

Fathima vs Ambika

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Court : Kerala Orders

Decided On : Oct-27-2023

Judge : Honourable Mr. Justice P.B.Suresh Kumar, Honourable Mr. Justice Johnson John

Appeal No. : RCRev./232/2023

Appellant : Fathima

Respondent : Ambika

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MR. JUSTICE JOHNSON JOHN FRIDAY, THE 27TH DAY OF OCTOBER 2023 / 5TH KARTHIKA, 1945 RCREV. NO. 232 OF 2023 AGAINST THE ORDER DATED 12.10.2023 IN I.A.NO.1 OF 2020 IN RCA NO.81 OF 2020 OF ADDITIONAL DISTRICT COURT, THRISSUR CONCURRING WITH THE COMMON ORDER IN RCP NO.82 OF 2018 OF I ADDITIONAL MUNSIF COURT ,THRISSUR REVISION PETITIONER/2ND APPELLANT IN RCA PARTY IN RCP 8: FATHIMA, AGED 72 YEARS W/O LATE USMAN, PULINJARAM HOUSE, KAIPARAMBU P.O, THRISSUR DISTRICT, PIN - 680546 BY

ADVS. ARUN KUMAR.P THIYYANNOOR RAMAKRISHNAN AMBIKA
RADHAKRISHNAN KAVYA SURESH
RESPONDENTS/RESPONDENTS IN RCA 81/2020/RESPONDENTS IN
I.A.NO.1/2020 IN RCA 81/2020/PETITIONERS IN RCP 8: 1 AMBIKA,
AGED 59 YEARS

W/O KAIPARAMBILVEETIL MARASSARI SANKUNNI, KAIPARAMBU
DESOM & VILLAGE, THRISSUR TALUK, PIN - 680546 2 GILSHA,
AGED 31 YEARS W/O KAIPARAMBUVEETIL MARASSARI
SREEJITH, KAIPARAMBU DESOM & VILLAGE, THRISSUR TALUK,
PIN - 680546 -:2:- BY ADVS. V.M.SYAM KUMAR V. M. FOR R1 SNEHA
RAJIV THIS RENT CONTROL REVISION HAVING COME UP FOR
ADMISSION ON 27.10.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: -:3:- P.B.SURESH KUMAR &
JOHNSON JOHN, JJ. -----
----- Dated this the 27th day of October,
2023

ORDER

P.B.Suresh Kumar, J.

The petitioner is the successor of the tenant in a proceedings for eviction under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act. The respondents were

the landlords in the proceedings. The said eviction petition was allowed ex parte on 30.11.2018. After the statutory period, the tenant preferred I.A.No.1664 of 2019 to set aside the ex parte order of eviction suffered by him along with an application to condone the delay of 15 days in filing I.A.No.1664 of 2019. The application preferred by the tenant to condone the delay in filing I.A.No.1664 of 2019 was dismissed by the Rent Control Court on the ground that it does not have power to condone the delay in filing the application

aforesaid. Consequently, I.A.No.1664 of 2019 was also -:4:-

dismissed on 20.12.2019. Having failed in his attempt to get the ex parte order of eviction set aside, after sometime, the tenant challenged the ex parte order of eviction in appeal before the Appellate Authority. R.C.A.No.81 of 2020 is the appeal preferred by the tenant in this regard. As the period prescribed for preferring the appeal expired in the meanwhile, the appeal was preferred with an application to condone the delay of 535 days in filing the appeal. During the pendency of the appeal, the tenant died and on his death, the petitioner got herself impleaded in the proceedings to pursue the appeal. The application preferred by the tenant to condone the delay in filing the appeal has now been dismissed by the Appellate

Authority. Consequently, R.C.A.No.81 of 2020 was also dismissed. The petitioner is aggrieved by the orders passed by the Appellate Authority in this regard and hence this revision petition.

