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Vivin P C vs Poly

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Court : Kerala

Decided On : Aug-24-2022

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

Appeal No. : OP (RC)/154/2022

Appellant : Vivin P C

Respondent : POLY

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 24TH DAY OF AUGUST 2022 / 2ND BHADRA, 1944 O.P.(RC) NO. 154 OF 2022 AGAINST THE ORDER DATED 19.02.2022 IN I.A.NO.11 OF 2022 IN R.C.P.NO.64 OF 2020 OF THE RENT CONTROL COURT (MUNSIFF), THRISSUR

PETITIONER: VIVIN P.C., AGED 32 YEARS, S/O CHANDRAN, RESIDING IN THE ADDRESS PUTHUKULANGARA HOUSE, OLARIKKARA P O, PULLAZHY VILLAGE-DESOM, THRISSUR TALUK, THRISSUR , PIN - 680004. BY ADV G.SREEKUMAR (CHELUR)

RESPONDENT: POLY, AGED 51 YEARS, S/O MULAKKAL THOMAS, ARANATTUKARA VILLAGE DESOM, OLARIKKARA P O, THRISSUR TALUK, THRISSUR , PIN - 680004. THIS OP (RENT CONTROL) HAVING COME UP FOR FINAL HEARING ON 19.08.2022, THE COURT ON 24.08.2022 DELIVERED THE FOLLOWING:

JUDGMENT

Ajithkumar, J.

The petitioner is the tenant. Respondent-landlord filed

R.C.P.No.64 of 2020 before the Rent Control Court (Additional Munsiff), Thrissur, seeking eviction of the petitioner under Section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The respondent also filed I.A.No.8 of 2021 under Section 12 of the Act. On 07.01.2022, an order under Section 12(1) of the Act was passed. The petitioner filed a review petition as I.A.No.11 of 2022, Ext.P4, stating that the amount directed to be paid was incorrect and the error is apparent on the face of record. The respondent filed Ext.P5 objection. The Rent Control Court after hearing both sides dismissed Ext.P4 review petition. Aggrieved by the said order, this Original Petition under Article 227 of the Constitution of India, has been filed.

2. When this matter has come up for admission on 19.08.2022, we heard the learned counsel appearing for the petitioner in detail.

3. The allegation in I.A.No.8 of 2021 was that the

petitioner defaulted payment of rent due from 17.03.2021 onwards. The rate of rent is Rs.1,760/- per day. It was alleged that an amount of Rs.4,33,200/- was due. The petitioner filed an objection contending that he was not liable to pay rent for a period of 228 days during which business could not be conducted due to lockdown and also on Sundays. The petitioner thereby contended that the claim of the respondent was incorrect and liability of the petitioner is to pay only admitted arrears of rent.

4. The Rent Control Court after considering the rival

contentions held that the petitioner was not liable to pay rent for the Sundays. But his contention that he has no obligation to pay rent during the period of lockdown was not accepted. Accordingly, the Rent Control Court as per order dated 07.01.2022 found that Rs.3,75,500/- as arrears of rent was admitted to be due. Accordingly the petitioner was directed to pay the amount within a period of four weeks.

5. I.A.No.11 of 2022, Ext.P4 was filed contending that

the Rent Control Court went wrong in holding that the petitioner was liable to pay rent during the period when the country was reeling under lockdown. Terming it an error apparent on the face of record, the petitioner sought to review that order. The Rent Control Court did not accept that contention by holding that the petitioner is not entitled to claim exemption from paying rent during the period of lockdown.

6. 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.

7. 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.

8. 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.

9. 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.

10. In the light of the aforesaid provisions, the liability

of the petitioner is to pay the rent admitted to be due alone for him to get the right to contest the matter. From the rival contention, only dispute arises is regarding the liability to pay rent during the period of lockdown, which according to the petitioner is 228 days. As pointed out above, in the agreement, Ext.P1, or in law there is no provision enabling the petitioner to claim such an exemption. In the said circumstances, the view taken by the Rent Control Court in Ext.P8 order by which the review petition was dismissed cannot be said to be incorrect or perverse. Hence, there is no reason to interfere with Ext.P8 order and the Original Petition is liable only to be dismissed. We do so.

11. A major portion of the rent in arrears has been paid by the petitioner. From Ext.P7 memo dated 22.03.2022 it is seen that an amount of Rs.2,80,000/- was paid on

28.02.2022 by the petitioner towards arrears of rent. In the said circumstances, we grant four weeks time from today to the petitioner to make payment of the arrears of rent admitted to be due after deducting the amount that has already been paid. Needless to say that the petitioner has to continue to pay the rent for the subsequent period.

Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr APPENDIX OF OP (RC) 154/2022 PETITIONER EXHIBITS EXHIBIT P1 A TRUE COPY OF THE AGREEMENT EXECUTED BY THE PETITIONER AND THE RESPONDENT DATED 31.01.2019. EXHIBIT P2 A TRUE COPY OF THE RENT CONTROL PETITION

FILED BY THE RESPONDENT HEREIN AS R C P NO.64 OF 2020 DATED 07.09.2020 BEFORE RENT CONTROL COURT, THRISSUR. EXHIBIT P3 A TRUE COPY OF THE ORDER PASSED IN I A NO.8 OF 2021 IN R C P NO.64 OF 2020 DATED 07.01.2022 ON THE FILE OF THE RENT CONTROL COURT, THRISSUR. EXHIBIT P4 COPY OF THE REVIEW PETITION FILED AS IA NO.11 OF 2022 IN R C P NO.64 OF 2020 FILED BY THE PETITIONER HEREIN DATED 11.02.2022 BEFORE THE RENT CONTROL COURT, THRISSUR. EXHIBIT P5 A

TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT HEREIN IN I A NO.11 OF 2022 IN R C P NO.64 OF 2020 BEFORE THE RENT CONTROL COURT, THRISSUR DATED 17.02.2022.

EXHIBIT P6 A TRUE COPY OF THE STATEMENT GIVEN ON BEHALF OF THE RESPONDENT DATED 28.10.2021. EXHIBIT P7 A TRUE COPY OF THE STATEMENT GIVEN ON BEHALF OF THE COUNSEL FOR THE RESPONDENT DATED 22.03.2022. EXHIBIT P8 A TRUE COPY OF THE ORDER PASSED IN I A NO.11 OF 2022 IN R C P NO.64 OF 2020 DATED 19.02.2022 ON THE FILE OF THE RENT CONTROL COURT, THRISSUR.

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