

(1957) 03 KL CK 0015
In the High Court Of Kerala
Case No : C.M.A. No. 32 of 1957

The Jaya Motion Pictures Ltd.

APPELLANT

Vs

A. Ramakrishna Ayyar

RESPONDENT

Date of Decision : 19-03-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : AIR 1958 Ker 303 : (1957) 1 KLJ 746

Hon'ble Judges : P.T. Raman Nair, J;K. Sankaran, J

Bench : Division Bench

Advocate : T.K. Kurien, for the Appellant; K.N. Narayanan Nair and C.K. Sivasankara Paniker, for the Respondent

Final Decision : Dismissed

Judgement

Sankahan, J.—The defendant in a suit for collection of arrears of rent and for evicting the tenant from the building rented out to him, is the appellant. On a prior occasion the plaintiff had applied for the appointment of a Receiver for the building in view of the large arrears left by the defendant and his refusal to pay up the rent. The first court passed a conditional order directing the appointment of a Receiver for the property in case the defendant fails to deposit the rent that had accrued due from the date of suit onwards, within a time stipulated in that order. The defendant filed an appeal against that order. The High Court confirmed the first court's order and dismissed that appeal. Even thereafter the defendant continued to be a defaulter. It was in such a situation that the present order directing the Receiver to take possession of the building so as to collect the rent of it was passed. The defendant has again come up in appeal.

2. We see no merit in this appeal. The question of appointment of a Receiver is concluded by the prior order which was confirmed by the High Court. There is also no force in the defendant's contention that the order appointing a Receiver for the building is an order for eviction of the defendant. It is no order for eviction as contemplated by the provisions of the Lease and Rent Control Order.

The Receiver order is merely intended to preserve the property for the benefit of the party who may ultimately succeed in the suit. The court taking custody of the property through its Receiver cannot be said to be evicting the tenant in the sense in which it is understood in law. In the circumstances of this case the only effective way of collecting the rent is by the Receiver taking possession of the property.

3. In the result this C. M. appeal is dismissed with costs.