

IN THE COURT OF RENT CONTROL APPELLATE AUTHORITY, THRISSUR

Present:

Smt. JAYA PRABHU, Rent Control Appellate Authority -II

Monday, 16th day of March 2026/ 25th Phalguna 1947

RCA No. 190/2019

(RCP 19/2014 of Rent Control Court,Chavakkad)

Appellant/Petitioner: Usman , Aged 58 Years, S/o Muhammed,
Pulikkal House, Guruvayoor Village, Palayoor Desom,
Chavakkad Taluk, Thrissur District.

By Adv. V. Vijayakumaar

Respondent:- Pathukunji , Aged 78 Years, D/o Aalikutty Haji,
Manakkal valappil House, Manathala Village & Desom,
Chavakkad Taluk, Thrissur District

By Adv. Roshan Babu

This Petition is coming on this day for hearing, the court passed the following:-

J U D G M E N T

This is an appeal preferred by the appellant /tenant against the order in IA.1729/2019 and IA.1728/2019 passed by the Rent Control Court, Chavakkad. For convenience the parties are herein after referred as per their status before the trial court.

2. The appellant is the tenant and the respondent is the landlord in the RCP. The RCP is one filed under section 5 of Kerala Buildings (Lease and Rent Control) Act, 1965 for fixation of fair rent. The appellant/tenant was working in abroad and he has not received notice in RCP. The landlord has taken paper publication against the tenant and he was set exparte. After returning from abroad

the tenant got knowledge regarding the ex parte order and filed 1A 1729/2019 and 1728/2019 on 09.10.2019 for setting aside the ex parte order and condoning the delay in filing the same. But the lower court has dismissed the same. Aggrieved by the same the present petition is filed .

3. The respondent contended that there is no sufficient ground shown by the petitioner to set aside the ex parte order and to condone the delay in filing the petition to set aside the ex parte order. The tenant failed to pay rent from 02.04.2014 and for realization of the same the landlord has filed OS 71/2019 .The tenant is trying to drag the proceedings and cause trouble to the landlord. Hence, the appeal is devoid of merits and it is liable to be dismissed with costs of the respondent.

4. On the basis of the pleadings of the parties the learned Rent Control Court has raised necessary points in 1A 1729/2019 and 1728/2019 and after hearing both sides, as per order dated 8.07.2019 the petition to condone delay and the petition to set aside the ex parte order was dismissed by the Rent Control Court vide separate orders.

5. The learned counsel for appellant argued that the appellant/tenant was working in abroad and has not received notice in RCP. The landlord has taken paper publication against the tenant and he was set ex parte. Only in February 2019 he return from abroad and when he got knowledge regarding the ex parte order he filed 1A 1729/2019 and 1728/2019 on 09.10.2019 for setting aside the ex parte order and condoning the delay in filing the same. But the same was dismissed by the trial court

on the ground that Sec.5 of Limitation Act is not applicable to Rent Control Petitions .
Thus the said orders are liable to be set aside.

6. The counsel for respondent argued that from 02.04.2014 onwards the tenant failed to pay rent and for realization of the rent arrears the landlord has filed OS 71/2019. The petitioner is trying to drag the proceedings. Hence, the appeal is liable to be dismissed.

7. The points for determination in this appeal are as follows:-

- 1 Whether the tenant has shown a sufficient cause to set aside the ex parte order ?
- 2 Whether the tenant has shown sufficient ground to condone the delay in filing petition to set aside the ex parte order ?
- 3 Whether any interference or modifications required in the impugned order by passed by the Rent Control Court in 1A 1729/2019 and 1728/2019 ?
- 4 Reliefs and costs?