2. Heard the learned counsel for the petitioner as also the learned counsel for the respondents.

3. The learned counsel for the petitioner pointed out that there was only a delay of 15 days in preferring I.A.No.1664 of 2019 and it is on account of the reason that the -:5:- Rent Control Court does not have power then to condone the delay in preferring the application to set aside an ex parte

order of eviction that the application preferred by the tenant to

set aside the ex parte order was dismissed, and it is in the aforesaid background that the tenant had to challenge the

order of eviction in appeal. It was also pointed out that the

delay occasioned in the matter of filing the appeal was due to the pendency of the application preferred by the tenant to set aside the ex parte order of eviction and if the said period is ignored, there is no delay at all. According to the learned counsel, inasmuch as the order of eviction was one passed ex parte, the Appellate Authority ought to have condoned the delay in filing the appeal and entertained the

same so as to enable the tenant to contest the application for eviction on merits. It was also submitted by the learned counsel that the

authorities below stood on technicalities to reject the applications preferred by the tenant, and standing on technicalities would defeat the very purpose of rendering justice. He relied on the decision of this Court in *Deepak S.P. v. B.Govardhanan Nair*, 2021 6 KHC 565 in support of the said proposition. -:6:-

4. We have considered the arguments advanced by the learned counsel for the petitioner.

5. True, there was only a delay of 15 days in filing

I.A.No.1664 of 2019 in the eviction petition and the said delay was not condoned by the Rent Control Court on the technical ground that it had no power to condone the delay in the filing such an application. It is however seen that the said order was passed as early as on 20.12.2019 and the petitioner has challenged the order of eviction thereafter only on 18.05.2020. Even if the period during which I.A.No.1664 of 2019 was pending is excluded, there was still a delay of 119 days in filing the appeal. A copy of the affidavit filed in support of the application preferred to condone the delay in filing R.C.A.No.81 of 2021 which was made available by the learned counsel for the petitioner indicates that no cause much less any sufficient cause was shown by the petitioner in the affidavit for the said delay. The relevant paragraph of the affidavit reads thus:

A petition was filed as I.A. 1664/2019 to set aside the exparte

order but the IA1664/2019 was dismissed. The delay was

caused in filing this appeal as IA 1664/2019 was pending. Later on I became sick and could not meet my advocate. There is a delay of 535 days in filing the appeal - :7:-

In the circumstances, we are unable to find fault with the Appellate Authority in not condoning the delay in filing R.C.A.No.81 of 2020. True, the application preferred by the tenant before the Rent Control Court as also the application preferred by

the tenant before the Appellate Authority were dismissed on the ground of delay. Orders passed on that basis cannot always be styled as orders on technicalities, for the same is part of the procedural law. What is to be seen by the court in cases of this nature is whether the party was diligent in the matter of prosecuting the proceedings and in cases where the court finds that the party was not diligent in prosecuting the matter, he cannot expect indulgence of the court in the matter of seeking orders condoning the delay in instituting the proceedings, for showing indulgence in such cases would not only affect the credibility of the institution, but also result in irreparable injuries to the opposite party. We take this view also for the reason that the ultimate prayer of the petitioner is for an opportunity to contest a matter which should have been disposed of in terms of the scheme of the Statute during 2018 itself after almost five years, depriving the

-:8:- respondents all their legitimate expectations while instituting the proceedings for no reasons attributable to them. In the said view of the matter, we do not find any

merit in this rent control revision and the same is accordingly dismissed. Nevertheless, having regard to the peculiar facts of this case and the orders passed by this Court in similar and identical revision petitions, the petitioner is granted six months' time from today to surrender vacant possession of the premises on condition that she shall file an unconditional undertaking before the Rent Control Court within two weeks from the date of receipt of a copy of this order to vacate the tenanted premises within six months and also that she shall pay the arrears of rent, if any, within the aforesaid time limit and continue to pay the monthly rent on or before the tenth day of every succeeding month till she vacates the premises.

Sd/- P.B.SURESH KUMAR, JUDGE. Sd/- JOHNSON JOHN, JUDGE. ds

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