

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

FRIDAY, THE 17TH DAY OF FEBRUARY 2023 / 28TH MAGHA, 1944

RCREV.NO.19 OF 2023

AGAINST THE ORDER/JUDGMENT IN RCA 42/2018 OF II RENT

CONTROL APPELLATE AUTHORITY, THRISSUR

RCP 18/2016 OF RENT CONTROLLER, CHALAKUDY

REVISION PETITIONER/APPELLANT IN RCA/RESPONDENT IN RCP:

GIREESH

AGED 42 YEARS

SON OF CHANDRAN, ATHIYARATH HOUSE, KADUKUTTY
DESOM, KALLUR VADAKKUMURY VILLAGE, CHALAKUDY
TALUK, THRISSUR DISTRICT, KERALA., PIN - 680309

BY ADVS.SRI.

SHIBIN K.F.

SEBY JOSEPH

RESPONDENT/RESPONDENT IN RCA/PETITIONER IN RCP:

ANTONY

AGED 51 YEARS

SON OF OUSEPH, CHAKKALAKKAL HOUSE, KADUKUTTY
DESOM, KALLUR VADAKKUMURY VILLAGE, CHALAKUDY
TALUK, THRISSUR DISTRICT, KERALA REPRESENTED BY
HIS POWER OF ATTORNEY HOLDER AND FATHER
MR.OUSEPH, AGED 82 YEARS, SON OF CHAKKALAKKAL
CHAKKU, KADUKUTTY DESOM, KALLUR VADAKKUMURY
VILLAGE, CHALAKUDY TALUK, THRISSUR DISTRICT,
KERALA., PIN - 680309.

BY ADV SRI.JITHIN BABU A(K/000674/2015)

(CAVEATOR)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD
ON 02.02.2023, THE COURT ON 17.02.2023 PASSED THE
FOLLOWING:

C.R

**P.B SURESHKUMAR &
SOPHY THOMAS, JJ.**

Rent Control Revision No.19 of 2023

Dated this the 17th day of February, 2023

O R D E R

Sophy Thomas, J.

In this revision, we are called upon to answer an interesting question as to whether the arrears of admitted rent decreed by a civil court, in a suit filed by the landlord, is liable to be excluded while computing the admitted arrears of rent under Section 12(1) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act').

2. The revision petitioner/tenant is impugning the judgment of the Rent Control Appellate Authority in RCA No.42 of 2018, invoking revisional jurisdiction of this Court, under Section 20 of the Act.

3. Brief facts necessary for the revision are as follows, referring the parties according to their status in RCP No.18 of

2016:

The petitioner/landlord filed RCP No.18 of 2016 before the Rent Control Court, Chalakudy, in order to evict the respondent/tenant from the tenanted premises, under Sections 11(2)(b), 11(3) and 11(4)(ii) of the Act. The respondent remained ex parte, and based on the affidavit and documents produced by the petitioner, the Rent Control Court allowed the RCP under Section 11(3) of the Act, and directed the respondent to surrender vacant possession of the tenanted premises within one month. Thereafter the respondent filed petition to set aside the ex parte order but it was dismissed. Thereupon the respondent preferred RCA No.42 of 2018 with a prayer to stay the execution proceedings. Stay was granted by the Rent Control Appellate Authority on deposit of Rs.87,500/- towards arrears of rent. In the RCA, the landlord filed I.A No.2 of 2022 under Section 12(1) of the Act, for directing the tenant to deposit the arrears of rent. That petition was allowed on 15.06.2022, directing the tenant to deposit the admitted arrears of rent @ Rs.2,500/- per month from May, 2015 till May, 2022 by 14.07.2022 and to continue payment of admitted rent till the

disposal of the appeal. Since the respondent/tenant did not comply with that direction, a show cause notice was issued against him. Since he failed to deposit the amount or to show cause for the non-remittance, the Rent Control Appellate Authority stopped further proceedings in the appeal, and the respondent/tenant was directed to put the landlord in possession of the tenanted premises under Section 12(3) of the Act, and that is the order impugned in this revision.

