



2023:KER:79397

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MR. JUSTICE JOHNSON JOHN

THURSDAY, THE 14TH DAY OF DECEMBER 2023 / 23RD AGRAHAYANA,
1945

OP (RC) NO. 39 OF 2023

AGAINST THE ORDER EP 46/2022 OF PRINCIPAL MUNSIF COURT,
KOTTAYAM

PETITIONER:

SINDHU A.K
AGED 45 YEARS
D/O ALENGATUPARAMBIL UNNI @ KUNJUNNI,
ALENGATUPARAMBIL, MULANKUNNATHKAVU,
THRISSUR, PIN - 680581

BY ADVS.
M.S.ANEER
SREELAKSHMI SURESH

RESPONDENT:

NIZAR KOCHERY, AGED 60 YEARS
S/O SULAIMAN, KOCHERY HOUSE, AMBALLOOR TALUK,
KANJIRAMATTOM P.O ERNAKULAM,
REP BY HIS POWER OF ATTORNEY HOLDER AND HIS
WIFE P.M SAJITHA, AGED 57 YEARS, KOCHERY HOUSE,
AMBALLOOR TALUK, KANJIRAMATTOM P.O
ERNAKULAM, PIN - 682315

BY ADVS.
Usha Kumari P
C.MURALIKRISHNAN (PAYYANUR) (K/145/1997)
Abraham George Jacob
P.I.RAHEENA (K/283/2015)
SRI.GEORGE VARGHESE PERUMPALLIKUTTIYIL, AMICUS
CURIAE

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON
06.12.2023, THE COURT ON 14.12.2023, DELIVERED THE
FOLLOWING:



O.P.(RC) No.39 of 2023

-: 2 :-

C.R.

P.B.SURESH KUMAR & JOHNSON JOHN, JJ.

O.P.(RC) No.39 of 2023

Dated this the 14th day of December, 2023

JUDGMENT

P.B.Suresh Kumar, J.

The tenant in a proceedings for eviction under the Kerala Buildings (Lease and Rent Control) Act (the Act), is the petitioner in this original petition. The respondent is the landlord. The question that falls for consideration in this matter is as to the maintainability of the petition instituted by the respondent to execute the order obtained by him in the proceedings for eviction.

2. Before considering the question, it is necessary to outline the essential facts. The subject matter of the proceedings is a premises situated within the territorial limits of the Rent Control Court, Ernakulam. During the pendency of the eviction proceedings, as agreed to by the parties, the matter was referred for mediation to the



O.P.(RC) No.39 of 2023

-: 3 :-

Ernakulam Mediation Centre, and the dispute was amicably settled. Ext.P1 is the settlement agreement executed between the parties at the mediation. It was agreed by the petitioner that vacant possession of the premises will be handed over to the respondent on or before 13.12.2021. It was also agreed that the arrears of rent due to be paid by the petitioner as on 31.08.2021 is Rs.75,00,000/- and that the petitioner will liquidate a portion of the same by transferring a property owned by her and situated in Kottayam District in favour of the respondent for a value to be determined by a valuer and accepted by the parties and remit the balance in 36 monthly instalments on or before 12.09.2024. It was also agreed that if the petitioner fails to agree for appointment of a valuer to value the property or transfer the property or pay the deficit amount, the respondent would be free to approach the court for getting the settlement agreement executed or to file a suit for realisation of the amount or specific performance of the settlement agreement. Ext.P1 settlement agreement has been accepted by the Rent Control Court and the eviction petition was disposed of in terms of the settlement on 30.09.2021. Ext.P6 is the order passed by the Rent Control Court in this



regard.

