

IN THE COURT OF THE MUNSIFF & RENT CONTROLLER, KOCHI
Present :-

Smt. Simi P Siju, Additional Munsiff & Rent Controller

Saturday the 20th day of September, 2025/ 29th Bhadra, 1947

I.A. No. 13/2025 in RCP No. 6/2022

Petitioner/Respondent:-

Shihab T A, aged 48 years, S/o.Abdul Khadar, Theyyath House,
Malippuram PO, Elamkunnappuzha, Kochi-682511

By Advs. Tresa Rani George, Adam Ambrose & Raviji

Respondents/Petitioners:-

- 1 Joy Figarado, aged 72 years, S/o.Dominic, Pathissery House,
Malippuram PO, Elamkunnappuzha, Kochi-682511
- 2 Romy Figarado, W/o.Joy Figarado, Pathissery House, Malippuram PO,
Elamkunnappuzha, Kochi-682511

By Adv. Santhosh Peter Mamalayil & P N Anoop

This petition come up for hearing on 10.09.2025 and the court on
20.09.2025 passed the following:-

ORDER

This is an application filed under Order 23(1)(h) of Kerala
Building(Lease and Rent Control)Act r/w Order 9 Rule 7 and S.151 of the
Code of Civil Procedure.

2. The averments in the petition in brief are as follows:- Petitioner is the respondent in the above RCP. The above RCP is filed for an order of eviction of the petitioner from the petition schedule building. On 18.06.2025 when this case was called there was no representation on his part and he was set exparte by this court. On 14.06.2025 the petitioner received a notice to appear before this court on 18.06.2025 since he had already engaged a counsel the petitioner was under the impression that his counsel would appear on behalf of him. Subsequently on enquiry it was revealed on 20.06.2025 that his counsel passed away but the same was not known to him. It is submitted that there is no willful negligence or laches in not appearing before this court when the case was taken up. What happened was beyond the reason of his control. The petitioner have got substantial contentions and he had filed his objection also. Hence pleased to set aside the exparte order against him and permit him to contest this case otherwise it will be put to irreparable injury and hardships.

3. Respondent filed counter affidavit vehemently disputing the averments in the petition. Respondent contended that this IA is filed by the petitioner to set aside the exparte order passed by this court on 18.06.2025. On 10.06.2025 this court noted that the respondent's counsel was

relinquished the vakkalath and directed to issue notice to the respondent regarding the relinquishment of vakkalath and posted the case on 18.06.2025. On 18.06.2025 there was no representation from the respondent and case was posted for evidence to 12.06.2025. On that day one counsel appeared for respondent but no vakkalath and petition was placed before this court. Therefore this court taken the evidence of the petitioner and posted for hearing on 27.06.2025. On 27.06.2025 there was no representation from the respondent and this court heard the petitioner and posted the case for orders on 07.07.2025. The respondent intentionally did not appear before this court on 18.06.2025, because if the advocate relinquished the vakkalath, he will definitely communicate the same early to the client even before he file relinquishment memo before this court. In the above case after receiving the relinquishment memo this court issued notice to the respondent regarding the relinquishment of vakkalath and posted the case for appearance of the respondent on 18.06.2025, but the respondent did not turned up even after receiving the notice and respondent was set exparte. The above petition to set aside the exparte order was only filed on 05.07.2025 which is only one day before the posting for final order.

The respondent was only trying to protract the matter, if he is a

prudent man he would appear before this court after receiving the notice, but that did not appear. The petitioners are aged persons and it is very difficult for them to appear before the court several times for evidence due to the old age ailments. The respondent's only intention is to protract the matter that can be visible from the several IAs filed by him some of them were dismissed by this court and now the respondent came up with a new story to protect the matter.

5. The points arise for consideration:-

- (i) Whether the petition to set aside the ex parte decree can be allowed?
- (ii) Reliefs and costs?

6. Heard both sides. Perused petition, objection and case records.

7. Point No.(i):- The specific case of the petitioner is that on 14.06.2025 the petitioner received a notice to appear before this court on 18.06.2025 since he had already engaged a counsel the petitioner was under the impression that his counsel would appear on behalf of him. Subsequently on enquiry it was revealed on 20.06.2025 that his counsel passed away but the same was not known to him. It is submitted that there is no willful negligence or laches in not appearing before this court when the case was taken up. The respondent contended that after receiving the

relinquishment memo this court issued notice to the respondent regarding the relinquishment of vakkalath and posted the case for appearance of the respondent on 18.06.2025, but the respondent did not turned up even after receiving the notice and respondent was set exparte. The above petition to set aside the exparte order was only filed on 05.07.2025 which is only one day before the posting for final order. The respondent was only trying to protract the matter, if he is a prudent man he would appear before this court after receiving the notice, but that did not happened.

8. This court considered the rival submissions made by the parties. The explanation offered by the petitioner that his counsel had passed away, and that this was not within his knowledge, appears to be a reasonable and sufficient cause for his non-appearance on 18.06.2025. The petitioner has already filed objections and raised contentions that require adjudication on merits. Denying him an opportunity to contest would result in irreparable prejudice, whereas no serious prejudice will be caused to the respondents if the matter is decided after hearing both sides. The paramount consideration of the Court is to decide the case on merits rather than on technical grounds. In such circumstances this court is of the view that sufficient cause has been made out to set aside the exparte order dated 18.06.2025. Accordingly, point

No.(i) is found in favour of the petitioner.

9. **Point No.(ii)**:- In the light of the above findings, this court of the view that petition can be allowed.

In the result, the petition is allowed without costs.

(Dictated to the Confdl.Asst; transcribed and typed by her, corrected and pronounced by me in open Court on this the 20th day of September 2025.)

Sd/-
Simi P Siju
Additional Munsiff/Rent Controller

APPENDIX : - Nil

Id/-
Additional Munsiff/Rent Controller

//True Copy//

Additional Munsiff/Rent Controller

ORDER
IA No. 13/2025
RCP. No. 6/2022
Dated : 20.09.2025