

(2003) 03 KL CK 0074

In the High Court Of Kerala

Case No : C.R.P. No. 1271 of 1997 & C.R.P. No. 1271 of 1997 (A)

G. Viswanatha Shet

APPELLANT

Vs

Sree Gopalakrishna Devaswom

RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(3), 11(7), 11(8), 23(1)

Citation : (2003) 2 KLT 400

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

Bench : Division Bench

Advocate : P. Sankarankutty Nair, for the Appellant; S.K. Brahmanandan, S.B. Premchandra Prabhu and G.S. Prabhu, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, J.—This revision petition arises from R.C.P.No. 80 of 1986 on the file of the Rent Control Court, Kochi. The revision petitioner is the tenant and the respondent in the R.C.P. The respondent is the landlord and the petitioner in the R.C.P.

2. The landlord filed R.C.P.No. 80 of 1986 for eviction of the tenant under Sections 11(3) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as "the Act"). After closing the evidence on both sides the landlord filed I.A.No. 1995 of 1989 for amendment of the petition for incorporating Section 11(7) of the Act also. In the affidavit filed in support of the I.A. it was stated that at the time when the Rent Control Petition was prepared, in the cause title the petition was shown to be under Sections 11(3) and 11(8) of the Act, instead of showing that the petition was u/s 11(7). It was further stated that wrong sections were written by an inadvertent mistake. It was further stated that the amendment application was filed by way of abundant caution to avoid unnecessary arguments. It was prayed that in the cause title the figures and words Sections 11(3) and 11(8) may be struck off and Section 11(7) may be

substituted. The tenant opposed the amendment contending that if the amendment was allowed it would change the character of the petition and would be prejudicial to him. Though the Rent Control Court accepted the position that the Rent Control Court can grant an order for amending the petition if the proposed ground was already available and was omitted to be incorporated in the petition by an inadvertent error, the court found that the petitioner in the R.C.P. really sought an order of eviction u/s 11(3) and that there was no specific pleading u/s 11(7). The Rent Control Court also found that even if the proposed amendment would not change the character of the petition it would definitely prejudice the right of the respondent as the respondent had not elicited evidence by cross examination P.W.1 with reference to the new proposed ground. The Rent Control Court further found merit in the argument of the respondent that the affidavit in support of the amendment application was not affirmed by the petitioner in the R.C.P. According to the Rent Control Court the counsel cannot plead that the petitioner is having bona fides unless the petitioner himself affirms the contents of the affidavit. Hence the Rent Control Court dismissed the application for amendment. Against the dismissal of the said application, the landlord filed R.C.A.No. 107 of 1995 in the Court of the Rent Control Appellate Authority, Ernakulam. The Appellate Authority set aside the order dated 10.8.1989 of the Rent Control Court in I.A.No. 1995 of 1989 and the prayer in the said I.A. was allowed. Against the judgment of the Appellate Authority the tenant has filed this revision petition.

3. The first question to be considered is whether the Rent Control Court has power and jurisdiction to allow amendment of the petition in the R.C.P. It was contended by the learned counsel for the revision petitioner that the power of the Rent Control Court for allowing an amendment is restricted to the power conferred by Section 23(1)(j) of the Act. As per Section 23(1)(j) of the Act the Rent Control Court has power to amend any defect or error in orders or proceedings. The contention of the revision petitioner is that the amendment sought in this case is not to amend any defect or error in orders or proceedings and therefore the amendment should not have been allowed by the Appellate Authority. However, the Appellate Authority rejected the above contention of the tenant and relying on a decision in Ibrahim v. Joseph (1975 KLT 167) held that a rent control petition is part of "proceedings" mentioned in Section 23(1)(j) of the Act and therefore if grounds, other than those mentioned in the petition, were available for eviction and by an omission they were not mentioned in the petition, the said error in not stating them in the petition for eviction can be amended. The Appellate Authority has also referred to the decision in Abdulla v. Rent Controller (1984 KLT 865) wherein it is held that the Rent Controller has always jurisdiction to allow amendment as long as it is bona fide and necessary to do justice between the parties and so long as it does not lead to irreparable injury to the opposite party.