3. Even though the petitioner surrendered vacant possession of the premises pursuant to the settlement agreement, the property agreed to be transferred towards arrears of rent has not been transferred by the petitioner to the respondent. The petitioner has also not paid to the respondent the arrears of rent due by other means. The respondent, in the circumstances, instituted Ext.P3 execution petition before the Munsiff's Court, Ernakulam and got it transferred to Munsiff's Court, Kottayam, within whose jurisdiction the property agreed to be sold is situated, to enforce Ext.P1 settlement agreement. On receipt of notice in the execution petition, the petitioner preferred Ext.P5 application before the execution court seeking orders dismissing Ext.P3 execution petition as not maintainable. This original petition is instituted thereafter invoking Article 227 of the Constitution seeking orders declaring that Munsiff's Court, Kottayam lacks jurisdiction to entertain Ext.P3 execution petition.

4. Heard the learned counsel for the petitioner, the learned counsel for the respondent as also the learned Amicus Curiae appointed in the matter.



5. The learned counsel for the petitioner contended that Ext.P1 settlement agreement is unenforceable since the Rent Control Court has no jurisdiction to dispose of an eviction proceedings in favour of the landlord unless it holds that one or other grounds prescribed in the Act exist in the case, and such a finding has not been rendered by the Rent Control Court in Ext.P6 order. It was also argued by the learned counsel alternatively that the Munsiff's Court, Kottayam, at any rate, cannot deal with Ext.P3 execution petition for want of pecuniary jurisdiction.

6. *Per contra*, the learned counsel for the respondent submitted that the Rent Control Court is empowered to make a reference of a pending eviction proceedings for mediation, and if the matter is settled at the mediation, the Rent Control Court will certainly be acting within its jurisdiction in disposing of the eviction proceedings based on the settlement agreement. According to the learned counsel, in such cases, it is unnecessary for the Rent Control Court to examine the question whether there exists any ground for eviction as prescribed in the Act. It was also argued by the learned counsel that at any rate, inasmuch as the petitioner



has surrendered vacant possession of the premises to the respondent, the question whether the Rent Control Court examined the existence of grounds for eviction, does not arise for consideration. It was also argued by the learned counsel that inasmuch as the settlement agreement has been accepted by the Rent Control Court, the same can certainly be executed treating it as an award of the Lok Adalat. On a query from the court, it was conceded by the learned counsel that the Munsiff's Court, Kottayam lacks pecuniary jurisdiction in the matter of dealing with the execution petition and the same should have been instituted before the Sub Court, Kottayam which has pecuniary jurisdiction to execute the settlement agreement.

7. The learned Amicus Curiae supported the argument advanced by the learned counsel for the respondent, pointing out that inasmuch as the eviction petition was referred for mediation to an institution, namely Ernakulam Mediation Centre, in the light of the provisions contained in Section 89 of the Code of Civil Procedure (the Code), the Ernakulam Mediation Centre shall be deemed to be a Lok Adalat and all provisions of the Legal Services Authorities Act,



O.P.(RC) No.39 of 2023

-: 7 :-

1987 (the 1987 Act) shall apply to such mediation as if the dispute were referred to the Lok Adalat as per the provisions of that Act. The learned Amicus Curiae has relied on the decision of the Apex Court in **Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.**, (2010) 8 SCC 24 and the provisions contained in Sections 19, 20 and 21 of the 1987 Act, in support of the said argument. On a query from the court, the learned Amicus Curiae asserted that Section 89 of the Code applies to the proceedings before the Rent Control Court also and that if Section 89 applies to the Rent Control Court, the said court will certainly be justified in giving a stamp of approval to a settlement arrived at between the parties to a proceedings on reference of the same for mediation.

8. In the light of the submissions made by the learned counsel for the parties and the learned Amicus Curiae, the following questions are formulated for decision:

(i) Does Section 89 of the Code apply to a proceedings before the Rent Control Court?

(ii) If Section 89 of the Code applies to a proceedings before the Rent Control Court, is the Rent Control Court competent to give a stamp of approval to a settlement



agreement dealing with matters not covered by the Act?

(iii) If questions (i) and (ii) are answered in the affirmative, the relief which the petitioner is entitled to.

