

Pmr Properties vs Frank Thomas

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Court : Kerala

Decided On : Jul-03-2023

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : RCRev./119/2023

Appellant : Pmr Properties

Respondent : Frank Thomas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR MONDAY, THE 3RD DAY OF JULY 2023 / 12TH ASHADHA, 1945 R.C.REV. NO. 119 OF 2023 AGAINST THE JUDGMENT DATED 27.02.2023 IN R.C.A.NO.60 OF 2022 OF THE RENT CONTROL APPELLATE AUTHORITY (ADDITIONAL DISTRICT COURT), IRIJANALKUDA AND THE ORDER DATED 19.07.2022 IN R.C.P.NO.17 OF 2019 OF THE RENT CONTROL COURT (ADDITIONAL MUNSIF), IRINJALAKUDA
REVISION PETITIONER/APPELLANT/RESPONDENT:

PMR PROPERTIES REP.BY MANAGING PARTNER PRADEEP,
S/O.KRISHNANKUTTY, KOZHUPPULLIPARAMBIL HOUSE,
KODASSERY VILLAGE AND ELINJIPRA DESOM, CHALAKUDY
TALUK, THRISSUR DISTRICT, PIN - 680721. BY ADVS. SAIJO
HASSAN NAGARAJ NARAYANAN
RESPONDENT/RESPONDENT/PETITIONER: FRANK THOMAS AGED
51 YEARS, S/O. THOMAS, ADIYATTIPARAMBIL HOUSE,
PORATHISSERY VILLAGE, MOORKKANAD DESOM,
MUKUNDAPURAM TALUK REP.BY POWER OF ATTORNEY HOLDER
THOMAS, ADIYATTIPARAMBIL HOUSE AGED 81 YEARS, S/O.
KOCHUDEVASSY, PORATHISSERY VILLAGE, MOORKKANAD
DESOM, MUKUNDAPURAM, PIN - 680711. SRI V.M.KRISHNA KUMAR
THIS RENT CONTROL REVISION HAVING COME UP FOR
ADMISSION ON 03.07.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

ORDER

Anil K. Narendran, J.

The petitioner is the tenant. The respondent-landlord filed

R.C.P.No.17 of 2019 before the Rent Control Court (Additional Munsiff),
Irinjalakuda seeking eviction of the petitioner from the petition schedule building on
the ground of arrears of rent, under Section 11(2)(b) of the Kerala Buildings
(Lease and Rent Control) Act, 1965. The respondent filed I.A.No.1 of 2020 under
Section 12 of the Act in which the Rent Control Court as per

order dated 09.06.2022 directed the petitioner to pay or

deposit Rs.7,99,752/- being the admitted arrears of rent along with interest at the
rate of 6% per annum within four weeks from the date of that order. The petitioner
was further directed to continue to pay the rent for the subsequent months. He
failed to pay or to show cause and that resulted in ordering under Section 12(3) of
the Act to stop the proceedings in R.C.P.No.17 of 2019 and directing the petitioner

to put the respondent in vacant possession of the building. The petitioner took up the matter in appeal by filing R.C.A.No.60 of 2022 under Section 18 of the Act before the Rent Control Appellate Authority (Additional District Court), Irinjalakuda. That appeal was dismissed as per the judgment dated 27.02.2023.

Challenging the said judgment and also the order of the Rent Control Court, the petitioner has filed this revision under Section 20 of the Act.

2. On 30.06.2022, notice on admission was directed to be served on the respondent. The respondent entered appearance through his learned counsel.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

4. The tenancy commenced on 31.08.2017. A rent

agreement was entered into between the parties on the said date. The monthly rent originally agreed to was Rs.20,790/- per month. Rent was enhanced to Rs.21,829/- from 01.07.2018 and again enhanced to Rs.22,920/-. Alleging that the petitioner defaulted payment of rent since February, 2018, R.C.P.No.17 of 2019 was filed. In the objection filed by the respondent, it was admitted that the rent from October, 2018 has been in arrears. He justified non-payment by contending that he suffered a loss of Rs.95,000/- due to the misdeeds of the respondent and he is entitled to set off that amount. In I.A.No.1 of 2020 filed by the respondent, the petitioner filed an objection and took the stand that he paid upto September, 2018. The Rent Control

Court taking into account the averments in the respective pleadings held that the petitioner admitted to have defaulted payment of rent since October, 2018 and that there has not been any dispute with respect to the rate of rent. That resulted in directing the petitioner to pay the rent admitted to be in arrears, which amounted to Rs.7,99,752/- along with interest at the rate of 6% per annum within four weeks from the date of the order, which was rendered on 09.06.2022. Indisputedly, the petitioner failed to make payment of the said amount or to

furnish any reason for non-payment. As an obvious consequence, an order under Section 12(3) of the Act was passed by the Rent Control Court on 19.07.2022.

