

RP No.753/2020 in
RCR No.380/2017 &
RCR No.380/2017



-:1:-

2024:KER:82440

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

THURSDAY, THE 7TH DAY OF NOVEMBER 2024 / 16TH KARTHIKA, 1946

RP NO. 753 OF 2020

AGAINST THE ORDER DATED 28/4/2020 IN RCR. NO.380 OF
2017 OF HIGH COURT OF KERALA

PETITIONERS/ADDL.RESPONDENTS IN RCR:

- 1 ZEENATH IBRAHIM
AGED 58 YEARS
W/O. LATE N.A IBRAHIMKUTTY, JNARAKKATIL HOUSE,
BISMILLAH MANZIL, ST.MARY'S STREET,
KURIACHIRA P O, THRISSUR - 680006.
- 2 RAZIL IBRAHIM
AGED 34 YEARS
S/O. LATE N.A IBRAHIMKUTTY, JNARAKKATIL HOUSE,
BISMILLAH MANZIL, ST.MARY'S STREET,
KURIACHIRA P O, THRISSUR - 680006.

RP No.753/2020 in
RCR No.380/2017 &
RCR No.380/2017



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- 3 NIZIL IBRAHIM
 AGED 30 YEARS
 S/O. LATE N.A IBRAHIMKUTTY, JNARAKKATIL HOUSE,
 BISMILLAH MANZIL, ST.MARY'S STREET,
 KURIACHIRA P O, THRISSUR - 680006.
- 4 SANAM IBRAHIM
 AGED 27 YEARS
 D/O. LATE N.A IBRAHIMKUTTY, JNARAKKATIL HOUSE,
 BISMILLAH MANZIL, ST.MARY'S STREET,
 KURIACHIRA P O, THRISSUR - 680006.

BY ADV P.B.KRISHNAN

RESPONDENT/PETITIONER IN RCR:

JOY DANIEL
AGED 62 YEARS
S/O. DANIEL, KANNAMPUZHA, THOTTATHIL LANE,
CHIYYARAM VILLAGE, THRISSUR - 680003.

ADV.SRI.V.K.PEERMOHAMED KHAN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 12.09.2024, THE COURT ON 07.11.2024 DELIVERED THE
FOLLOWING:

RP No.753/2020 in
RCR No.380/2017 &
RCR No.380/2017



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

THURSDAY, THE 7TH DAY OF NOVEMBER 2024 / 16TH KARTHIKA, 1946

RCREV. NO. 380 OF 2017

AGAINST THE ORDER DATED 31.08.2015 IN IA NO.15498/2015
IN RCP NO.105 OF 2013 OF RENT CONTROL COURT,THRISSUR
ARISING OUT OF THE JUDGMENT DATED 07.04.2017 IN RCA NO.75
OF 2015 OF IV ADDITIONAL RENT CONTROL APPELLATE AUTHORITY,
THRISSUR

REVISION PETITIONER/APPELLANT/RESPONDENT:

JOY DANIEL
AGED 59 YEARS, S/O. DANIEL, KANNAMPUZHA,
THOTTATHIL LANE, CHIYYARAM VILLAGE, THRISSUR.

BY ADV SRI.V.K.PEERMOHAMED KHAN

RESPONDENT/RESPONDENT/PETITIONER:

*1 N.A.IBRAHIMKUTTY



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S/O. NJARAKKATTIL, ADIMAKUNJU HAJI, KURIACHIRA
DESOM, CHIYYARAM VILLAGE, THRISSUR - 680 001.
(DIED, LEGAL REPRESENTATIVES IMPLEADED)