9. Question (i): There cannot be any doubt to the proposition that the Rent Control Court is also a court in the real sense of the term "Court". It is worth in this context to refer to a decision of the Madras High Court in **V. Syed Hanifa v. Muhammad Khalifulla**, 1968 SCC OnLine Mad 100, dealing with the question whether the Rent Controller in terms of the provisions of the Madras Rent Control Act is a court. The relevant portion of the judgment reads thus:

"When a question therefore arises as to whether an authority created by an Act is a court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a court".

Applying these principles there is no doubt that the Rent Controller would be a 'court'. He decides disputes in a judicial manner and declares rights of parties in a definitive judgment. Parties are entitled as a matter of a right to be heard in respect of their claim and adduce evidence in proof of it. He has to decide the matter on a consideration of the evidence adduced and in accordance with law. In all matters before the Rent Controller there is a '*lis*' in which person with opposing claims are entitled to have their rights adjudicated in a judicial manner. The enquiry is not entrusted to an ad hoc



tribunal. Applying all these tests it would appear that the Rent Controller is a 'Court'. But it may still be argued that the Rent Controller is not a civil, criminal or revenue court.”

The above passage has been quoted with approval by this Court in **Krishnan v. Radha Lekshmi Amma**, 1971 SCC OnLine Ker 81. Be that as it may, as noted, the question is whether Section 89 of the Code applies to a proceedings before the Rent Control Court, especially in the light of the provisions contained in Section 23 of the Act. Section 23 of the Act reads thus:

“23. Summons, etc.--(1) Subject to such conditions and limitations as may be prescribed, the Accommodation Controller, the Rent Control Court and the appellate authority shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters:-

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses, and requiring the deposits of their expenses;
- (c) compelling the production of documents;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence taken on affidavit;
- (g) issuing commission for the examination of witnesses and for local inspection;
- (h) setting aside *ex parte* orders;
- (i) enlargement of time originally fixed or granted;



O.P.(RC) No.39 of 2023

-: 10 :-

(j) power to amend any defect or error in orders or proceedings; and

(k) power to review its own order.

(2) The Accommodation Controller, the Rent control Court or the appellate authority may summon and examine suo motu any person whose evidence appears to it to be material; and it shall be deemed to be a Civil Court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act 5 of 1898). ”

Despite the provisions contained in Section 23, with a view to ensure that the Rent Control Court is able to discharge its functions, it has been held by courts that the Rent Control Court has the power conferred on civil court on various other matters as well or in any case, the principles contained therein, which are not inconsistent with the provisions contained in the Act. It is on that basis, it was held by this Court that the provisions of Order I Rule 10(2), Order VI Rule 17, Order IX Rule 9, Order XI Rule 13, Order XLI Rule 22 of the Code etc. would apply to the proceedings under the Act [See **Sukumaran v. Susy Isaac**, 1985 SCC OnLine Ker 236, **Jullunder Duree & Niwar Mfg. Co. v. Jayadevan**, 1998 SCC OnLine Ker 164, **K. Mohan v. K.H. Jayaprakash**, 2012 SCC OnLine Ker 31958, **T.V. Krishna Iyer v. Abdul Rasheed**, 2014 SCC OnLine Ker 28662 and **Poomkudy Auto Service (P) Ltd. v. Parshanth Raghuvaran**, 2016 SCC OnLine Ker 29830]. Inasmuch as



Section 89 of the Code does not run counter to any of the provisions of the Act, in the light of the consistent view taken by this Court in the decisions aforesaid, we are of the view that Section 89 of the Code would certainly apply to the proceedings before the Rent Control Court. We take this view also in the light of the various provisions contained in the 1987 Act. Section 2(1)(aaa) of the 1987 Act which defines “court” is wide enough to include within its sweep, the Rent Control Court also, as the same is a forum exercising judicial functions. Section 20 of the 1987 Act confers power on the Rent Control Court to refer a pending matter to the Lok Adalat and if such a matter is settled and an award is passed in terms of Section 21 of the 1987 Act, the award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, or an order of any other court. Sub-section (5) of Section 19 of the 1987 Act confers jurisdiction on the Lok Adalat to determine and to arrive at a settlement between the parties not only in respect of disputes which are brought before the court, but also in respect of disputes which are not brought before the court. In other words, if a matter referred by the Rent Control Court to a Lok Adalat is settled at the Lok Adalat, an award



