

IN THE COURT OF ADDITIONAL MUNSIFF-IV (RCC),
THIRUVANANTHAPURAM

Present : Smt. Thejimai Thampuratty.S,
Additional Munsiff-IV (RCC)

Wednesday 1st day of December, 2021/10th Agrahayana, 1943

IA 1/2021 in RCP No.23/2021

Petitioner:-

Anil Kumar. A, S/o Appu Thankan,
aged 51 years, residing at T.C.No.14/1754,
Kunnathu House, Thycaud.P.O,
Thycaud Village, Thiruvananthapuram

By Adv. Smt. Anju Thampy. P.L

Respondent:-

Sunil Kumar, aged 47 years,
S/o Gopalakrishnan, residing at
Subhadra Bhavan, Karodu,
Vilappilshala.P.O, Vilappil Village,
Thiruvananthapuram.

By Adv. Smt. Salini. T. S

This petition is having been finally heard on 1.12.2021
and the court on the same day passed the following.

ORDER

1. Petition is filed u/s.12 of the Kerala Buildings (Lease and Rent Control) Act, 1965.

2. The petition averments in brief are as follows:- The petitioner is the landlord of the petition schedule shop room and the counter petitioner is the tenant. The respondent took the petition schedule shop room on rent of Rs.15,000/- per month as per the rent agreement dated 12.07.2019. The rent agreement was expired in the month of June 2020. On 27.09.2020 the rental agreement was renewed for six months and the agreement period ended on 31.03.2021. The petitioner evaded the rent in the month of March 2020 and both the parties were mutually agreed to pay the rent of Rs.12,000/- per month for July to September 2020. After deducting the rent arrears from the advance amount of Rs.1,50,000/- as per the mutual agreement, the remaining amount was Rs.99,000/-.

Both the parties mutually agreed to consider the said amount towards new rent agreement. On that basis they executed acknowledgment and lease agreement. Respondent committed default in payment of rent from October to March 2021. On 26.02.2020 and on 14.12.2020 the petitioner sent advocate notices to the respondent requesting him to pay arrears of rent with electricity charges. But the counter petitioner did not care to surrender the vacant possession. The petitioner's wife is running her beauty parlour in their house. As it is an old building, they are in bonafide needs of the petition schedule shop room for conducting their business. Petitioner's wife has no other suitable building for conducting her business. There is an amount of Rs.90,000/- is due towards rent for six months from October to March 2021. The petitioner's major income is from the rental amount for their livelihood. In spite of the notices, the respondent neither replied nor paid the rent arrears. Hence this petition for directing the counter petitioner to pay or deposit the total arrears of rent is filed.

3. Respondent filed objection stating that the Section 12 petition is not tenable either under law or on facts. The petition is devoid of merits and filed with the malafide intention by concealing material facts. After the completion of the agreement dated 12.07.2019 the parties were not able to renew the agreement. The respondent was unable to pay the rent due to the out break of Covid-19. So the petitioner has no right to force the respondent for the arrears of rent as the shop run by the respondent was closed. On 01.10.2020 a new agreement was executed between the parties and the monthly rent was fixed as Rs.15,000/- and advance as Rs.99,000/-. The petition agreed that the arrears of rent can be appropriated from the advance. So the petitioner cannot force the respondent to deposit the arrears of rent. Hence the petition is to be dismissed with costs.

4. Heard both sides. Perused the records and documents.

5. According to the petitioner, the rent agreement was renewed on 01.10.2020 and rent was fixed at the rate of

Rs.15,000/- per month. Respondent paid Rs.99,000/- as advance / security deposit. However, the respondent has not paid any rent thereafter. Till March 2021 the arrears of rent is Rs.90,000/-. Petition is filed to direct the respondent to deposit Rs.90,000/- before the court. However the respondent contended that even if there is arrears of rent, that can be appropriated from the security deposit. Here it is pertinent to note that the present petition is filed under Order VI Rule 17 r/w Section 151 of C.P.C. which does not suit the prayer in the petition. No application is filed under Section 12 of the Kerala Buildings (Lease and Rent Control) Act. Here the petitioner does not ask for directing the respondent to pay the admitted arrears under Section 12 of the Act. The only prayer asked in the petition is to direct the respondent to pay Rs.90,000/- towards the rent from October 2020 to March 2021. It is seen from the rent agreement dated 01.10.2020 and from the averments in the petition that respondent already paid Rs.99,000/- to the petitioner as advance / security deposit. Petitioner can very well appropriate that amount towards the

rent arrears if any. Through the objection, the respondent agreed for the same. Hence it is found that respondent cannot be asked for paying Rs.90,000/- towards the rent of October 2020 to March 2021. Thus the petition is only to be dismissed.

In the result, petition is dismissed.

Dictated to the C.A. typed by her, corrected by me and pronounced in open court on this the 1st day of December 2021

Sd/-

**Thejomai Thampuratty.S,
Additional Munsiff-IV (RCC)**

Appendix :- Nil

Id/-

Additional Munsiff-IV (RCC)

//True Copy//

Additional Munsiff-IV (RCC)

True Copy of Order in
IA 1/2021 in RCP No.23/2021
Dated: 01/12/2021