

Joy vs Rajeevan

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Court : Kerala

Decided On : May-30-2022

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

Appeal No. : RCRev./78/2022

Appellant : JOY

Respondent : Rajeevan

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 30TH DAY OF MAY 2022 / 9TH JYAISHTA, 1944 R.C.REV.NO.78 OF 2022 AGAINST THE JUDGMENT DATED 17/03/2022 IN R.C.A.NO.64 OF 2020 OF THE RENT CONTROL APPELLATE AUTHORITY (IVTH ADDITIONAL DISTRICT COURT, THRISSUR ARISING OUT OF THE

ORDER DATED 31/01/2020 IN R.C.P.NO.127 OF 2014 OF THE

RENT CONTROL COURT (MUNSIFF), THRISSUR REVISION
PETITIONER/APPELLANT/RESPONDENT: JOY DANIEL, AGED 62 YEARS,
S/O.KANNAMPUZHA DANIEL, THOTTATHIL LANE, CHIYYARAM VILLAGE,
THRISSUR, PIN - 680006 BY ADV VINOD KUMAR.C
RESPONDENT/RESPONDENT/PETITIONER: RAJEEVAN, AGED 61 YEARS,
S/O.THEKKEVAREATH E SANKARA WARRIER, KEERANKULANGARA
DESAM, CHEMBUKAVU VILLAGE, THRISSUR, PIN - 680020 BY ADV LINDONS
C.DAVIS(K/1115/2009)(CAVEATOR) THIS RENT CONTROL REVISION HAVING
COME UP FOR ADMISSION ON 30.05.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: -2-

ORDER

Anil K. Narendran, J.

The petitioner, who is the respondent-tenant in R.C.P.No.127 of 2014 on the file of the Rent Control Court (Principal Munsiff), Thrissur, a petition filed by the respondent herein-landlord seeking eviction of the tenant from the petition schedule residential building under Sections 11(3) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act,

1965. The tenant filed counter in the Rent Control Petition

opposing the order of eviction sought for. Before the Rent Control Court, Exts.A1 to A11 were marked on the side of the landlord and he was examined as PW1. On the side of the tenant, he was examined as RW1. After considering the pleadings and evidence on record, the Rent Control Court found that the landlord is entitled to an order of eviction under Section 11(3) of the Act. The order of eviction under Section 11(4)(v) of the Act was declined. By the order dated 31.01.2020 in R.C.P.No.127 of 2014, the tenant was directed to put the landlord in possession of the petition schedule residential building under Section 11(3) of the Act, within a

-3- period of two months from the date of that order, and the landlord was found entitled to recover and realise the entire cost of the proceedings.

2. Challenging the order of eviction granted by the

Rent Control Court in R.C.P.No.127 of 2014, the tenant filed R.C.A.No.64 of 2020 before the Rent Control Appellate Authority (Additional District Judge-IV), Thrissur, invoking the provisions under Section 18(1)(b) of the Act. During the pendency of R.C.A.No.64 of 2020, the respondent-landlord filed I.A.No.6 of 2021, a petition under Section 12 of the Act, seeking an order directing the tenant to pay or deposit the admitted arrears of rent and continue to pay or deposit rent for the subsequent period, during the pendency of that appeal. In that interlocutory application, the appellant-tenant filed objections. After considering the objections raised by the

tenant, the Appellate Authority passed an order dated 12.11.2021 under Section 12(1) of the Act, whereby, the tenant was directed to remit the arrears of rent for 42 months, at the rate of Rs.12,000/- per month, with 6% interest, within a period of five weeks from the date of that -4- order. The tenant did not comply with the direction contained in that order, within the time limit stipulated therein. The

Appellate Authority adjourned the matter on several occasions. Thereafter, by the order dated 17.03.2022, which is impugned in this original petition, the Appellate Authority stopped further proceedings in R.C.A.No.64 of 2020, under Section 12(3) of the Act, and the tenant is directed to put the landlord in possession of the petition schedule residential building within a period of one month. Challenging the aforesaid order of the Appellate Authority, the petitioner tenant is before this Court in this Rent Control Revision, invoking the revisional jurisdiction under Section 20 of the Act.

