

(2003) 03 KL CK 0126
In the High Court Of Kerala
Case No : C.R.P. No. 2334 of 2001

Bharathakshemam

APPELLANT

Vs

Mangolodayam (P) Ltd.

RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 17, Order 6 Rule 2
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(8), 23(1)

Citation : (2003) 3 ILR (Ker) 530 : (2004) 1 KLT 81 : (2004) 2 RCR(Civil) 68 :
(2004) 1 RCR(Rent) 174

Hon'ble Judges : N. Krishnan Nair, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : P.B. Sahasranaman and T.S. Harikumar, for the Appellant; Dinesh R. Shenoy, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, J.—This Civil Revision Petition arises from R.C.P. No. 122 of 1997 on the file of the Rent Control Court, Thrissur. The revision petitioner is the tenant and the respondent in the R.C.P. The respondent in the revision is the landlord and the petitioner in the R.C.P.

2. The landlord filed R.C.P. No. 122 of 1997 praying for eviction of the tenant under Sections 11(2)(b), 11(3) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as "the Act"). However, before the Rent Control Court, the counsel for the landlord submitted that the landlord was not pressing the relief under Sections 11(2)(b) and 11(8) of the Act. The Rent Control Court dismissed the R.C.P. holding that the landlord was not entitled to an order of eviction u/s 11(3) as the need put forward by the landlord was not bona fide.

3. Against the order of the Rent Control Court, the landlord filed R.C.A. No. 101 of 1999 in the Court of the Rent Control Appellate Authority, Thrissur. The landlord also filed I.A. No.780 of 2001 praying that the appellant may be

permitted to amend the memorandum of appeal to include the statement of facts pressing eviction u/s 11 (8) of the Act and also additional grounds. Through the amendment, the appellant wanted to add a brief statement of facts and three additional grounds as grounds 28 to 30 in the appeal memorandum. In the affidavit in support of the application for amendment, it was averred that the R.C.P. was filed under Sections 11(2)(b), 11(3) and 11(8) of the Act. At the time of trial, there were no arrears. So the Manager of the appellant company, who was examined as P.W. 1 stated that no rent arrears were due from the respondents. However, the counsel appearing for the petitioner in the Rent Control Petition submitted before the Rent Control Court that he was not pressing any relief sought for under Sections 11(2)(b) and 11(8) of the Act. It was also stated in the affidavit that the counsel who was appearing in the Rent Control Court had filed the appeal but he later relinquished his vakalath three months prior to the date of filing of the application for amendment. Only when the appellant consulted a new lawyer, the appellant came to know that the counsel had not pressed any relief u/s 11(8) of the Act. It was further averred in the affidavit that the pleadings in the case would show that the petition was filed u/s 11(8) and not u/s 11(3) of the Act and that the appellant never instructed to the counsel to submit that the appellant was not pressing any relief u/s 11(8) of the Act. It was further averred that the counsel made the concession without informing the appellant and without discussing the matter with the appellant. The memorandum of appeal was prepared by the same lawyer and hence the above aspect was not projected in the appeal memorandum.

4. The tenant filed a counter in I.A. No. 780 of 2001 opposing the prayer for amendment. It was contended that u/s 23 of the Act, only mistakes and defects could be corrected and that, even assuming that an additional ground could be added, the mistake of the lawyer could not be corrected through amendment. It was further contended that the statement of the counsel recorded by the Rent Control Court could not be withdrawn. If it was a mistake, it could be corrected only by a review.

5. After considering the rival contentions, the Rent Control Appellate Authority as per his Order dated 17th August 2001 allowed the prayer in I.A. No. 780 of 2001. Challenging the said order of the appellate authority, the tenant has filed this Revision Petition.