4. We agree with the view taken by the Appellate Authority that the power of the Rent Control Court u/s 23(1)(j) of the Act to amend any defect or error in orders

or proceedings will include the power to amend the Rent Control Petition and that if grounds other than those mentioned in the petition were available for eviction and by an omission they were not mentioned in the petition the error in not stating them in the petition for eviction can be allowed to be amended. We also agree with the Appellate Authority that the ground u/s 11(7) was available to the landlord at the time of filing the R.C.P. in 1986. We also agree with the Appellate Authority that there were sufficient pleadings to incorporate the amendment. The petitioner in the R.C.P. is Sree Gopalakrishna Devaswom, Fort Cochin represented by its Managing Trustee. A Hindu Devaswom is obviously a religious institution which as landlord can seek eviction of a tenant u/s 11(7) of the Act. It was specifically stated in the R.C.P. that "the petitioner bona fide requires the schedule rooms for the occupation and residence of the priest in the petitioner devaswom". It was also stated that the respondent was bound to surrender the schedule rooms for the own use of the petitioner. According to the learned counsel for the landlord the pleadings in the R.C.P. are sufficient to seek a prayer for eviction u/s 11(7) and therefore the landlord has not sought amendment of the pleadings. The amendment sought is only in the cause title of the petition where Sections 11(3) and 11(8) were wrongly mentioned instead of Section 11(7). We are of the view that the Appellate Authority was right in allowing the application for amendment.

5. We do not find any merit in the contention of the learned counsel for the revision petitioner that the application for amendment was not supported by a proper affidavit. The landlord did not seek any amendment of the pleadings in the petition. He only sought substitution of the sections under which eviction was sought. In the cause title sections are mentioned by the counsel and not by the party. If a counsel inadvertently committed the error of mentioning a wrong section in the cause title of the petition, the application for amendment of the said cause title to incorporate the correct provision of law can be supported by an affidavit of the counsel. The observation of the Rent Control Court that the bona fides of the requirement can be pleaded only by the party and not by the counsel is erroneous and irrelevant. First of all, as stated earlier, no amendment of the pleadings in the petition is sought by the landlord. Secondly, there is no reference to any bona fide need in Section 11(7). Section 11(7) only says that where the landlord of a building is a religious, charitable, educational or other public institution, it may, if the building is needed for the purpose of the institution, apply to the Rent Control Court for an order directing the tenant to put the institution in possession of the building. Hence I.A. No. 1995 of 1989 was not defective for the reason that the affidavit in support of the application was by the counsel and not by the party.

6. The Rent Control Court had observed that the evidence had already been closed and the respondent-tenant had not elicited evidence by cross examining P.W. 1 with reference to the new ground. However, the Appellate Authority has rightly pointed out that if the grievance of the tenant is that he had no chance to meet the case of the petitioner and cross examine him on the point, that can be

set right by giving a further opportunity to adduce evidence, especially when the R.C.P. has not been finally disposed of.

7. We also do not find any merit in the contention that the amendment would change the character of the petition. As per the pleadings in the unamended petition eviction of the tenant was sought for own occupation of the petitioner and it was specifically stated that the petitioner bona fide required the schedule rooms for the occupation and residence of the priest in the petitioner devaswom. This character of the petition will not be changed even if the amendment is allowed for incorporating Section 11(7) in the cause title of the petition. In substance and effect, by allowing the amendment the court has only allowed the petitioner in the R.C.P. to correct the provision of law quoted in the cause title. It cannot in any way change the character of the petition or prejudice the respondent-tenant.

8. In the above circumstances, we do not find any merit in this revision petition. Hence the revision petition is dismissed.