
(2002) 02 KL CK 0012

High Court Of Kerala

Case No: C.R.P. No. 368 of 1999

Leelambika Thampi

APPELLANT

Vs

Nithyanandan

RESPONDENT

Date of Decision: Feb. 13, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 8

Citation: (2002) 1 KLJ 420

Hon'ble Judges: K.S. Radhakrishnan, J; K.A. Mohammed ShafA?, J

Bench: Division Bench

Advocate: B. Radhakrishnan Thottathil, K.B. Pradeep, K.S. Sreekumaran and Pearly Josei, for the Appellant; S.V.Rajan, Sajan Sree Raj and M.V.S. Namboothiry, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Radhakrishnan, J.

This revision petition arises out of proceedings under Sec. 11(4)(iv) of Act 2 of 1965. Eviction was ordered for the purpose of reconstruction with a right for re-entry to the tenant. Landlord started construction of a multi-storeyed building after getting the tenant evicted from the premises. Pending the proceeding tenant died. One of the legal representatives of the tenant filed I.A. No. 898 of 1993 for a direction to expedite the reconstruction of the building and for allotment of the same to him. That petition was posted for hearing to 20-1-1996. Since counsel was not present on that day the same was dismissed for default. Tenant then filed I.A. No. 1549 of 1996 on 16-2-1997 for restoring I.A. No. 898 of 1993. Reason for non-appearance was that the counsel was held up in traffic jam and therefore could not reach the Rent Control Court in time. Request was opposed by the landlord as time barred stating that I.A. No. 1549 of 1996 was filed after fifteen days prescribed by Rule 15(3) of the Kerala Buildings (Lease & Rent Control) Rules, 1979. Rent Control Court however passed an order on 12-7-1996 allowing

I.A.1549 of 1996. Consequently I.A. No. 898 of 1993 was restored to file. The said order was challenged by the landlord in appeal before the Appellate Authority and the appeal was dismissed on 23-11-1998. It was ordered by the Appellate Authority that it would be open to the tenant to prefer another application similar to I.A. No. 898 of 1993.

2. Counsel appearing for the revision petitioner challenged the orders of the courts below. Counsel submitted that the principle contained in Order IX Rule 8 of the CPC and the principle of res judicata and finality attached to the decisions would equally apply to the proceedings before the Rent Control Court as well. Consequently there is no justification in allowing the tenant to make another application. We are of the view the point raised in this case has already been covered by a Bench decision of this court in Jullunder D & N Mfg.Co. v. Jayadcvan, 1999 (1) KLT 107. Interpreting Sec. 23(1) of the Act the court held that the authorities under the Act have the power in appropriate cases to restore application dismissed for default. Similar is the view taken by a learned single Judge of this court in [K.P. Pius Vs. Mrs. Albina Rozario and Another](#), . Same principle was followed by another Division Bench in State of Kerala v. Joseph, 1989 (2) KLT 561 while dealing with a provision under the Kerala Private Forests (Vesting and Assignment) Act, 1971. It was held by the Bench that even though earlier application was dismissed for default second application is maintainable. We find no good reasons to take a different view from that of the above mentioned decisions. In such circumstances, we find no infirmity in the order of the appellate authority to be interfered with in this revision petition. Revision Petition is accordingly dismissed.