

PETITIONER:
CHINNAMMA

Vs.

RESPONDENT:
GOPALAN AND OTHERS

DATE OF JUDGMENT 13/10/1995

BENCH:
PARIPOORNAN, K.S.(J)
BENCH:
PARIPOORNAN, K.S.(J)
AHMADI A.M. (CJ)
SEN, S.C. (J)

CITATION:
1996 AIR 363 1995 SCC (6) 491
JT 1995 (7) 276 1995 SCALE (5) 727

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Paripoornan.J.

The first respondent in O.P. No. 10288/88, Kerala High Court - hereinafter referred to as the 'tenant' - appeals against the judgment of the High Court dated 27.10.1994. The petitioner in the Original Petition - hereinafter referred to as the 'landlord' - is the first respondent herein. The statutory authorities and other proforma respondents in the High Court are the respondents in this Civil Appeal. The learned Judge of the High Court, by the judgment dated 27.10.1994, in exercise of the power under Article 227 of the Constitution, set aside the order passed by the District Judge, Palakkad in R.C.R.P. No. 6 of 1985 dated 31.7.1986 (Ext. P-3) and restored the order passed by the Rent Control Court and appellate authority rendered in I.A. No. 764/82 in R.C.P. (O.P.) No. 141/77 (Ext. P-1) and R.C.A. 68/83 (Ext. P-2). The appellant-tenant was given three months' time to surrender the possession of the building in question to the respondent-landlord.

2. This litigation has a checkered history. The appellant is a tenant of a residential building bearing Door No. 22/70 in Sriram Street, Moothanthara, Koppom, Palakkad Taluk under the first respondent-landlord. The appellant took the building on lease at a rent of Rs. 20/- per mensem from the landlord on 1.8.1972. Alleging that the rent from 1.6.1975 is in arrears, the landlord sent a notice on 22.6.1977 terminating the tenancy and demanding surrender of the building. Subsequently, the landlord filed R.C.P. (O.P.) No. 141/77 seeking eviction of the tenant under Section 11(2) and 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965 (hereinafter referred to as the 'Act'). The grounds urged for eviction of the tenant are, default in payment of rent [S. 11(2)] and bonafide requirement of the building for the landlord's own occupation [S. 11(3)]. The

plea of bonafide requirement for landlord's own occupation was found against. However, the Rent Control Court ordered eviction under Section 11(2) (b) of the Act on the ground of default in payment of rent. The Court ordered that in case the tenant deposits a sum of Rs.820/- as arrears as on 1.11.1978 within one month from the date of the order, i.e., 30.11.1978, the tenant could move an application for vacating the order of eviction. The tenant filed an appeal - R.C.A. No. 8/79 before the appellate authority. The appellate authority, by order dated 26.7.1979, set aside the order passed by the Rent Controller and ordered a remit, directing the Rent Controller to consider the maintainability of the petition. After remit, the Rent Controller passed an order on 22.2.1980 under Section 11(2)(b) of the Act in the following terms:-

"In the result, I find that the petitioner's claim for recovery of possession under section 11(3) is unsustainable. But the petitioner is entitled to get recovery of possession since the respondent has defaulted payment of rent. So the respondent is ordered to surrender vacant possession of the petition schedule building under section 11(2) within 30 days from today. In case the respondent deposits the sum of Rs. 540/- which is the arrears of rent due as on 1.2.1980 she will be entitled to apply for getting the order vacated under section 11(2) (c) of Act 2/1965. The respondent is ordered to pay costs of the petitioner including advocate's fee which is fixed as Rs. 25/-. The respondent is further ordered to pay interest at 6% per annum on the arrears of Rs. 540/- from today."

(emphasis supplied)

The appeal, R.C.A. No. 40/1980, filed by the tenant before the appellate authority was dismissed on 21.7.1981. Thereafter, the tenant moved the Revisional Authority, District Court, Palghat in R.C.R.P. No. 53 of 1981 and the learned District Judge passed the following order on 24.3.1982 :-

"The tenant shall be free to get the order vacated by making the necessary deposit and application as contemplated in Sec. 11(2) (c) of Act 2 of 1965 before the Rent Control Court on or before 24.5.1982."

