
(1992) 03 KL CK 0005
In the High Court Of Kerala
Case No : C.R.P. No. 1308 of 1991

Kariyadan Puthiya Maliyakkal Rabi Umma	APPELLANT
Vs	
Mukundan	RESPONDENT

Date of Decision : 26-03-1992

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(2), 11(2)(a), 11(2)(b), 11(2)(c), 23(1)(i)

Citation : (1992) 1 KLJ 592

Hon'ble Judges : T.V. Ramakrishnan, J; K. John Mathew, J

Bench : Division Bench

Advocate : A.K. Basheer, for the Appellant; G. Mohan, for the Respondent

Final Decision : Dismissed

Judgement

Ramakrishnan, J.—The challenge in this revision is against an order passed by the Rent Control Appellate Authority u/s 11 (2) (c) of the Kerala Buildings (Lease & Rent Control) Act (for short "the Act") granting the respondent-tenant further time to make the required deposit under that sub section in an appeal filed by the respondent-tenant against an order by the Rent Control Court refusing to pass such an order in his favour. It was contended that when once the period fixed for depositing the arrears of rent together with interest and costs in the order of eviction expires and on such expiry the landlord files execution petition; it may not be a proper exercise of jurisdiction on the part of the rent control court or the appellate authority to grant further time for deposit thereafter so as to deprive the landlord of his right to execute the order of eviction which has become executable by default in the payment of arrears of rent with interest and costs. The learned counsel submitted that initiation of execution proceedings after the expiry of the original period would in fact act as a bar for the exercise of the discretionary jurisdiction to grant further time u/s 11 (2) (c) of the Act. The facts and circumstances under which the appellate authority has passed the impugned order u/s 11 (2) (c) of the Act can be stated thus: The order of

eviction u/s 11 (2) (b) of the Act was passed on 2-3-1990 giving two months" time for depositing the required amount and for moving the court u/s 11 (2)(c) of the Act. The two months" time fixed in the order expired on 3-5-1990, during mid summer vacation. The court reopened after mid summer vacation on 25-6-1990. No deposit was made on or before 25-6-1990. If the tenant wanted to file necessary application for granting further, time it could have been filed on 25-6-1990 itself and in that case there would not have been any delay in filing the application for further time. However before filing any application for further time u/s 11 (2) (c) of the Act, on 30-5-1990 the landlord filed execution application to execute the order of eviction. On 14-6-1990 the respondent-tenant filed I. A. No. 1008 of 1990 praying for granting further time for deposit u/s 11 (2) (c) of the Act after condoning the default in not making the deposit within 2 months" time granted originally as per the order of eviction. The entire arrears of rent with interest and costs was actually deposited on 16-6-1990 as per challan No. 52. The request was to extend the time for deposit till 16-6-1990. The prayer in the application was opposed by the landlord. The Rent Control Court found no reason to grant further time and rejected the prayer. On appeal the appellate authority has on a consideration of the entire facts and circumstances of the case, found that the refusal to grant further time as requested by the tenant was not proper and legal and has allowed the application granting time till 16-6-1990. It is the validity of the order so passed by the appellate authority which has been challenged in this revision.

2. Section 11 (2) of the Act is in the following terms:

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

(b) 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 fifteen 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 six per cent per annum and postal charges incurred in sending the notice within fifteen days of the receipt of the notice or of the refusal thereof.

(c) The order of the Rent Control Court directing the tenant to put the landlord in possession of the building shall not be executed before the expiry of one month from the date of such order or such further period as the Rent Control Court may in its discretion allow; and if the tenant deposits the arrears of rent with interest

and cost of proceedings within the said period of one month or such further period, as the case may be, it shall vacate that order.

