

ITEM NO.3

COURT NO.8

SECTION XIA

S U P R E M E                      C O U R T   O F   I N D I A  
R E C O R D   O F   P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).538/2009

(From the judgement and order dated 15/10/2008 in  
of The HIGH COURT OF KERALA AT ERNAKULAM)

RCR No.191/2008

P.H.THAHA

Petitioner(s)

VERSUS

SUDHA DEVADAS &amp; ORS.

Respondent(s)

(With prayer for interim relief and office report )  
(For Final Disposal)

Date: 13/09/2011            This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE G.S. SINGHVI  
          HON'BLE MR. JUSTICE H.L. DATTU  
          HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

For Petitioner(s)            Mr. A. Raghunath, Adv.

For Respondent(s)            Mr. P.B. Suresh, Adv.  
                                      Mr. Vipin Nair, Adv.

UPON hearing counsel the Court made the following

## O R D E R

The petitioner is aggrieved by dismissal of the revision filed by him against the order passed by Rent Control Appellate Authority, Kozhikode (for short, 'the Appellate Authority'), which declined to interfere with the discretion exercised by the Rent Control Court not to set aside the ex parte order of eviction.

The respondents filed a petition for eviction of the tenant Hamid Kunhu (predecessor of the petitioner) under Section 11(8) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short, 'the Act') on the grounds that they were in

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need of the tenanted premises and that the tenant had made material alterations in the premises.

The petition filed by the respondents was allowed by the Rent Control Court vide ex parte order dated 27.10.2005. That order was set aside at the instance of the petitioner and others, who were implicated as parties during the pendency of the eviction petition. The second ex parte order of eviction passed on 12.4.2006 was likewise set aside. Thereafter, the eviction petition was dismissed in default due to non-appearance of the respondents and their advocate. This time the case was restored at the instance of the respondents.

After restoration of the petition filed by the respondents, the petitioner and others, who were joined as parties in the main case did not appear to contest the prayer made by the respondents. The Rent

Control Court evaluated the evidence produced by the respondents and passed ex parte order dated 28.2.2007 for eviction of the petitioner and others by observing that the respondents have succeeded in making out a case for eviction under section 11(8) of the Act.

I.A. Nos.1074 of 2007 and 1345 of 2007 by Sarfudheen and others and the petitioner for setting aside the ex parte order were dismissed by the Rent Control Court by observing that the cause shown for their non-appearance. The Rent Control Court also adversely commented upon the refusal of the petitioner's advocate to accept the copy of the restoration application filed on behalf of the respondents and held that even though the petitioner had known about restoration of the eviction petition, he did not bother to contest the same.

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The petitioner alone challenged the order passed by the Rent Controller. His appeal was dismissed by the Appellate Authority by observing that the tenant and his legal representative had adopted dilatory tactics to delay the disposal of the case.

The Division Bench of the High Court by dismissing the revision filed by the petitioner by observing that he and his predecessor were guilty of highly contumacious conduct and there was no valid ground to grant indulgence to such litigant.

We have heard learned counsel for the parties. In our view, the reasons recorded by the High Court for dismissing the revision filed by the petitioner are legally correct and the order under challenge does not suffer from any legal infirmity warranting interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

However, time is allowed to the petitioner to vacate the suit premises on or before 31.12.2011 subject to his filing usual undertaking before this Court within four weeks from today. This would be

subject to the further condition that the petitioner shall handover vacant possession of the suit premises to the respondent by 31st December, 2011. It is also made clear that during this period the petitioner shall not induct any other person in the suit premises in any capacity whatsoever else he may have to suffer proceedings under the Contempt of Courts Act, 1971.

(A.D. Sharma)  
Court Master

(Phoolan Wati Arora)  
Court Master