It is nobody's case that either the Rent Control Court or the appellate court or the Revisional Court passed any order under Section 12 of the Act regarding the payment of subsequent arrears (or future rent till the termination of proceedings) admitted by the tenant, when the proceedings were pending for eviction and before the order was passed under Section 11(2)(b) of the Act. Before expiry of the time fixed in the aforesaid order of the District Judge, the tenant filed I.A. No. 764/82 before the Rent Controller on 6.4.1982, along with a remittance of a sum of Rs. 750/- and prayed for setting aside the order of eviction dated 22.2.1980. The Rent Controller, by Ext. P-1, order dated 4.8.1983, held that the tenant has failed to remit the amount, which is due, within the time specified and dismissed the petition. The appeal filed by the tenant was dismissed by the appellate authority by Ext. P-2, order

dated 14.12.1984. The learned District Judge, in R.C.R.P. No. 6 of 1985, by Ext. P-3, order dated 31.7.1986, set aside the order passed by the Rent Controller dated 4.8.1983 and of the appellate authority dated 14.12.1984 and also set aside the order of eviction passed in R.C.P. (O.P.) No. 141/77. The learned District Judge took the view that it was not disputed by the landlord that the amount of Rs. 750/- deposited on 6.4.1982 will cover the entire amount specifically quantified by the Rent Control Court in its order dated 22.2.1980 as affirmed by the Revisional Court in R.C.R.P. No 53/81 dated 24.3.1982. In other words, the amount remitted by the tenant included the arrears of rent Rs. 540/- with interest at the rate of 6% per annum from the date of the order, Rs. 25 towards cost and also the rent for subsequent four months. The District Judge in Ext. P-3, order dated 31.7.1986, held that the Rent Controller has only to see whether the order for deposit (order dated 22.2.1980) as affirmed by the Revisional Court (order dated 24.3.1982) has been complied with or not. In this case, it was admittedly complied with. No further question arose for consideration to set aside the order of eviction, under Section 11(2) (c) of the Act. It was further held that it was beyond the powers of the Rent Controller in an application under Section 11(2) (c) of the Act to consider the claim of arrears of rent that has become due after the passing of the order under Section 11(2) (b). In other words, the order of eviction passed in R.C.P. (O.P.) No. 141 of 1977 on 22.2.1980 clearly determined the amount payable by the tenant and that was the only amount required to be paid by the tenant to get the order vacated under section 11(2) (c) of the Act. It was admittedly paid. Since the eviction has been allowed only on the ground of non-payment of rent till then, it is not for the Rent Controller or appellate authority to see whether any rent has been kept in arrears by the tenant subsequent thereto. It was held that it is beyond the powers of the Rent Controller in an application under Section 11(2) (c) of the Act to consider the claim for arrears of rent that has become due after the passing of an order under Section 11(2) (b) of the Act. It is, in this view, the learned District Judge in Ext. P-3 order dated 31.7.1986 set aside the order of the lower authorities (Ext. P-1 and P-2).

3. The landlord filed Original petition No. 10288/88 in the High Court of Kerala and assailed the aforesaid order passed by the District Judge in R.C.R.P. No. 6/85 dated 31.7.1986 (Ext. P-3). The learned single Judge of the Kerala High Court, after referring to the prior history of the case and the earlier orders passed in the various proceedings, posed the question thus:-

"Whether the revisional court was right in holding that the respondent was not required to pay or deposit more than the amount which was quantified by the Rent Controller, the same being confirmed by the Appellate Authority and the Revisional Authority or whether the respondent/tenant should have deposited the entire arrears of rent that fell due by 6.4.1982 instead of Rs. 750/- in terms of the directions of the revisional court in R.C.R.P. No. 53 of 1991."

(It was on 6.4.1982, the tenant filed the application under Section 11(2) (c) of the Act and made the deposit.)
After referring to Section 11(2) (a) (b) and (c) and Section

12(1) and (2) of the Act the learned Single Judge held thus:-

"The expression "arrears of rent" in Sec. 11(2) (c) of the Act (was held to mean) will be the "entire arrears of rent due" as on the date of deposit under that sub clause in the context of section 12 of the Act."

(emphasis supplied)

In taking the said view the learned Single Judge followed a Bench decision in Chellamma Varghese vs. Cicey (1994 (2) KLT 106) and held that it is not the arrears specified in the order of eviction passed by the Rent Controller dated 22.2.1980 but the deposit of all arrears of rent that accrued even subsequent thereto till the date of filing of the application under Section 11(2) (c) of the Act, that should be made. The learned Single Judge set aside the order passed in revision by the District Judge in R.C.R.P. No. 6 of 1985 dated 31.7.1986 (Ext. P-3).

4. We heard counsel. The short question that arises for our consideration is what is the amount that should be deposited by the tenant under Section 11(2) (c) of the Act to set aside the order passed under Section 11(2) (b) of the Act. Should the deposit be only of that amount which was specified as payable in the order of eviction passed under Section 11(2) (b) of the Act or will it take within its fold even the arrears of rent that accrued due subsequent to the said order of eviction and upto the date of deposit? The Rent Controller passed the order of eviction on 22.2.1980. He held that in case the tenant deposits a sum of Rs. 540/- which is the arrears of rent due as on 1.2.1980 along with the advocate's fee Rs. 25/- and interest at the rate of 6% per annum on arrears of Rs.540/-, the tenant will be entitled to get the order of eviction vacated under Section 11(2) (c) of the Act. The learned District Judge has found that the amount of Rs. 750/- will cover the amount quantified specifically by the Rent Controller in the order dated 22.2.1980. The deposit made along with the application filed under Section 11(2) (c) of the Act - complied with the order dated 22.2.1980. Really, no other point arose for consideration on the facts of this case, at that stage. But the learned Single Judge of the High Court held that deposit to be made by the tenant should also include the arrears of rent that accrued due subsequent to the order of eviction dated 22.2.1980 and should include the dues till the date of deposit, i.e., 6.4.1982. The question is whether the view so expressed by the learned single Judge is in accord with Section 11(2) (c) and the Scheme of the Act?

