



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR.JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 14TH DAY OF FEBRUARY 2025 / 25TH MAGHA, 1946

OP (RC) NO. 88 OF 2024

AGAINST THE ORDER/JUDGMENT DATED 4/1/2024 IN I.A.NO.1/2023
IN IA.NO.117/2018 RCA NO.22 OF 2016 OF RENT CONTROL APPELLATE
AUTHORITY, IRINJALAKUDA

PETITIONER/PETITIONER/COUNTER PETITIONER:

SAJEEVAN SWAMY
AGED 58 YEARS
S/O RAVEENDRAN, THUBARAPULLI HOUSE,
NORTH IRINJALAKUDA P O THRISSUR DISTRICT,
PIN - 680125

BY ADV G.SREEKUMAR (CHELUR)

RESPONDENTS/ORIGINAL RESPONDENT AND THE ADDITIONAL RESPONDENTS 2
TO 5/ORIGINAL PETITIONER SINCE DECEASED AND THE LEGAL HEIRS OF
ORIGINAL PETITIONER LANDLORD:

1 JOHNSON, (DIED)
S/O RAPPAYI, RESIDING IN THE ADDRESS PALLISSERY HOUSE,
ROSARIO STREET, KIZHAKKE CHALAKUDY VILLAGE DESOM,
CHALAKUDY P O, CHALAKUDY TALUK, THRISSUR DISTRICT,,
PIN - 680701



- 2 MINI JOHNSON
 AGED 49 YEARS
 W/O JOHNSON, RESIDING IN THE ADDRESS PALLISSERY HOUSE,
 ROSARIO STREET, KIZHAKE CHALAKUDY VILLAGE DESOM,
 CHALAKUDY P O, CHALAKUDY TALUK, THRISSUR DISTRICT,,
 PIN - 680307

- 3 AKHILA JOHN
 AGED 29 YEARS
 D/O JOHNSON, RESIDING IN THE ADDRESS PALLISSERY HOUSE,
 ROSARIO STREET, KIZHAKE CHALAKUDY VILLAGE DESOM,
 CHALAKUDY P O, CHALAKUDY TALUK, THRISSUR DISTRICT,,
 PIN - 680307

- 4 ALEENA JOHN
 AGED 25 YEARS
 D/O JOHNSON, RESIDING IN THE ADDRESS PALLISSERY HOUSE,
 ROSARIO STREET, KIZHAKE CHALAKUDY VILLAGE DESOM,
 CHALAKUDY P O, CHALAKUDY TALUK, THRISSUR DISTRICT,
 PIN - 680307

- 5 AMAL JOHN
 AGED 23 YEARS
 S/O JOHNSON, RESIDING IN THE ADDRESS PALLISSERY HOUSE,
 ROSARIO STREET, KIZHAKE CHALAKUDY VILLAGE DESOM,
 CHALAKUDY P O, CHALAKUDY TALUK, THRISSUR DISTRICT,
 PIN - 680307

BY ADV RAJESH R KORMATH

THIS OP (RENT CONTROL) HAVING COME UP FOR HEARING ON
30.01.2025, THE COURT ON 14.02.2025 DELIVERED THE FOLLOWING:



CR

JUDGMENT**P.Krishna Kumar, J.**

The petitioner suffered an *ex parte* order of eviction [Ext.R2(a)] dated 31.01.2015 under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 ('the Act', for short). On 18/02/2015, he filed an application to set aside the *ex parte* order. As the said application was filed without a petition to condone the delay, the court dismissed the application by Ext.P4 order. The court also rejected the explanation offered by the petitioner for setting aside the *ex parte* order i.e., the petitioner was under the impression that the matter would be settled by the opposite party.

2. The petitioner filed an appeal against the said order. He alleges that the appeal was transferred to the Additional District Court, Irinjalakkuda from the



District Court, Thrissur and it was not intimated to the petitioner and consequently, the appeal was dismissed for default. In the meantime, the person who initiated the rent control proceedings died, and the petitioner was unable to trace out the details of his legal heirs. As a result, the application submitted by the petitioner for readmitting the appeal was also dismissed for default, it is contended. Resultantly, he filed a petition to condone the delay of 1535 days for restoring the application for readmitting the appeal, and it was also dismissed by the Appellate Authority as per Ext.P12 order on the finding that there are no reasonable grounds to condone the delay.

3. The present original petition is filed against Ext.P12 order contending that the delay occasioned as mentioned above was not purposeful and, hence, the petitioner should be permitted to contest the matter on merit.

4. Heard Sri.G.Sreekumar (Chelur), the learned



counsel appearing for the petitioner and Sri.R. Rajesh Kormath, the learned counsel appearing for the respondents.

