

**Krishna Iyer Vs. Krishna Iyer**

**Krishna Iyer Vs. Krishna Iyer**

**SooperKanoon Citation :** [sooperkanoon.com/720070](http://sooperkanoon.com/720070)

**Court :** Kerala

**Decided On :** Jun-17-1971

**Reported in :** AIR1972Ker216

**Judge :** Sadasivan, J.

**Acts :** [Transfer of Property Act, 1882](#) - Sections 105

**Appeal No. :** Civil Revn. Petn. No. 289 of 1971

**Appellant :** Krishna Iyer

**Respondent :** Krishna Iyer

**Advocate for Def. :** M.K. Narayana Menon, Adv.

**Advocate for Pet/Ap. :** V. Parameswara Menon, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**Sadasivan, J.**

1. The revision petitioner is the tenant of building No 12082 in ward XX (Now ward XXII) of the Ernakulam Municipality. R, C. P. 90/60 was filed before the Rent Controller by the landlord on the ground of arrears of rent. Finally the matter

reached this court in O. P. 1508/64 and before the learned Judge who heard the O. P. the respondent agreed to give time to the petitioner to vacate the premises till 31-12-1965 or in the alternative to pay up the entire arrears at the contract rate on or before the said date and continue in occupation of the premises. As the arrears were not paid as was agreed before this court, the respondent had to file the E. P. for eviction. While the E. P. was pending the respondent gave the petitioner some more time to pay up the arrears and avoid eviction. On account of this extension of time, a contention was put forward on behalf of the tenant that a new tenancy thereby must be presumed to have been created and the eviction order already passed by the court had been rendered nugatory. The tenant has also a case that the entire arrears have been paid by him. The lower court having held against the tenant on all the points, the tenant has come up in revision.

2. I hardly see any ground to interfere in revision. The undertaking made before this court in the O. P. was that all the arrears would be paid on or before 31-12-1965 and on the basis of this undertaking the O. P. was disposed of on 27-9-1965. On 27-12-1965 an application was moved before this court for extension of time and that was dismissed. The fact is not disputed that between 27-9-1965 and 31-12-1965 no payment was made by the tenant. In other words, the order of this court passed in the O. P. has not in the least been complied with. In the circumstances, the only course open to the lower Court is to enforce the order by evicting the tenant. The time granted by this court in the O. P. was for eviction. That is to say that if all arrears were paid on or before 31-12-1965 the eviction will stand postponed. Now that no payment was made in pursuance of this court's order, postponement of the eviction has become impossible. The tenant has admitted in his deposition that the only payment made by him after this court's order was the one made on 18-2-1966 (the Payment made to advocate Mr. T. C. N. Menon by cheque). It is thus clear that the direction of this court in the O. P. was not complied with. It is no doubt true that some more time was granted by the landlord; but from that it cannot be argued that by granting such a concession the landlord has committed himself to the creation of a fresh tenancy. Time granted by him was, in fact, the postponement of delivery by paying off the arrears. The order for delivery is all the same there, intact and it can be executed when the tenant fails to pay the arrears. *Konchada Ramamurthy Subudhi v Gopinath Naik*, (AIR

1968 SC 919) is a complete answer to the tenant's contention that by grant of time for payment the landlord has agreed to the creation of a new tenancy. The following observations are relevant En this connection:--

'Where the suit for ejectment of tenant after termination of tenancy having been dismissed, a compromise decree was passed in the appellate court, enabling the decree-holder, by its terms to execute the decree if the judgment-debtor failed to pay rent for any three consecutive months.

Held the compromise deed did not create a lease but a license. It was difficult to impute to the decree-holder an Intention to create a fresh tenancy while the fact that he brought the suit showed that his intention was to eject the judgment-debtor after having purported to terminate the tenancy. The fact that the word 'rent' had been used in the compromise deed was not conclusive as in its wider sense rent meant any payment made for the use of land or buildings and thus included the payment by a licensee in respect of the use and occupation of any land or buildings. The period of five years granted under the deed to the (judgment-debtor for continuation of the possession also do not militate against the Construction that the compromise only created a license for the decree-holder had lost in the trial court and it was only in the court of appeal that the compromise was arrived at'.

So also in the present case the extension of time given by the landlord can have only the effect of giving license to the tenant to continue his occupation till his arrears are paid.

3. The result is that I see no ground to interfere in revision. The revision petition is dismissed.