
(2003) 12 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 28941 of 1999

South Indian Bank Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 16-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 33, 33(1), 33(2), 34

Citation : (2004) 2 ILR (Ker) 401 : (2004) 3 KLT 37

Hon'ble Judges : Jawahar Lal Gupta, C.J.; K. Padmanabhan Nair, J

Bench : Division Bench

Advocate : K. Prabhakaran and Jose Thettayil, for the Appellant; K. Padmanabhan and George Mecheril and P.I. Davis, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Padmanabhan Nair, J.—Is an order passed by the Rent Controller impounding an instrument produced before him in a proceedings under the Kerala Buildings (Lease and Rent Control) Act one passed under the Rent Control Act or under the Stamp Act? This is the short question that arises for consideration in this Original Petition.

2. The petitioner/landlord in R.C.P. No. 28 of 1994 on the file of the Rent Control Court, Trichur, is the petitioner in this Original Petition. The Original Petition is filed for quashing Ext.P3 order passed by the Rent Control Court on 17th July, 1999 directing the petitioner to pay stamp duty and penalty on two letters produced before it holding that both the letters together constitute a lease agreement.

3. The petitioner is a Scheduled Bank having its registered office at Trichur. It is having branches at various places including one at Trichur which is known as the Main Branch, Trichur. The petitioner is the owner of a building situated in the Trichur Corporation. Three rooms in that building were let out to three tenants.

The petitioner-Bank filed three Original Petitions u/s 11(3) of the Rent Control Act for eviction of the three tenants on the ground of bona fide need of own occupation. The three Original Petitions were consolidated and the trial of cases had commenced.

4. The petitioner-Bank is occupying the first floor of a building bearing Door No. 28/631 of Thrissur Corporation owned by Smt. P.K. Radha and two others. According to the Bank, it intends to surrender possession of that building to its landlords and to shift the business now conducted in that building also to the petition scheduled buildings. Smt. P.K. Radha was examined as PW.3. A letter written by the Bank to PW.3 and another letter written by PW.3 to the Bank were tendered in evidence. The third respondent objected to the marking of those two letters in evidence. It was contended that both these documents together will constitute an agreement of lease and as such the same is chargeable to stamp duty as provided under Article 33(ii) of the Kerala Stamp Act, 1959. It was further contended that since the document is not sufficiently stamped it is inadmissible in evidence. The petitioner contended that the two letters together will not satisfy the conditions of a lease and one cannot be considered as a counter part of the other and hence the instrument is not chargeable to stamp duty.

5. The Rent Control Court found that both the letters together constitute an agreement of lease and hence chargeable with duty and the document was insufficiently stamped. The petitioner was directed to pay stamp duty of Rs. 1,20,231 and penalty. The petitioner-Bank has filed this Original Petition challenging that order.

6. The Counsel appearing for the petitioner has argued that though the order happened to be passed in a Rent Control Proceedings the same was passed u/s 33 of the Stamp Act and hence in substance the order is one passed under the Stamp Act. It is argued that the letters sought to be proved were produced for the sole purpose of proving that the petitioner-Bank is in occupation of a building belonging to PW.3 and others. Neither the jural relationship between the Bank and PW.3 nor the question of rent are issues germane to the proceedings and hence the same cannot be treated as an order passed under the Rent Control Act; it is argued.

7. Sections 33 to 46 of Chapter IV of the Stamp Act deal with instruments not duly stamped. Section 33(1) reads as follows:

"Examination and impounding of instruments.- (1) Every person having by law or consent of parties authority to receive, evidence and every person in charge of a public office, except an Officer of Police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same."

(2).....

(3).....

So to attract the provisions of Section 33(1) of the Stamp Act, the document must be produced before a person having by law or consent of parties authority to receive evidence. It is also necessary that person must satisfy himself that such an instrument is chargeable with stamp duty. Sub-section (2) of Section 33 prescribes that such person shall examine every instrument in order to ascertain whether it is duly stamped or not. So the duty cast upon such a person is to impound a document which is produced or coming before him during the course of a proceedings. The provisions of Section 33(2) of the Stamp Act are applied only to find out whether the instrument is duly stamped. Section 34 of the Act enjoins that an instrument not duly stamped is inadmissible in evidence. Section 35 of the Act provides that if an instrument is admitted in evidence such admission shall not, except as provided u/s 59, be called in question at any stage of the suit or proceedings.