5. The Appellate Authority, after considering the matter

in detail, did not find any reason to interfere with the order

under Section 12(3) of the Act. The Appellate Authority held

that, the finding regarding arrears of rent admitted to be due and also non-furnishing of any reason for non-payment did not suffer from any illegality. The learned counsel appearing for the petitioner would submit that the concurrent findings of the Rent Control Court and the Appellate Authority are incorrect for the reasons that the petitioner was directed to pay interest also on

the arrears of rent, which is impermissible under Section 12(1) of the Act and that his plea of adjusting an amount of Rs.95,000/-, which he suffered as a loss on account of the mis- deeds of the respondent was not allowed.

6. The learned counsel appearing for the petitioner

placed reliance on the decision in Bhagirath Agarwal v. M/s Simplex Concrete and Piles (I) Pvt.Ltd. and others [(2017) 13 SCC 111], in order to contend that, ordering payment of interest on the admitted arrears of rent is incorrect. In the said decision, the Apex Court considered the question of entitlement of the landlord to claim interest in a matter coming under the West Bengal Premises Tenancy Act (for short West Bengal Act). The question was decided with reference to Section 17(2) and 17(2A) of the West Bengal Act. The Apex Court observed that the provisions of Section 17(2A) provides for payment of interest in cases where payment of arrears of rent is permitted to be paid in installments, the provisions of Section 17(2A) of the West Bengal Act as extracted in the said decision says that where payment is permitted by installments, such sum shall include all amounts calculated at the rate of rent for the period of default including the period subsequent thereto upto

the end of the month previous to that in which the order under that sub-section is to be made with interest on any such amount calculated at the rate specified in sub-section (1) from the date when such amount was payable upto the date of such order.

7. The provisions in the West Bengal Act and the Kerala

Act are totally different. In the light of the specific provisions in the West Bengal Act providing for payment of interest, when the arrears of rent is allowed to be paid in installments, the Apex Court held that the landlord could claim interest. Of course, it may say that if no installment is allowed, no interest may be ordered. But that principle cannot be applied in this case.

8. In Section 12(1) of the Act, there is no provision for

payment of interest on the arrears of rent. This Court considered the question of the entitlement of interest by the landlord in *Gopala Panicker Baiju and another v. Mallika* [2018 (5) KHC 95]. A Division Bench of this Court, after analysing the provisions in the Kerala Act held that, the arrears of rent ordered to be paid under Section 12(1) of the Act shall carry interest at the rate of 6% per annum. We find no reason to deviate from the said view. Therefore, the contention of the petitioner that the

direction of the Rent Control Court to pay interest at the rate of 6% per annum on the arrears of rent admitted to be due together with interest at the rate of 6% per annum is untenable, cannot be accepted.

9. Except contending that the petitioner sustained a loss

of Rs.95,000/- on account of the misdeeds of the respondent- landlord, no material in that regard was placed on record. Therefore, the said contention cannot be reckoned with at all. The learned counsel appearing for the petitioner would further submit that, he is prepared to make payment of the amount of rent in arrears for which some more time may be granted. The Rent Control Court, as is evident from the order dated 09.06.2022, which was passed under Section 12(1) of the Act, has granted time to the petitioner to make payment as provided in the Statute. The

petitioner did not make payment within that time. A reasonable time was given to the petitioner thereafter, however, the petitioner did not offer any explanation. It was only thereafter, the Rent Control Court passed the order under Section 12(3) of the Act on 19.07.2022. As such, no error or illegality can be attributed to the orders under Section 12(1) or 12(3) of the Act. The Appellate Authority considered all such aspects before

confirming the orders of the Rent Control Court. Hence, we find no reason to interfere with the said order.

10. Coming to the request of the petitioner to afford an opportunity to make payment of the rent admitted to be in arrears, the law is clear.

