

IN THE COURT OF THE RENT CONTROLLOR, CHERTHALA

Present: Sri. Rovin Rodrigues, Principal Munsiff

Saturday, the 4th day of January 2025 / 14th Pousham, 1946

IA 02/2024 in RCP. No. 37/2023

(Filed on 14.10.2024)

Petitioner:-

Akshaykumar J., aged 58,
S/o. Janardana Kammathi, Kurikayil House,
Velorvattom, Cherthala North Muri,
Cherthala North Village, Cherthala Taluk.

By Adv. Jacob Joseph.

Cr.Petitioner:-

A.P.Sadanandan Achari, aged 66,
S/o. Pazhani Achari, Lakshmi Jewellery,
Muttom Bazar, Cherthala P.O.,
Cherthala North Muri, Cherthala North Village,
residing at Lakshmi Sadanam House,
West of Arthinkal Road Railway Level Cross,
Cherthala P.O., Cherthala North Village,
Cherthala North Muri, Cherthala Taluk.

By Adv. C.H.Chandrabhanu.

This petition having been heard on 04.01.2025 and the Court on the same day passed the following:-

ORDER

This is a petition filed by the petitioner/landlord under Section 12 of the Kerala Building (Lease and Rent Control) Act, 1965 seeking a direction to the

respondent/tenant to pay the admitted arrears of rent.

2. The brief facts in the petition are as follows: - The RCP 37 of 2023 was filed seeking eviction of the tenant under Sections 11(3) and 11(4)(v) and also for fixation of fair rent under the Kerala Building (Lease and Rent Control) Act. The counter-petitioner defaulted on rent payments of Rs. 3,250/- per month for the scheduled room from September 20, 2022. The counter-petitioner's vague denial of rent default in his objection implies admission of rent arrears. Despite this, the counter-petitioner did not pay subsequent rent dues following the filing of the original petition. The case was included in the special list and was adjourned from October 7, 2024, to October 14, 2024, at the counter-petitioner's request. The counter-petitioner's nonpayment of admitted rent arrears and the subsequent dues disqualified him from contesting the original petition. Therefore, the petitioner requests the court to direct the counter-petitioner to pay the admitted rent arrears and subsequent dues within a specified time frame. If the counter-petitioner fails to comply, the petitioner prays for an order stopping further proceedings and directing the counter-petitioner to vacate the premises, allowing the petitioner to take possession.

3. The counter-petitioner objected to the petition, stating that the petition is not maintainable in law and on facts and is an abuse of process. The petitioner strategically filed this petition at the late stage of the trial to coerce the counter-petitioner, who had meritorious defenses, into not contesting the case. The counter-

petitioner denied allegations of defaulting on rent payments from September 20, 2022, onwards, as previously stated in his objection to the original petition. There was no admission of rent arrears, contrary to the petitioner's claims. The counter-petitioner asserted that rent payments were up to date during the pendency of the petition, with no outstanding arrears. The counter-petitioner argued that the petition appears to be a pretext for eviction without contest, which should not be permitted.

4. Heard both sides. Perused the records.

5. As per S.12(1) of the Act, no tenant against whom an application for eviction has been made by a landlord under S.11, shall be entitled to contest the application before the Rent Control Court under that section or to prefer an appeal under S.18 against any order made by the Rent Control Court on the application, **unless he has paid or pays to the landlord, or deposits with the Rent Control Court or the appellate authority, as the case may be, all arrears of rent admitted by the tenant to be due in respect of the building up to the date of payment or deposit, and continues to pay or to deposit any rent which may subsequently become due in respect of the building, until the termination of the proceedings before the Rent Control Court or the appellate authority, as the case may be.** Thus, as per S.12 of the Act, the tenant is entitled to contest the petition only if he deposits the arrears of rent and if he fails to do so, he has no right to contest the petition. The Rent Control Court has to pass the order under S.12(1) of the Act after ascertaining the quantum of arrears of rent due to the landlord on the basis of the

relevant records available. The Hon'ble High Court in **Gopala Panicker Baiju and Another v. Mallika, 2018 (5) KHC 95** held that the terminology "all arrears of rent" used in S.12 will undoubtedly include interest on such arrears and that granting 6% interest for the admitted arrears of rent is fair and proper.