3. Heard the learned counsel for the petitioner-tenant and the learned counsel for the respondent-landlord.

4. During the course of arguments, the learned

counsel for the petitioner-tenant has made available for the perusal of this Court a certified copy of the order dated 12.11.2021 of the Appellate Authority, which is one issued under Section 12(1) of the Act. -5-

5. A reading of the order dated 12.11.2021 of the

Appellate Authority in I.A.No.6 of 2021, would show that in the objection filed to that application filed by the landlord under Section 12 of the Act, the tenant raised contention that he had paid the arrears till December 2017 and as such, arrears of rent from January 2018 alone is pending. The tenant has also raised a contention that the rate of interest can only be 6% and not 12% as claimed by the landlord. During the course of arguments, the tenant agreed that 42 months rent is in arrears. Since there is no other dispute, the Appellate Authority passed the order dated 12.11.2021 in I.A. No.6 of 2021, whereby the tenant was directed to remit the arrears of rent for 42 months, at the rate of Rs.12,000/- per month, with 6% interest, within a period of five weeks from the date of that order. However, the tenant did not comply with the direction contained in that order, within the time limit stipulated therein. The Appellate Authority adjourned the matter on several occasions. The tenant did not show sufficient cause for non-payment of the admitted arrears of rent. The Appellate Authority, by the impugned order dated

-6- 17.03.2022 in R.C.A.No.64 of 2020, stopped further proceedings in that appeal under Section 12(3) of the Act and the tenant is directed to put the landlord in possession of the petition schedule residential building within a period of one month.

6. In the order dated 17.03.2022 in R.C.A.No.64 of 2020, the Appellate Authority has noticed the order of this Court in O.P.(RC)No.128 of 2021, which was an original

petition filed by the tenant under Article 227 of the Constitution of India challenging the order dated 12.11.2021 of the Rent Control Appellate Authority in I.A.No.6 of 2021 in R.C.A.No.64 of 2020, issued under Section 12(1) of the Act. Paragraphs 2 and 3 of the said order read thus;

2. As per the order dated 12.11.2021 in I.A.No.6 of 2021, my learned predecessor passed an order under Section 12 of the Kerala Buildings (Lease and Rent Control) Act directing the appellant to remit the arrears of rent within a period of 5 weeks from the date of order. But the tenant did not comply the order. He took up the matter before the Hon'ble High

Court of Kerala as per OP(RC)No.128 of 2021. As per order dated 16.12.2021 in OP(RC)No.128 of 2021, the Hon'ble High Court of -7-

Kerala granted an interim stay for a period of one month, on a condition that the tenant shall pay to the landlord or deposit before the Execution Court a sum of Rs.2,50,000/- within a period of two weeks. But the

tenant did not comply the said direction. As per order

dated 27.01.2022, the Hon'ble High Court of Kerala was pleased to order that subject to deposit of the amount directed in the order dated 16.12.2021 within a week, the interim order shall be extended for a period of one month. Thereafter, as per order dated 24.02.2022, the Hon'ble High Court of Kerala was pleased to extend the time limit stipulated in the order dated 16.12.2021 to deposit Rs.2,50,000/- till 03.03.2022. Both sides submitted that no deposit or payment was made as directed.

3. The learned counsel for the respondent/landlord

produced a copy of order of the Hon'ble High Court of Kerala dated 07.03.2022 in OP(RC)No.128 of 2021. As per this order, the Hon'ble High Court of Kerala was pleased to vacate the interim order of stay granted in the matter. As such there is no stay. The matter was again adjourned to this day for hearing the respondent regarding the nonpayment of the admitted arrears of rent.

7. 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 -8-

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

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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.

8. Section 12(1) of the Act enjoins a tenant, against

whom an application for eviction has been made by a landlord under Section 11, to pay to the landlord, or deposit with the Rent Control Court, all arrears of rent admitted by the tenant to be due in respect of the building, up to the date of payment -10-

or deposit, and 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, in order to contest that application for eviction before the Rent Control Court. Similarly, Section 12(1) of the Act enjoins a tenant, in order 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, to pay the landlord, or deposits with the Appellate Authority, 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 Appellate Authority.

