

(1968) 11 KL CK 0019

In the High Court Of Kerala

Case No : O.P. No. 1961 of 1966 and 987 of 1967

Harihara Iyer

APPELLANT

Vs

The First Additional District Judge's Court, Trivandrum and others

RESPONDENT

Date of Decision : 21-11-1968

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1969) KLJ 509

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Advocate : T.N. Subramonia Iyer and K.S. Paripoornan, for the Appellant; S.A. Nagendran and M.M. Cherian for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

V. Balakrishna Eradi, J.—These two original petitions have been preferred by the same person and arise out of a proceeding instituted by him under the Travancore-Cochin Buildings (Lease and Rent Control) Order, 1950 before the Rent Controller, Trivandrum for eviction of the 4th respondent who was the tenant in occupation of a building belonging to the petitioner situated within the Trivandrum City limits. Ex. P2 is a copy of the petition dated 23-5-1957 filed by the petitioner under Rule 9 clause 2 of the Travancore-Cochin Buildings (Lease and Rent Control) Order, 1950 praying for an order of eviction of the 4th respondent on the ground of defaults in paying rent. This proceeding was ultimately numbered as B.R.C. 304 of 1957 and by the order Ex. P3 dated the 20th January, 1959 the Rent Control Court allowed the petition and directed the tenant to put the landlord in possession of the building forthwith. Four days before the above order was passed, namely on 16-1-1959, the Kerala Buildings (Lease and Rent Control) Ordinance--Ordinance 3 of 1959--had come into force.

2. On 4-2-1959 the tenant filed a petition in the Additional Munsiff's Court Trivandrum (the Additional Munsiff was exercising the functions of the Rent

Controller) praying for the grant of three months" time u/s 11(2)(b) of Ordinance 13 of 1959 for paying the arrears of rent. There was also a further prayer that on deposit of such arrears within the time to be allowed by the court the court should be pleased to vacate the order of eviction dated 20-1-1959. This application was opposed by the landlord on the ground inter alia that the Rent Controller had no jurisdiction to make any order granting time for payment of arrears of rent in as much as final orders for eviction of the tenant had already been passed as per Ex. P3 whereunder the tenant had been ordered to surrender possession forthwith without any time being fixed or granted for payment or arrears of rent. It was urged that in the face of this direction to surrender possession of the building forthwith, there being no period fixed in Ex. P3 for payment of arrears no question at all could arise of any "extension" of time fixed in the prior order.

3. The Rent Controller by his order Ex. P6 dated the 16th February, 1959 allowed the petition filed by the tenant and directed that if all the arrears due were deposited on or before 16-3-1959 the order for surrender of possession would stand vacated. Thereafter followed a further consequential order evidenced by Ex. P7 dated the 17th August, 1959 wherein it is stated that the arrears of rent till date had been deposited and that therefore the order of eviction was vacated under clause (b) of sub-section (2) of section 11 of Act 16 of 1959 (hereinafter referred to as the Act).

4. The petitioner (landlord) filed appeals against the aforesaid orders before the Subordinate Judge of Trivandrum reiterating his contention that with the passing of the final order for eviction evidenced by Ex. P3 the Rent Control Court had become functus officio and that it had, therefore, no jurisdiction whatever for making any subsequent order granting the tenant time to deposit the arrears of rent and directing that on such deposit being made the prior order for eviction would stand vacated. The appellate authority by its judgment dated the 21st December, 1960 evidenced by Ex. P10 allowed the appeals upholding the above contention raised by the landlord and set aside the orders passed by the Rent Controller evidenced by Exs. P6 and P7.

5. The tenant thereupon filed two revision petitions before the Dist. Court, Trivandrum challenging the correctness of the above decision of the appellate authority. Originally by order dated 6-10-1961 the District Court allowed the revision petitions and restored the orders of the Rent Controller. The landlord thereupon moved this court under Article 226 of the Constitution and ultimately in Writ Appeal No. 200 of 1963 a Division Bench of this court set aside the orders of the District Court and remanded the revision petitions to that court for fresh disposal. One of the question which the District Court was specifically called upon by the order of remand to consider was whether the Rent Control Court had jurisdiction to extend the time for depositing the arrears of rent after final orders had already been passed by it on the B.R.C. petition directing the tenant to surrender possession of the building forthwith.