3. From the above provision, the legislative scheme subject to which alone eviction of tenants can be had on the ground of default in payment of rent is fairly clear. Before filing a petition u/s 11 (2) (a) of the Act it is mandatory that landlord should issue a registered notice to the tenant intimating default in payment of rent and only in case the tenant fails to discharge the rent in arrears with interest and postal charges within 15 days of the notice or its refusal, an application for eviction u/s 11(2) (a) can be filed. Even after the filing of the petition for eviction and the passing of an order for surrender of the building; sub clause (c) of Section 11 (2) of the Act specifically provides that the order so passed shall not be executed before the expiry of one month from the date of such order or such further period as the Rent Control Court may in its discretion allow. It further provides that if the tenant makes the required deposit, either within the statutory period of one month from the date of order for surrender or within the time originally fixed by the Rent Control Court in its order, or such further time the court may in its discretion allow, the court shall vacate the order passed for surrender of possession. Interpreting the provisions in Section 11 (2) (c) and Section 23 (1) (i) of the Act a Division Bench of this Court has held in *Sreedharan v. Muhammed Kunhi* (1978 KLT 20) that the wording of the sub clause especially the words "such further period" would permit extension of the period fixed in the original order by a subsequent order passed not only before the expiry of the original period but also after its expiry. Further in the same decision this Court has held that no period is prescribed for an application u/s 11 (2) (c) of the Act. However, this Court has in *Lakshmi v. Kuppuswamy Chettiar* (1983 KLT 703) held that the power to grant "further time" can be exercised only once and cannot be exercised successively ad infinitum. In *Madhavan v. District Judge* (1988(1) KLT 318), a learned Single Judge had occasion to consider the question whether the exercise of the power to grant further time by the Rent Control Court would preclude the appellate authority from granting further time if in the exercise of the appellate power, the appellate authority finds the need to grant further time. In this connection it was observed so by the learned Judge:

...When the appellate court grants a further period over and above the time granted by the Rent Control Court, it is not to be understood as a second extension of time but only a refixation of the period originally extended. In other words, the appellate authority replaces or substitutes the period extended by the Rent Control Court. Thus it cannot be argued that the Appellate Authority has no jurisdiction to extend the time or expand the period fixed by the Rent Control Court.....

In the light of the principles laid down in the above decisions, there cannot be any dispute regarding the power of the Rent Control Court and the appellate authority to grant further time either before or after the expiry of the period originally fixed either statutorily or as per the order of the court, at least once.

4. The only other question to be considered is whether the filing of an execution petition after the expiry of the period originally fixed would in any way affect the power of the court to grant further time in appropriate cases exercising the discretion statutorily vested in the authorities as per Section 11 (2) (c) of the act. It is clear from the provisions contained in Section 11 (2) (c) that the avowed object or purpose of the legislature in suspending the execution of the order passed u/s 11 (2) (b) of the Act till the expiry of the period originally fixed by the statute itself or by the Rent Control Court or till the expiry of the further time given by the Rent Court and/or the appellate authority as the case may be; is to avoid the consequence of the default committed by the tenant in the payment of rent even after an order for surrender is passed taking note of the initial default and to get the order for surrender vacated. If that be the ultimate object or purpose of the legislation as is clear from the provisions in Section 11 (2) (c) of the Act; there cannot be any doubt about the fact that so long as the order for surrender remains executable the Rent Control Court and the appellate authority should have power to exercise their discretionary power to grant further time at least once as explained in *Lakshmi v. Kuppuswamy Chettiar* (1983 KLT 703) and *Madhavan v. District Judge* (1988 (1) K. L. T. 318). Till the order for surrender is actually executed the tenant must be held to be entitled to move the court to grant further time and to get the order for surrender vacated as contemplated by Section 11 (2) (c) of the Act. We do not find any justification in the provisions in Section 11 (2) (c) of the Act or in the object and purpose of the Act to hold that filing of an execution petition or initiation of any other steps in execution will preclude the Rent Control Court or the appellate authority from exercising the discretionary power to grant further time [under Section 11 (2) (c) of the Act till such power is exhausted by its exercise at least once by the concerned authorities. Nor do we find anything in the decision reported in *Arjun Khiamal Makhijani Vs. Jamnadas C. Tuliani and Others*, and strongly relied upon by the learned counsel for the petitioner, to hold that filing of the execution petition by the landlord would preclude the tenant from moving the court for granting further time as contemplated by the provisions contained in Section 11 (2) (c) or the Court from granting the same at least once in appropriate cases in exercise of its discretionary jurisdiction. In the light of the above discussion, the only relevant question to be considered in the revision is whether the appellate authority has properly exercised the discretion to grant further time statutorily vested in it while granting further time as prayed for by the tenant in this case. Taking into consideration the entire facts and circumstances of the case, we are of the view that the appellate authority was fully justified in coming to the conclusion that it was a fit case for exercise of the discretionary power vested in the Rent Control Court for granting further time. That finding being purely a finding of fact has only to be confirmed. We do not find any illegality, irregularity or impropriety in the said finding.

In the circumstances, there is no merit in the revision and the same is dismissed in limine.