9. 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 -11- 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.

10. 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.

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

495 : ILR 2021 (4) Kerala 876] this Court held that, 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 -13- 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.

12. In *Pochappan Narayanan v. Gopalan* [1990 (2)

KLT 1] a Division Bench of this Court noticed that, Section 12(3) of the Kerala Buildings (Lease and Rent Control) Act deals with consequences flowing as a result of the failure on the part of the tenant to pay or deposit admitted rent. When the tenant fails to pay or deposit the admitted rent, as provided in Section 12(1) and (2), the Rent Control Court or the Appellate Authority, as the case may be, will be required to ask the tenant to show cause why all further proceedings should not

be stopped and an order be made directing the tenant to put the landlord in possession. When such an opportunity is afforded to the tenant, the tenant is entitled to show, if there is sufficient cause, for his failure to pay the amount or deposit the rent as provided in Section 12(1) and (2). If the Rent Control Court or the Appellate Authority is

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satisfied that there is sufficient cause for not making the payment or deposit of the rent within time, it will not make any order stopping further proceedings and directing the tenant to put the landlord in possession. If, however, the Rent Control Court or the Appellate Authority is not satisfied about the cause shown, an order has to be made stopping all further proceedings and directing the tenant to put the landlord in possession.

13. In Pochappan Narayanan the Division Bench held

that, before the consequences contemplated by Section 12(3) of the Act can ensue, the conditions specified in Section 12(1) and (2) have to be satisfied. It is therefore clear that, before any steps can be taken under Section 12(3) for making an

order against the tenant who has committed default in paying

or making the deposit as contemplated by Section 12(1), the procedure prescribed by Section 12(2) has to be satisfied. A tenant who does not fulfill the obligations imposed on him by Section 12(1) cannot be visited with the penal consequences contemplated by Section 12(3), unless all the conditions specified by Section 12(2) are satisfactorily fulfilled. Even

-15- after the court acts in accordance with Section 12(2) and the tenant still commits default, the tenant has to be given one

more opportunity of showing cause as to why penal consequences contemplated by Section 12(3) should not be imposed on him. It is only when the court is not satisfied with the cause shown that it can pass an order stopping all further

proceedings and directing the tenant to put the landlord in possession of the building.

14. In *Narayanan v. Vinod* [2004 (3) KLT 955] the

order passed by the Rent Control Appellate Authority under

Section 12(3) of the Kerala Buildings (Lease and Rent Control) Act was assailed before the Division Bench, on the ground that the petitioner-tenant was not granted time as stipulated in Section 12(2) to deposit the arrears of rent and that, he had not been issued with any notice under Section 12(3) to show sufficient cause for not depositing the rent and, therefore, the order directing eviction of the tenant is contrary to the provisions of Section 12. The Division Bench noticed that, the provisions of Section 12 of the Act are mandatory and no tenant against whom an application for eviction has

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been made by a landlord is entitled to contest the same or to prefer an appeal under Section 18, against any order passed by the Rent Control Court, unless he had paid or pays to the landlord or deposits with the Rent Control Court or with the Appellate Authority, all arrears of rent admitted by him to be due in respect of the demised premises up to the date of payment and continues to pay or deposit the 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. Section 12(3) of the Act then mandates that if any tenant fails to pay or deposit the rent as aforesaid, the Rent Control Court or the Appellate Authority 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 demised premises. In other words, if the admitted rent due is not deposited during the pendency of the proceedings before the Rent Control Court or the Appellate Authority, all further proceedings have to stop and the authority concerned is required to make an order directing the tenant to put the

-17- landlord in vacant possession of the premises, unless the tenant shows sufficient cause for not depositing that rent.

