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## **COURTS MUST PASS REASONED ORDERS IN *EX PARTE* PROCEEDINGS**

The High Court of Kerala (“**HC**”), in the *Sanjeevan Swamy* case,<sup>1</sup> held that in *ex parte* proceedings, the Court can issue an order in favour of the party present only if they prove their rights or the opposite party’s liability.

### **Brief Facts.**

Sajeevan Swamy (“**Swamy**”), contented that by an oral rental agreement he was put in possession of the schedule property by Johnson (“**Johnson**”).

In 2015, an *ex parte* eviction order was passed against Swamy, under Section 11(3)<sup>2</sup> of the Kerala Buildings (Lease and Rent Control) Act, 1965 (“**the Act**”) based on petition by Johnson. Swamy’s application to set aside the *ex parte* order was dismissed by the Rent Control Court (“**Court**”) for lacking a delay condonation petition.

His subsequent appeal was dismissed for default because the transfer of the appeal to the Additional District Court, Irinjalakkuda was not communicated to the Swamy. The application to readmit the appeal was dismissed for default as Swamy could not locate Johnson’s legal representatives (**LRs**).

The Rent Control Appellate Authority (“**Authority**”) rejected Swamy’s petition to condone delay of five years, citing no reasonable grounds.

He approached HC *vide* present petition and sought setting aside of the order to contest the matter on merits.

### **Parties Contentions.**

#### Swamy’s Contentions.

Swamy’s contention was that the delay was unintentional and he should be allowed to contest the matter based on merits.

The original rent control proceedings initiator lacked property title, making the sale deed invalid and negating any landlord-tenant relationship.

#### Johnson’s Contentions (through the LRs).

Swamy lacked *bona fides* and colluded with his wife, who executed the sale deed in favour of Johnson’s predecessor. Swamy only acted when the execution petition was filed, so there is no reason to condone the five-year delay.

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<sup>1</sup>*Sajeevan Swamy vs. Johnson, (died) and others* (2025) SC OnLine Ker 913.

<sup>2</sup> Section 11(3) “A landlord may apply to the Rent Control Court, for an order directing the tenant to put the landlord in possession of the building if he *bona fide* needs the building for his own occupation or for the occupation by any member of his family dependent on him”

## Judgment & Reasoning.

The HC:

- Acknowledged the submissions and orders from Authority and Court but found an irregularity in the *ex parte* eviction order. Court granted eviction without reviewing the merits, relying solely on unrebutted evidence without assessing its sufficiency.
- Emphasized that even in *ex parte* proceedings, a court must deliver a considered order adhering to fundamental legal principles. The litigants must still prove their case to the court's satisfaction.
- Relied on *Rameshchand Arda* case,<sup>3</sup> noting that even with undisputed averments in an *ex parte* proceeding, the court must be satisfied about the existence of a right or liability.
- Cited *Arjun Singh* case,<sup>4</sup> which held that the court cannot mechanically rule in favour of the petitioner in an *ex parte* proceeding. The order should include a summary of pleadings, points for determination, and findings based on oral and documentary evidence.
- Referred to sub-rule (8)<sup>5</sup> of Rule 11 of the Kerala Buildings (Lease and Rent Control) Rules, 1979, which requires a court to record evidence and provide a decision based on justice, equity, and good conscience, even in *ex parte* decisions. Section 11<sup>6</sup> of the Act requires Court to be satisfied that the landlord's claim is *bona fide* before passing an eviction order.
- Found that the *ex parte* order failed to demonstrate such satisfaction, making it unsustainable.
- Set aside the *ex parte* order.

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<sup>3</sup> *Rameshchand Arda vs. Ani Panjwani*, AIR (2003) SC 2508.

<sup>4</sup> *Arjun Singh vs. Mohindra Kumar*, AIR (1964) SC 1993.

<sup>5</sup> Rule 11 sub Rule "(8) *The Accommodation Controller, Rent Control Court or the Appellate Authority deciding the dispute shall record a brief note of the evidence adduced by the parties and witness who attend, and upon the evidence so recorded, and after consideration of any documentary evidence produced by the parties, a decision shall be given in accordance with justice, equity and good conscience by Accommodation Controller, Rent Control Court or Appellate Authority. The decision given shall be reduced to writing. In the absence of any party duly summoned to attend, the dispute may be decided ex parte.*"

<sup>6</sup> Section 11- Eviction of Tenants.