

(2023) 12 KL CK 0153

In the High Court Of Kerala

Case No : Rent Control Revision Nos.64, 65 Of 2019

Jose

APPELLANT

Vs

Achappan

RESPONDENT

Date of Decision : 15-12-2023

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1959 — Section 11(3), 11(4)(iv), 18

Citation : (2023) 12 KL CK 0153

Hon'ble Judges : P.B.Suresh Kumar, J;Johnson John, J

Bench : Division Bench

Advocate : B.Krishna Mani, Dinesh R.Shenoy, Ebin Mathew, P.Rohit Premanandan Shenoy, Alike M Muralidhar

Final Decision : Disposed Of

Judgement

P.B.Suresh Kumar, J.

1. These revisions arise from R.C.P.No.29 of 2016 on the files of the Rent Control Court, Kochi. The petitioners are the landlords in the proceedings and the respondent is the tenant.

2. The eviction petition was one instituted under Sections 11(3) and 11(4)(iv) of the Kerala Buildings (Lease and Rent Control) Act (the Act). During the pendency of the eviction petition, the respondent preferred two interlocutory applications, I.A.No.3198 of 2017 seeking leave of the court to amend the counter statement filed by him in the eviction petition and I.A.No.3197 of 2017 seeking orders appointing an Advocate Commissioner to ascertain and report certain facts. The Rent Control Court dismissed the said interlocutory applications. The dismissal of the interlocutory applications were challenged by the respondent before this Court in O.P.(RC) No.207 of 2017.

3. It is seen that when the above original petition came up for hearing, the petitioners raised a preliminary objection that the original petition is not maintainable as the orders sought to be set aside are appealable under Section

18 of the Act. This Court accepted the said contention of the petitioners and disposed of the original petition with liberty to the respondent to institute appeals under Section 18 of the Act against the orders impugned in the original petition. Pursuant to the decision in the said case, the respondent challenged the orders impugned in the original petition in two separate appeals namely, R.C.A.No.24 of 2018 and R.C.A.No.25 of 2018 before the Appellate Authority, and in terms of the common judgment rendered in the said appeals, the Appellate Authority set aside the impugned orders and allowed the interlocutory applications. As far as I.A.No.3198 of 2017 is concerned, it was directed by the Appellate Authority that the respondent shall carry out the amendment in his counter statement and the petitioners will be at liberty to file additional pleadings in the light of the amendment brought in. As far as I.A.No.3197 of 2017 is concerned, the Appellate Authority directed the Rent Control Court to depute the Advocate Commissioner earlier appointed in the proceedings to conduct local inspection. The petitioners are aggrieved by the said decisions of the Appellate Authority and hence, these revisions.

4. Heard the learned counsel for the petitioners as also the learned counsel for the respondent.

5. The learned counsel for the petitioners contended that an application for amendment of the pleadings is not entertainable in a proceedings for eviction under the Act.

Similarly, it was contended by the learned counsel that an order refusing to appoint an Advocate Commissioner being a procedural matter, the same cannot be interfered with in an appeal under Section 18 of the Act.

6. We do not find any substance in the arguments advanced by the learned counsel for the petitioners. The contention of the petitioners that in a proceedings under the Act, an application for amendment is not entertainable, cannot be accepted. Similarly, having resisted the original petition instituted by the respondent challenging the order dismissing the application for appointment of Advocate Commissioner on the ground that only an appeal would lie against such an order, the petitioners cannot now be heard to contend that an appeal will not lie against such an order.

7. It is seen that on account of the dispute between the parties as to the right of the tenant to seek amendment of the counter statement filed in the eviction petition and to take out a commission to ascertain and report the additional facts sought to be ascertained by him, the eviction petition instituted as early as in the year 2016 is yet to be finally disposed of.

In the circumstances, the revisions are disposed of affirming the impugned orders and directing the Rent Control Court to dispose of finally the eviction petition as expeditiously as possible and at any rate, on or before 31.03.2024.