

Kerala High Court

Winner The Oven Fresh vs E.V.Seleena on 5 August, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

RCRev..No. 181 of 2008()

1. WINNER THE OVEN FRESH, STAR BUILDINGS,
... Petitioner
2. K.P.NAZAR, AGED 39 YEARS, MANAGING

Vs

1. E.V.SELEENA
... Respondent

For Petitioner :SRI.V.V.SIDHARTHAN

For Respondent :SRI.LEO GEORGE

The Hon'ble MR. Justice P.R.RAMAN

The Hon'ble MR. Justice T.R.RAMACHANDRAN NAIR

Dated :05/08/2008

O R D E R

P.R. RAMAN &

T.R. RAMACHANDRAN NAIR, JJ.

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R.C.R. NO. 181 OF 2008 & CAVEAT O.P. 525/2008

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DATED THIS, THE 5TH DAY OF AUGUST, 2008.

O R D E R

Raman, J.

Tenant is the revision petitioner. Eviction was sought by the landlord under Section 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). During the course of the proceedings, on an application made by the landlady as I.A. 2473/2007, the tenant was directed to pay or deposit the admitted arrears within 30 days and also to pay future arrears within 15 days of such default, after entering a finding that rent from 2007 is in arrears. The

accumulated arrears were, however, deposited only later after the expiry of the time granted by the court. Still further the tenant did not continue to deposit the rent which fell due every month. Hence the trial court passed an order under Section 12(3) of the Act by staying all further proceedings and ordering eviction.

2. The trial court, as per its order dated 13.9.2007 found that though the tenant was asked to show cause for not proceeding under Section 12(3) RCR 181/2008 :2:

of the Act, no cause was shown and he also absented from court on 13.9.2007 when the case was taken up. It was in these circumstances, that the order of eviction was passed under Section 12(3) of the Act. Aggrieved thereby, the tenant filed an appeal before the appellate authority. The appellate authority raised and considered the point as to the justification or otherwise of granting eviction under Section 12(3) of the Act by stopping all further proceedings, by the trial court. The appellate court noticed that on 4.4.2007, the Rent Control court passed an order in I.A. 2473/2007 under Section 12, directing the tenant to pay the admitted arrears of rent within 30 days and to pay the future arrears which may fall due within 15 days of such default. There is no case for the tenant that he has paid the subsequent rent or deposited the same on or before the date as fixed in the order passed by the court. Even if he had paid or deposited the amount after the order passed under Section 12(3) of the Act, it will not in any way help him to vacate the order so passed. This position has been made in clear terms in the decision reported in *Devi v. Indu* (1999(3) KLT 434). In *Narayanan v. Vinod* (2004(3) KLT 955) this Court held that when admitted arrears of rent has not been disputed by the tenant, then there is no necessity of issuing any separate notice enabling him to show sufficient cause for committing default. As a matter of fact, the section itself is very clear that RCR 181/2008 :3:

when the admitted arrears of rent is not paid or deposited, it is for the tenant to invoke the provision and then explain the circumstances under which he did not make the deposit. Here, the Rent Control Court had already passed an order directing the tenant to pay the admitted arrears of rent within 30 days. He was also directed to deposit/pay the subsequent arrears within 15 days from the date on which it fell due. Therefore, this is a composite order directing to deposit the arrears of rent as found as on the date of the order as also a direction to pay future rent within 30 days from the date on which it fell due. It is not the case for the tenant that he paid or deposited the dues within 15 days as directed by the Rent Control Court. According to the learned counsel for the petitioner, he made a statement on 13.9.2007 itself explaining the circumstances under which he did not deposit the amount. But the court below did not consider the same while passing the order. We have considered this argument. The tenant has no case that he has deposited the amount as on the date on which the order was passed and even in the explanation he has offered, he only stated that it is due to an inadvertent omission that rent was not paid. The rent from July was in arrears and even according to him, it was only deposited in October. When every month rent has to be paid, it is improbable and impossible to believe that non payment for all these months is due to an inadvertent omission on RCR 181/2008 :4:

his part. Further, within a reasonable time he did not come with any explanation also. It was only when the landlord pressed for an order under Section 12(3) that even a statement was filed, that too,

on the date on which the order was passed under Section 12(3) of the Act. In the circumstances, we find that the tenant having failed to deposit or pay the amount as directed by the Rent Control Court in its order, the consequence will follow and the court below was justified in passing an order under Section 12(3) of the Act. We find no merit in the contention raised by the revision petitioner. Accordingly, this revision petition is dismissed.

P.R. RAMAN, (JUDGE) T.R. RAMACHANDRAN NAIR, (JUDGE) knc/-