passed by the Lok Adalat in relation to the matters covered by the Act, as also matters not covered by the Act, but brought before the Lok Adalat by the parties, can certainly be enforced in the light of the provisions contained in the 1987 Act. Yet another reason for us to take this view is that alternative dispute resolution mechanisms are now considered, having regard to the challenges faced by the justice delivery system in place, especially the huge pendency, as the appropriate dispute resolution mechanisms. As evident from Section 24 of the Act, when the Act was enacted, the contemplation of the legislature was that proceedings under the Act shall be disposed of as far as may be practicable, within four months from the date of appearance of the parties. But the ground reality is that despite the aforesaid provision, the proceedings are concluded only after several years. The huge pendency of the rent control matters and the time taken by courts for disposal of the same also prompt us to hold that alternative dispute resolution mechanisms shall be made applicable to the proceedings under the Act. The question is answered accordingly.

10. Question (ii): Sub-section (1) of Section 89 of



the Code provides that where it appears to the Court that there exist elements of settlement in a pending proceedings, the Court shall refer the dispute for any one of the alternative dispute resolution mechanisms provided for therein, including mediation. Sub-section (2) of Section 89 provides further that where the court chooses to refer the parties for judicial settlement, the Court shall refer them to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the 1987 Act shall apply as if the dispute were referred to a Lok Adalat and where the dispute has been referred for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed. In **Afcons Infrastructure Ltd.**, after noticing that an inadvertent error crept in while drafting the provisions contained in Section 89 of the Code, the Apex Court held that the provision has to be understood in such a manner that where the court chooses to refer the parties for mediation, they shall be referred to an institution and such institution or person shall be deemed to be a Lok Adalat and all provisions of the 1987 Act shall apply to such mediation as if the dispute were referred to a Lok Adalat under



the provisions of the 1987 Act. Paragraph 16 of the judgment of the Apex Court in **Afcons Infrastructure Ltd.** reads thus:

“16. In view of the foregoing, it has to be concluded that proper interpretation of Section 89 of the Code requires two changes from a plain and literal reading of the Section. Firstly, it is not necessary for the Court, before referring the parties to an ADR process to formulate or re-formulate the terms of a possible settlement. It is sufficient if the Court merely describes the nature of dispute (in a sentence or two) and makes the reference. Secondly, the definitions of ‘judicial settlement’ and ‘mediation’ in clauses (c) and (d) of Section 89(2) shall have to be interchanged to correct the draftsman’s error. Clauses (c) and (d) of S. 89 (2) of the Code will read as under when the two terms are interchanged.

(c) for “mediation”, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for “judicial settlement”, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

The above changes made by interpretative process shall remain in force till the legislature corrects the mistakes, so that S.89 is not rendered meaningless and infructuous.”

In **Afcons Infrastructure Ltd.**, it was also held by the Apex Court that where the reference is for mediation, though it will be deemed to be a reference to Lok Adalat, as the court retains



its control and jurisdiction over the matter, the mediation settlement will have to be placed before the court for recording the settlement and disposal and whenever a settlement is arrived at the mediation, the court shall apply the principles of Order XXIII Rule 3 of the Code and make a decree/order in terms of the settlement, in regard to the subject matter of the suit/proceedings, and if the matters/disputes are not subject matter of the suit/proceedings, the court will have to direct that the settlement shall be governed by Section 21 of the 1987 Act. Paragraphs 37 to 40 of the judgment of the Apex Court in **Afcons Infrastructure Ltd.**, dealing with the said aspects read thus:

“Whether the settlement in an ADR process is binding in itself?”