15. In Narayanan, on the question as to whether the

Rent Control Court or the Appellate Authority, as the case may be, where admitted rent has not been paid, is required to issue a separate notice to the tenant to enable him to show sufficient cause for the default in payment of admitted rent or is it for the tenant himself to file an application and bring to the notice of the Rent Control Court or the Appellate Authority the reasons which prevented him from depositing the rent, the Division Bench held that, if the admitted arrears of rent are not deposited within the time fixed by the Rent Control Court or the Appellate Authority the tenant makes a default resulting in the penal consequences of his immediate eviction by stopping all further proceedings. This, however, will not happen if the tenant is able to show sufficient cause for making the default in not depositing the admitted rent. From the language of Section 12(3) of the Act and the legislative intent, it is not for the Rent Control Court or the Appellate Authority to issue any separate notice to the tenant to enable

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him to show sufficient cause for not depositing the admitted arrears of rent. When the time fixed for the deposit of 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 of ejectment of the tenant forthwith.

16. In Narayanan the Division Bench held that, the

Rent Control Court or the Appellate Authority, while fixing the time within which the arrears of rent shall be deposited by the tenant should normally adjourn the hearing of the case to a date beyond the date fixed for depositing the rent, thereby allowing reasonable time to the tenant to show sufficient cause for not depositing the rent, if he has committed default in payment. It will then be for the tenant to move an application before the concerned authority to show sufficient cause for the non-payment of rent. In other words, the interval between the date up to which

the rent is to be deposited and the date on which the order under Section 12(3) is passed should be reasonable to enable the tenant to show sufficient cause for committing the default, if he so

-19- chooses. If the tenant moves such an application and points out the reasons which prevented him from depositing the arrears of admitted rent, the concerned authority will examine the issue on merits to find out whether sufficient cause has been shown or not. If sufficient cause has been shown, the

Rent Control Court or the Appellate Authority will not order

immediate ejectment of the tenant. If no application is filed by the tenant or if the reasons shown by the tenant are insufficient, the penal consequences as contemplated in Section 12(3) of the Act shall follow. Section 12(3) of the Act is a mandate to the Rent Control Court or the Appellate Authority to order immediate ejectment of the tenant, if the tenant does not deposit the admitted arrears of rent, the only exception being, if he is able to show sufficient cause for not doing so. In that view of the matter, the Division Bench concluded that, the Rent Control Court or the Appellate Authority, as the case may be, where admitted rent has not been deposited by the tenant, is not required to issue any separate notice to the tenant, to enable him to show sufficient cause for committing the default.

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17. In *Shaji M. v. SNDP Sakhayogam* No. 610, Alappuzha [2020 (2) KHC 574] a Full Bench of this Court

held that, in view of the principle evolved in *Narayanan*

[2004 (3) KLT 955], from the language of Section 12(3) of the of the Kerala Buildings (Lease and Rent Control) Act, and from the legislative intent, it is not for the Rent Control Court or the Appellate Authority to issue any separate notice to the tenant to enable him to show sufficient cause for not depositing the admitted arrears of rent. Instead, 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 rent, if he has committed default in payment of the arrears of rent. The interpretation made and the directions issued in Narayanan is more apt and appropriate to be held,

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as a view which can be legally sustained. The opportunity to be afforded to the tenant to show sufficient cause with respect to the failure to pay or deposit rent, as directed in Section 12(1) and (2), within the date stipulated, is not an empty formality. The principles of natural justice would mandate that the Rent Control Court or the Appellate Authority, as the case may be, should afford the tenant with such an opportunity.

18. In Shaji M., on the question as to whether the

Rent Control Court or the Appellate Authority is required to issue any specific notice to the tenant to show cause, the Full Bench noticed that, the consequences provided under Section 12(3) of the Act follows when there occurred a default in complying with the direction for deposit or payment of the admitted arrears. Therefore, on the date stipulated for effecting such payment, by virtue of the order passed under Section 12(1) and (2), 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, would follow automatically. Therefore, there is no necessity to

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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 the payment or the deposit, 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. Such a procedure, if followed, would be sufficient compliance for providing reasonable opportunity satisfying the statutory requirement contained in Section 12(3). Hence the Full Bench concluded that the decision in Narayanan [2004 (3) KLT 955], even though passed without noticing the decision in Pochappan Narayanan [1990 (2) KLT 1] had laid the correct law. The Full Bench noticed that its view in this regard has got support from the decision of the Apex Court in Sankaran Pillai v. V.P. Venuguduswami [(1999) 6 SCC 396], the decisions of this Court in C.V. Xavier v. Francis

-23- Leonard Pappali [1975 KLT 542] and Narayanan v. Muraleedhara Maran [1964 KLT 509].