6. After remand the District Court considered the above questions as also the further question as to whether the tenant had in any event, deposited the arrears of rent within time so as to satisfy the requirements of Section 11 (2) (b) of the Act. On the first question relating to jurisdiction the District Judge came to the conclusion that u/s 11 (2) (b) of the Act the Rent Control Court had the power to extend the period for making deposit of arrears of rent provided an application in that behalf was filed by the tenant before the expiry of one month from the date of the order for eviction. Although the attention of the District Judge had been invited to the decision of Raman Nayar, J. reported in *Mohamed Khani Rowther v. Thaivana Ammal*, 1963 KLT 206, explaining the scope of Section 11 (2) (b) and holding that expression "such other period as may be allowed by the Rent Control Court" occurring therein refers only to a period to be fixed by the court at the time of passing the order for eviction, the fixation being incorporated in that order itself, and that the Rent Control Court has no jurisdiction or power at any stage subsequent to the passing of the order for eviction to extend the time for deposit of arrears of rent beyond the statutory period of one month fixed by section 11(2) (b), the District Judge felt emboldened to bypass this decision apparently on the basis that certain observations contained in the judgment of a Full Bench of this court in *Kurien v. Sarama Chacko*, 1964, KLT 1, lend support to the conclusion that the Rent Control Court has jurisdiction to extend the time for deposit of arrears of rent even after passing final orders in the petition filed u/s 11, provided the application praying for such relief is made by the tenant before the expiry of the second period to one month referred to in Section 11(2) (b). On the second point raised before it the District Court considered it necessary to direct both parties to file statements in the light of the observations contained in paragraphs 7 to 11 of its judgment. It accordingly passed a preliminary order Ex. P11 answering point No. 1 in favour of the tenant stating that final orders on point No. 2 will be passed after the statements are filed by the parties and the objections thereon are heard. It is against this order that O. P. 1966 has been preferred by the landlord.

7. Subsequently, after statements were filed by both parties pursuant to the directions contained in Ex. P-11 and arguments were heard in respect of the objections raised by both sides the District Court, passed the further order dated the 12th October, 1966 whereby it found that a balance of Rs. 119.15 remained to be deposited by the tenant but held that it was a fit case in which the tenant should be given further time to make up the deficit. It accordingly granted the revision petitioner (tenant) one month's time to deposit the balance amount and directed that on such deposit being made the order for eviction passed by the Rent Control Court evidenced by Ex. P3 would stand vacated. The landlord has preferred O.P. 987 of 1967 challenging the aforesaid final order passed by the District Judge, a copy of which has been produced as Ex. P2 in this writ petition.

8. The main contention urged by the learned counsel for the petitioner is that the view taken by the District Court that the Rent Control Court had jurisdiction to

extend the time for depositing the arrears of rent even after the final orders directing the tenant to surrender possession forthwith had been passed by it on the B.R.C. petition is erroneous and unsustainable. It is submitted that the decision of the Full Bench reported in *Kurien v. Saramma Chacko* 1964 KLT 1, gives no support whatever to the view expressed by the District Judge regarding the scope of section 11 (2) (b) of the Act, and that on the other hand, the observations in the Full Bench judgment are clearly indicative of the correctness of the contrary view. The decision of Raman Nayar, J. in *Mohammed Khani Rowther v. Thaivana Ammal* 1963 KLT 205, is very strongly relied on by the petitioner's counsel and it is contended that the authority of this ruling has not in any manner been shaken by the pronouncement of the Full Bench in *Kurien v. Saramma Chacko*, 1964 KLT 1.

