

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MR.JUSTICE N.ANIL KUMAR

FRIDAY, THE 29TH DAY OF NOVEMBER 2019 / 8TH AGRAHAYANA, 1941

OP (RC).No.148 OF 2019

AGAINST THE ORDER DATED 07-07-2019 IN I.A NO.528 OF 2019 OF
RENT CONTROL COURT (MUNSIFF), VADAKARA.

PETITIONER :

- 1 CHATHOTH PUNNAROTH NANU,
S/O.KANARAN, AGED 62 YEARS,
"SRUTHI"(WHITE HOUSE),
ERAMALA ORKATTERI PO, VATAKARA,
KOZHIKODE DISTRICT - 673 501.
- 2 ARIIPPOOVIL JAYANTHI,
W/O.NANU, AGED 48 YEARS,
"SRUTHI"(WHITE HOUSE),
ERAMALA ORKATTERI PO, VATAKARA,
KOZHIKODE DISTRICT - 673 501.
- 3 NIJIL,
S/O.NANU, AGED 28 YEARS,
"SRUTHI"(WHITE HOUSE),
ERAMALA ORKATTERI PO, VATAKARA,
KOZHIKODE DISTRICT - 673 501.

BY ADVS.
SRI.K.MOHANAKANNAN
SMT.T.V.NEEMA

RESPONDENTS :

- 1 NAZEER,
 S/O.ABDUL KHADER, AGED 49 YEARS,
 PARAMBATH HOUSE, KUNNUMMAKKARA,
 VATAKARA TALUK, KOZHIKODE DISTRICT-673 501.
- 2 NAZEEMA,
 D/O.ABDUL KHADER, AGED 49 YEARS.
 PARAMBATH HOUSE, KUNNUMMAKKARA,
 VATAKARA TALUK, KOZHIKODE DISTRICT-673 501.
- 3 MUHAMMED SUHAIB,
 S/O.MOOSA, AGED 26 YEARS, GREEN PALACE,
 ABDUL KHADER, AGED 49 YEARS,
 ERAMALA ORKATTERI.P.O, VATAKARA,
 KOZHIKODE DISTRICT - 673 501.

R1-2 BY ADV. SRI.R.GOPAN.

R1-2 BY ADV. SRI.P.M.SANEER.

THIS OP (RENT CONTROL) HAVING BEEN FINALLY HEARD ON
29.11.2019, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 29th day of November 2019

Heard the learned counsel for the petitioners and respondents.

2. Aggrieved by Ext.P6 order passed by the Rent Control Court, Vatakara on I.A No.528 of 2019 in R.C.P No.130 of 2017, the petitioners in the above rent control petition have approached this Court. Ext.P1 is the eviction petition, preferred by the petitioners, seeking eviction of the respondents from the tenanted premises. As per Ext.P2 order, an ex parte order of eviction was passed by the Rent Control Court finding that the respondents did not appear on the assigned date. Thereafter, Ext.P3 application was filed by the respondents in the eviction petition (respondents herein) requesting the court below to set aside the ex parte order. That application was filed within the statutory period. In that matter, after hearing both sides, Ext.P6 order was passed. In the meantime, the

eviction petitioners sought the order of eviction executed through the Munsiff's court having jurisdiction as per E.P No.65 of 2019 in the above Rent Control Petition. Pursuant to the order in the execution petition without giving notice to the respondents as required under Order XXI Rule 22 C.P.C, an order of eviction was passed. It is the case of the petitioners that after getting delivery of the property through court they had entrusted the building to another tenant and he had invested huge amounts for modifying the building and started occupying the same. It is contended that if the ex parte order is set aside, the petitioners and new tenant would suffer irreparable injury.

3. After hearing the learned counsel on both sides, we are of the view that the court below cannot be faulted for setting aside the ex parte order as mentioned in Ext.P6. Apprehension of the petitioners is that the property will be restituted by invoking Section 144 C.P.C. It is a matter to

be agitated before the executing court. All the questions relating to application of Section 144 C.P.C to the given facts are left open. We find no merit in the challenge against Ext.P6 and hence, O.P is dismissed.

All pending interlocutory applications will stand dismissed.

**A.HARIPRASAD,
JUDGE**

**N.ANIL KUMAR,
JUDGE**

APPENDIXPETITIONER'S EXHIBITS :

EXHIBIT P1	TRUE COPY OF RCP 130/2017 OF THE RENT CONTROL COURT, VATAKARA.
EXHIBIT P2	TRUE COPY OF THE ORDER IN RCP 130/2017 DATED 7.3.2019 OF THE RENT CONTROL COURT VATAKARA.
EXHIBIT P3	TRUE COPY OF THE AFFIDAVIT AND PETITION FILED IN SUPPORT OF IA 528/2019 IN RCP 130/2017
EXHIBIT P4	TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONERS IN IA 528/19 IN RCP 130/2017
EXHIBIT P5	TRUE COPY OF THE PROCEEDINGS IN EP 65/2019 IN RCP 130/2017
EXHIBIT P6	TRUE COPY OF THE ORDER IN IA 528/2019 IN RCP 130/2017 BY ORDER DATED 7.7.2019
EXHIBIT P7	TRUE COPY OF THE AFFIDAVIT AND PETITION FILED AS IA NO.1100/2019 IN RCP 130/2017 DATED 22.07.2019
EXHIBIT P8	TRUE COPY OF THE COUNTER STATEMENT FILED BY PETITIONERS IN IA NO.1100/2019 IN RCP 130/2017
EXHIBIT P9	TRUE COPY OF IA NO.1099/2019 IN RCP 130/2017
EXHIBIT P10	TRUE COPY OF THE COUNTER STATEMENT IN IA 1099/2019 IN RCP 130/2017

RESPONDENTS' EXHIBITS : NIL.