8. Sections 54 to 59 in Chapter VI of the Stamp Act, deal with reference and revision regarding the amount of duty payable on an instrument. A reading of Sections 54 to 59 makes it clear that the remedies provided under those sections are available to the Collector, Government, such other authorities specified by the Government and the Court. The parties to the proceedings are not entitled to invoke the remedies provided under Sections 54 to 59 of the Stamp Act. u/s 38 of the Act, the Collector is given power to refund the whole or portion of the penalty. A person who is ordered to pay the penalty can approach the Government or such other authority as may be specified by the Government by filing a petition claiming refund of such penalty wholly or in part u/s 44 of the Stamp Act. Such petition is to be filed within one year. But none of the authorities mentioned in the above said section are competent to decide whether the document is chargeable to stamp duty or not.

9. The jurisdiction of the Rent Control Court to decide the question of stamp duty and penalty conferred by the proviso to Section 34 of the Act is only incidental to the reception of a document tendered by a person in evidence. If the document is admitted in evidence without objection, thereafter no party to the proceedings can question the admissibility of that document in evidence.

10. In this case, the document happened to be produced before the Rent Controller only because of the pendency of the Rent Control proceedings. In view of the provisions contained in Section 33 (1) and (2) of the Stamp Act, the Rent Controller is bound to consider and decide whether a document produced before the Court is sufficiently stamped or not. If the document is chargeable to stamp duty and not sufficiently stamped, he is bound to impound the same. Such a document is inadmissible in evidence also. The admissibility of the document is decided with reference to the provisions of the Stamp Act. But that order is an order passed at the time of recording evidence in a Rent Control proceedings and not in any independent proceedings under the provisions of the Stamp Act. Still further Section 33 of the Stamp Act does not contemplate an independent

proceeding at all. So there is absolutely no merit in the contention raised that the impugned order is not an order passed under the provisions of the Rent Control Act, but one passed under the Stamp Act.

11. The learned Counsel appearing for the petitioner has argued that the view taken by the learned Single Judge that the order is appealable is not correct. It is argued that the order challenged cannot be considered as an order from which an appeal u/s 18 lies. Section 18 of the Rent Control Act reads as follows:

"18. Appeal.-- (1) (a) The Government may, by general or special order notified in the Gazette, confer on such officers and authorities not below the rank of a Subordinate Judge the powers of appellate authorities for the purpose of this Act in such areas or in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the thirty days aforesaid, the time taken to obtain a certified copy of the order appealed against shall be excluded."

It is well-settled position of law that no appeal lies from an interlocutory order of procedural nature. The appeal is maintainable only if such orders affect the rights or liabilities of the parties. The procedural orders or those which do not determine the rights or liabilities of the parties are not appealable. The orders which virtually put an end to the proceedings or make it practically impossible for the affected party to get effective relief to set up or substantiate a defence alone are rendered appealable vide *Sumathi v. Devesan* (1991 (1) KLT 453). In *Charulatha v. Manju* (1994 (1) KLT 133) it was held that the orders which are necessary for the proper prosecution of the litigation and pertaining to matters merely of procedure or evidence or steps in the proceedings are not appealable.

12. The petitioner-Bank filed the Original Petition for eviction of the third respondent from the building let out to him on the ground of bona fide need of own occupation. The specific case put forward by the petitioner-Bank is that it is occupying a building belonging to PW.3 and others and it intends to surrender possession of that building to its landlords and occupy the building owned by it and now let out to the third respondent and other tenants. PW.3 was examined for the sole purpose of proving that the need put forward by the petitioner is genuine and bonafide. The jural relationship between the petitioner and PW.3 and the quantum of rent payable to PW.3 are not essential to resolve the dispute which arises for consideration in this proceedings. Even if the petitioner fails to prove the jural relationship between the Bank and PW.3 still it may get an effective relief. So the impugned order is not one which determines or decides the rights or liabilities of the petitioner-Bank and the third respondent tenant or it puts an end to the proceedings. So we find it difficult to agree with the view taken by the learned Single Judge that the order under challenge is an appealable one.

13. In *Sanjeevi v. State of Kerala* (1994 (2) KLT 127), a Division Bench of this Court has held that whether a petition under Article 226 is entertainable or not despite the existence of alternative remedy will depend upon the facts of each case. It was further held that the existence of an alternate remedy does not take away the jurisdiction under Article 226 of the Constitution.