6. The petitioner's case is that the respondent has failed to pay the arrears of rent he admitted, and hence he has no right to contest the rent control petition. According to the petitioner, the monthly rent was Rs. 3250/- for the petition schedule room, and the rent had been in arrears from 20.09.2022 onward. The petitioner filed a calculation statement and claimed rent arrears of Rs. 78,000/- for the period from 20.09.2022 to 19.09.2024. He also claimed interest at 6%, amounting to Rs. 4,485/-. Thus, the total amount due from the respondent is Rs. 82,485/- as of 20.09.2024. The respondent, on the other hand, would contend that the rent during the pendency of the petition was also paid and there are no arrears of rent as of now. However, the respondent did not produce any rent receipts or other documents to show that he had paid the rent up to date.

7. The Hon'ble High Court in **Nandanam Tiles & Sanitaries (P) Ltd. v. Abdul Gaffur, 2022 (4) KHC 201**, has held, "Admitted arrears is an amount that can be quantified by the Rent Control Court from the rent deed produced by the landlord and the receipts or documents specified under S.9 of the Act, evidencing payment of rent, produced by the tenants, unless the rent deed contains anything to the contrary. To sum up, the tenant cannot be allowed to wriggle out from the

statutory liability, under S.12 of the Act, by a blank denial in his counter statement or objection to the application filed under S.12 of the Act, where the rent deed and receipts would quantify an amount, as admitted arrears of rent, from the admissions therein; but otherwise, the determination empowered with the Rent Control Court contemplated under S.12(1) of the Act would come to an end, on a bare denial of the tenant and thereby the purpose of S.12 of the Act itself would be defeated.”

8. The respondent/tenant, in paragraph 3 of his objection to the rent control petition, alleges that his business has suffered due to the unloading of goods from the wholesale grocery shop in front of the petition schedule room during working hours, and the parking of big trucks and lorries in front of the shop. As a result, he is not liable to pay the renewed rent of Rs. 3250/- per month. Therefore, it is clear that the tenant has agreed to a current rent rate of Rs. 3250/- per month. As per the calculation statement of the petitioner, the rent arrears are calculated at Rs.3250/- per month till 19.09.2024, and it comes to Rs.78,000/-, and the interest at 6% would come to 4,485/-. Therefore, the respondent/tenant must pay a total of Rs. 82,485/- as of 19.09.2024. I believe that the rent arrears calculated by the petitioner are just and proper. Adding the rent for October 2024, November 2024, and December 2024 ($\text{Rs. } 3250 \times 3 = \text{Rs. } 9750$) and 6% interest on the rents for September 2024, October 2024, and November 2024 ($\text{Rs. } 195 \times 3 = \text{Rs. } 585$), it would come to Rs. 92,820/-. Thus, the total rent due till date is Rs. 92,820/

9. The discussions in the preceding paragraphs reveal that the

respondent/tenant has kept the rent in arrears and is now liable to pay the admitted arrears of rent with interest. Therefore, I allow the petition. I direct the respondent/tenant to deposit the admitted rent arrears of 92,820/- (Rupees Ninety Two Thousand Eight Hundred and Twenty only) on or before 31.01.2025, and to pay the subsequent rent dues on or before the 15th day of every calendar month.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open Court on this the 4th day of January, 2025).

Sd/-
Rovin Rodrigues
Principal Munsiff

Appendix: - Nil

Sd/-
Principal Munsiff

/True Copy/

Principal Munsiff

*Typed by :jc
Comp by :ra*

*Fair Copy of Order in
LA No.2/24in RCP..37/2023
Dated: 04.01.2025*