8. Heard both sides.

9. **Point Nos. 1 to 3:-** I have gone through the records of the trial court and re-appreciated the evidence on record. Admittedly, the RCP is one filed under section 5 for fixation of fair rent. From the proceedings in RCP. 19/2014 it can be seen that the notice issued to the respondent/tenant was not served as he is in abroad and substituted service was ordered against respondent/tenant and on producing the paper publication he was set ex parte on 06.11.2014 and thereafter ex parte order in

RCP was passed on 21.01.2016. The respondent/tenant has filed 1A 1729/2019 and 1728/2019 on 09.10.2019 for setting aside the ex parte order and condoning the delay in filing the same. But it was dismissed by the trial court. The respondent contended that the in order to drag the proceedings the appeal is filed .The pleadings in the 1A 1729/2019 and 1728/2019 shows that the appellant has return from abroad only in February 2019 and when he got knowledge regarding the ex parte order against him he filed the said petitions. From the proceedings in RCP. 19/2014 itself can be seen that the notice issued to the respondent/tenant was not served as he was in abroad and substituted service was ordered against respondent/tenant and on producing the paper publication he was set ex parte on 06.11.2014 and thereafter ex parte order in RCP was passed on 21.01.2016. Thus the petitioner has shown a sufficient cause for his absence before the court and to condone the delay and to set aside the ex parte order against him. The trial court relied on the decision reported in Ratheesh. v. A.M Chacko & Another reported in 2018(4) KLJ 841 and held that limitation Act is not applicable to the Rent Control Act and dismissed the IA1728/2019 filed for condoning the delay and in view of the said order IA1729/2019 filed for setting aside the ex parte order against the tenant also was dismissed. In case of K K Hamsa .v. Athikottu Snehalatha reported in 2021 SCC Online ker 383 the Hon'ble High Court of Kerala overruled the decision in Ratheesh .v. A M Chacko and held that the Rent Control Court ,as quasi judicial body,has power to condone delay under sec 5 of the Limitation Act ,1963. Thus the findings of the trial court that the sec 5 of the

Limitation Act is not applicable to the Rent Control Petitions is liable to be interfered. There is 1126 days delay in filing the petition to set aside the ex parte order and the petitioner has shown a sufficient cause for the said delay and his absence before the trial court. Thus the delay can be condoned for the interest of justice. Admittedly the order passed by the Rent Control Court under sec 5 of the Kerala Buildings(Lease and Rent) Control Act is an ex parte order and there was no adjudication of the said petition on merits. Thus for the just and proper adjudication of the case, the ex parte order in favour of the landlord can be set aside and an opportunity can be given to the tenant to contest the matter. Otherwise the appellant/tenant will take the matter to another round of litigation and which ultimately prolong the final disposal of the RCP on merits and it will result in causing injustice to the landlord also. Hence, I am of the opinion that for the just and proper adjudication of the dispute between the parties on merits, the delay in filing petition to set aside the ex parte order can be condoned and the ex parte order against the appellant/tenant can be set aside on payment of cost to the landlord. Considering the fact that the RCP is filed in the year 2014 and due to the above said reason the final disposal of the RCP on merits was delayed and it caused inconvenience to the landlord so an amount of Rs.15,000/- can be imposed as cost. In view of the above discussion,I find that in the interest of justice and for the just and proper adjudication of the RCP on merits the impugned order of the Rent Control court can be interfered. Thus the points are found accordingly.

10. Point no 4: In the result appeal is allowed as follows:-

The order in 1A 1729/2019 and 1728/2019 are hereby set aside .Delay in filing IA 1729/2019 is condoned and the exparte order against the appellant/tenant in the RCP dated 21.01.2016 is set aside subject to payment of cost of Rs.15,000/- to the respondent/landlord. Pay cost and file memo or deposit the cost before the Rent Control Court on or before 30.03.2026. In the event of failure, the IA 1729/2019 and 1728/2019 will stands dismissed. The Rent Control Court is directed to include the case in the next available list. As the case is of the year 2014, the Rent Control Court shall dispose the matter as expeditiously as possible.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 16th day of March,2026).

Sd/-
JAYA PRABHU
RENT CONTROL APPELLATE AUTHORITY-II
THRISSUR

Appendix :Nil

Sd/-
JAYA PRABHU
RENT CONTROL APPELLATE AUTHORITY II
THRISSUR

/ True Copy /

By Order

Copied by:NEM

Compared by : SMS

Sheristadar

Judgment in
R.C.A :190/2029
Dated: 16.03.2026