
(2025) 02 KL CK 0060

High Court Of Kerala

Case No: Original Petition (RC) NO. 88 Of 2024

Sajeevan Swamy

APPELLANT

Vs

Johnson

RESPONDENT

Date of Decision: Feb. 14, 2025

Acts Referred:

- Kerala Buildings (Lease and Rent Control) Act, 1965 - Section 11, 11(3), 11(4), 11(7), 11(8)
- Kerala Buildings (Lease and Rent Control) Rules, 1979 - Rule 2(b), 11(8)

Hon'ble Judges: A.Muhammed Mustaque, J; P.Krishna Kumar, J

Bench: Division Bench

Advocate: G.Sreekumar, Rajesh R Kormath

Final Decision: Disposed Of

Judgement

P.Krishna Kumar, J

1. 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 (Ã¢â‚¬Ëœthe ActÃ¢â‚¬Ëœ, 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.Ã¢â€

(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)

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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.