11. Section 12(2) of the Act enjoins a tenant to deposit

the admitted rent under sub-section (1), within such time as the court may fix and in such manner as may be prescribed. The time fixed by the court for the deposit of the arrears of rent and the time fixed for the deposit of rent which subsequently accrues due shall not be less than that specified in the proviso to Section 12(2). As per the statutory mandate of Section 12(1), on an application filed by the landlord under Section 12, the Rent Control Court or the Appellate Authority, as the case may be, has to order payment or deposit of arrears of rent admitted by the tenant to be due in respect of the petition schedule building, up to the date of payment or deposit and the tenant shall also be directed to continue to pay or deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the Appellate Authority, regardless of the relief sought

for in that application. As per Section 12(3) of the Act, if any tenant fails to pay or to deposit the rent as aforesaid, the Rent Control Court or the Appellate Authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building. As per sub-section (4) of Section 12, when any deposit is made under sub-section (1), the Rent Control Court or the Appellate Authority, as the case may be, shall cause notice of the deposit to be

served on the landlord in the prescribed manner, and the amount deposited may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him to the Rent Control Court or the Appellate Authority in that behalf.

12. In *J. Ramkumar v. Ashok Jacob* [2022 (1) KHC

495 : ILR 2021 (4) Kerala 876], a Division Bench of this Court, in which both of us are parties, held that Section 12 of the Act imposes certain obligations on the tenant to pay or deposit admitted rent, during the pendency of the proceedings for eviction under Section 11, before the Rent Control Court, and also the proceedings in an appeal filed under Section 18,

before the Appellate Authority, against such an order of eviction. Section 12(3) of the Act also provides for the consequences, which were to follow, for committing default in fulfilling those

obligations. Section 12(3) of the Act deals with the consequences flowing as a result of the failure on the part of the tenant to pay or deposit admitted rent. Before the consequences under Section 12(3) can ensue, the conditions specified in Section 12(1) and (2) have to be satisfied. Section 12(3) mandates that if any tenant fails to pay or deposit the admitted rent as provided under Section 12(1) and (2), the Rent Control Court or the Appellate Authority, as the case may be, shall, unless the tenant shows sufficient cause to the

contrary stop all further proceedings and make an order

directing the tenant to put the landlord in possession of the building. Therefore, if the Rent Control Court or the Appellate Authority, as the case may be, is satisfied about the cause shown by the tenant, it will not make any order under Section 12(3) of the Act, stopping further proceedings and directing the tenant to put the landlord in possession of the building. It is clear from the plain language and also the legislative intent of Section 12 of the Act that, it is not for the Rent Control Court

or the Appellate Authority, as the case may be, to pass an order

under Section 12(3), stopping further proceedings and directing the tenant to put the landlord in possession of the building, once the time limit fixed for payment or deposit of admitted rent runs out, and the tenant defaulted payment or deposit of rent in terms of the order passed under Section 12(1) and (2). Though it is not for the Rent Control Court or the Appellate Authority, as the case may be, to issue any separate notice to the tenant to enable him to show sufficient cause for

not paying or depositing the admitted arrears of rent, as held

by the Division Bench in Narayanan v. Vinod [2004 (3) KLT 955] and approved by the Full Bench in Shaji M. v. SNDP Sakha Yogam No.610, Alappuzha [2020 (2) KHC 574], the Rent Control Court or the Appellate Authority is not expected to pass an order forthwith, stopping further proceedings and directing the tenant to put the landlord in possession of the building, under Section 12(3).

13. In J. Ramkumar [2022 (1) KHC 495], this Court

held that, the consequences provided under Section 12(3) of

the Act follow when there occurred a default by the tenant in complying with the direction in an order passed under Section

12(1) and (2), for deposit or payment of the admitted arrears of rent. On the date stipulated for effecting such payment, by virtue of that order, the tenant becomes fully aware that, unless sufficient cause has not been shown for the default committed, the consequence of stoppage of the proceedings and direction to put the landlord in possession of the building, under Section 12(3) would follow automatically. There is no necessity to alert the tenant by issuing any specific notice in this regard, calling upon him to show sufficient cause. On the other hand, providing of a further opportunity after the last date stipulated for effecting payment or deposit of admitted rent, is mandatory. If no sufficient cause is shown within such extended date to which the rent control petition is posted, it is absolutely within the authority and competence, and is the natural consequence that, the

Rent Control Court or the Appellate Authority, as the case may be, should stop the proceedings and direct the tenant to put the landlord in possession of the building. As held by the Full Bench in Shaji M. [2020 (2) KHC 574], such a procedure, if followed, would be sufficient compliance for providing reasonable opportunity satisfying the statutory requirement contained in Section 12(3) of the Act.

