

(2009) 01 KL CK 0076
In the High Court Of Kerala
Case No : Writ Petition (C) No. 903 of 2009

Jain Abraham

APPELLANT

Vs

Best Buy T.V. and Home Appliances

RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11, 11(2), 12, 12(1), 12(2)

Citation : (2009) 01 KL CK 0076

Hon'ble Judges : Pius C. Kuriakose, J;M.C. Hari Rani, J

Bench : Division Bench

Advocate : V. Rajendran and George Varghese Kizhakkambalam, for the Appellant; K.R. Vinod, for the Respondent

Judgement

Pius C. Kuriakose, J.—This writ petition under Article 227 of the Constitution is filed by the landlord, who is the Petitioner in R.C.P. No. 16/2008, on the files of the Rent Control Court, Ernakulam. The grievance voiced by the Petitioner is that the Principal Munsiff Court, Ernakulam, which is presently holding charge of the Rent Control Court, is not passing final orders on Exts. P-5 and P-6, which are applications filed by him under Sections 12(1) and 12(2) of the Kerala Buildings (Lease and Rent Control) Act, 1965 respectively. On notice being served on the Respondent by special messenger, Sri K.R. Vinod, Advocate has entered appearance on behalf of the Respondent.

2. We have heard the submissions of Sri V. Rajendran, (Perumbavoor) learned Counsel for the Petitioner and also those of Sri K.R. Vinod, learned Counsel for the Respondent. Sri Vinod submitted that going by the counter-affidavit, which the Respondent had filed to the first application u/s 12 filed by the Petitioner, the Respondent has admitted that the rent is in default only from June, 2008. The Petitioner, the learned Counsel would submit, is ready and willing to pay the rent arrears so admitted by him provided a minimum period of 30 days time is given. According to the learned Counsel, it is on account of unforeseen contingencies

like initiation of coercive action by the sales tax authorities, that the rent fell into arrears. Sri V. Rajendran, learned Counsel for the Petitioner, would submit that there is no justification for showing any indulgence towards the Respondent. According to him, the Respondent has to pay the rent which has fallen due subsequent to the institution of the Rent Control Petition since the rate of rent is not in dispute.

3. We have considered the rival submissions. Section 12 of the Act 2 of 1965 is extracted below:

12. Payment or 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 u/s 11, shall be entitled to contest the application before the Rent Control Court under that section, or to prefer an appeal u/s 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 upto 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.

(2) The deposit under Sub-section (1) shall be made within such time as the Court may fix and in such manner as may be prescribed and shall be accompanied by the fee prescribed for the service of notice referred to in Sub-section (4):

Provided that the time fixed by the Court for the deposit of the arrears or rent shall not be less than four weeks from the date of the order and the time fixed for the deposit of rent which subsequently accrues due shall not be less than two weeks from the date on which the rent becomes due.

(3) If any tenant fails to pay or to deposit the rent as aforesaid, the Rent Control Court or the Appellate Authority, as the case may be, shall, unless that tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

(4) When any deposit is made under Sub-section (1), the Rent Control Court or the Appellate Authority, as the case may be, shall cause notice of the deposit to be served on the landlord in the prescribed manner and the amount deposited may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him to the Rent Control Court or the Appellate Authority in that behalf.

4. It is the statutory obligation of a tenant, who wants to contest any proceeding for eviction whether it be before the Rent Control Court or the Appellate Authority, to pay the arrears of rent to the extent admitted by him. It is also his obligation to pay the rent, which falls due subsequent to the commencement of

the proceedings. We are of the view that in a situation like the present one, where the contract rent is admitted to be Rs. 39,000 per mensem, there is no scope for any contest regarding the Respondent's liability to pay the rent which has fallen due subsequent to the institution of the Rent Control Petition, which in this case was on 31-1-2008. The legislature has drawn a distinction between arrears of rent and the rent which falls due subsequently. Arrears obviously means the rent which had already accrued as payable as on the date of the issuance of the statutory demand notice u/s 11(2) and at the time of institution of the RCP. The rent which falls due subsequently cannot be described as arrears since the same fell due only subsequent to the commencement of the rent control proceedings. In the instant case, the apparent contention raised by the Respondent through his counter to the I.A., that there is admitted arrears of rent only from June, 2008, cannot be countenanced even for a moment especially in the absence of any receipt issued by the landlord in favour of the Respondent subsequent to the filing of the Rent Control Petition. Looking at the issue in that way, we are of the view that since the institution of the Rent Control Petition is on 31-1-2008, the quantum of rent which has fallen due till 15-1-2009 is Rs. 4,29,000. Since we are concerned with proceedings u/s 12, the Respondent's liability to pay interest at the statutory rate of 6% on the rent defaulted can be ignored for the time being. Thus in strict terms of Section 12(1), the Respondent's liability towards the rent falling due subsequent to the Rent Control Petition as on today is Rs. 4,29,000. It was conceded by Sri Vinod that towards the rent quantified as above, the Respondent has paid only Rs. 1,31,896. The balance comes to Rs. 2,97,104. The present one is a case where orders u/s 12(2) directing payment of admitted arrears and of the rent, which falls due subsequently, have already been passed by the Rent Control Court. The liability of the Respondent to pay the rent, which has fallen due subsequent to the passage of such order is statutory and therefore it is not necessary to pass order u/s 12(2) once again.

5. Yet, in view of the persuasive submissions of Sri Vinod, we are inclined to pass fresh orders directing the Respondent to pay either directly or to the Petitioner's counsel in this Court against proper receipt a sum of Rs. 2,97,000 so as to cover the subsequent rent up to 15-1-2009 on or before 6-2-2009. If the Rent Control Court notices that the amount, as directed above, is not paid by 7-2-2009, that Court will pass final orders u/s 12(3) of the Act without delay i.e. at any rate on or before 10-2-2009.

The Rent Control Court will special list this case for trial only after it ensures that the orders given above are complied with.

The Writ Petition is disposed of as above.