5. Sri. G.Sreekumar (Chelur) submitted that the person who originally initiated the rent control proceedings had no title to the property as Ext.P2 sale deed in his name is not a genuine document and that there is no landlord-tenant relationship between him and the respondents. Even according to the purported landlord's account, the petitioner was put in possession of the building on the very day the sale deed was executed, based on an oral rental arrangement. This fact alone exposes the falsity of his claim, it is urged.

6. Refuting the above submissions, Sri.R.Rajesh Kormath submitted that the petitioner has no bona fides and he has filed the present petition in collusion with his wife, who had executed the sale deed in favour of the predecessor in interest of the present respondents.



The learned counsel further pointed out that the petitioner moved the court by waking up from his slumber only when the execution petition was filed, and thus, there is no reason to condone the delay of nearly five years.

7. After considering the submissions of both sides and the orders passed by the Rent Control Appellate Authority and the Rent Control Court, we find no apparent illegality in the said orders. The records reveal that the petitioner failed to diligently contest the matter. Furthermore, the explanation offered for condoning the delay is unconvincing. Nevertheless, we remain cognizant of the consistent stand of this court on condoning delay. As a general principle, delay will be condoned unless it smacks malafide, and the parties will be permitted to raise their contentions on merit, provided the opposing party is adequately compensated for the losses incurred due to the delay.

8. We would have left the matter here by setting



aside the impugned order on cost but for a grave irregularity that caught our attention. Significantly, Ext.R2(a), the *ex parte* order of eviction, reveals that the Rent Control Court allowed the application with no discussion of the merits of the materials presented before the court. After summarizing the contents of the eviction petition, the court passed the order in the following lines:

“3. Respondent filed objection denying all the allegations in the petition. According to the respondent the agreement entered into between the parties in O.S.No.770/2010 on the file of the Hon'ble Sub Court, Palakkad is only as a security for the debt due by him to the petitioner. He sold 20 ¼ cents of property to a third party with the consent of the petitioner and his friend.

4. When the case came up for trial, the respondent remained *exparte*. Petitioner filed proof affidavit. Exts.A1 to A8 were marked. Ext.A1 is the sale deed No.164/2009. Ext.A2 is the rent agreement dated 17.08.2009. Ext.A3 is the exchange agreement. Ext.A4 is the copy of lawyer notice. Ext.A5 is the postal receipt. Ext.A6 is the postal acknowledgment card. Ext.A7 is the reply notice



and Ext.A8 is the compromise petition filed in O.S.770/2010.

5. The unrebutted evidence adduced by the petitioner entitled him an order for getting vacant possession of the building.

In the result, petition is allowed with costs directing the respondent to surrender vacant possession of the petition schedule house to the petitioner within two months and on failure of the same allowing the petitioner to secure vacant possession of the petition scheduled building by the due execution of the order."

(emphasis added)

It is evident from paragraph 5 that the court passed the eviction order solely because the evidence presented remained unrebutted. However, the court failed to examine the nature and sufficiency of this unrebutted evidence in relation to the relief sought. When a court proceeds *ex parte*, it merely signifies that the case will continue without the presence of the opposing party. Even in *ex parte* proceedings, the court remains equally bound to return a considered order just



as it would in a contested case. The absence of the opposite party does not exempt the court from adhering to the fundamental legal principles. The court will grant an order in favour of a litigant only if he successfully establishes his right or the liability of the opposite party. The burden of the litigant to prove his case to the satisfaction of the court is not vanished by the absence of the opposite party. Equally, the court is not expected to blindly pass an order in favour of the prosecuting party for the fault of the defending side.

9. Indeed, the burden of proof of the party who approached the court will not be hefty when his averments stand undisputed in an *ex parte* proceeding. Only a *prima facie* proof of the relevant facts constituting the cause of action would suffice, and the court would grant him such relief as to which he may in law be found entitled [see **Rameshchand Arda v. Anil Panjwani AIR (2003 SC 2508)**]. Even in such cases, the



the court can issue a favourable order only if it is satisfied about the existence of the right/liability in question. When the opposite party is set *ex parte*, he is not forbidden to take part in the further proceedings of the case. It is open to him to join and participate in the proceedings at a later stage by accepting the events which had taken place in the interregnum as they stand [see **Arjun Singh v. Mohindra kumar (AIR 1964 SC 1993)**]. This also shows that the court cannot mechanically pass an order in favour of the plaintiff/petitioner in an *ex parte* proceeding.

10. Ordinarily, although the judgment/final order is passed *ex parte*, the court will provide in the judgment/order a summary of pleadings, points for determination and findings therein after succinctly discussing oral as well as documentary evidence. Ext.R2(a) order is an exception to that standard practice.