14. In Venugopalan v. Raphael [1974 KLT 640] it

was argued before the Division Bench that Section 12(3) of the Act is discriminatory and violative of Article 14 of the Constitution of India. The Division Bench observed that, the scope and the purpose of Section 11(2)(c) and Section 12 are fundamentally different. The one is meant to relieve against forfeiture, and the other, as a condition precedent to be performed by the tenant before entering on his defence. The law itself does not encourage or put a premium on dishonesty, although those inclined to be dishonest may make use of its provisions to suit their purpose. Therefore, the Division Bench repelled the contention of the tenant that Section 12(3) of the Act is discriminatory.

15. In Davy v. Indu [1999 (3) KLT 434] a Division

Bench of this Court reiterated that Section 11 and Section 12 of the Act operate in different fields and circumstances. The compliance of these mandatory provisions will lead to eviction of the tenant. But an order of eviction once passed under Section 12(3) cannot be undone by resorting to Section 11(2)(c) of the Act. Section 11(2)(c) of the Act relates to orders of eviction passed under Section 11(2) only. Therefore, Section 11

and 12 of the Act are not dependent on each other.

16. In Nasiruddin v. Sita Ram Agarwal [(2003) 2

SCC 577] the question as to the applicability of Section 5 of the Limitation Act, 1963, in the matter of default in deposit of rent as also interpretation of the word shall occurring in Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, came up for consideration before a Three- Judge Bench of the Apex. Section 13(1)(a) of the Act enables a landlord to sue for a decree of eviction

in the event a tenant has neither paid nor tendered the amount of rent due from him for six months. In terms of Section 13(3), which was substituted by Section 8(i) of Rajasthan Act 14 of 1976, it is obligatory on the court to provisionally determine the amount of rent wherefor no application is required to be filed. As per Section 13(4) of the Act, the tenant shall deposit in court or pay to the landlord the amount determined by the court under Section 13(3) within fifteen days from the date of such determination, or within such further time, not exceeding three months, as may be extended by the court. The tenant shall also continue to deposit in court or pay to the landlord, month by month, the monthly rent subsequent to the period up to which

determination has been made, by the fifteenth of each succeeding month or within such further time not exceeding fifteen days, as may be extended by the court, at the monthly rate at which the rent was determined by the court under Section 13(3). Under Section 13(5), if a tenant fails to deposit or pay any amount referred to in Section 13 (4), on the date or within the time specified therein, the court shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit.

17. In Nasiruddin [(2003) 2 SCC 577] the Apex Court

held that, a bare perusal of the aforementioned provisions

would show that in terms of Section 13(4), a tenant is required to deposit the amount of rent determined by the court under Section 13(3) within fifteen days of the date of determination or within such further time not exceeding three months, as may be extended by the court. By reason of the 1976 Amendment, the following was specifically inserted:

within such further time, not exceeding three months as may be extended by the court or the words or within such further time, not exceeding fifteen days, as may be extended by the court, at the monthly rate at which the rent was determined by the court under sub-section (3)

The word shall, which is ordinarily imperative in nature, has been used in Section 13(4). The power of the court has also been limited to the extent that it can extend time for such deposit not exceeding three months and so far as the deposit of monthly rent is concerned, by fifteen days. The court's power, therefore, is restricted. In case the tenant deposits the provisional rent as determined by the court within the stipulated period the tenant is relieved by the eviction decree.

