

indira Devi Vs. EdvIn Teddy

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Court : Kerala

Decided On : Jul-04-2014

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : indira Devi

Respondent : EdvIn Teddy

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN & THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE FRIDAY, THE 4TH DAY OF JULY 2014 13TH ASHADHA, 1936 OP (RC).No. 62 of 2014 (O) ----- I.A. NO.2569/2014 IN RCP.NO.55/2012 OF ADDITIONAL MUNSIFF (RCC) THIRUVANANTHAPURAM. PETITIONERS: ----- 1. INDIRA DEVI, D/O.LATE BHAVANIKUTTY AMMA, AGED 67 YEARS, T.C.XXV/2222, PADMA VIHAR, THAMPANOOR, THIRUVANANTHAPURAM.

2. J.P.RAJ, S/O.LATE JAIPRAKASH. K.N, AGED 34 YEARS, RESIDING AT T.C.XXV/2222, PADMA VIHAR, THAMPANOOR, THIRUVANANTHAPURAM. BY ADVS. SRI.K.B.PRADEEP, SRI.ASHOK SURESH. RESPONDENT(S): ----- EDVIN TEDDY, S/O.C.S. TEDDY, 'NEW NET' INTERNET CAFE, T.C.XXV/2221, MANJALIKULAM ROAD, OPP.SMV SCHOOL STADIUM, THIRUVANANTHAPURAM-695 001. THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 04-07-2014, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING: rs. OP (RC).No. 62 of 2014 (O) APPENDIX
PETITIONER'S EXHIBITS:- EXT.P1 COPY OF THE I.A.9384/2013. EXT.P2
COPY OF THE COUNTER AFFIDAVIT. EXT.P3 COPY OF I.A.1922/2014.
EXT.P4 COPY OF THE COUNTER AFFIDAVIT IN I.A.1922/2014. EXT.P5 COPY
OF THE I.A.2569/2014. EXT.P6 COPY OF THE

ORDER

DATED 17.03.2014. EXT.P7 COPY OF THE OBJECTION FILED BY THE
RESPONDENTS. RESPONDENT'S EXHIBITS:- NIL. //TRUE COPY// P.S.TO
JUDGE rs. K.T.SANKARAN & A.MUHAMED MUSTAQUE, JJ.

----- O.P.(RC) No.62 of 2014
----- Dated this the 4th day of
July, 2014

JUDGMENT

K.T.Sankaran, J.

The petitioners filed Rent Control Petition No.55 of 2012 on the file of the Rent Control Court, Thiruvananthapuram against the respondent under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The Rent Control Court passed an ex parte order of eviction on 15.11.2013.

2. The respondent/tenant filed an application on 17.12.2013 to set aside the ex parte order. There was delay of 14 days in filing the application. At the time when the application to set aside the ex parte order was filed, no application was filed to condone the delay.

3. On the objections raised by the landlord that the application is barred by limitation, the tenant filed an application to condone a delay of 14 days. In Maya devi v. Krishna Bhattathiri [1981 KLT239, a Division Bench of this Court held that when the defect is cured and an application is filed for condonation of delay after filing the appeal, the appeal shall be deemed to be filed on the date on which, the O.P.(RC) No.62 of 2014 2 memorandum of appeal was originally filed in court. The Hon'ble Supreme Court has also held that even if no application is filed along with

the memorandum of appeal, that defect can be cured subsequently.

4. The reason stated for condonation of delay is that during the relevant time, the tenant was suffering from jaundice. This was disputed by the landlord. According to the landlord, the tenant is running an internet cafe. The landlord filed I.A.No.2569 of 2014 to issue a direction to the tenant to produce the bills/invoices issued by his internet service provider during the period from 15.11.2013 to 15.12.2013 and the bills covering the period just before and after the period from 15.11.2013 to 15.12.2013. This application was filed, probably to disprove the averment made by the tenant that he was suffering from illness during the relevant period. The court below dismissed the application by the order dated 17.03.2014, which is under challenge in this O.P.(RC).

5. We do not think that the court below committed any error in dismissing the application as irrelevant. For dealing with an application to condone the delay of 14 days, it is not necessary to make a roving enquiry as is contemplated by the O.P.(RC) No.62 of 2014 3 landlord. We do not find any ground to interfere with the order passed by the Rent Control Court.

6. Lastly, the learned counsel for the petitioners submitted that the Rent Control Court may be directed to dispose of the application to set aside the exparte order as expeditiously as possible. Accordingly, there will be a direction to the Rent Control Court to dispose of the application filed by the tenant to set aside the exparte order, as expeditiously as possible, preferably within two months. The O.P(RC) is disposed of as above. Sd/- K.T.SANKARAN, JUDGE Sd/- A.MUHAMED MUSTAQUE, JUDGE In /True copy/ P.A. to Judge

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