- 2 ADDL.R2. ZEENATH IBRAHIM,
W/O. LATE N.A IBRAHIMKUTTY, AGED 56, NJARAKKATTIL
HOUSE, BISMILLAH MANZIL, ST. MARY'S STREET,
KURIACHIRA P O, THRISSUR-680006.
- 3 ADDL.R3.RAZIL IBRAHIM,
S/O. LATE N.A IBRAHIMKUTTY, AGED 32, NJARAKKATTIL
HOUSE, BISMILLAH MANZIL, ST. MARY'S STREET,
KURIACHIRA P O, THRISSUR-680006.
- 4 ADDL.R4. NIZIL IBRAHIM
S/O. LATE N.A IBRAHIMKUTTY, AGED 28, NJARAKKATTIL
HOUSE, BISMILLAH MANZIL, ST. MARY'S STREET,
KURIACHIRA P O, THRISSUR-680006.
- 5 ADDL.R5. SANAM IBRAHIM
D/O. LATE N.A IBRAHIMKUTTY, AGED 25, NJARAKKATTIL
HOUSE, BISMILLAH MANZIL, ST. MARY'S STREET,
KURIACHIRA P O, THRISSUR-680006. (ADDITIONAL R2 TO
R5 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF
THE DECEASED 1ST RESPONDENT VIDE ORDER DATED
21.02.2018 IN IA 386/18.)

BY ADV SRI.P.B.KRISHNAN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD
ON 12.09.2024, ALONG WITH RP.753/2020, THE COURT ON
07.11.2024 PASSED THE FOLLOWING:



ORDER

Dr.Kauser Edappagath, J.

Doubting the correctness of the law declared by the three Division Benches¹ of this Court on the question of maintainability of an application filed under Section 12 (1) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short, the Rent Control Act) in an appeal preferred against the order passed under Section 12(3), a Full Bench² of this Court thought it appropriate to refer the question to a Larger Bench for an authoritative pronouncement, and that is how the above review petition has been placed before us.

Background Facts

2. The facts of the case lie within a very narrow compass. The landlord filed a Rent Control Petition against his tenant for eviction under Sections 11(2)(b), 11(3) and 11(4)(v) of the Rent Control Act before the Rent Control Court, Thrissur as RCP

¹ *Sulaiman Sahib v. Mohemmed Moosa*, (2003 (2) KLT 1058), *Mohammed Shameer v. Ashokan* (2015 (1) KLT 396) and *City Co-operative Hospital v. Luquman* (2017 (3) KLT 1172)

² *Joy Daniel v. Ibrahimkutty* {2020 (2) KLT 850 (FB)}



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No.105/2013. There is no dispute between the parties regarding their jural relationship and rate of rent. The tenant is running an electric shop in the building under the name and style 'Sara Electricals'. The rate of rent per month is ₹66,000/-. During the pendency of the Rent Control Petition, the landlord filed IA No.456/2013 on 20/12/2013 at the trial court under Section 12(1) of the Rent Control Act seeking a direction to the tenant to pay the admitted arrears of rent. According to the landlord, a sum of ₹18,07,819/- was due and payable towards arrears of rent. The tenant disputed the allegation and filed a statement contending that he was liable to pay only ₹5,63,817/-. By the order dated 12/6/2015, the Rent Control Court directed the tenant to pay the admitted arrears of rent. Though the Rent Control Court granted sufficient time to the tenant to pay the admitted arrears of rent, the tenant failed to remit the same. The landlord then filed IA No.15498/2015 under Section 12(3) of the Rent Control Act seeking an order to stop further proceedings and to direct the tenant to hand over the possession of the building to him. By the order dated 31/8/2015 passed in IA No.15498/2015, the Rent Control Court recorded a finding that the tenant has failed to pay



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the admitted arrears of rent (₹5,63,817/-) and consequently directed the tenant to hand over the petition-scheduled building to the landlord within a period of one month. By a separate order, on the same date, the Rent Control Court disposed of the Rent Control Petition.

