

Mr.Govindankutty Vs. Dr.Philip Cherry

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Court : Kerala

Decided On : Aug-25-2014

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : Mr.Govindankutty

Respondent : Dr.Philip Cherry

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN & THE HONOURABLE MR.JUSTICE K.HARILAL MONDAY, THE 25^H DAY OF AUGUST 2014 3RD BHADRA, 1936 OP (RC).No. 97 of 2014 (O) AGAINST THE

ORDER

IN E.P.NO.311/2013 IN RCP.NO.55/2013 OF THE PRINCIPAL MUNSIF COURT, ERNAKULAM DATED 11-06-2014. PETITIONER: ----- M.R.GOVINDANKUTTY DIRECTOR, KALADY G. ENTERPRISES PVT. LTD. MEKKARA HOUSE, KUTHIYATHODE P.O., KODAMTHURUTHU, CHERTHALA, ALAPPUZHA, PIN-683 579. BY ADV. SRI.P.P.JACOB RESPONDENT: ----- DR.PHILIP CHERRY HOUSE NO. XXXI/29 H, PANCHAVATI, AMBELPPADAM ROAD, VYTILA P.O., ERNAKULAM, PIN-682 019. BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR BY ADV. SRI.P.GOPINATH BY ADV. SRI.P.BENNY THOMAS BY ADV. SRI.K.JOHN MATHAI BY ADV. SRI.JOSON MANAVALAN BY ADV. SRI.KURRYAN THOMAS THIS OP (RENT CONTROL)

HAVING COME UP FOR ADMISSION ON 2508-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP (RC).No. 97 of 2014 (O) APPENDIX PETITIONER'S EXHIBITS EXHIBIT P1- TRUE PHOTOCOPY OF E.P. NO.311/2013 IN R.C.P. 55/2013 OF THE PRINCIPAL MUNSIF COURT, ERNAKULAM DATED 212-13. EXHIBIT P1(A)- TRUE PHOTOCOPY OF THE E.A. 168/2014 IN E.P. 311/2013 IN R.C.P. 55/2013 OF THE PRINCIPAL MUNSIF COURT, ERNAKULAM. EXHIBIT P2- TRUE PHOTOCOPY OF I.A.NO.3782/2014 IN R.C.P. 55/2013 DATED 295.2014 OF THE RENT CONTROL COURT, ERNAKULAM. EXHIBIT P3 TRUE PHOTOCOPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENT IN I.A. 3782/2014 DATED 167-2014. EXHIBIT P4 TRUE PHOTOCOPY OF I.A. 3783/2014 IN R.C.P.55/2013 DATED 295- 2014 OF THE RENT CONTROL COURT, ERNAKULAM. EXHIBIT P5 TRUE PHOTOCOPY OF I.A.NO.3784/2014 IN R.C.P. 55/2013 DATED 295-2014. EXHIBIT P6 TRUE PHOTOCOPY OF EXTRACT OF ORDER IN E.P. 311/2013 IN R.C.P. 55/2013 OF THE PRINCIPAL MUNSIF COURT, ERNAKULAM DATED 116.2014. RESPONDENT'S EXHIBITS : NIL //TRUE COPY// AHZ/ K.T.SANKARAN & K. HARILAL, JJ.

----- O.P.(R.C.) NO.97 OF 2014(O)
----- Dated this the 25th day of August, 2014

JUDGMENT

K.T.Sankaran, J.

The respondent filed R.C.P.No.55 of 2013 on the file of the Rent Control Court, Ernakulam against the petitioner under Sections 11(2)(b), 11(3) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act. The Rent Control Court passed an ex parte order of eviction on 9.10.2013. The landlord filed E.P.No.311 of 2013 for execution of the order.

2. The petition schedule building is a residential house. According to the landlord, the tenancy commenced from 1.5.2012 on a monthly rental of 7,500/-. The landlord contended that even during the first month the tenant paid only 2,500/- and the entire balance rent from the first month is in arrears. The learned counsel

for the petitioner/tenant submitted that rent is not in arrears from May 2012 as alleged by the landlord and the rent is in arrears for the last one year only. The learned counsel for the respondent/landlord submitted that the notice claiming arrears of rent was issued on O.P.(R.C.) NO.97 OF2014(O) ::

2. ::

13. 3.2013 and even from that date, for more than 1= years, rent is in arrears.

3. After receiving notice in the Execution Petition, the petitioner/tenant filed I.A.No.3782 of 2014 to set aside the exparte order of eviction. To condone the delay of 219 days in filing I.A.No.3782 of 2014, he filed I.A.No.3783 of 2014. Those applications are pending disposal. Meanwhile, in E.P.No.311 of 2013, delivery of the building was ordered on 11.6.2014.

4. The relief prayed for in the Original Petition is to issue a direction to the Rent Control Court to consider the application for setting aside the exparte order and the application for condonation of delay and to keep in abeyance the delivery of the building. By the interim order dated 24.7.2014, we directed the petitioner/tenant to deposit a sum of `75,000/- before the executing court towards arrears of rent. The learned counsel for the petitioner submitted that the said order has been complied with.

5. After having heard the learned counsel for the parties, we are of the view that the interests of both parties can be safeguarded by issuing a direction to the Rent Control Court to dispose of O.P.(R.C.) NO.97 OF2014(O) ::

3. :: I.A.Nos.3782 of 2014 and 3783 of 2014 as expeditiously as possible and, at any rate, before 31.10.2014. This direction is conditional that the petitioner/tenant shall deposit before the executing court another sum of `50,000/- on or before 25.9.2014. On such deposit, the respondent/landlord would be entitled to withdraw the same. The respondent/landlord would also be entitled to withdraw the sum of `75,000/- deposited by the petitioner/tenant. If the petitioner/tenant fails to deposit `50,000/- on or before 25.9.2014, delivery of the petition schedule building shall be made forthwith. If the petitioner complies with the direction, the order for delivery of

the petition schedule building shall be kept in abeyance till the disposal of I.A.Nos.3782 of 2014 and 3783 of 2014. The Original Petition (Rent Control) is disposed of as above. (K.T.SANKARAN) Judge (K. HARILAL) Judge ahz/

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