19. In Sankaran Pillai v. V.P. Venuguduswami

[(1999) 6 SCC 396] the Apex Court held that, it is for the tenant to show sufficient cause and not for the Rent Control Court or the Appellate Authority, as the case may be, to issue any show cause notice calling upon the tenant to show cause why an order of eviction shall not be passed.

20. In C.V. Xavier v. Francis Leonard Pappali

[1975 KLT 542] a Division Bench of this Court held that, the reasonable opportunity contemplated under Section 12(3) of the Act must be a reasonable and real opportunity and is not an empty formality and that, if the tenant is not given such opportunity to show sufficient cause, an order passed under Section 12(3) would be unsustainable.

21. In Narayanan v. Muraleedhara Maran [1964

KLT 509] a Division Bench of this Court held that, when the court had passed an order directing a party before it to do a particular thing, in default of which certain consequence is to follow, if the party is to be relieved of the consequences of -24- any non-compliance of that order, he has to make a specific motion thereof

showing sufficient cause for his non-compliance of the order and making appropriate prayer therein. Otherwise the order would work itself out and the default to comply with it will bring the appointed consequences on the tenant.

22. 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.

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

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, -
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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 of 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. -26-

24. 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 [2004 (3) KLT 955] and approved by the Full Bench in Shaji M. [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). -27-

25. Before passing an order under Section 12(3) of the

Act, 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 payment or deposit of admitted rent, thereby allowing reasonable time to the tenant to show sufficient cause for not paying or depositing the admitted rent, if he has committed default in payment of the same, within the time limit stipulated in the order passed under Section 12(1) and (2). Such an opportunity to be afforded to the tenant to show sufficient cause is not an empty formality. The principles of

natural justice would mandate that the Rent Control Court or the Appellate Authority should afford such an opportunity to the tenant before passing an order under Section 12(3).

26. 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
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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.

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27. In Venugopalan v. Raphael [1974 KLT 640] the

Division Bench of this Court was dealing with a case in which the landlord filed Rent Control Petition under Section 11(2)(b) of the Act claiming eviction of the

petition schedule building on the ground of arrears of rent. The Rent Control Court passed an order directing the tenant to pay admitted arrears of rent on or before the 20.09.1971. In the said order it was made clear that, on default of deposit within the specified period, an order for possession under Section 12(3) of the Act, will be passed. The order under Section 12(1) and (2) was not complied with, despite the fact that time for payment was extended. Therefore, the Rent Control Court passed an

order for possession under Section 12(3) of the Act, which

was dated 25.10.1971. Within thirty days of the said order, the tenant filed I.A. No. 4143 of 1971 to receive what was claimed to be the admitted arrears; and I.A. No. 4142 of 1971 to set aside the order for possession passed under Section 12(3) of the Act on 25.10.1971. The Rent Control Court dismissed I.A. No. 4142 of 1971 holding that an order under Section 12(3) cannot be set aside or vacated on the mere

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ground that the admitted arrears of rent had been deposited subsequent to the order. It declined to receive the arrears of rent tendered along with the I.A. No. 4143 of 1971, and accordingly dismissed the same. The appeals preferred by the tenant under Section 18(1)(b) of the Act against those orders were dismissed by the Rent Control Appellate Authority. On further revision, the revisional court, namely the District Court, Trichur, allowed the revision and set aside the orders of the Rent Control Court and of the Appellate Authority and remanded I.A. Nos. 4142 of 1971 and 4143 of 1971 back to the Rent Control Court for fresh disposal directing that the time for making deposit of the arrears of rent, will be extended by the Rent Control Court. Feeling aggrieved landlord preferred revision petition before this Court.