3. Assailing the aforesaid order in IA No.15498/2015, the tenant filed RCA No.75/2015 before the Rent Control Appellate Authority, Thrissur (for short, the Appellate Authority). Pending adjudication of the appeal, the landlord filed IA No.5136/2016 on 16/11/2016 invoking Section 12(1) of the Rent Control Act seeking an order directing the tenant to deposit the then admitted arrears of rent. By the order dated 9/3/2017, the Appellate Authority passed an order under Section 12(2) in IA No.5136/2016 and directed the tenant to pay the admitted arrears of rent of ₹10,88,000/- within four weeks or to show cause. The Appellate Authority passed an order on 7/4/2017 under Section 12(3) directing the tenant to put the landlord in possession of the building as the direction in IA No.5136/2016 was not complied with.

4. The tenant preferred RCR No.380/2017 challenging the



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order dated 7/4/2017 in RCA No.75/2015. In the revision petition, the tenant essentially took up a contention that the application filed by the landlord, i.e., IA No. 5136/2016 was not maintainable and it was not open to the landlord to invoke Section 12(1) of the Rent Control Act in an appeal filed by the tenant against an order passed by the Rent Control Court in exercise of its power under Section 12(3) of the Rent Control Act. In support of the said contention, the tenant heavily relied on the two decisions of the Division Benches of this Court in ***Sulaiman Sahib v. Mohammed Moosa***³ and ***Mohammed Shameer v. Ashokan***⁴ wherein it was held that the landlord is not entitled to file an application under Section 12(1) of the Act in an appeal filed by the tenant against an order dismissing his application to set aside the *ex parte* order of eviction filed under Section 23(1)(h) of the Rent Control Act r/w Rule 13(3) of the Kerala Buildings (Lease and Rent Control) Rules, 1979 (for short, the Rent Control Rules). The Division Bench found that the above said dictum laid in ***Sulaiman Sahib*** and ***Mohammed Shameer*** requires reconsideration by a Larger Bench. Accordingly, the Division Bench, by the order dated 20/3/2018,

³(2003 (2) KLT 1058)

⁴(2015 (1) KLT 396)



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referred the Revision Petition to the Full Bench. After the Division Bench passed the said order of reference, another Division Bench of this Court in ***City Co-operative Hospital v. Luquman***⁵ held that an application under Section 12(1) of the Rent Control Act cannot be filed in an appeal pending against an order passed under Section 12(3) of the Act. By order dated 28/4/2020, the Full Bench in ***Joy Daniel*** answered the reference in favour of the tenant upholding the law laid in ***City Co-operative Hospital, Sulaiman Sahib*** and ***Mohammed Shameer***. It was declared that the Rent Control Act does not cast an obligation on the tenant to pay the admitted arrears of rent while pursuing an appeal filed by him against an order passed by the Rent Control Court under Section 12(3) of the Rent Control Act. The landlord then filed Review Petition No.753/2020 seeking review of the order dated 28/4/2020 of the Full Bench. On 26/5/2022, the Full Bench referred the Review Petition to a Larger Bench doubting the correctness of the decisions in ***City Co-operative Hospital, Sulaiman Sahib*** and ***Mohammed Shameer***.

Points for Determination

⁵(2017 (3) KLT 1172)



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5. The issue referred to us concerns the interpretation of the provisions of Section 12 of the Rent Control Act that casts an obligation on the tenant to pay the arrears of the rent to the extent admitted by him to contest any proceedings for eviction, whether it be before the Rent Control Court or the Appellate Authority. In particular, we are called upon to give an authoritative pronouncement on the question – whether an application under Section 12(1) of the Rent Control Act is maintainable in an appeal filed under Section 18 against an order passed under Section 12(3)? Incidentally, we will also be addressing the issue regarding the maintainability of an application under Section 12(1) in an appeal arising from other types of orders passed during the course of eviction proceedings under Section 11.

Rival Submissions

6. We have heard the learned Senior Counsel Sri.P.B.Krishnan on behalf of the landlord and the learned Counsel Sri. V.K.Peermohamed Khan on behalf of the tenant. We have also perused the records.



