

B2 Builders & Developers (P) Ltd vs Joshy

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Court : Kerala

Decided On : Jan-05-2022

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

Appeal No. : OP (RC)/2/2022

Appellant : B2 Builders & Developers (P) Ltd

Respondent : JOSH Y

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ANIL K. NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR WEDNESDAY, THE 5TH DAY OF JANUARY 2022 / 15TH POUSHA, 1943 O.P.(RC)NO.2 OF 2022 EARLY DISPOSAL OF I.A.NO.1 OF 2020 IN R.C.P.NO.4 OF 2020 ON THE FILE OF THE RENT CONTROL COURT (MUNSIFF), CHAVAKAD PETITIONER:

B2 BUILDERS & DEVELOPERS (P) LTD., DOOR NO.29-184, SHORNUR ROAD, THRISSUR VILLAGE, THRISSUR TALUK, PIN - 680 001, REP. BY ITS MANAGING DIRECTOR, K. BHARATHAN ALIAS

BHARATHAN MENON ALIAS BHARATHAN KONDOOTH, AGED 45 YEARS, S/O. BALAKRISHNAN NAIR, KONDOOTH HOUSE, MULLAPALLI, PUKUNNAM DESOM, THRISSUR VILLAGE, THRISSUR TALUK, PIN - 680 002. BY ADVS. DINESH MATHEW J.MURICKEN K.A.ABHILASH VINOD S. PILLAI MOHAMMED THAYIB N.M. AHAMMAD SACHIN K. ANSU SARA MATHEW

RESPONDENT: JOSHY, AGED 54 YEARS, S/O. VARAPPAN, PONTHEKKAN HOUSE, AVANNUR P. O., KARUR DESOM, THAGALUR VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT, PIN - 680 541. THIS OP (RENT CONTROL) HAVING COME UP FOR ADMISSION ON 05.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J.

The petitioner has filed this original petition under

Article 227 of the Constitution of India, seeking an order

directing the Rent Control Court (Munsiff), Chavakad to dispose of I.A.No.1 of 2020 in R.C.P.No.4 of 2020, as expeditiously as possible, at any rate, within a period of one month.

2. Going by the averments in the original petition,

the petitioner filed R.C.P.No.4 of 2020 before the Rent Control Court, Chavakad, seeking eviction of respondent herein-tenant from the petition schedule shop room bearing No.XV/173 of Guruvayoor Municipality. The petitioner has also filed I.A.No.1 of 2020 (Ext.P2), invoking the provisions under Section 12 of the Kerala Buildings (Lease and Rent Control) Act, 1965, seeking an

order directing the tenant to deposit the arrears of rent

amounting to Rs.14,30,139.30/- and continue to pay rent for the subsequent period and in case of default to put the landlord in vacant possession of the petition schedule shop room. The respondent-tenant filed Ext.P3 objection in I.A.No.1 of 2020, which is one dated 08.11.2021. Now, the grievance of the petitioner is that Rent Control Court is yet to take an appropriate decision in that interlocutory application.

3. Heard the learned counsel for the petitioner. Considering the nature of relief proposed to be granted, service of notice on the respondent-tenant is dispensed with.

4. The grievance of the petitioner-landlord is that

there is delay on the part of the Rent Control Court in taking an appropriate decision in I.A.No.1 of 2020 filed by the landlord, invoking the provisions under Section 12 of the Act.

5. Section 12 of the Act deals with payment or deposit of rent during the pendency of proceedings for eviction. As per Section 12(1), no tenant against whom

an application for eviction has been made by a landlord under Section 11, shall be entitled to contest the application before the Rent Control Court under that Section, or to prefer an appeal under Section 18 against any order made by the Rent Control Court on the application, unless he has paid or pays to the landlord, or deposits with the Rent Control Court or the Appellate Authority, as the case may be, all arrears of rent admitted by the tenant to be due in respect of the building up to the date of payment or deposit, and continues to pay or to 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, as the case may be. As per Section 12(2), the deposit under sub-section

(1) shall be made within such time as the court may fix and in such manner as may be prescribed and shall be accompanied by the fee prescribed for the service of

notice referred to in sub-section (4). As per the proviso to Section 12(2), the time fixed by the court 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) 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 Section 12(4), 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.

6. The liability of a tenant under Section 12(1) of the Act, against whom an application for eviction has been made by a landlord under Section 11, or who prefer

an appeal under Section 18 of the Act, against any order

made by the Rent Control Court on an application made by a landlord under Section 11, is limited to all arrears of rent admitted by the tenant to be due in respect of the building, up to the date of payment or deposit, and he shall 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, as the case may be.

7. The object of the provisions of Section 12(1) of the Act is to deny the defaulting tenant the right to

contest the application for eviction before the Rent Control Court, or to prefer an appeal under Section 18 of the Act against any order made by the Rent Control

Court on an application made by a landlord under Section 11, unless he pays to the landlord, or deposits with the Rent Control Court or the Appellate Authority, as the case may be, all arrears of rent admitted by him to be due in respect of the building, up to the date of payment or deposit, and continues to pay or to 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, as the case may be.

8. 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. Therefore, even in a case in which the relief sought for in an application filed under Section 12 of the Act is confined to payment or deposit of admitted arrears of rent up to the date of application or up to the date of order to be passed in that application,

the Rent Control Court or the Appellate Authority, as the

case may be, is statutorily bound to pass an order

directing the tenant to pay or deposit admitted arrears of rent up to the date of payment or deposit and continue to pay or deposit rent which may subsequently

become due, until termination of that proceedings. In such circumstances, this original petition is disposed of by directing the Rent Control Court to take an appropriate decision in I.A.No.1 of 2020 in R.C.P.No.4 of 2020, strictly in accordance with law, as expeditiously as possible, at any rate, within a period of one month from the date of production of a certified copy of this

judgment.

Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE MIN
APPENDIX OF O.P.(RC) No.2 of 2022 PETITIONER EXHIBITS Exhibit P1 TRUE
COPY OF THE PETITION IN R.C.P.NO.4/2020 ON THE FILE OF RENT
CONTROL COURT, CHAVAKKAD DATED 31.01.2020. Exhibit P2 TRUE COPY
OF THE I.A.NO.1/2020 IN R.C.P.NO.4/2020 ON THE FILE OF RENT CONTROL
COURT, CHAVAKKAD DATED 31.01.2020. Exhibit P3 TRUE COPY OF
OBJECTION IN R.C.P.NO.4/2020 ON THE FILE OF RENT CONTROL COURT,
CHAVAKKAD DATED 08.11.2021.

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