

(2010) 09 KL CK 0206

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 28523 of 2010 (M)

P. Jaya and P. Maheswari

APPELLANT

Vs

C. Rethinam, P. Ramani and Kannan

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 6, 11(2), 18
Constitution of India, 1950 — Article 227

Citation : (2010) 09 KL CK 0206

Hon'ble Judges : Pius C. Kuriakose, J;P.S. Gopinathan, J

Bench : Division Bench

Advocate : CIBI Thomas, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

Pius C. Kuriakose, J.—Under challenge in this writ petition filed under Article 227 are Ext.P4 order passed by the Principal Munsiff, Thiruvananthapuram in E.P. No. 181/2008 in R.C.P. No. 6/2005 and also Ext.P6 order of the Additional District Judge, Thiruvananthapuram confirming Ext.P4.

2. Two points are seriously urged before us by Sri. Cibi Thomas, learned Counsel for the petitioners. The first point is that the order of eviction was passed ignoring the contention of the tenant that he is kudikidappukaran. According to us, this is not a contention which is available on the Execution side. It was open to the petitioners to challenge the eviction order by filing regular appeal u/s 18. The second point, which is urged, is that the order of eviction passed by the Rent Control Court is a nullity and hence the same is not executable by the Principal Munsiff. The merit of this contention is actually considered by the Execution Court as well as the learned District Judge with reference to Rule 6 of Order 22 CPC. It is not disputed before us that the predecessor in interest of the petitioners had passed away after the hearing in the RCP was over and the case was posted for order by the Rent Control Court. That being so, we do not find any infirmity about Exts.P4 or P6. We also notice that the order of eviction, which

is being executed, is one u/s 11(2)(b). It is trite that orders of eviction passed u/s 11(2)(b) are tentative in the sense that they are liable to be vacated by making requisite deposits u/s 11(2)(c). According to us, the petitioners cannot have legitimate grievance if they are granted reasonable time for making requisite deposit and filing application u/s 11(2)(c).

We dismiss the writ petition. However, we direct the Execution Court not to order and effect delivery for a period of one month from today. It is open to the petitioners to pursue other remedies available to them as indicated hereinabove in the meanwhile.