18. In Nasiruddin [(2003) 2 SCC 577] the Apex Court

noticed that, Section 13(1) of the M.P. Accommodation Control Act, 1961 dealt with in the decision in Shyamcharan Sharma v. Dharamdas [(1980) 2 SCC 151] the court has been conferred power to extend the time for deposit of rent to any such further time, as it may, on an application made to it, allow in this behalf. The power of the court under the M.P. Act is not restricted. However, discretion available to the court under the Rajasthan Premises (Control of Rent and Eviction) Act is limited. Furthermore, in Section 13(6) of the M.P. Act, the word may has been used which is directory; in contradistinction with the word shall employed in the Rajasthan Act. The M.P. Act provides for the power of the court to extend the time in

the event sufficient cause therefor is shown which is absent in the Rajasthan Act. Furthermore, in terms thereof once the rent has been determined, the same has to be deposited within the prescribed period wherefor there exists no provision for filing an application. Wherever the special Act provides for extension of time or condonation of default, the court possesses the power therefor, but where the statute does not provide either for extension of time or to condone the default in depositing the rent within the stipulated period, the court does not have

the power to do so. In that view of the matter it must be held

that in absence of such provisions in the Rajasthan Premises (Control of Rent and Eviction) Act, the court did not have the power to either extend the period to deposit the rent or to condone the default in depositing the rent.

19. In Nasiruddin [(2003) 2 SCC 577] the Apex Court

observed that, it is true that the Rajasthan Premises (Control of Rent and Eviction) Act does not expressly exclude the application of the Limitation Act, 1963. But Section 5 of the Limitation Act in its terms is not applicable to wherever there is a default in depositing the rent by the tenant. The provisions of Section 5 of the Limitation Act must be construed having regard

to Section 3 thereof. For filing an application after the expiry of the period prescribed under the Limitation Act or any other special statute, a cause of action must arise. Compliance with an order passed by a court of law in terms of a statutory provision does not give rise to a cause of action. On failure to comply with an order passed by a court of law, instant consequences are provided for under the statute. The court can condone the default only when the statute confers such a power on the court and not otherwise. In that view of the matter the Apex Court held that Section 5 of the Limitation Act has no application in the case on hand.

20. In J. Ramkumar [2022 (1) KHC 495], this Court

concluded that the consequences provided under Section 12(3) of the Act follow when there occurred a default by the tenant in complying with the direction in an order passed under Section 12(1) and (2), for deposit or payment of the admitted arrears of rent. On the date stipulated for effecting such payment, by virtue of that order, the tenant becomes fully aware that, unless sufficient cause has not been shown for the default committed, the consequence of stoppage of the proceedings and direction to put the landlord in possession of

the building, under Section 12(3) would follow automatically. As held by a Division Bench in Venugopalan [1974 KLT 640] and reiterated in Davy [1999 (3) KLT 434] even assuming that for purpose of execution an order under Section 12(3) of the Act can be equated with and treated as the same, as one under Section 11 of the Act, the consequence enjoined by an

order under Section 12(3) for failure to deposit the admitted

arrears in time can not be vacated or obliterated by payment at any subsequent stages or periods. The law laid down by a Three-Judge Bench of the Apex Court in Nasiruddin [(2003) 2 SCC 577] is to the effect that, where the statute does not provide either for extension of time or to condone the default in depositing the rent within the stipulated period, the court does not have the power to do so.

21. The judgment of this Court in J. Ramkumar [2022

(1) KHC 495] was under challenge before the Apex Court in

SLP(C)No.18301 of 2021. After having heard the learned counsel for the parties, the Apex Court was not inclined to interfere with the order of this Court and accordingly, the special leave petition along with connected matters were dismissed by the order dated 18.11.2021. The said order reads thus;

After having heard the learned counsel for the parties, we are not inclined to interfere with the Special Leave Petitions. Mr.Roy Abraham, learned counsel for the petitioner points out that he deposited a sum of Rs.26,00,000/- in compliance of order dated 16.04.2019 passed by this Court. According to him that represented the rent due as on that day. According to the petitioner, the amount of Rs.26,00,000/- represented the amount of admitted arrears. He, therefore, prays that when this Court is not accepting the request to set aside the order under Section 12(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 and grant relief otherwise the Court may direct to return the amount that was deposited by him. This is objected to Mr.Liju V. Stephen, learned

counsel for the respondent. We notice that the order

was dated 16.04.2019. We would take the view that the interest of justice would require that after deducting a sum of Rs.11,10,000/- which would be the rent due for a period of 30 months from 16.04.2019 the amount remaining, namely, Rs.14,90,000/- must be returned to the petitioner. It is accordingly so ordered. Out of the amount of Rs.26,00,000/-, petitioner is

free to withdraw a sum of Rs.14,90,000/- from the Rent Control Court. It will be open to the respondent- landlord to appropriate towards the rent for the period as already noted the balance amount of Rs.11,10,000/-.