28. In Venugopalan the Division Bench noticed that,

under Section 11(2)(c) of the Act a tenant, against whom a decree for eviction has been passed by the Rent Control Court on the ground that rent had been kept in

arrears, is allowed relief against the forfeiture of tenancy incurred by non- payment of rent, by depositing the arrears of rent decreed, -31- within a certain period. In Kurien v. Saramma Chacko [1964 KLT 1] it was held that the power under Section 11(2)

(c) can be exercised by the Appellate Authority and also by

the Revisional Authority. Section 12 of the Act provides for a totally different contingency. The deposit of the admitted arrears enjoined by Section 12, is a condition precedent to the tenant entering on his defence and contesting the application for eviction, or an appeal filed therefrom. The scope and purpose of the deposit of arrears of rent enjoined by Section 12 is fundamentally different from the scope and the purpose of the deposit envisaged by Section 11(2)(c) of the Act. In K.P. Mohammed v. Madhavi Amma [1963 KLT 688] the Division Bench held that, Section 11 and Section 12 of the Act are not dependent on each other. They provide for different contingencies though the consequence of the non compliance of the mandates of either Section is eviction. 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. In T.B. Mohanan v. Kanakaraja Pillai [1970 KLT 1024] a

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learned Judge of this Court held that an order passed under Section 12 of the Act, cannot be reopened or vacated by tendering the rent subsequent to the passing of the said order. In Venugopalan, the Division Bench held that, 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.

29. In Venugopalan 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

-33- 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.

30. 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.

31. 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

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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

-35- shall order the defence against eviction to be struck out and shall proceed with the hearing of the suit.

32. In *Nasiruddin* 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 -36- 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.

33. In *Nasiruddin* 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

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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.

34. In *Nasiruddin* 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

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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.

35. 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.

-39- 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.

36. 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 -40- 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 -41-

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 stands dismissed. Pending application(s), if any, stands disposed of. (underline supplied)

37. In the instant case, as already noticed, during the pendency of R.C.A.No.64 of 2020, the landlord filed I.A.No.6

of 2021 under Section 12 of the Act, seeking an order

directing the tenant to pay or deposit the admitted arrears of rent and continue to pay or deposit rent for the subsequent period, during the pendency of that appeal. In that interlocutory application, the tenant filed objections, contending that he had paid the arrears till December 2017 and as such, arrears rent from January 2018 alone is pending. During the course of arguments before the Appellate Authority, the tenant agreed that 42 months rent is in arrears. -42-

Since there is no other dispute, the Appellate Authority passed the order dated 12.11.2021 in I.A. No.6 of 2021, whereby the tenant was directed to remit the admitted arrears of rent for 42 months, within a period of five weeks from the date of that order. The tenant did not comply with the direction contained in that order, within the time limit stipulated therein. The

Appellate Authority adjourned the matter on several occasions. The tenant did not show sufficient cause for non- payment of the admitted arrears of rent. The Appellate Authority, by the order dated 17.03.2022, stopped further proceedings in R.C.A.No.64 of 2020, under Section 12(3) of the Act, and the tenant is directed to put the landlord in possession of the petition schedule residential building within a period of one month.

38. Viewed in the light of the law laid down in the decisions referred to supra, conclusion is irresistible that, the

order of the Rent Control Appellate Authority dated

17.03.2022, whereby the further proceedings in R.C.A.No.64 of 2020 stands stopped under Section 12(3) of the Act, with a direction to the tenant to give vacant possession of the -43- petition schedule residential building to the landlord, within a period of one month from the date of that order, is perfectly legal.

39. 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.

40. In *Rukmini Amma Saradamma v. Kallyani Sulochana* [(1993) 1 SCC 499], the scope of revisional powers of the High Court under Section 20 of the Kerala -44-

Buildings (Lease and Rent Control) Act, 1965 came up for consideration before the Three-Judge Bench of the Apex Court. While considering whether the High Court could have re-appreciated entire evidence, the Apex Court held that, even the wider language of Section 20 of the Act cannot enable the High Court to act as a first or a second court of appeal. Otherwise, the distinction between appellate and revisional jurisdiction will get obliterated. Hence, the High Court was not right in re-appreciating the entire evidence both oral or documentary in the light of the Commissioner's report. The High Court had travelled far beyond the revisional jurisdiction. Even by the presence of the word propriety it cannot mean that there could be a re-appreciation of evidence. Of course, the revisional court can come to a different conclusion but not on a re-appreciation of evidence; on the contrary, by confining

itself to legality, regularity and propriety of the order

impugned before it.