4. According to the tenant, he deposited Rs.64,000/- before the Rent Control Appellate Authority on 01.07.2022 as the entire arrears of admitted rent and no further arrears were due from him. He drew our attention to O.S No.355 of 2018 filed by the landlord, claiming arrears of rent for the period May, 2015 till May, 2018, and Annexure A8 judgment in that suit. According to him, the arrears of rent decreed by the civil court after adjudicating the issue, cannot be treated as admitted arrears of rent envisaged under Section 12(1) of the Act. If the decretal amount is excluded, there will not be any balance to be paid towards arrears of rent ordered in I.A No.2 of 2022.

5. Heard learned counsel Sri.Shibin K.F, appearing for the tenant and learned counsel Sri.Jithin Babu A, appearing for the landlord.

6. For answering the question involved in this revision, we have to find out what was the admitted rent and what was the period of default.

7. The word 'rent' or 'admitted arrears of rent' are not defined in the Act. Obviously, Section 12 proceedings under the Act can be invoked against the tenant, only when the arrears of rent is admitted. The admission regarding the rent of the tenanted premises may be direct or indirect, express or implied, and it need not necessarily be an admission in the rent control proceedings itself. There cannot be any insistence that the quantum of admitted arrears of rent should come from the tenant himself by express words in his counter statement in the Rent Control Petition or in the objection to the application filed by the landlord under Section 12 of the Act. It could be inferred from any document containing admission as to the rate of rent and period of default made by the tenant. The rent deed executed by the tenant is a relevant document to ascertain

admission as to the rate of rent made by the tenant. Similarly, rent receipts, bank records, postal receipts etc. contemplated under Section 9(2) of the Act, also could be relied upon to find out the rate of rent as well as the period of default. In the case on hand, the rent deed is not made available to find out, what was the rate of rent agreed by the tenant as per the lease deed. No documents such as postal receipts, bank records, rent receipts are available to verify the rent admitted by the tenant. So, we have to find out whether there was any admission from the part of the tenant regarding the rent payable to the landlord for the tenanted premises.

8. Admission made by the parties in their pleadings in the very same proceedings or even in some other proceedings may be used as evidence against them, though in other proceedings that admission may not be regarded as conclusive. An admission by a party in his pleadings in a prior suit is an admission within the meaning of Section 17 of the Indian Evidence Act, 1872, and may be proved against him in other litigations, as observed by the Bombay High Court in **D. S. Mohite** vs. **S. I. Mohite** (AIR 1960 Bombay 153]. A

statement in a pleading sworn, signed or otherwise adopted by a party is admissible against him in other actions.

9. Going by Section 17 of the Evidence Act, "an admission is a statement; oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned".

10. Admissions are substantive evidence by itself, in view of Sections 17 to 21 of the Evidence Act, though they are not conclusive proof of the matters admitted. Section 17 does not make any distinction between an admission made by a party in a pleading and other documents. An admission made by a party in a pleading signed and verified by him may be used as evidence against him in other suits though it cannot be regarded as conclusive.

11. In RCP No.18 of 2016, in paragraph 3 of the counter filed by the tenant, he had categorically admitted that the monthly rent of the tenanted premises was Rs.2,500/-. In the RCP, the case of the landlord was that, two rooms were leased out to the tenant and the total rent fixed was Rs.4,000/-. But,

in the counter, the respondent contended that the landlord himself altered the two rooms to make it a single room and the monthly rent was fixed as Rs.2,500/-. So, the Rent Control Court as well as the appellate court took Rs.2,500/- as the monthly rent admitted by the tenant. The tenant also is not challenging the finding of the Rent Control Court and the appellate court that the admitted rent was Rs.2,500/- per month.

12. Regarding the period of default, according to the landlord, the rent was in arrears from May, 2015 till May, 2022, for which he filed I.A No.2 of 2022 before the Rent Control Appellate Authority under Section 12(1) of the Act.