It can be withdrawn by the respondent-landlord. We leave it open to the landlord-respondent to seek remedies as regards any amount due towards arrears of rent. Accordingly, the Special Leave Petitions stand dismissed. Pending application(s), if any, stands disposed of. (underline supplied)

22. In M/s Greenix Ventures Pvt. Ltd v. P.M. Salim

[2022 (3) KLJ 311], a Division Bench of this Court, in which both of us are parties, held that, the failure of the tenant to deposit the admitted arrears of rent becomes a default in terms of Section 12(3) of the Act once the Rent Control Court

or the Appellate Authority records its satisfaction in an order

under Section 12(3) that the tenant failed to show sufficient cause for non-payment of the admitted arrears of rent. On such satisfaction being recorded the consequence of stoppage of the proceedings and the direction to put the landlord in possession of the building would follow automatically. The default committed by the tenant in depositing the rent in terms of the

order under Section 12(1) and (2) cannot be condoned by the

Rent Control Court or the Appellate Authority, while passing an

order under Section 12(3), by permitting the tenant to pay the

admitted arrears of rent after such an order. Paragraphs 48 to 53 of the said decision read thus;

48. As per Section 12(2), the deposit of admitted arrears of rent under Section 12(1) shall be made within such time the Rent Control Court or the Appellate Authority may fix. As per the proviso to Section 12(2), the

time limit fixed by the Rent Control Court or the Appellate Authority, as the case may be, for the deposit of the arrears of rent shall not be less than four weeks from the date of the

order and the time fixed for the deposit of rent which

subsequently accrues due shall not be less than two weeks from the date on which the rent becomes due. As per Section 12(3), if any tenant fails to pay or deposit the admitted rent as provided under Section 12(1) and (2), the Rent Control Court or the Appellate Authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building.

49. In Shaji M. [2020 (2) KHC 574] a Full Bench of this

Court held that, in view of the principle evolved in Narayanan [2004 (3) KLT 955], when the time fixed for deposit of the arrears of rent runs out and the tenant has not deposited the same, the Rent Control Court or the Appellate Authority, as the case may be, is not expected to pass an order ordering ejectment of the tenant forthwith. The Rent Control Court or the Appellate Authority, as the case may be, should normally adjourn the hearing of the case to a date beyond the date fixed for deposit, thereby allowing reasonable time to the tenant to show sufficient cause for not depositing the

admitted arrears of rent, if he has committed default in payment of the admitted arrears of rent.

50. As held by the Division Bench in K.P. Mohammed

[1963 KLT 688] an order of eviction passed under Section 12(3) of the Act is not amenable to correction under Section 11(2)(c), which relates to orders of eviction passed under Section 11(2)(b) only. As held by another

Division Bench in Venugopalan [1974 KLT 640] even assuming that for purpose of execution an order under Section 12(3) of the Act can be equated with and treated as the same, as one under Section 11 of the Act, the consequence enjoined by an order under Section 12(3) for failure to deposit the admitted arrears in time cannot be vacated or obliterated by payment at any subsequent stages or periods.

51. As per Section 23(1)(i) of the Act, the Rent Control

Court or the Appellate Authority shall have the power of enlargement of time originally fixed or granted. As already noticed hereinbefore, when the time fixed for deposit of the arrears of rent runs out and the tenant has not deposited the same, the Rent Control Court or the Appellate Authority, as the case may be, is not expected to pass an order ordering ejectment of the tenant forthwith. The Rent Control Court or the Appellate Authority, as the case may be, should normally adjourn the hearing of the case to a date beyond the date fixed for deposit, thereby allowing reasonable time to the tenant to show sufficient cause for not depositing the admitted arrears of rent. Within the said reasonable time granted by the Rent Control Court or the Appellate Authority (beyond the date originally fixed for deposit of

arrears of rent), the tenant can deposit the admitted arrears of rent in terms of the order passed under Section 12(1) and (2) of the Act, by seeking enlargement of time under Section 23(1)(i). On the failure of the tenant to show sufficient cause for the default in complying with the direction to deposit or pay the admitted arrears of rent, within the reasonable time granted by the Rent Control Court or the Appellate Authority (beyond the date originally fixed for deposit of arrears of rent), the consequences provided under Section 12(3) of the Act

shall follow. On the said date, by virtue of the order

passed under Section 12(1) and (2) of the Act, unless sufficient cause has been shown for the default committed, the consequence of stoppage of the proceedings and direction to put the landlord in possession of the building would follow automatically.