14. Though the High Court will not permit the extraordinary jurisdiction to be converted into a civil Court under the ordinary law, in appropriate cases to do justice between the parties this Court shall invoke the powers conferred on it under Article 226 of the Constitution. In *Alicekutty v. Kadambazhipuram Grama Panchayat* (1996 (2) KLT 203) a Division Bench of this Court following the principle laid down on an earlier Division Bench decision rendered in *Sreekanta Bhasi v. University of Kerala* (1996 (1) KLT 626) had held that in the case of patent illegalities and lack of jurisdiction, this Court would exercise its jurisdiction under Article 226 of the Constitution and will not relegate the parties to the alternate remedies.

15. In *Agricultural Income Tax and Sales Tax Officer v. Tata Tea Ltd.* (2002 (2) KLT 433) it was held that it is not just and proper to dismiss a petition under Article 226 of the Constitution after lapse of considerable time on the ground that the petitioner has got an equally efficacious alternate remedy.

16. The Rent Control Proceedings were initiated in the year 1994. This Original Petition was filed on November 18, 1999. In view of the peculiar facts and circumstances of the case, we are of the considered view that it is not just and proper to dismiss the Original Petition on the ground that the petitioner has got an alternate remedy.

17. Now we shall consider whether the petitioner has shown any sufficient ground for the exercise of extraordinary powers conferred on this Court under Articles 226 and 227 of the Constitution of India, Interpretation of terms of an instrument is a pure question of law. According to the Bank it occupies the building belonging to the PW.3. It intends to surrender that building to its owner and occupy its own building. PW. 3 was examined to show that the Bank is occupying the building belonging to PW.3, as a tenant. It produced a communication addressed to it by PW.3 and others and also took steps for production of a letter written by the petitioner Bank to PW.3. Ext.P1 is the letter written by the Bank to PW3 on 26th October, 1995. In Ext.P1 letter it was stated that the Bank had offered to take a building belonging to PW.3 and others for a monthly rent of Rs. 40,077. It was further stated that the Bank will have an option to continue the leasehold premises for another five years with enhancement in the rate of rent to the extent of 25 per cent over and above the existing rent. Ext.P2 is a letter written by PW.3 and others on the same date to the petitioner-Bank. There is absolutely nothing in Exts.P1 and P2 to show that there was an offer and acceptance. It is well accepted principle of law that to form a binding contract, there must be an offer and acceptance. Ext.P1 letter is not a reply to Ext.P2. Likewise, there is nothing in Ext.P2 to show that P2 was

written as a reply to Ext.P1; So at best it can be stated that Exts.P1 and P2 are offer and counter offer. A reading of Ext.P1 shows that the Bank had put forward certain conditions. One of the conditions stipulated in Ext.P1 was that it will have aright to adjust the rent to the loan account sanctioned to Geetha Photo Express from Trichur Branch (West), in case of default. Nowhere in Ext.P2 it is stated that the persons who wrote that letter had agreed for such an adjustment. On the other hand Ext.P2 also contains certain conditions.

18. A reading of Exts.P1 and P2 shows that they are not counter part of a single document. It is neither a lease agreement nor an agreement to enter into a lease. The Rent Controller, without properly construing Exts.P1 and P2, found that these documents form part of a single lease deed. The Rent Controller has made another mistake also. He has found that stamp duty payable is Rs. 1,20,231. In the counter-affidavit filed by respondents 1 and 2, it is admitted that stamp duty actually payable is 12,023.10. So the stamp duty ordered to be paid is illegal. Still further, there is no order impounding the documents as provided u/s 33 of the Act.

19. The finding of the Rent Control Court that Exts.P1 and P2 documents produced in this case are lease deed executed by the petitioner and counter part by PW.3 in favour of the petitioner is illegal and liable to be quashed. We do so.

In the result, the Original Petition is allowed. The order dated 17th July, 1999 passed by the Rent Control Court, Thrissur in R.C.P. No. 28 of 1994 by which it was held that the petitioner is liable to pay stamp duty and penalty is hereby quashed. The Rent Control Court is directed to dispose of the Rent Control proceedings in accordance with law. Parties are directed to suffer their costs.