5. It will be useful to quote Section 11(2) (a), (b) and the proviso thereto, 11(2) (c) and Section 12 of the Act, which are as under:-

"11. Eviction of tenants

(2) (a) A landlord who seeks to evict his tenant shall apply to the Rent Control Court for a direction in that behalf.

(b) If the Rent Control Court, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that the tenant has not paid or tendered the rent due by him in respect of the building within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the

absence of any such agreement by the last day of the month next following that for which the rent is payable, it shall make an order directing the tenant to put the landlord in possession of the building, and if it is not satisfied it shall make an order rejecting the application thereof by him:

Provided that an application under this sub-section shall be made only if the landlord has sent a registered notice to the tenant intimating the default and the tenant has failed to pay or tender the rent together with interest at six per cent per annum and postal charges incurred in sending the notice within fifteen days of the receipt of the notice or of the refusal thereof.

(c) The order of the Rent Control Court directing the tenant to put the landlord in possession of the building shall not be executed before the expiry of one month from the date of such order or such further period as the Rent Control Court may in its discretion allow; and if the tenant deposits the arrears of rent with interest and cost of proceedings within the said period of one month or such further period, as the case may be, it shall vacate that order."

"12. Payment or 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 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 the 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." (emphasis supplied)

6. In coming to the conclusion as he did the learned Single Judge relied on the earlier Bench decision in *Chellamma Varghese vs. Cicey* (supra), which held that Sections 11 and 12 of the Act should be read together and so the arrears of rent in Section 11(2) (c) of the Act would mean "entire arrears of rent due" as on the date of deposit under that sub-clause in the context of Section 12 of the Act.

7. A mere look at Sections 11 and 12 of the Act would show that they operate in different situations. Under Section 11(2) (b) of the Act the court passes a final order of eviction, directing the tenant to put the landlord in possession of the building, if there is default as provided therein. The execution of such final order is statutorily suspended for a period of one month. Within that time or such further time as the court may allow, the tenant is given an opportunity to deposit the arrears of rent with interest and cost of the proceedings and, if so done, the court is bound to vacate the order passed under Section 11(2) (b) of the Act. On the other hand, the provisions of Section 12 are applicable during the pendency of the proceedings for eviction. It permits the tenant against whom an application has been made by the landlord under Section 11 to contest the application or to prefer an appeal only if the tenant has paid or pays to the landlord or deposits in the court all arrears of rent admitted by the tenant to be due in respect of the building upto the date of payment of deposit and also continues to pay or to deposit any rent which may subsequently become due in respect of the building till the termination of the proceedings before the court. Section 12 is a special provision applicable during the pendency of the proceedings and the provisions thereof point out that an order has to be made by the court fixing a time and the manner for payment or deposit of the amount. If the tenant fails to pay or deposit the rent so specified, unless sufficient cause is shown to the contrary, the Rent Control Court shall stop all further proceedings and make an order directing the tenant to put the landlord in possession of the building. In other words, Section 12 provides a summary procedure whereby during the pendency of the proceedings the

court can direct the tenant to pay the current rent as admitted by the tenant and if it is not so done, the main eviction proceedings itself will come to an end and the court is enabled to pass an order directing the tenant to put the landlord in possession of the building. For the applicability of Section 12 it is evident that the proceedings for eviction should be pending, and the court should, by an order, direct the tenant to pay or deposit all arrears of rent that have been admitted by the tenant to be due and the tenant shall continue to pay the admitted rent that may subsequently become due till the termination of the proceedings and if it is not so done, that itself is treated as an independent default which will enable the court to stop further proceedings and make an order directing the tenant to put the landlord in possession of the building. Section 12 will not apply to a proceeding which is already over under Section 11(2) (b) of the Act. To invoke Section 12 of the Act, an independent order, passed during the pendency of the proceedings under Section 11 is required. With regard to the proceedings which have ended in an order passed by the Rent Control Court under Section 11(2) (b), it is only the provisions of Section 11(2) (c) that are applicable. The view of the learned Single Judge that provisions of Section 11(2) (b) should be read along with Section 12 of the Act relying on an earlier Bench decision in Chellama Varghese vs. Cicey (supra), is not justified in law. We hold that Section 12 of the Act has no application to a case wherein the proceedings for eviction are not pending, but on the other hand an order of eviction has been passed by the court under Section 11(2) (b) of the Act. In a case where an order of eviction has been passed under Section 11 (2) (b) of the Act, Section 11(2) (c) alone is attracted and Section 12 of the Act is "inapplicable".