13. Learned counsel for the tenant contended that, though the landlord filed RCP on the ground of Section 11(2)(b) also, there was no finding to that effect by the Rent Control Court, and the RCP was allowed only on the ground of bonafide need under Section 11(3) of the Act. In order to invoke the proceedings under Section 12 of the Act, it is not a condition precedent that there should be a finding as to arrears of rent by the Rent Control Court under Section 11(2)(b) of the Act.

14. It is worth quoting Section 12 of the Act for a better understanding. Section 12 reads as follows:

“12. Payment of deposit of rent during the pendency of proceedings for eviction.—(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...”.

15. The object 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.

16. The purpose of Section 12 of the Act is not to provide another ground of eviction in addition to those provided under Section 11 of the Act but to ensure that the tenant does not avail of the pendency of the petition for eviction for evading regular payment of rent which, even according to him, is due to the landlord, as observed by this Court in **Celine Sourunny vs. Mary Paul Abrao** (1979 KHC 289).

17. Regarding the arrears of admitted rent, we have found that there was clear admission in the counter filed by the tenant that the rent agreed was Rs.2,500/-. Regarding the period also, it appears that there is no dispute because the tenant deposited the arrears Rs.87,500/- before the appellate authority for obtaining stay and thereafter deposited Rs.64,000/- as per order

in I.A No.2 of 2022 filed under Section 12(1) of the Act. According to him, the amount decreed by the Munsiff Court towards arrears of rent cannot be treated as admitted arrears of rent and if that amount is excluded from the total arrears ordered to be paid by the Rent Control Appellate Authority in I.A No.2 of 2022, then there will not be any rent arrears to be paid to the landlord. Moreover, learned counsel for the tenant would submit that, the decree of a civil court cannot be executed through the proceedings in a Rent Control Court or the Rent Control Appellate Authority.

18. Let us examine the veracity of the contention taken by the tenant that, the decree passed by a civil court for the rent arrears for a particular period, is liable to be excluded from the operation of the order under Section 12(1) of the Act, as it cannot be treated as admitted arrears.

19. Annexure A8, the judgment in O.S.No.355 of 2018, will show that the landlord filed that suit claiming rent arrears from the tenant @ Rs.4,000/- per month for the period May 2015 to May 2018. The defendant/tenant filed written statement contending that, he had availed only one room from

the landlord on a monthly rent of Rs.1,500/- and subsequently, a separating wall with the adjacent room was demolished and the area of the room was increased and so, the rent was enhanced and agreed to be paid @ Rs.2,500/- per month. So, in the civil suit also there was categorical admission from the part of the tenant that the agreed rent was Rs.2,500/- per month.

20. It is true that the deposit contemplated under Section 12 of the Act, is not the amount determined after adjudication but is the rent admitted by the tenant. Annexure A8 judgment shows that the decree was passed based on the rate of rent admitted by the tenant, and the case set up by the landlord that the monthly rent was Rs.4,000/- was found against. Including interest, the total amount decreed was Rs.99,580/- after deducting Rs.87,500/- deposited by the tenant towards rent arrears before the Rent Control Appellate Authority.

21. The tenant has no case that he has challenged that decree by filing an appeal. Moreover, he is admitting that, in the execution proceedings initiated by the landlord based on the decree of the civil court, he is remitting the amount in instalments and so far, he has remitted Rs.10,000/- towards the

decree debt. So, obviously, the tenant is not disputing the decree in O.S No.355 of 2018 passed for rent arrears from May, 2015 to May, 2018, after adjusting the arrears deposited before the Rent Control Appellate Authority.

22. The crucial point is that, the decree was passed accepting the rent amount admitted by the tenant in his written statement. Now the question is whether that amount has to be excluded from the arrears of rent claimed under Section 12(1) of the Act on the ground that the decretal amount cannot be treated as admitted arrears. If the civil court found that the rate of rent stated by the tenant was not correct, and after adjudicating the issue as to the rate of rent and period of default, a decree was passed for a rent not admitted by the tenant, things would have been different. In a case where the tenant himself clearly admitted the rate of rent, and a decree was passed accepting the rent admitted by the tenant, then the tenant cannot turn round and say that the decretal amount cannot be termed as admitted arrears of rent. Even if we forget about the suit and decree, the tenant is admitting monthly rent of the tenanted premises @ Rs.2,500/- throughout the period of

lease.

