of the Rent Control Court under Section 12(3) of the Act.

13. The learned counsel appearing for the petitioner would submit at that juncture that even on confirming the impugned judgment and the order, the petitioner may be allowed to pay the rent for the remaining period and to

contest the R.C.P. He placed reliance in that regard on **K.S.Binuraj v. A.H.Thalish [2009 KER 47650]**, **Biju v. Madhavikutty Amma [2011(1) KLT 864]** and **Shaji v. Sivasubramoni [2018 (4) KLT 632]**.

14. In **K.S.Binuraj [2009 KER 47650]**, the law laid down is that subsequent payment of the admitted arrears of rent does not make the order under Section 12(3) of the Act obliterated or wrong. On holding that there was doubt about the amount due to be paid by the tenant, this Court set aside the order under Section 12(3) of the Act and granted time to make the deposit. In **Shaji [2018(4) KLT 632]**, the order under Section 12(1) of the Act was challenged in a proceedings initiated under Article 227 of the Constitution of India. It was held that the Court is empowered to extend the period fixed under Section 12(2) of the Act for payment of the admitted arrears of rent. In the exercise of that power, more time was granted for making payment of the amount of admitted arrears of rent. That was not a case where an order under Section 12(3) of the Act was passed. Therefore, the

said decisions are not available to the aid of the petitioner.

15. It is true that in **Biju [2011(1) KLT 864]**, this Court, despite finding no illegality of irregularity in the order under Section 12(3) of the Act, which was under challenge, it was set aside on the condition of payment of the entire arrears of rent and costs within a period of 6 weeks. The said decision was rendered in the peculiar facts and circumstances of that case. The law on the point is settled. In **Ramkumar J. [2022 (1) KHC 495]** this Court held as follows:

“As held by a Division Bench of this Court in **Venugopalan [1974 KLT 640]** and reiterated in **Davy [1999 (3) KLT 434]**, even assuming that for the purpose of execution an order under Section 12(3) of the Act can be equated with and treated as the same, as one under Section 11 of the Act, the consequence enjoined by an order under Section 12(3) for failure to deposit the admitted arrears in time cannot be vacated or obliterated by payment at any subsequent stages or periods. The law laid down by a Three - Judge Bench of the Apex Court in **Nasiruddin [(2003) 2 SCC 577]** is to the effect that, where the Statute does not provide either for extension of time or to condone the default in depositing the rent within

the stipulated period, the Court does not have the power to do so.”

(underline added)

16. In view of the above, the view taken in **Biju** above cannot be relied on as a binding precedent. Hence, we are of the view that the payment of the admitted arrears of rent during the pendency of the appeal is not a reason to set aside the order of the Rent Control Court dated 29.03.2021 under Section 12(3) of the Act or to grant an opportunity to the petitioner to contest the R.C.P. Accordingly, this Revision Petition is dismissed.

17. The learned counsel appearing for the petitioner would submit that the petitioner is conducting a workshop in the petition schedule building and atleast, a period of one month is required to remove his articles and fixtures in the premises. The delivery of the premises is scheduled tomorrow by the Execution Court and adjournment for a reasonable period of the delivery may be ordered in the interest of justice.

18. Considering the fact that the petitioner is running a

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workshop in the petition schedule premises and obviously some time is required to remove the fixtures, we are inclined to direct the Execution Court to effect delivery after a period of fifteen days from today.

Sd/-

P.B.SURESH KUMAR, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

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