37. When the court refers the matter to arbitration under Section 89 of the Act, as already noticed, the case goes out of the stream of the court and becomes an independent proceeding before the Arbitral Tribunal. Arbitration being an adjudicatory process, it always ends in a decision. There is also no question of failure of the ADR process or the matter being returned to the court with a failure report. The award of the arbitrators is binding on the parties and is executable/enforceable as if a decree of a court, having regard to Section 36 of the AC Act. If any settlement is reached in the arbitration proceedings, then the award passed by the Arbitral Tribunal on such settlement, will also be binding and executable/enforceable as if a decree of a court,



under Section 30 of the AC Act.

38. The other four ADR processes are non-adjudicatory and the case does not go out of the stream of the court when a reference is made to such a non-adjudicatory ADR forum. The court retains its control and jurisdiction over the case, even when the matter is before the ADR forum. When a matter is settled through conciliation, the settlement agreement is enforceable as if it is a decree of the court having regard to Section 74 read with Section 30 of the AC Act. Similarly, when a settlement takes place before the Lok Adalat, the Lok Adalat award is also deemed to be a decree of the civil court and executable as such under Section 21 of the Legal Services Authorities Act, 1987. Though the settlement agreement in a conciliation or a settlement award of a Lok Adalat may not require the seal of approval of the court for its enforcement when they are made in a direct reference by parties without the intervention of court, the position will be different if they are made on a reference by a court in a pending suit/proceedings. As the court continues to retain control and jurisdiction over the cases which it refers to conciliations, or Lok Adalats, the settlement agreement in conciliation or the Lok Adalat award will have to be placed before the court for recording it and disposal in its terms.

39. Where the reference is to a neutral third party (“mediation” as defined above) on a court reference, though it will be deemed to be reference to Lok Adalat, as the court retains its control and jurisdiction over the matter, the mediation settlement will have to be placed before the court for recording the settlement and disposal. Where the matter is referred to another Judge and settlement is arrived at before him, such settlement agreement will also have to be placed before the court which referred the matter and that court will make a decree in terms of it.



40. Whenever such settlements reached before non-adjudicatory ADR fora are placed before the court, the court should apply the principles of Order 23 Rule 3 of the Code and make a decree/order in terms of the settlement, in regard to the subject-matter of the suit/proceeding. In regard to matters/disputes which are not the subject-matter of the suit/proceedings, the court will have to direct that the settlement shall be governed by Section 74 of the AC Act (in respect of conciliation settlements) or Section 21 of the Legal Services Authorities Act, 1987 (in respect of settlements by a Lok Adalat or a mediator). Only then such settlements will be effective.”

(Underline supplied)

As already noticed, sub-section (5) of Section 19 of the 1987 Act provides that a Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of not only any case pending before any court, but also any matter which is falling within the jurisdiction of, and is not brought before any court. Sub-section (5) of Section 19 of the 1987 Act reads thus:

“(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

- (i) any case pending before; or
- (ii) any matter which is falling within the jurisdiction of, and is not brought before, any Court for which the Lok Adalat is organised:



O.P.(RC) No.39 of 2023

-: 18 :-

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.”

As indicated, in terms of Section 21 of the 1987 Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court or as the case may be, an order of any other court enforceable under law. In the light of the decision of the Apex Court in **Afcons Infrastructure Ltd.** and the provisions contained in the 1987 Act, we are of the view that settlement agreements arrived at, at the mediation and accepted by the Rent Control Court are enforceable. It needs to be emphasized that as held by the Apex Court in **Afcons Infrastructure Ltd.** in regard to matters/disputes which are not the subject matter of the suit/proceedings, it is in the light of Section 21 of the 1987 Act that settlement agreements once accepted by the court would become enforceable under law. The question is answered accordingly.