11. In this context, it is relevant to read sub-



rule (8) of Rule 11 of the Kerala Buildings (Lease and Rent Control) Rules, 1979, which describes the manner in which the Rent Control Court (as well as the Accommodation Controller and the Appellate Authority) has to arrive at a final decision. Sub-rule (8) expressly permits the Rent Control Court to decide a dispute *ex parte*. The said provision also does not prescribe a different course in the case of *ex parte* orders. Sub-clause (8) reads thus:

“(8) The Accommodation Controller, Rent Control Court or the Appellate Authority deciding the dispute shall record a brief note of the evidence adduced by the parties and witness who attend, and upon the evidence so recorded, and after consideration of any documentary evidence produced by the parties, a decision shall be given in accordance with justice, equity and good conscience by Accommodation Controller, Rent Control Court or Appellate Authority. The decision given shall be reduced to writing. **In the absence of any party duly summoned to attend, the dispute may be decided ex parte.**”

(emphasis added)

The term “the dispute may be decided *ex parte*” means the



dispute must be *decided in the manner provided* in the said provision, when the party duly summoned fails to attend. In other words, the decision should be in writing and it must be made after considering the oral or documentary evidence produced in the case. It must also be in accordance with justice, equity and good conscience.

12. Besides the procedural and conventional requirements in passing *ex parte* judgment or orders, Section 11 of the Act itself unequivocally provides that an eviction order can be passed by the Rent Control Court only if it is satisfied that the claim of the landlord is bona fide. For illustration, Rule 2(b) provides that if the Rent Control Court is satisfied that the tenant has not paid the rent due by him, it shall make an order directing the tenant to put the landlord in possession, subject to the satisfaction of certain other conditions. In respect of sub-sections (3), (4), (7) and (8) of Section 11 of the Act, sub-



section 10 provides as follows:

“The Rent Control Court shall, if it is satisfied that the claim of the landlord under sub-sections (3), (4), (7) or sub-section (8) is bonafide make an order directing the tenant to put the landlord in possession of the building.....”

(emphasis added)

13. In short, the satisfaction of the court as to the genuineness of the claim made by the landlord is a concomitant element of a valid order of eviction under the Act. An order passed under the Act without arriving at such satisfaction is a nullity and unsustainable in law. We make it clear that it is not the form of expression of the court about the satisfaction of the existence of a bona fide claim but the manner in which the court arrived at such a conclusion that matters. It need not be stated in so many words. However, there should be some reasoning from which such satisfaction could even be inferred.

14. Regrettably, the *ex parte* order in this case fails to demonstrate such satisfaction, and hence, we



are unable to uphold it for that reason as well. Although the petitioner does not directly challenge the order on the above ground, when this court noticed such a grave irregularity from the records produced before it, it is necessary to set aside the same and relegate the parties to the trial court, rather than readmitting the appeal.

15. However, considering the fact that the eviction petition was filed in the year 2011 and the petitioner was not so vigilant in defending the matter, the original petition is disposed of as follows:

- 1.Ext.R2(a) order is set aside.
- 2.The parties shall appear before the Rent Control Court on 27/02/2025.
- 3.The petitioner will be permitted to contest the matter on merit, on condition that he should deposit Rs.15,000/- (Rupees Fifteen Thousand only) as cost in the Rent Control Court within thirty days from today, which



shall be released to the respondents on filing a proper application. If the petitioner herein complies with the above direction, the order setting him *ex parte* will be treated as recalled. If he fails to do so, the court can proceed afresh from the stage it set the petitioner *ex parte*. The respondents will be at liberty to adduce fresh evidence, if advised.

4.The Rent Control Court shall make all efforts to dispose of the matter on or before 11/04/2025.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