23. Learned counsel for the tenant relied on the decision **Williams Daniel vs. Jose** (2019 (4) KLT 464), to say that arrears of rent admitted under Section 12 do not postulate adjudicated rent, when there is denial of liability and the only enquiry which could be taken as granted by law in this respect is to find out whether the tenant has made any admission of liability and, if so the extent thereof, so that the arrears of admitted rent could well be ascertained by the court.

24. In **Manik Lal Majumdar and others. vs. Gouranga Chandra Dey and others** [(2005) 2 SCC 400], the Apex Court held in paragraph 6 of as follows:

"6. The expression "all arrears of rent admitted by the tenant to be due", if interpreted literally, would mean that unless the tenant specifically admits any arrears of rent to be due to the landlord, the condition to make the payment of arrears of rent in order to contest the original proceedings before the Rent Control Court or to prefer an appeal as provided under Section 13 of the Act would not arise. The High Court in *Binapani Roy case* [(1994) 1 Gau LR 98] has held that giving literal meaning to the words "admitted by the tenant to be due" would frustrate the provisions of Section 13 of the Act and make the same nugatory or otiose. The object of sub-section (1) of Section 13 of the Act is to avoid litigation for realisation of arrears of rent which is likely to accumulate during the course of

litigation, which may be a long period and also to deter the tenant from resorting to an unfair practice to use and occupy the tenanted premises without payment of any rent so long as the litigation continues. The High Court was of the opinion that the reasonable meaning of the words "admitted by the tenant to be due" is the inference of admission from the material on record. If the material on record prima facie discloses the admission of relationship of landlord and tenant and the rate of monthly rent payable, the tenant would be required to pay or deposit arrears of rent and continue payment of current rent during the pendency of the litigation, as enjoined under Section 13 of the Act.....".

25. In **Koyakkanari Sivadasan vs. K.K Nirmala** (2022 0 Supreme (All) 455), a Division Bench of this Court, relying on *Williams Daniel's case* and *Manik Lal Majumdar's case* cited supra, observed that, in order to ascertain the 'arrears admitted by the tenant to be due', court can have an enquiry in a limited sense. The enquiry allowed is scrutiny of the petitions under Sections 11 and 12 of the Act, objections thereto and other materials brought on record by either parties for purpose only of ascertaining admission regarding landlord-tenant relationship, rate of monthly rent and quantum of arrears of rent payable. If the materials on record disclose or infer such admission, Court shall direct the tenant to pay or deposit arrears of rent due as

on the date of application under Section 12 of the Act and continue to pay subsequent rent which falls due during pendency of litigation.

26. We have seen that, Rs.2,500/- per month was the rent admitted by the tenant in the original suit as well as in the Rent Control Petition filed by the landlord. According to the tenant, the landlord refused to accept the rent and that is why it became arrears. In Annexure A5 objection filed by the tenant in I.A No.2 of 2022, he had expressed his willingness to deposit Rs.64,000/- which, according to him, was the rent arrears till May 2022. His definite case is that the decree amount in O.S No.355 of 2018 cannot be treated as admitted arrears of rent, as the decree was passed not on admission but on adjudication. He is admitting that, if the decretal amount also has to be treated as part of admitted arrears of rent, then there will be balance, as submitted by the landlord. When the tenant is admitting a particular amount as monthly rent of the tenanted premises throughout the period of lease, and he was making deposit of the rent arrears at that rate, just because of the fact that there was decree from a civil court for the rent for an

interregnum period, that too for the rent admitted by him, he cannot contend that the decree was not for admitted arrears of rent. Even if such a suit was not filed by the landlord, then also the tenant was liable to pay arrears of rent as admitted by him in a proceedings under Section 12(1) of the Act, covering the suit period also. So, there is no logic in his contention that the decree amount cannot be treated as admitted arrears, when there is clear evidence to show that the decree was passed accepting the rent admitted by the tenant in his written statement. The tenant has no case that the rent admitted by him in the written statement was not the actual rent during the period covered by the suit or even thereafter.

