

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.HARILAL

&

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY ,THE 30TH DAY OF NOVEMBER 2018 / 9TH AGRAHAYANA, 1940

OP (RC).No. 177 of 2018

AGAINST THE ORDER/JUDGMENT IN RCP 238/2015 of RENT CONTROL COURT,  
KOZHIKODE-I

PETITIONER:

K.T.SAYNATH,  
AGED 45 YEARS  
APPUKUTTAN, PERUNTHAR, NILAM HOUSE,  
KACHERI AMOSM DESOM, WEST HILL POST,  
KOZHIKODE- 673005.

BY ADVS.  
SRI.K.M.FIROZ  
SMT.M.SHAJNA

RESPONDENT:

V.K. UMMER,  
S/O.MOIDU, VALIYAPARAMBIL VEETIL,  
THIRUVANGAD AMSOM DESOM, THALASSERY TALUK,  
KANNUR DISTRICT- 670103, REPRESENTED BY  
POWER OF ATTORNEY HOLDER MOHANLAL, AGED 62,  
S/O.RAGHAVAN, MOSHIMA NIVAS, VENGARI AMSOM,  
KOZHIKODE- 673010.

BY ADV.SRI.G.UNNIKRISHNAN

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON 30.11.2018,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

## **J U D G M E N T**

This OP(RC) has been directed against Exts.P10 and P11 orders passed by the Rent Control Court. Ext.P10 order was passed on IA No.2475/2018 in RCP No.328/2015 and the said application was filed to get the Commissioner examined for the purpose of setting aside his earlier report. The Rent Control Court dismissed the said application on a finding that a Commissioner's report cannot be set aside in view of the decision of this Court in ***Francis Assissi v. Sr. Breesiya*** [2017 (1) KLT 1041]. We do not find fault with the court below in dismissing the said application in view of the aforesaid decision of this Court. Coming to Ext.P11, the said order was passed on IA No.2475/2018 and the said application was filed to appoint a fresh Commission to ascertain the matters sought to be ascertained in Ext.P9 application filed by the petitioner. We have meticulously examined the matters sought to be ascertained in the said application and we find that almost all matters sought to be ascertained in the said application rest on the opinion of the

Commissioner. It is needless to say that a Commission cannot be deputed to form an opinion and report to the court. In the above view, the Rent Control Court is justified in dismissing Ext.P9 application by Ext.P11 order.

2. However, we find that the petitioner can examine the Commissioner during the course of trial and after the examination of the Commissioner, if the matters reported by the Commissioner are found insufficient, the petitioner can seek the same relief again and this order will not stand in the way of such an opportunity to the petitioner.

OP(RC) is dismissed with the above observation.

Sd/-

**K.HARILAL**

**JUDGE**

Sd/-

**N.NAGARESH**

**JUDGE**

aks/03.12.2018

## **APPENDIX**

### **PETITIONER'S EXHIBITS:**

EXHIBIT P1	TRUE COPY OF THE RENT CONTROL PETITION IN RCP NO.328 OF 2015 ON THE FILES OF RENT CONTROL COURT, KOZHIKODE.
EXHIBIT P2	TRUE COPY OF THE COUNTER STATEMENT IN RCP NO.328 OF 2015 ON THE FILES OF RENT CONTROL COURT, KOZHIKODE.
EXHIBIT P3	TRUE COPY OF THE I.A.NO.2285 OF 2017 IN RCP NO.328 OF 2015 ON THE FILES OF RENT CONTROL COURT, KOZHIKODE.
EXHIBIT P4	TRUE COPY OF REPORT OF ADVOCATE COMMISSIONER DATED 19.10.2017 IN RCP NO.328 OF 2015 ON THE FILES OF RENT CONTROL COURT, KOZHIKODE.
EXHIBIT P4 A	TRUE COPY OF PLAN OF ADVOCATE COMMISSIONER DATED 19.10.2017 IN RCP NO.328 OF 2015 ON THE FILES OF RENT CONTROL COURT, KOZHIKODE.
EXHIBIT P5	TRUE COPY OF THE AFFIDAVIT IN SUPPORT OF THE APPLICATION DATED 20.12.2017 PREFERRED BY RESPONDENT HEREIN.
EXHIBIT P6	TRUE COPY OF WORK MEMO IN I.A.NO.3926 OF 2017 IN RCP NO.328 OF 2015 ON THE FILES OF RENT CONTROL COURT, KOZHIKODE SUBMITTED BY THE PETITIONER HEREIN.
EXHIBIT P7	TRUE COPY OF REPORT OF ADVOCATE COMMISSIONER DATED 12.07.2018 IN RCP NO.328 OF 2015 ON THE FILES OF RENT CONTROL COURT, KOZHIKODE.
EXHIBIT P7 A	TRUE COPY OF PLAN OF ADVOCATE COMMISSIONER DATED 12.07.2018 IN RCP NO.328 OF 2015 ON THE FILES OF RENT

CONTROL COURT, KOZHIKODE.

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| EXHIBIT P8  | TRUE COPY OF I.A.NO.2475 OF 2018 IN<br>RCP NO.328 OF 2015 ON THE FILES OF<br>RENT CONTROL COURT, KOZHIKODE.                        |
| EXHIBIT P9  | TRUE COPY OF I.A.NO.2476 OF 2018 IN<br>RCP NO.328 OF 2015 ON THE FILES OF<br>RENT CONTROL COURT, KOZHIKODE.                        |
| EXHIBIT P10 | TRUE COPY OF ORDER DATED 29.10.2018<br>IN I.A.NO.2475 OF 2018 IN RCP NO.328<br>OF 2015 PASSED BY RENT CONTROL<br>COURT,KOZHIKODE.  |
| EXHIBIT P11 | TRUE COPY OF ORDER DATED 08.11.2018<br>IN I.A.NO.2476 OF 2018 IN RCP NO.328<br>OF 2015 PASSED BY RENT CONTROL COURT,<br>KOZHIKODE. |