P.KRISHNA KUMAR

JUDGE

APPENDIX OF OP (RC) 88/2024**PETITIONER'S EXHIBITS**

- Exhibit P1** TRUE COPY OF THE RENT CONTROL PETITION BEARING NO. 22 OF 2011 FILED BEFORE THE RENT CONTROL COURT, IRINJALAKUDA DATED 22.12.2011
- Exhibit -P2** TRUE COPY OF THE ALLEGED SALE DEED BEARING NO. 164 OF 2009 OF THE IRINJALAKUDA SRO DATED 24.01.2009 ALLEGEDLY EXECUTED BY WIFE OF THE PETITIONER HEREIN IN THE NAME OF THE 1ST RESPONDENT SINCE DECEASED ,WITH ENGLISH TRANSLATION
- Exhibit P3** TRUE COPY OF THE OBJECTION FILED AT THE INSTANCE OF THE RESPONDENT IN R C P NO. 22 OF 2011 ON THE FILE OF THE RENT CONTROL COURT, IRINJALAKUDA FILED DATED 15.10.2013 WITH ENGLISH TRANSLATION
- Exhibit -P4** TRUE COPY OF THE ORDER PASSED IN I A NO. 1326 OF 2015 IN R C P NO. 22 OF 2011 DATED 09.07.2015 ON THE FILE OF THE RENT CONTROL COURT, IRINJALAKUDA
- Exhibit -P5** TRUE COPY OF THE APPEAL MEMORANDUM FILED IN R C A NO. 22 OF 2016 BEFORE THE RENT CONTROL APPELLATE AUTHORITY, DISTRICT COURT, THRISSUR DATED 19.02.2016
- Exhibit -P6** TRUE COPY OF I A NO. 117 OF 2018 IN R C A NO. 22 OF 2016 FILED ON THE FILE OF THE ADDITIONAL DISTRICT COURT, IRINJALAKUDA DATED 02.07.2018,WITH ENGLISH TRANSLATION
- Exhibit -P7** TRUE COPY OF E P NO. 54 OF 2022 IN R C P NO. 22 OF 2011 ON THE FILE OF THE MUNSIF COURT, IRINJALAKUDA FILED DATED 12.07.2022 WITH ENGLISH TRANSLATION



- Exhibit -P8** TRUE COPY OF I A NO. 4 OF 2023 IN I A NO. 117 OF 2018 IN R C A NO. 22 OF 2016 FILED DATED 02.02.2023 ON THE FILE OF THE ADDITIONAL DISTRICT COURT, IRINJALAKUDA WITH ENGLISH TRANSLATION
- Exhibit -P9** TRUE COPY OF THE OBJECTION FILED AT THE INSTANCE OF THE RESPONDENTS 2 TO 5 IN THIS ORIGINAL PETITION TO THE APPLICATION FILED AS EXT P8 FILED DATED 17.07.2023 WITH ENGLISH TRANSLATION
- Exhibit -P10** TRUE COPY OF I A NO. 1 OF 2023 IN I A NO. 117 OF 2018 IN R C A NO. 22 OF 2016 BEFORE THE ADDITIONAL DISTRICT COURT, IRINJALAKUDA FILED DATED 02.02.2023 WITH ENGLISH TRANSLATION
- Exhibit -P11** TRUE COPY OF THE OBJECTION FILED IN EXT P10 AT THE INSTANCE OF THE RESPONDENTS 2 TO 5 HEREIN FILED DATED 01.07.2023 WITH ENGLISH TRANSLATION
- Exhibit -P12** RUE COPY OF THE ORDER PASSED IN I A NO I OF 2023 IN I A NO 117 OF 2018 IN R C A NO 22 OF 2016 ON THE FILE OF THE RENT CONTROL APPELLATE AUTHORITY, IRINJALAKUDA DATED 4.1.2024
- Exhibit -P13** TRUE COPY OF THE ORDER PASSED IN R P NO 4 OF 2023 IN I A NO 117 OF 2018 IN R C A NO 22 OF 2016 DATED 4.1.2024 ON THE FILE OF THE RENT CONTROL APPELLATE AUTHORITY, IRINJALAKUDA

RESPONDENT'S EXHIBITS

- Exhibit R2(a)** TRUE COPY OF THE ORDER DATED 31.1.2015 IN R.C.P.NO. 22 OF 2011 ON THE FILE OF THE RENT CONTROLLER, IRINJALAKUDA.
- Exhibit R2(b)** TRUE COPY OF THE PLAINT DATED 27.7.2024 IN O.S.NO. 405 OF 2024 ON THE FILE OF THE



COURT OF THE MUNSIF OF IRINJALAKUDA.

Exhibit R2 (c)

**TRUE COPY OF I.A.NO. 2 OF 2024 AND THE
ACCOMPANYING AFFIDAVIT DATED 27.7.2024 IN
O.S.NO. 405 OF 2024 ON THE FILE OF THE
COURT OF THE MUNSIF OF IRINJALAKUDA.**

Exhibit R2 (d)

**TRUE COPY OF THE COUNTER STATEMENT DATED
23.9.2024 FILED BY RESPONDENTS 2 TO 5
HEREIN TO I.A.NO. 2 OF 2024 IN O.S.NO.-405
OF 2024 ON THE FILE OF THE COURT OF THE
MUNSIF OF IRINJALAKUDA.**

Exhibit R2 (e)

**TRUE-COPY OF E.A.NO. 488 OF 2023 AND THE
ACCOMPANYING AFFIDAVIT DATED 28.2.2023 IN
E.P.NO. 547 OF 2023 IN R.C.P. NO. 22 OF
2011 ON THE FILE OF THE COURT OF THE
MUNSIF OF IRINJALAKUDA.**