

(2017) 03 KL CK 0053
In the High Court Of Kerala
Case No : 3569 of 2013 (O)

M. ABDUL KAREEM

APPELLANT

Vs

P. MUHAMMED SHAFI

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 151](#) & [Order VI Rule 17](#) - Saving of Inherent powers of Court
[Kerala Buildings \(Lease and Rent Control\) Act, 1965](#)

Citation : (2017) 03 KL CK 0053

Hon'ble Judges : K.Harilal, Raja Vijayaraghavan V

Bench : DIVISION BENCH

Advocate : D.KRISHNA PRASAD, S.SANTHY, JAWAHAR JOSE

Judgement

1. The petitioner is the landlord who filed Ext.P1 Rent Control Petition seeking an order of eviction under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, (for short, "the Act"). After filing Ext.P1 Rent Control Petition, he filed Exts.P3 & P5 applications for amending Ext.P1 and appointing an Advocate Commission. After considering Exts.P4 & P6 objections, the Rent Control Court passed Exts.P7 & P8 orders. The legality and correctness of the findings whereby Exts.P3 & P5 stand rejected, are challenged in this Original Petition (RC).

2. According to the petitioner, originally, the Rent Control Petition was filed under Sections 11(2)(b) and 11(3) of the Act. Subsequently, after filing the petition, the respondent has acquired possession and occupied three other shop rooms in the same locality and thereby, he is entitled to get eviction under Section 11(4) (iii) of the Act also. In that circumstance, he has preferred Ext.P3 application under Order VI Rule 17 of the Code of Civil Procedure (for short, "the C.P.C.") and Section 23 (1)(j) of the Act to amend the petition, so as to incorporate the grounds under Section 11(4)(iii) of the Act also.

3. The respondent filed objections contending that the alleged acquisition of the possession and occupation of three other rooms were after filing of the Rent Control Petition. According to him, even if the said allegation is true, that ground cannot be incorporated in the petition by way of amendment, as the cause of action did not arise at the time of filing the petition and thereby, it can never be deemed to be an omission falling either under "defect" or "error" contemplated under Section 23 (1)(j) of the Act. 4. After considering the rival contentions, the Rent Control Court dismissed the petition on a finding that the amendments sought for by the petitioner would not fall under "defect" or "error" provided under Section 23(1)(j) of the Act and the same has no fundamental impact on the main issue involved in the Rent Control Petition.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

6. The question, in controversy, revolves around Section 23(1)(j) of the Act. Section 23(1)(j) of the Act reads as under:- "Section 23(1):- Subject to such conditions and limitations as may be prescribed, the Accommodation Controller, the Rent Control Court and the appellate authority shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters:

(j) Power to amend any defect or error in orders or proceedings."

7. On a cursory reading of the aforesaid provision itself, it could be seen that the amendment, to the Rent Control Petition, after filing the same, is permissible, where there is any "defect" or "error" only in the Rent Control Petition. It follows that according to the Kerala Buildings (Lease and Rent Control) Act, the amendment to the Original Petition cannot be allowed, unless the matters sought to be incorporated, by way of amendment, fall under "defect" or "error".

8. The learned counsel invited our attention to the decisions in Krishna Iyer v. Abdul Rasheed [2015(1) KLT 511] and contended that the Rent Control Court has inherent power which the civil court exercises under the C.P.C. and invoking the inherent power the Rent Control Court can allow the amendment, though the matter sought to be amended would not fall under Sec.23(g). We are unable to accept the said argument in view of Sec.23 of the Act where under a specific grounds are provided to amend the Rent Control Petitions.

9. In Krishna Iyer's case (Supra) also this Court held that Sec.23 of the Act would not be a bar for the Rent Control Court to exercise any other power which a civil court exercises under the C.P.C. provided that it does not offend the provisions under the Kerala Buildings (Lease and Rent Control) Act and the Rules made thereunder.

10. Further, in Abdul Asees v. Devaki [2009 (2) KLT 801], this Court held that the procedure envisaged by Order XXXII of the CPC can be followed in the Rent Control Petitions which are filed by against minors or persons of unsound mind,

though not in strict terms of Rules of Order XXXII of the C.P.C. in the absence of specific provision for the same in the Kerala Buildings (Lease and Rent Control) Act.

11. We take note of the decisions whereby certain provisions in the Code of Civil Procedure are made applicable to the proceedings under the Kerala Buildings (Lease and Rent Control) Act, 1965. But, it is pertinent to note that those provisions are made applicable, where no specific provision is made available in the Kerala Buildings (Lease and Rent Control) Act or where the provision in C.P.C., is not in conflict with any of the specific provisions in the Kerala Buildings (Lease and Rent Control) Act, 1965. Further, the inherent power under Section 151 of the Code of Civil Procedure was also imported to the proceedings under the rent control law by the aforesaid decision of this Court. But, such inherent powers also can be exercised where no specific provision is made available in the Act and the invocation of inherent power will not be in conflict with any provision specifically provided in the Kerala Buildings (Lease and Rent Control) Act.

12. In the above view, we find that the specific provision incorporated under Section 23 (1)(j) of the Act is confined to amendment to cure "defect" or "error" in the Rent Control Petition only. If the cause of action for eviction on the new ground, which is intended to be incorporated, by way of amendment has arisen, after filing of the Rent Control Petition, that ground cannot be allowed to be incorporated by way of amendment, as the same was not available on the date of filing the Rent Control Petition. If that ground was not available, on the date of filing of the rent control petition, it will not fall under the "defect" or "error" contemplated under Section 23(1) (j) of the Act. It follows that if the matters sought to be incorporated by way of amendment, would not come under "error" or "omission", such amendment cannot be allowed, in the Rent Control Petition, in exercise of the inherent powers under Section 151 or Order VI rule 17 of the Code of Civil Procedure.

13. The grounds available for amendment under Order VI rule 17 is more wide than the grounds provided under Section 23(1)(j) of the Act. But, in view of the rigour under Section 23(1)(j) of the Act such grounds available under order VI rule 17 cannot be invariably applied in a Rent Control Petition filed under the Kerala Buildings (Lease and Rent Control) Act, 1965. Thus, there is no illegality or irregularity in the order rejecting the application seeking amendment.

14. The application seeking appointment of the commission was rejected on the ground that the acquisition of a new building and shifting of business to that building are susceptible to proof by production of documents. But, we find that the Commission is sought to be appointed for collecting more evidence to substantiate his rival contentions and the court cannot dictate the manner in which evidence can be adduced. Further, if the respondent herein is conducting business in the other building, that will help the petitioner to substantiate his contention under the first limb of the second proviso to Section 11(3) of the Act also.

15. It is the case of the petitioner that during the pendency of the Rent Control Petition, for trial, the respondent has started the very same business in another place in a large scale manner and now the income derived from that shop is the main source of income for his livelihood. It appears that the Commission was sought to be appointed to explain the ground already made in the Original Petition itself. Therefore, we find that the Commission application can be allowed to collect more evidence, so as to prove the petitioner's contention that the respondent is depending for his livelihood mainly on the income derived from the newly started shop.

16. In the above view, Ext.P8 order is set aside and I.A.No.2013 of 2013 in R.C.P. No.29 of 2011 is allowed. The Rent Control Court shall depute a Commission to ascertain the matters sought to be ascertained in the said application. The parties are allowed to file work memo also. This O.P.(R.C.) is allowed in part. However, this judgment will not stand in the way of filing fresh Rent Control Petition under the new ground.