
K. V Kalesan Vs Baby M.J

Original Petition (RC) No. 208 Of 2024

Court: High Court Of Kerala

Date of Decision: Dec. 27, 2024

Acts Referred:

Kerala Building (Lease and Rent Control) Act, 1965 – Section 11(2)(b), 11(3), 12, 12(1), 12(3)

Hon'ble Judges: Dr.Kauser Edappagath, J; Basant Balaji, J

Bench: Division Bench

Advocate: N.K.Mohanlal

Final Decision: Disposed Of

Judgement

Dr. Kauser Edappagath , J

1. The petitioner is the tenant and the respondents are the landlords. The respondents filed R.C.P No.4/2021 before the Additional Munsiff and Rent

Controller Court-III, Ernakulam, against the petitioner for eviction under Sections 11(2)(b) and 11(3) of the Kerala Building (Lease and Rent Control)

Act, 1965 (for short – the Act).

2. During the pendency of the Rent Control Petition, the respondents filed I.A No.1/2022 invoking Section 12 of the Act to direct the petitioner to pay

the admitted arrears of rent amounting to Rs.2,74,340/-. The petitioner took a contention that since he did not admit the arrears of rent, the application

filed under Section 12 of the Act is not maintainable. The Rent Control Court after hearing both sides passed Ext.P5 order under Section 12(1) of the

Act, directing the petitioner to remit the rent arrears within 30 days and also continue to remit the rent which may subsequent due till the culmination

of the proceedings. The petitioner challenged Ext.P5 before the Rent Control Appellate Authority, Ernakulam. The Rent Control Appellate Authority

found that the challenge against the order passed under Section 12(1) is not maintainable and dismissed the appeal directing the Rent Control Court to

give an opportunity to the petitioner to pay or deposit the arrears of rent as ordered in Ext.P5 or to show cause why the proceedings should not be

stopped and the landlord be put in possession of the building.

3. Thereafter, the petitioner was given sufficient time to either to pay the arrears of rent as ordered in Ext.P5 or to show cause. The petitioner neither

paid rent nor showed any cause. Therefore, the Rent Control Court passed Ext.P7 order under Section 12(3) of the Act, directing the petitioner to give

vacant possession of the building to the respondents.

4. The respondents filed execution petition to execute Ext.P7 order. In the execution petition, the petitioner appeared and took up a contention that

Ext.P7 is a nullity. The Rent Control Court overruled the said objection and ordered delivery on 19.12.2024. Thereafter, the petitioner filed E.A

No.932/2024 on 20.12.2024 to recall the order of granting delivery. It was dismissed on the same day. The petitioner has filed the the above original

petition to direct the Rent Control Court to issue forthwith carbon copy in E.A No.932/2024 and stay the delivery till carbon copy is issued.

5. We have heard the learned Counsel of the petitioner.

6. The learned Counsel for the petitioner submitted that Ext.P7 order is a nullity and inexecutable in as much as no sufficient time was given to the

petitioner to show cause against Ext.P5 order. We are unable to accept this contention. A perusal of Ext.P5 would show that sufficient opportunity

was given to the petitioner either to pay the admitted arrears of rent or to show sufficient cause to the contrary. Since he failed to show cause or pay

the admitted arrears of rent, an order under Section 12(3) of the Act was passed as early as on 01.11.2023. He has not challenged the said order. It

has become final. For these, the contention of the petitioner that Ext.P7 order is nullity cannot be accepted. Therefore, we see no reason to entertain

the plea of the petitioner that the delivery has to be stayed till carbon copy of the order is issued.

7. The learned Counsel for the petitioner submits that the petitioner is doing business in the tenanted premises and he may be granted one month to

vacate the premises.

8. Taking note of the fact that the business of the petitioner is ongoing one, we are inclined to grant one month time to the petitioner to vacate the

tenanted premises on condition that he shall file an undertaking before the Rent Control Court that he shall vacate the premises unconditionally on or

before 31.01.2025. The petitioner shall deposit the entire arrears of rent as of today before the Rent Control Court along with the affidavit.

The original petition is disposed of as above.