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7. The submissions of the learned Senior Counsel for the landlord, briefly stated, are as follows:

- (i) An order passed in exercise of the power under Section 12(3) of the Rent Control Act is essentially an order passed on an application under Section 11, and such an order falls within the purview of the expression 'any order' in Section 12. Any other interpretation has the effect of offering room to the tenant to evade payment of even the admitted arrears of rent and procrastinate the proceedings thereby depriving the landlord of the machinery provided by the integrated scheme of the Act to redress the default made by the tenant to pay even the admitted arrears of rent during the prosecution of an application filed under Section 11.
- (ii) The Rent Control Authorities have a statutory obligation to ensure that the tenant is not able to contest the eviction petition or the appeal without depositing or paying the admitted arrears of rent. Therefore, the view that the application under Section 12 is not maintainable in an appeal instituted against an order passed by the



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Rent Control Court under Section 12(3) is not justifiable and legally sustainable.

- (iii) It would be unreasonable to limit the applicability of Section 12 only to appeals from final orders of eviction passed under Section 11 of the Rent Control Act.
- (iv) The challenge which is being pursued by a tenant against an order under Section 12(3) is equal to a challenge against an order of eviction passed under Section 11 and therefore even in the absence of any specific mention in Section 12, the tenant can be permitted to challenge the order by preferring an appeal before the Appellate Authority only on its compliance with respect to payment of the arrears of the admitted rent as contemplated under Section 12. Reliance was placed on *Sahadevan v. Kesavan Nair*⁶.
- (v) The law declared in *City Co-operative Hospital, Sulaiman Sahib* and *Mohammed Shameer* that Section 12 of the Rent Control Act will be attracted only in an appeal from the final order of eviction under Section 11 and not in an appeal arising from other types of orders is not good law

⁶ (1973 KLT 37)



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and liable to be overruled.

- (vi) The dictum laid down by the Full Bench in *Joy Daniel* that the Rent Control Act does not cast an obligation on the tenant to pay the admitted arrears of rent while pursuing an appeal filed by him against an order passed by the Rent Control Court under Section 12(3) cannot be sustained.

8. Per contra the submissions of the learned counsel for the tenant, briefly stated, are as follows:

- (i) Section 12(1) of the Rent Control Act does not impel the tenant to pay the admitted arrears of rent while pursuing an appeal filed by him against an order passed under Section 12(3) of the Act.
- (ii) The wordings in Section 12(1) of the Rent Control Act refers only to an application for eviction filed under Section 11 of the Act, and therefore Section 12(1) does not apply to an appeal arising from any other order passed by the Rent Control Court, including an order passed under Section 12(3).
- (iii) *City Co-operative Hospital, Sulaiman Sahib, Mohammed*



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Shameer and ***Joy Daniel*** have been correctly decided and do not require any reconsideration.

Analysis and Findings

9. The lease of immovable property is ordinarily governed by the Transfer of Property Act. Such a lease comes to an end by any of the modes prescribed by the Transfer of Property Act, and the landlord gets the right of re-entry. This right of reversion is restricted and fettered by the provisions of Rent Control Legislation enacted in various States in India. One such Rent Control Legislation enacted in Kerala – the Rent Control Act- restricts the unfettered right enjoyed by the landlord under the Transfer of Property Act to evict his tenant. Though the Rent Control Act is mainly meant to protect the tenant from arbitrary and whimsical eviction, it at the same time, ensures the landlord's right to get his building back on certain specified grounds. Sub-sections (2), (3), (4), (7) and (8) of Section 11 of the Rent Control Act enable the landlord to file an application for eviction on the ground mentioned therein. The tenant's right to contest such an application or to prefer the appeal against an



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order passed in such an application is circumscribed by his vital obligation to pay the rent as mandated in Section 12.

10. Section 12 of the Rent Control Act reads as under:

“12. Payment of deposit of rent during the pendency of proceedings for eviction: (1) No tenant against whom an application for eviction has been made by a landlord under Section 11, shall be entitled to contest the application before the Rent Control Court under that section, or to prefer an appeal under Section 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.