8. In order to maintain an application for eviction of the tenant on the ground of default in the payment of rent, the proviso to Section 11(2) (b), mandates the landlord to send a registered notice to the tenant intimating the default and there should be failure by the tenant to pay the rent together with interest at 6% per annum and postal charges incurred in sending the notice within 15 days of the receipt or the notice or of the refusal thereof. The proviso to Section 11(2) (b) of the Act is mandatory. Only after compliance of the proviso aforesaid, the landlord can apply to the Rent Control Court, after giving the tenant a reasonable opportunity, should be satisfied that the tenant has not paid or tendered the rent due by him in respect of the building as per the terms of agreement of tenancy or by the last day of the month next following that for which the rent is payable, the court can make an order directing the tenant to put the landlord in possession of the building. An order passed under Section 11(2) (b) remains in suspended animation for a period of one month. If within the period of one month from the date of the order passed under Section 11(2) (b) or such further period as Rent Controller Court may allow, the tenant deposits the arrears of rent with interest and cost of proceedings, the court is bound to vacate the order passed under Section 11(2) (b). The language of Section 11(2) (b), and the proviso thereto, read along with Section 11(2) (c) clearly obliges the tenant only to deposit the arrears of rent (along with interest and cost of proceedings) for which the landlord is obliged to send the notice under the proviso to Section 11(2) (b) of the Act and the court has passed an order on the basis of such cause of action, under Section 11 (2) (b) of the Act. By no stretch of imagination, the arrears of rent specified in

Section 11(2) (c) of the Act will take within its fold, the entire arrears of rent due till the date of deposit, since the date of deposit will always be after the date of the order passed by the court under Section 11(2) (b) of the Act. In the decision of this Court in Smt. Prakash Mehra vs. K.L. Malhotra AIR 1989 SC 1652), a somewhat similar provision in Delhi Rent Control Act, 1958 (59 of 1958), Section 14(1) (a) came up for consideration:

"14. Protection of tenant against eviction - (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1882 (4 of 1882)."

The crucial words, occurring in Section 14(1) (a) to the effect, "the whole of the arrears of rent", was construed by this Court to mean only the arrears of rent demanded by the notice for payment of arrears of rent. In para 7 of the judgment, this Court held as follows:-

"It is urged before us by learned counsel for the appellant that S. 14(1) (a) of the Act contemplates the payment or tender of the whole of the arrears of rent legally recoverable from the tenant on the date when the demand notice is sent including the rent which has accrued after service of the demand notice. When the notice was sent on 7 May, 1976 rent for the months of April and May 1976 had become due, and as two months was given for payment of the arrears, it would include also the rent which had accrued during the said period of two months. We are not satisfied that there is substance in the contention. The arrears of rent envisaged by S. 14(1) (a) of the Act are the arrears demanded by the notice for payment of arrears of rent. The arrears due cannot be extended to rent which has fallen due after service of the notice of demand."

The observations have great relevance herein.

9. We are of the view that the reasoning and conclusion by the learned Single Judge of the Kerala High Court, contrary to our conclusion hereinabove, is incorrect and unsustainable in law. The Bench decision relied upon by the learned Judge Chellamma Varghese vs. Cicey (supra), construed the words "the arrears of rent" occurring in

Section 11(2) (c) of the Act, in the light of the provisions in Section 12 of the Act. The approach so made is clearly erroneous. The decisions referred to in Chellamma Varghese case, Francis vs. Jacob (1983 KLT 669), and K.G.U. Trust vs. Shri Ram Chandraji (AIR 1978 SC 287), have nothing to do with the controversy raised herein. Those decisions only stated that "rent due" "or entire amount of rent due", will include the recovery of rent, which became time barred. That aspect does not arise herein. We overrule the decision in Chellama Varghese vs. Cicey.

10. We are of the view that the judgment of Radhakrishna Menon, J. in P. Anil vs. Devaki and others (1991 KLJ 611), holding that the words, "the arrears of rent" occurring in Section 11(2) (c) cannot be anything other than the arrears of rent made mention of in the notice (sent by the landlord under the proviso to Section 11(2) (b) of the Act) and cannot be extended to rent which has fallen due after the service of the notice, represents the correct enunciation of the law on the subject.

11. The judgment of the learned Single Judge dated 27.10.1994 is set aside and this appeal is allowed. The order passed by the District Judge in R.C.R.P. No. 6 of 1985 dated 31.7.1986 is restored. However, there shall be no order as to costs.