6. The petition for eviction was filed by a private limited company. The company owns a three storeyed building in the heart of Thrissur town. In the petition for eviction, the landlord has clearly stated that it bona fide needed more space to meet the additional requirements such as erecting printing machineries, providing for modern office facilities for publishing works, starting library etc. In the cause title of the petition, it was stated that the petition was filed under Sections 11(2)(b), 11(3) and 11(8) of the Act. In the counter-affidavit filed by the tenants, it was specifically contended that the landlord was in possession of three rooms and those rooms were kept under lock and key for some time and

they were being used as an automobile show room by the relative of the Managing Director of the Company. In the evidence adduced before the Rent Control Court, it came out that the landlord company was having an office in the very same building. The case of the tenant was that the space already available with the landlord was sufficient to meet its requirements and the attempt of the landlord was to evict the tenant and to sell the property for a higher price. When the matter came up for trial, the counsel appearing for the landlord made a submission that the landlord was not pressing the claims u/s 11(2)(b) and 11(8) of the Act. The case put forward by the landlord before the appellate authority was that, with the pleadings and evidence on record, the claim of the landlord could be only u/s 11(8) of the Act and hence, the counsel while making the concession made a mistake regarding the provision of law applicable in the case and therefore, the landlord was entitled to resile from the concession made by the counsel. The appellate authority found that there was factual foundation for raising such a contention by the landlord. The landlord had stated in the Rent Control Petition that it required additional space. The evidence adduced showed that the landlord was occupying a portion of the building and it wanted more space. Hence, it could not be said that there was no pleading to attract the ingredients of Section 11(8) of the Act. The appellate authority has also observed that whether it is a case falling u/s 11(8) or 11(3) or both, is to be considered while hearing the appeal. The appellate authority has also held that by allowing the appellant/ landlord to raise a contention that there are sufficient pleadings to make out a case u/s 11(8) of the Act, no prejudice will be caused to the respondent/tenant.

7. Having regard to the facts and circumstances of the case, we do not find any illegality or material irregularity in the impugned order of the appellate authority. The only contention of the learned Counsel for the revision petitioner is that there is no provision for amending the memorandum of appeal. But, in our view, the memorandum of appeal can be amended u/s 23(1)(j) of the Act. As per Section 23(1)(j) of the Act, subject to such conditions and limitations as may be prescribed, the appellate authority shall have the powers which are vested in a court under the Code of Civil Procedure, 1908 to amend any defect or error in orders or proceedings. "Proceedings" include memorandum of appeal also. Hence any defect or error in the appeal memorandum can be allowed to be amended. In this case, from the averments in the R.C.P. and the evidence adduced by the landlord, it is clear that the landlord had made necessary and sufficient pleadings to seek eviction of the tenant u/s 11(8) of the Act. As per Section 11(8), a landlord who is occupying only a part of a building may apply to the Rent Control Court for an order directing any tenant occupying the whole or any portion of the remaining part of the building, to put the landlord in possession thereof if he requires additional accommodation for his personal use. In this case, the landlord had specifically pleaded that he required the space occupied by the tenant for additional accommodation for his own use. Hence the ground for eviction u/s 11(8) existed when the Rent Control Petition was filed and therefore, these was

nothing wrong in allowing the amendment for incorporating the said ground in the appeal memorandum. It is also to be noted that under Order XLI, Rule 2 C.P.C. the appellate court has power to grant leave to the appellant to urge any ground not set forth in the memorandum of appeal. It is also to be noted that as per Order VI, Rule 17 of the C P.C., the court may at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just and such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. The pleadings include appeal memorandum also. In the above circumstances, the impugned order of the appellate authority allowing the application for amendment of the memorandum of appeal is not vitiated by any illegality or material irregularity.

8. There is another aspect also. The averments in the petition and the evidence adduced by the landlord make it clear that the eviction was sought u/s 11 (8) rather than Section 11(3) of the Act. Hence, there was no reason for the counsel for the landlord to make a submission before the Rent Control Court that the landlord was not pressing the ground u/s 11(8) of the Act. It could only be a bona fide mistake on the part of the counsel in mentioning the provision of law. The definite case of the landlord is that he had not instructed to make such a concession and that the said concession was made by the counsel without the consent and knowledge of the landlord. While drafting the appeal memorandum also, the counsel did not realise the mistake and only after he relinquished the vakalath and a new lawyer was engaged, the error was noted. In such circumstances, the dismissal of the application for amendment of the appeal memorandum would have resulted in serious miscarriage of justice.

9. For the reasons stated above, we hold that there is no merit in the Revision Petition and hence, the C.R.P. is dismissed.