11.Question (iii): The findings on questions (i) and (ii) take us to the issue as regards the pecuniary jurisdiction of the Munsiff's Court, Kottayam to deal with an execution petition in the nature of Ext.P3. In an exactly identical situation, in **Ummer and Another v. Pariparamban Abdul**



Azeez, 2015 (1) KHC 450, this Court held that an order in the nature of Ext.P6 accepting a settlement agreement arrived at, at the mediation shall be enforceable before the court which has pecuniary jurisdiction to enforce the same. Paragraph 11 of the judgment in the said case reads thus:

“11. The argument put forward by the learned Senior Counsel for the petitioners may, on the first look, appear to be quite attractive. The opening part of S.14 states about the execution of orders passed under S.11, S.12, S.13, S.19 or 33. The provision for the order be executed by the Munsiff relates only to an order under the Sections mentioned in S.14 of the Rent Control Act. The award in the present case was passed by the Lok Adalat exercising the jurisdiction under the Legal Services Authorities Act. An award can be passed by the Lok Adalat on agreement between the parties. The agreement between the parties need not be confined to the grounds mentioned in S.11 of the Rent Control Act. The parties can settle their disputes in respect of the whole issue between them in respect of the building, including a dispute with respect to the repayment of the advance amount by the landlord. The Rent Control Court cannot pass an order directing the landlord to repay the advance amount, while dealing with an application under S.11(3) of the Rent Control Act. However, there is no such restriction for the parties to enter into an agreement with respect to the advance amount also while they settle the matter before the Lok Adalat. The parties having settled all their disputes and differences before the Lok Adalat, it cannot be said that it is an order under S.11(3) of the Act. If so, the provision in S.14 of the Act, that the order shall be executed by the Munsiff having original jurisdiction over the area, in which, the building is situated,



would not apply at all. On the other hand, S.21 of the Legal Services Authorities Act, 1987 would apply, which provides that every award of the Lok Adalat shall be deemed to be a decree of the Civil Court. In the present case, the agreement to repay Rs.3,75,000/- by the landlords to the tenant is a decree coming under S.21 of the Legal Services Authorities Act. It is not an order under S.11 of the Kerala Buildings (Lease and Rent Control) Act. Therefore, S.14 of the said Act has no application for the purpose of executing the money part of the settlement arrived at between the parties. Since the amount sought to be realised exceeds the pecuniary jurisdiction of the Munsiff's Court, necessarily, the Court of the Subordinate Judge alone will have jurisdiction to execute the decree."

In the result, the original petition (rent control) is allowed in part declaring that the Munsiff's Court, Kottayam does not have pecuniary jurisdiction to deal with Ext.P3 execution petition. It is, however, made clear that this judgment will not preclude the respondent from instituting proceedings for execution of Ext.P1 settlement agreement before the appropriate forum.

Sd/-
P.B.SURESH KUMAR, JUDGE.

Sd/-
JOHNSON JOHN, JUDGE.



O.P.(RC) No.39 of 2023

-: 21 :-

APPENDIX OF OP (RC) 39/2023

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE MEDIATION AGREEMENT ENTERED BETWEEN THE PETITIONER AND THE RESPONDENT
- Exhibit P2 A TRUE COPY OF THE VALUATION REPORT OF THE PROPERTY OF THE PETITIONER WHICH SITUATES IN KOTTAYAM ISSUED BY AN APPROVED VALUER
- Exhibit P3 . TRUE COPY OF THE EP NO 46/2022 PENDING ON THE FILES OF THE MUNSIF COURT KOTTAYAM
- Exhibit P4 TRUE COPY OF THE EXECUTION APPLICATION IN EP 46/2022 WHICH IS NUMBERED AS EA NO 1 OF 2023 IN EP 46/2022
- Exhibit P5 TRUE COPY OF THE EXECUTION APPLICATION FILED BY THE PETITIONER HEREIN AND WHICH IS NUMBERED AS EA NO 2 OF 2023 BEFORE THE MUNSIF COURT KOTTAYAM
- Exhibit P6 THE CERTIFIED COPY OF THE DECREE IN RCP 190/2019 PASSED BY THE RENT CONTROL COURT ERNAKULAM