9. The relevant portion of Section 11 of the Act may be usefully extracted :-

(1) Notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise except in accordance with the provisions of this Act:

* * *

(2) A landlord who seeks to evict his tenant shall apply to the Rent Control Court for a direction in that behalf--

(a) If the Rent Control Court, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that the tenant has not paid or tendered the rent due by him in respect of the building within 16 days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable, it shall make an order directing the tenant to put the landlord in possession of the building and if it is not satisfied it shall make an order rejecting the application thereof by him:

Provided that an application under this sub-section shall be made only if the landlord has sent a registered notice to the tenant intimating the default and the tenant has failed to pay or tender the rent together with interest at 6% per annum and postal charges incurred in sending the notice within 15 days of the receipt of the notice or of the refusal thereof.

(b) The order directing the tenant to put the landlord in possession of the building shall not be executed before the lapse of one month from the date of the order of the Rent Control Court and if the tenant deposits arrears of rent with interest and cost of proceedings within a month of such order or such other period as may be allowed by the Rent Control Court, it shall vacate that order.

As I understand the Section, the combined effect of clauses (a) and (b) of sub-section (2) is as follows: Where the landlord satisfies the Rent Control Court that the tenant has not paid or tendered the rent due by him in respect of the building within 15 days after the due date as fixed in the contract of tenancy or

by the last day of the month next following that for which the rent is payable in the absence of any specific agreement as to the date by which the rent is to be paid, the Rent Control Court is bound to make an order directing the tenant to put the landlord in possession of the building. A statutory minimum period of one month, is however, allowed to the tenant by clause (b) to deposit the arrears of rent together with interest and costs and on such deposit being made the order for eviction shall be vacated by the Rent Control Court. The Rent Control Court is also empowered to fix a period larger than the statutory minimum period of one month within which the tenant may be allowed to deposit arrears for the purpose of getting the order vacated. During the aforesaid statutory period of one month or the larger period that may be fixed by the Court within which the tenant is allowed to deposit the arrears of rent the order directing the tenant to put the landlord in possession of the building shall not be executed. The question for consideration is to the proper stage when the Rent Control Court is to exercise this power to fix the time within which such deposit should be made by the tenant - whether it is to be done at the time of passing the order for eviction or whether the Rent Control Court has jurisdiction to pass such an order even after an unconditional order for eviction has been passed and the B.R.C. petition finally disposed of.

10. In Mohammed Khani Rowther v. Thaivana Ammal, 1963 KLT 205, the above question directly arose for consideration before my learned brother Raman Nayar, J. and after a detailed examination of all the relevant aspects the learned Judge held thus:

Reading S. 11 (2)(b) and S. 14 together, it seems to me that what the statute contemplates is that the order of eviction should itself allow a time for eviction, on the expiry of which alone the order can be executed. That would be the one month's period allowed by S. 11 (2) (b) itself "or such other period as may be allowed by the Rent Control Court" under that section. It follows that "the such other period" must be prescribed by the order of eviction itself and not by any other order. If this were not so it would mean that long after an order for eviction has been made, even long after it has been executed, the Rent Control Court could give time for depositing the arrears of rent (not even perhaps up to date but only up to the date of the application for eviction) and, on such deposit would be bound to vacate the order of eviction. This would be most unreasonable and I should think that if S. 11 (2) (b) were really intended to empower the Rent Control Court to extend or enlarge (from time to time, as and when occasion arose) the one month's period allowed therein, it would have been very differently worded.....

A reading of S. 14 of the Act makes the position clear. An order under S. 11 shall be executed by the Munsiff after the expiry of the time allowed therein. If nothing is said in the order then the one month's time allowed by S. 11 (2)(b) automatically attaches to the order. If any other period is to be regarded as the time allowed by the order then the order itself must state the period that cannot

be done by a subsequent order. If the Rent Control Court were to prescribe a different period by a subsequent order that would not be a period allowed by the order made under S. 11: and, under the terms of S. 14 the Munsiff would be bound to execute the order made under S. 11 on the expiry of the time allowed therein.