52. As already noticed, the failure of the tenant to deposit the admitted arrears of rent becomes a default in terms of Section 12(3) of the Act once the Rent Control Court or

the Appellate Authority records its satisfaction in an order

under Section 12(3) that the tenant failed to show sufficient cause for non-payment of the admitted arrears of rent. On such satisfaction being recorded the consequence of stoppage of the proceedings and the direction to put the landlord in possession of the building would follow automatically. The default committed by the tenant in depositing the rent in terms of the order under Section 12(1) and (2) cannot be condoned by the Rent Control Court or the Appellate Authority, while passing an

order under Section 12(3), by permitting the tenant to

pay the admitted arrears of rent after such an order.

53. Therefore, in an order passed under Section 12(3) of

the Act, which is one passed on being satisfied that the tenant has not shown sufficient cause for non-payment of the admitted arrears of rent, in terms of the order under Section 12(1) and (2) of the Act, the Rent Control Court or the Appellate Authority cannot enlarge the time limit originally granted for payment of the admitted arrears of rent, invoking the provisions under Section 23(1)(i), since on passing such an order under Section 12(3), the consequence of stoppage of the proceedings and direction to put the landlord in possession of the building would follow automatically.

23. In M/s Greenix Ventures Pvt. Ltd [2022 (3) KLJ

311], the learned counsel for the tenants contended that considering the quantum of arrears of rent, the Appellate Authority granted the tenants three months time to comply with the direction contained in the order of the Rent Control Court to pay admitted arrears of rent, either in lump or in installments, which warrants no interference by this Court. The said time limit granted by the Appellate Authority is not yet over. The Appellate Authority cannot be found fault with in granting such time, in view of the provisions under Section 23(1)(i) of

the Act. Per contra, the learned counsel for the landlords contended that, after confirming the order passed by the Rent Control Court under Section 12(3) of the Act, the Appellate Authority went wrong in granting the tenants three months time to comply with the direction contained in the order of the Rent Control Court to pay admitted arrears of rent, either in lump or in installments. The judgment of the Appellate Authority to the extent the tenants were granted time for making payment of admitted arrears of rent warrants interference by this Court.

24. In view of the said legal principle, no time to make payment of the arrears of rent admitted to be due can be granted after passing of the order under Section 12(3) of the Act.

25. Section 20 of the Kerala Buildings (Lease and Rent

Control) Act deals with revision. As per sub-section (1) of Section 20, in cases, where the appellate authority empowered under Section 18 is a Subordinate Judge, the District Court, and in other cases the High Court, may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such order in reference thereto as

it thinks fit. As per sub-section (2) of Section 20 of the Act, the costs of and incident to all proceedings before the High Court or District Court under sub-section (1) shall be in its discretion.

26. In Hindustan Petroleum Corporation Limited v.

Dilbahar Singh [(2014) 9 SCC 78] a Five-Judge Bench of the Apex Court considered the revisional powers of the High Court under Rent Acts operating in different States. After referring to the law laid down in Rukmini Amma Saradamma v. Kallyani Sulochana [(1993) 1 SCC 499] the Apex Court reiterated that even the wider language of Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 does not enable the High Court to act as a first or a second court of appeal. The Constitution Bench agreed with the view of the Three-Judge Bench in Rukmini Amma Saradamma that the word propriety does not confer power upon the High Court to re- appreciate evidence to come to a different conclusion, but its consideration of evidence is confined to find out legality, regularity and propriety of the order impugned before it.

27. Viewed in the light of the law laid down in the decisions referred to supra, conclusion is irresistible that the reasoning of the Rent Control Court and the Rent Control

Appellate Authority in the impugned orders is neither perverse nor patently illegal, warranting interference in exercise of the revisional jurisdiction of this Court under Section 20 of the Act. In the result, this Rent Control Revision fails and the same is accordingly dismissed. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE Dkr APPENDIX OF RCREV. 119/2023 PETITIONER ANNEXURES ANNEXURE 1 CERTIFIED COPY OF JUDGMENT PASSED BY THE RENT CONTROL COURT, IRINJALAKUDA IN IA 09.07.2022

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