27. The tenant filed Annexure A10 before the Rent Control Appellate Authority admitting the arrear statement filed by the landlord for Rs.63,500/- excluding Rs.87,500/- deposited before the appellate court at the time of granting stay, Rs.10,000/- deposited in the E.P and Rs.64,000/- deposited as per order in I.A No.2 of 2022. As per Annexure A10, the tenant undertook to deposit Rs.63,500/- claimed by the landlord as per Annexure A9 statement, within seven days. But, without

depositing that amount, the tenant preferred the above revision.

28. Learned counsel Sri.Shibin K.F, appearing for the tenant, admitted that if the decree amount is not excluded, there will be arrears of rent. Finding that still there is arrears of rent, and no cause was shown by the tenant for not depositing the arrears, the learned Rent Control Appellate Authority ordered eviction under Section 12(3) of the Act.

On going through the available facts and circumstances, we could not find out any illegality, irregularity or impropriety in the impugned judgment of the Rent Control Appellate Authority, ordering the tenant to put the landlord in possession of the tenanted premises under Section 12(3) of the Act.

The Rent Control Revision fails and hence dismissed.

Sd/-

**P.B SURESH KUMAR
JUDGE**

Sd/-

**SOPHY THOMAS
JUDGE**

APPENDIX OF RCREV.19/2023

PETITIONER ANNEXURES

- Annexure A1 A TRUE COPY OF THE PETITION FILED BY THE RESPONDENT HEREIN BEFORE THE RENT CONTROL COURT, CHALAKUDY DATED 05-12-2016
- Annexure A2 A TRUE COPY OF THE APPEAL MEMORANDUM IN RCA NO.42/2018 FILED BEFORE THE RENT CONTROL APPELLATE AUTHORITY, THRISSUR DATED 30-11-2018
- Annexure A3 A TRUE COPY OF THE ORDER DATED 12-04-2019 OF THE RENT CONTROL APPELLATE AUTHORITY, THRISSUR IN IA NO.4697/2018 IN RCA NO.42/2018
- Annexure A4 A TRUE COPY OF THE IA NO.2/2022 IN RCA NO.42/2018 FILED BY THE RESPONDENT HEREIN BEFORE THE RENT CONTROL APPELLATE AUTHORITY, THRISSUR DATED NIL
- Annexure A5 A TRUE COPY OF THE COUNTER TO IA NO.2/2022 IN RCA NO.42/2018 DATED 15-06-2022
- Annexure A6 A TRUE COPY OF THE ORDER OF THE IIIRD RENT CONTROL APPELLATE AUTHORITY, THRISSUR DATED 15-06-2022
- Annexure7 A TRUE COPY OF APPLICATION FILED TO RECEIVE THE TREASURY RECEIPT SHOWING THE DEPOSIT OF SUM OF Rs.64,000/- (RUPEES SIXTY-FOUR THOUSAND ONLY) IN RCA NO.42/2018 DATED 02-07-2022
- Annexure A8 A TRUE COPY OF THE JUDGMENT IN O.S. NO.355/2018 ON THE FILES OF THE MUNSIFF COURT, CHALAKUDY DATED 31-08-2019
- Annexure A9 A TRUE COPY OF THE STATEMENT FILED BY THE RESPONDENT HEREIN BEFORE THE RENT CONTROL APPELLATE AUTHORITY, THRISSUR IN RCA NO.42/218 DATED 19-08-2022

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Annexure A10 A TRUE COPY OF THE REPLY FILED BY THE APPELLANT IN RCA NO.42/2018 DATED 05-12-2022

Annexure A11 A TRUE COPY OF THE COUNTER FILED IN RCP NO.18/2016 ON THE FILES OF THE RENT CONTROL COURT, CHALAKUDY DATED 23-03-2017

Annexure A12 A TRUE COPY OF THE I.A. NO.4697/2018 DATED 30-11-2018 FILED IN R.C.A NO.42/2018 ON THE FILES OF THE RENT CONTROL APPELLATE AUTHORITY, THRISSUR

True Copy

P.S to Judge

smp