(2) The deposit under sub-section (1) shall be made within such time as the Court may fix and in such manner as may be prescribed and shall be accompanied by the fee prescribed for the service of notice referred to in sub-section (4):

Provided that the time fixed by the Court for the deposit of the arrears of rent shall not be less than four weeks from the date of the order and the time fixed for the deposit of rent which subsequently accrues due shall not be less than two weeks from the date on which the rent becomes due.

(3) If any tenant fails to pay or to deposit the rent as



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aforesaid, the Rent Control Court or the appellate authority, as the case may be, shall, unless the tenant shows sufficient cause to the contrary, stop all further proceedings and make an order directing the tenant to put landlord in possession of the building.

(4) When any deposit is made under sub-section (1), the Rent Control Court or the appellate authority, as the case may be, shall cause notice of the deposit to be served on the landlord in the prescribed manner and the amount deposited may, subject to such conditions as may be prescribed, be withdrawn by the landlord on application made by him to the Rent Control Court or the appellate authority in that behalf."

11. The opening sentence in the above provision, '*No tenant against whom an application for eviction has been made by a landlord under Section 11*', makes it clear that the special restriction for contesting can only apply in cases where the original proceeding is for eviction of the tenant under Section 11. The restriction cannot apply to an application filed by the landlord under sub-section (5) of Section 11 seeking renovation of the building. The application under sub-section (5) of Section 11 is not for eviction but only for a direction to the tenant to permit the landlord to enter into the tenanted premises and carry out the renovation without parting with possession. Similarly, provisions



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under Section 12 cannot be put in service where the application is for fixation of fair rent under Section 5.

12. Sub-section (1) of Section 12 obliges a tenant who wants to contest any proceedings for eviction, whether it be before the Rent Control Court or the Appellate Authority, to pay all arrears of rent admitted by him. It is also his obligation to pay rent which falls due subsequent to the commencement of the proceedings. The deposit contemplated under sub-section (1) is not the amount determined after adjudication but is the amount admitted by the tenant. Section 12 proceedings can be invoked against the tenant, only when the arrears of rent is admitted. Sub-section (2) deals with the time and manner in which the deposit contemplated by sub-section (1) is to be made. Sub-section (3) deals with the consequence of non-deposit as contemplated in Section 12(2). If the tenant fails to pay or deposit the admitted rent without any reasonable cause, as provided under sub-sections (1) and (2), the landlord acquires the right under Section 12(3) to get an eviction. Sub-section (4) deals with the manner in which the amount deposited should be dealt with and paid to the landlord. Once the petition came to a



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close and an order for eviction was passed, there was no further occasion or right for the tenant to contest the petition for eviction or appeal as the case may be on depositing the arrears of rent.

13. Section 12 which is part and parcel of proceedings on an application for eviction under Section 11, consists of two limbs. The first limb has application for contesting an application under Section 11. It refers to the tenant's right to contest the application for eviction under Section 11, for which he must pay or deposit the admitted arrears. The second limb has application while preferring an appeal under Section 18. It refers to the tenant's right to prefer an appeal for which also he must pay or deposit the admitted arrears. However, the Supreme Court⁷ while interpreting a *pari materia* provision under the Tripura Rent Control Act, held that the expression 'prefer an appeal' must be interpreted to mean 'proceed with the appeal' without paying the admitted arrears of rent. Recently the Kerala High Court⁸ also took the same view and held that paying or depositing of all arrears of rent admitted by the tenant is not a condition precedent for presenting an appeal under Section 18. The

⁷ *Manik Lal Majumdar and Others v Gouranga Chandra Dey and Others* (AIR 2005 SC 1090)

⁸ *Suvarna v. Ibrahimkutty* (2022 (1) KLT 818)



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pendency of an original petition of eviction under Section 11 is a condition precedent to attract the first limb, and the pendency of an appeal under Section 18 against an order made by the Rent Control Court on the application for eviction is a condition precedent to attract the second limb. We are concerned with the second limb inasmuch as the primary question that falls for consideration before us relates to the maintainability of an application filed under Section 12(1) in an appeal filed against an order passed under Section 12(3).

