
(2023) 05 KL CK 0138

In the High Court Of Kerala

Case No : Rent Control Revision No. 98 Of 2023

Roy

APPELLANT

Vs

Puthenpalli Dhanavardhana Company Private Limited

RESPONDENT

Date of Decision : 22-05-2023

Acts Referred:

Kerala Building (Lease and Rent Control) Act, 1965 — Section 11(4)(v)

Citation : (2023) 05 KL CK 0138

Hon'ble Judges : A.K. Jayasankaran Nambiar, J; Mohammed Nias C.P., J

Bench : Division Bench

Advocate : S.M.Prem, H.Narayanan

Final Decision : Dismissed

Judgement

Mohammed Nias.C.P. J.

1. This revision is preferred against the judgment in RCA No.16 of 2019 dated 9.2.2023 of the Additional District Judge and Rent Control Appellate Authority, North Paravur, which arose from the order in RCP No.37 of 2010 dated 28.07.2018 of the Rent Control Court, North Paravur. By the impugned order of the appellate authority, an application to condone a delay of 374 days in filing RCA No.16 of 2019 was dismissed. Consequently, RCA No.16 of 2019 was also dismissed.

2. The petitioner was the tenant in RCP No.37 of 2010 against whom an eviction order was passed on 28.07.2018. It was the contention of the petitioner that he was under the impression that the said order was an ex-parte order and so he filed IA No.1826 of 2018 before the Rent Control Court to set aside the ex-parte order and he was prosecuting the said application bonafide under the said belief that the ex-parte order would be set aside. However, the Rent Control Court by order dated 9.8.2012 dismissed IA No.1826 of 2018 finding that the order of eviction dated 28.7.2018 was not an ex-parte order and that it was passed on merits. Thereafter petitioner applied for the certified copy of the order dated

28-07-2018 and preferred the appeal with a delay of 374 days. The appellate authority found that the order of eviction dated 28.7.2018 was not an ex-parte order and that it had considered the evidence adduced by both sides after granting sufficient opportunity to adduce evidence. In such circumstances, the appellate authority did not accept the contention of the petitioner that he was bonafidely prosecuting the application to set aside the ex-parte order and held that the intention of the petitioner was to drag the matter and postpone the eviction to the maximum extent. Thus finding that the reason put forth for condoning the delay is not satisfactory, IA No.772 of 2019, the delay condonation application leading to the dismissal of RCA No.16 of 2019.

3. Before us, the learned counsel for the petitioner Sri.S.M.Prem, argues that they did not get an opportunity to contest the case on merit. It is also his argument that the Rent Control Court had ordered eviction relying on a report of the Advocate Commissioner which was filed in another case, which is totally wrong.

4. We find from the records that this Court had earlier in RC Rev. No.51 of 2017 set aside the order passed by the Rent Control Appellate Authority as well as the Rent Control Court and remanded the matter back to the Rent Control Court for a fresh consideration after granting opportunity for both sides to adduce evidence. It is seen that no evidence was adduced by the parties even after the order of remand and after relying on the evidence of PW 1 and PW2 who were examined and Exts.A1 to A5 and C1, that the Rent Control Court had passed an order on 28.7.2018. The respondents had not adduced any evidence after remand and it is in such circumstances that an order of eviction under Section 11(4)(v) of the Kerala Building (Lease and Rent Control) Act, 1965 was passed by the Rent Control Court. It was this order that the petitioner contends was an ex-parte order and not on merits that made the petitioner file an application to set aside the ex-parte order. The Appellate Authority did find on facts that the reasons put forth by the petitioner were not true. We also have no doubt in holding that the petitioner's assumption that the Rent Control Court order was an ex-parte order was clearly without any basis. We do not find any reason to interfere with the order of the appellate authority dismissing the delay condonation application and consequently the appeal before it. We find no merit in the above revision and accordingly, we dismiss the above revision.

5. Learned counsel for the petitioner seeks one year time to vacate the premises. We find that reasonable time can be granted subject to conditions.

6. Having considered all the aspects, we deem it appropriate to grant six months time to the petitioner to vacate the scheduled premises, subject to the following conditions:-

“(i)The respondent-tenant in the Rent Control Petition shall file an affidavit before the Rent Control Court or the Execution Court, as the case may be, within two weeks from the date of receipt of a certified copy of this order, unconditionally

undertaking that he will surrender vacant possession of the petition schedule building to the petitioner landlord within six months from the date of this order and that, he shall not induct third parties in possession of the petition schedule building and further that he shall conduct any business in the petition schedule building only on the strength of a valid licence/permission/consent issued by the local authority/statutory authorities;

(ii) The respondent-tenant in the Rent Control Petition shall deposit the entire arrears of rent as on date, if any, before the Rent Control Court or the Execution Court, as the case may be, within four weeks from the date of receipt of a certified copy of this order, and shall continue to pay rent for every succeeding months, without any default;

(iii) Needless to say, in the event of the respondent-tenant in the Rent Control Petition failing to comply with any one of the conditions stated above, the time limit granted by this order to surrender vacant possession of the petition schedule building will stand cancelled automatically and the petitioner landlord will be at liberty to proceed with the execution of the order of eviction.”