I am in respectful agreement with the view expressed by the learned judge that the power conferred on the Rent Control Court by section 11 (2) to fix a larger time than the statutory period of one month within which the tenant may deposit arrears of rent and get the order for eviction vacated has to be exercised by it only the time it passes the order for eviction and that thereafter the Rent Control Court has no jurisdiction to allow the tenant any period other than the statutory period of one month by any subsequent order.

11. The Full Bench which decided *Kurien v. Saramma Chacko*, 1964 KLT 1 did not have occasion directly to consider This question, because the only point which arose for consideration before it related to the construction of expression "the Rent Control Court" occurring in section 11 (2) (b) of the Act, the question raised being whether the said expression connotes only the original Rent Control Court presided over by the Rent Controller or takes in also the appellate and the revisional authorities. While considering the above question the Full Bench has however incidentally touched upon the nature and extent of the prohibition against execution imposed by Section 11(2) (b) and the power conferred on the "Rent Control Court", in relation thereto. The Full Bench has pointed out that section 11 (2) (b) contemplates two periods of time namely, (1) the period of one month statutorily fixed during which the order directing the tenant to put the landlord in possession cannot be executed and (2) the period of one month or such other period as may be allowed by the court during which the tenant may deposit arrears of rent with interest, cost etc. for getting the order of eviction vacated. In the view of the Full Bench the power conferred on the court is not really one to grant an extension of the statutory period of one month but a power to allow the tenant in the exercise of its discretion any larger period as may be fixed by it during which the arrears of rent, interest, cost etc. may be deposited. Although the Full Bench has not directly expressed any opinion as to when such discretionary power should be exercised by the court, it seems to me obvious that such fixation of a larger period has to be made by the court at the time of passing the order of eviction, because thereafter there can only be a question of extension of the statutory period of one month which would have begun to run, and this the Full Bench has held the court has no power to do. Hence, far from supporting the view taken by the learned District Judge, the observations contained in the Full Bench judgment, to the extent to which they throw any light on the question raised in this case, tend to show that once the Rent Control Court has passed an unconditional order for eviction of the tenant without fixing any period larger than the statutory period of one month within which the arrears of rent etc. can be deposited by the tenant for getting the order of eviction vacated, it has thereafter no jurisdiction to pass a subsequent

order granting the tenant a larger time than the statutory period of one month for making the deposit.

12. In the light of the above, it must follow that the District Judge was clearly in error in holding that the Rent Controller had jurisdiction in this case to pass the order extending the time for the tenant to make the deposit of arrears of rent. In this view it becomes unnecessary for me to consider the further question as to whether, the District Court while passing its final order dated 12-10-1966 had, in any event jurisdiction to grant further time for enabling the tenant to make up the deficiency in the deposit already made, when it was found that the requisite amount had not been deposited by the tenant in time even pursuant to the impugned order passed by the Rent Controller.

13. The order of the District Court dated 9-11-1965 Ex. P11 in O.P. 1961 of 1966 - and the consequential order dated the 12th October, 1966 - Ex. P2 in O.P. 987 of 1967 - are therefore quashed and the decision of the Subordinate Judge dated the 21st December, 1960 will stand restored.

14. Counsel for the petitioner has very fairly stated that his client has no objection to keep the execution proceedings in abeyance for a period of six months from today provided the 4th respondent deposits before the Munsiff's Court, Trivandrum on or before 2-1-1969 all the arrears of rent which have accrued due and remain unpaid till that date and also continues thereafter to deposit before the 10th of each succeeding month commencing with the 10th February 1969 the rent due in respect of the immediately previous month. There will be a direction accordingly. It is, however, made clear that in case the 4th respondent commits a default in making the initial deposit of arrears of rent directed to be made on or before 2-1-1969 or any of the succeeding deposits of monthly rent, the petitioner shall be entitled to execute the decree forthwith without waiting for the expiry of the period of six months. The original petitions are allowed as above. I make no direction regarding costs.