14. The very same question came up for consideration before the Division Bench in *City Co-operative Hospital*. It was held that neither is it permissible nor recognizable under law to have recourse under Section 12 in an appeal pending against an order passed under Section 12(3) of the Act. The Division Bench relied upon the decisions of the two earlier Division Benches in *Sulaiman Sahib* and *Mohammed Shameer*. In both those decisions, it was held that the landlord is not entitled to file an application under Section 12(1) of the Act in an appeal which arises from Rule 13(3) of the Rent Control Rules. In fact, the question whether in an appeal filed by the tenant from an order passed under



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Section 12(3) of the Act, an application under Section 12(1) of the Act is maintainable or not, did not directly arise for consideration in those decisions, since in both cases challenge in the appeal was against order passed dismissing an application filed by the tenant to set aside the *ex parte* order passed against him.

15. The Full Bench of this Court in *Joy Daniel* answering the reference approved the law declared in *Sulaiman Sahib, Mohammed Shameer* and *City Co-operative Hospital* and held that the Rent Control Act does not cast an obligation on the tenant to pay the admitted arrears of rent while pursuing an appeal filed by him against an order passed by the Rent Control Court under Section 12(3). The Full Bench has arrived at the aforesaid proposition on the reasoning that the obligation cast under Section 12(1) is exclusively confined to an application for eviction filed under Section 11 and in an appeal filed challenging an order passed on such an application, but it cannot be extended in the case of an appeal instituted against an order passed by the Rent Control Court under Section 12(3). We are unable to subscribe to the dictum laid down by the Division Benches in *Co-operative Hospital, Sulaiman Sahib, Mohammed*



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Shameer and endorsed by the Full Bench in ***Joy Daniel*** for the following reasons.

16. While arriving at the finding that the appeal in which the Appellate Authority may exercise the power to direct deposit of admitted rent could only be with respect to an appeal arising from a final order of eviction under Section 11 and not otherwise, the Division Bench in ***City Co-operative Hospital and Mohammed Shameer*** interpreted the term “on the application” found in Section 12(1) as one refers only to an application made and mentioned in the first limb of Section 12(1), i.e., an application under Section 11 of the Rent Control Act. We are of the view that such an interpretation would run contrary to the integrated scheme of Sections 11 and 12 of the Rent Control Act. The expression in sub-section 12(1) that “*No tenant against whom an application for eviction has been made by a landlord under Section 11, shall be entitled to contest the application before the Rent Control Court under that section, or to prefer an appeal under Section 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*”



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authority, as the case may be, all arrears of rent admitted by the tenant” clearly suggests that the tenant is not entitled to contest the application for eviction and to even prefer an appeal against any order made on the Section 11 application without paying the admitted arrears of rent. The Division Bench in ***Co-operative Hospital*** and ***Mohammed Shameer*** did not advert or consider the purport of the word “any order” preceding the word “on the application” while interpreting the latter word as above. It is an accepted principle of interpretation of statutes that a provision in a statute must be read as a whole, and no word of a provision in a statute could be construed in isolation. It is also well settled that the Court should examine every word of a provision in a statute in its context. The interpretation is best which makes the textual interpretation contextual⁹. The twin object of the Rent Control Act is to protect the tenant from arbitrary and whimsical eviction and, at the same time, ensure the right of the landlord to recover possession of the tenanted premises on certain contingencies. Thus, it is a social legislation beneficial to both landlord and tenant. The legislature considered

⁹ *Reserve Bank of India v Peerless General Finance and Investment Co.Ltd.*, (AIR 1987 SC 1023)



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the payment of rent as the primary duty of the tenant and that is why Section 12 has been incorporated. Section 12 conceives a scheme to protect the rights of the landlord to receive the rent, which is the consideration for the contract of lease, and to compel the tenant to discharge his fundamental obligation to pay rent to contest proceedings initiated by the landlord for eviction. It is a provision intended for the benefit of the landlord. While interpreting a beneficial provision in a statute, the court must always interpret the words in the provision in such a manner that the relief contemplated by the provision is secured and not denied to the class intended to be benefited. Thus, the use of the expression “any order.....on the application” without denoting a particular order warrants an interpretation in furtherance of the said legislative intention. The said expression requires a liberal interpretation in its widest amplitude in the landlord's favour. Interpreting so, the expression “any order made by the Rent Control Court on the application” found in Section 12(1) must be understood to encompass all orders which may be passed during the course of prosecution of an application for eviction under Section 11.