41. In *T. Sivasubramaniam v. Kasinath Pujari* [(1999) 7 SCC 275] the Apex Court held that, the words to satisfy itself employed in Section 25 of the Tamil Nadu -45-

Buildings (Lease and Rent Control) Act, 1960 no doubt is a power of superintendence, and the High Court is not required to interfere with the finding of fact merely because the High Court is not in agreement with the findings of the courts below. It is also true that the power exercisable by the High Court under Section 25 of the Act is not an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the courts below. But where a finding arrived at by the courts below is based on no evidence, the High Court would be justified in interfering with such a finding recorded by the courts below.

42. In *Ubaiba v. Damodaran* [(1999) 5 SCC 645]

the Apex Court considered the exercise of revisional power by the High Court, under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965, in the context of an issue as to whether the relationship of landlord-tenant existed or not. It was urged that whether such relationship existed would be a jurisdictional fact. Relying on the decision in *Rukmini Amma Saradamma* it was contended that, however wide the jurisdiction of the revisional court under Section 20 of the Act

-46- may be, it cannot have jurisdiction to re-appreciate the evidence and substitute its own finding upsetting the finding

arrived at by the appellate authority. The Apex Court held

that, though the revisional power under Section 20 of the Act may be wider than Section 115 of the Code of Civil Procedure, 1908 it cannot be equated even with the second appellate power conferred on the civil court under the Code. Therefore, notwithstanding the use of the expression propriety in Section 20 of the Act, the revisional court will not be entitled

to re-appreciate the evidence and substitute its own

conclusion in place of the conclusion of the appellate

authority. On examining the impugned judgment of the High

Court, in the light of the aforesaid ratio, the Apex Court held

that the High Court exceeded its jurisdiction by re- appreciating the evidence and in coming to the conclusion that the relationship of landlord-tenant did not exist.

43. 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 -47-

referring to the law laid down in Rukmini Amma Saradamma 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.

44. In Thankamony Amma v. Omana Amma [AIR 2019 SC 3803 : 2019 (4) KHC 412] considering the matter in the backdrop of law laid down in Rukmini Amma Saradamma, Ubaiba and Dilbahar Singh the Apex Court

held that the findings rendered by the courts below were well

supported by evidence on record and could not even be said to be perverse in any way. The High Court could not have re- appreciated the evidence and the concurrent findings rendered by the courts below ought not to have been -48- interfered with by the High Court while exercising revisional jurisdiction.

45. 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 Appellate Authority in the order

dated 17.03.2022 for stopping the proceedings in R.A.C.No.64 of 2020 invoking the provisions under Section 12(3) of the Act and directing the tenant to put the landlord in vacant possession of the petition schedule residential building within one month from the date of that order, is neither perverse nor patently illegal, warranting interference in exercise of the revisional jurisdiction of this Court under Section 20 of the

Act. Therefore, we find no reason to interfere with the impugned order dated 17.03.2022 of the Rent Control Appellate Authority in R.C.A.No.64 of 2020 and hence, this Rent Control Revision is dismissed. The learned counsel for the petitioner-tenant would submit that the execution petition now stands posted to 04.06.2022 and the petitioner may be granted a reasonable time to vacate the petition schedule residential building. The -49-

learned counsel for the respondent-landlord would submit that, in case the tenant requires reasonable time to vacate the petition schedule residential building, he has to make an application for that purpose before the Execution Court, after depositing or paying the arrears of rent. In which event, the landlord has no objection in the execution court granting reasonable time to the tenant to vacate the petition schedule residential building. The above submission made by the learned counsel for the landlord is recorded.

Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE AV/31/5 - 50- APPENDIX OF RCREV. 78/2022 PETITIONER ANNEXURES Annexure1 ORDER IN RCA 64/2020 ON THE FILE OF RENT CONTROL APPELLATE AUTHORITY THRISSUR DT 17.03.2022 Annexure2 COPY OF ORDER IN RCP 127/2014 DT 31.01.2020 OF RENT CONTROL COURT THRISSUR

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