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17. Though the issue involved in *Sulaiman Sahib* and *Mohammed Shameer* was as to the maintainability of an application under Section 12(1) in an appeal filed by the tenant against an order dismissing his application to set aside the *ex parte* order of eviction, the ultimate finding therein was that Section 12 would be attracted only in an appeal from a final order of eviction under Section 11 and not in appeals arising from other types of orders passed during the course of the proceedings under Section 11 before the Rent Control Court. There is nothing to indicate in Section 12(1) to restrict the applicability of the said provision to the final order of eviction passed under Section 11 alone. The embargo cast on the tenant to contest the application/appeal postulated by Section 12(1) applies to any order passed in the course of pursuing an application under Section 11. If the proposition laid down by the Division Bench and Full Bench that the obligation cast under Section 12(1) is exclusively confined to an order of eviction passed under Section 11 is accepted, it may provide room to a tenant who persistently defaulted in paying even the admitted arrears of rent to continue to evade payment and prolong the adjudication of Section 11



application besides nullifying the paramount objective of incorporating Section 12 for effective and meaningful prosecution of proceedings for eviction under Section 11. Therefore, an order passed in the exercise of the power under Section 12(3) of the Rent Control Act or Rule 13(3) of the Rent Control Rules would fall within the purview of the expression “any order” in Section 12(1).

18. The scheme of the Rent Control Act reflects that the order under Section 12(3) is a final order of eviction passed during the course of eviction proceedings under Section 11. On passing an order under Section 12(3), the proceedings for eviction under Section 11 or appeal under Section 18, as the case may be, come to an end and stand closed. Thus, an order passed under Section 12(3) has all the characteristics, trappings and effect of a final order of eviction passed under Section 11. In ***Sahadevan***, in the context of the applicability of Section 14 of the Rent Control Act (prior to its amendment in 1966 by Act 7 of 1966) to an order passed under Section 12(3), the Division Bench of this Court observed that on a proper consideration of the provisions contained in Sections 11 and 12(3), it has to be said that an order passed under Section 12(3) is really an order



passed under Section 11.

19. While finding that the order to stop further proceedings in the Rent Control Petition or Rent Control Appeal cannot be treated or equated to an order rendered in consonance with Section 11 of the Act, the Division Bench in ***City Co-operative Hospital*** observed that when an order is passed under Section 12(3), it would be an order passed by the Rent Control Court or the Rent Control Appellate Authority, as the case may be, terminating the proceedings initiated by way of Rent Control Petition or the Rent Control Appeal, but that does not mean it is an order of eviction under Section 11 of the Rent Control Act itself. We cannot subscribe to the said view. The words used in Section 12(3) are "*stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building*". The very same words "*order directing the tenant to put the landlord in possession of the building*" have been used in sub-sections (2), (3), (4), (7), and (8) of Section 11 as well. Thus, an order passed under Section 12(3) is actually and effectively a final order of eviction. In fact, it is more effective than an order of eviction passed under Section 11 because the effect of an order



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of eviction passed under Section 12(3) cannot be undone or obliterated at all unlike an order passed under sub-section (2)(b), 3 or (4)(iv) of Section 11. An order of eviction passed under Section 11(2)(b) can be set aside under Section 11(2)(c) on payment of entire arrears of rent with interest and cost within one month or an extended period. An order of eviction passed under Section 11(3) is subject to Section 11(12) which says that a landlord who has obtained possession of a building pursuant to an order under Section 11(3) does not occupy it without reasonable cause within one month of the date of obtaining possession, or having so occupied it, vacates it without reasonable cause within six months of such date, the tenant is entitled to get restoration of possession. A tenant who is evicted under Section 11(4)(iv) shall have the first option to have a reconstructed building allotted to him with liability to its fair rent under the proviso. When an order is passed under Section 12(3) in an application for eviction filed under sub-sections (2), (3) or (4)(iv) of Section 11, the provisions of sub-sections (2)(c), (12) or Proviso to sub-section 4(iv) as indicated above will not apply. Having all the characteristics of a final order of eviction, a



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challenge against such an order under Section 12 (3) needs to be construed as a challenge against an order of eviction under Section 11. Hence, the obligation under Section 12(1) is equally applicable with respect to an appeal filed under Section 12(3).

20. In the light of the above findings, we hold that the law declared in *Sulaiman Sahib* and *Mohammed Shameer* that Section 12 of the Rent Control Act will be attracted only in an appeal from the final order of eviction under Section 11 and not in an appeal arising from other types of orders and in *City Co-operative Hospital* that it is not permissible to invoke Section 12(1) of the Rent Control Act in an appeal preferred against an order passed under Section 12(3) is not good law and liable to be overruled.

Conclusions

21. In conclusion, we answer the reference as follows:

(i). An order passed in exercise of the power under Section 12(3) of the Rent Control Act is essentially an order passed on an application under Section 11, and, as such, falls within the purview of the expression “any order” in Section 12.

(ii). An order passed under Section 12(3) of the Rent Control



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Act during the course of eviction proceedings under Section 11 has all the characteristics, trappings and effect of a final order passed under Section 11.

(iii). An application under Section 12(1) of the Rent Control Act is maintainable in an appeal filed under Section 18 against an order passed under Section 12(3).

(iv). An application under Section 12(1) of the Rent Control Act is maintainable not only in appeal from a final order of eviction under Section 11 but also in appeals arising from other types of orders passed during the course of proceedings under Section 11 before the Rent Control Court.

(v). The judgments in *City Co-operative Hospital, Sulaiman Sahib* and *Mohammed Shameer* do not lay down the correct law and are hereby overruled.

Relief

22. In view of the declaration of law that an application under Section 12(1) of the Rent Control Act is perfectly maintainable in an appeal filed against an order passed under Section 12(3), the judgment of the Full Bench in *Joy Daniel* is



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reversed.

23. Having answered the reference as above, in normal course, we would have remitted the case to the Division Bench for disposal. But we feel that such a course is not necessary since there is hardly anything more to be considered on the merits of the case.

24. It is quite open for this court to decide the merit as well instead of sending the case back to the appropriate Bench for further consideration after answering the reference by virtue of the specific power conferred under Section 7 of the Kerala High Court Act, 1958.

25. There is no dispute regarding the quantum of admitted rent. The Appellate Authority gave four weeks' time to the tenant to deposit the arrears of rent as contemplated under the proviso to sub-section (2) of Section 12. The tenant failed to pay the rent or show sufficient cause to the contrary. The sufficient cause must be some reasonable circumstances which prevented the tenant from making the deposit in time. In the counter statement to IA No.5136/2016, the tenant had set up a case that he had incurred huge expenses towards carrying out repair works of the



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building and the same has to be adjusted towards the admitted arrears. Any claim for set-off cannot be treated as a sufficient cause for making the deposit in time.

We, therefore, see no reason to interfere with the order of the Appellate Authority. We, accordingly, dismiss the Rent Control Revision (RCR No.380/2017) and direct the tenant to give vacant possession of the building to the landlord within two months from today.

Sd/-

DR.A.K.JAYASANKARAN NAMBIAR, JUDGE

Sd/-

DR. KAUSER EDAPPAGATH, JUDGE

Sd/-

MOHAMMED NIAS C.P., JUDGE

Sd/-

C.S.SUDHA, JUDGE

Sd/-

SYAM KUMAR V.M., JUDGE