

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

R.C.Rev..No. 7 of 2015

AGAINST THE JUDGMENT IN RCA 38/2010 of ADDL. RENT CONTROL APPELLATE
AUTHORITY, KOTTAYAM, DATED 17.10.2014

AGAINST THE ORDER IN RCOP 11/2009 of RENT CONTROL COURT, CHANGANACHERRY
DATED 30.10.2010

REVISION PETITIONER/PETITIONER/APPELLANT/PETITIONER:

C.C.CHERIAN,
ROOPA CHERIAN'S (MRS.ROPA JAMINIS)HOUSE
CHIRAMUKHATHUCHERIL, OLD WARD NO.17, NEW WARD NO.19
CHANGANACHERRY MUNICIPALITY, CHANGANACHERY VILLAGE
CHANGANACHERY TALUK, KOTTAYAM DISTRICT.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.DOMSON J.VATTAKUZHAY

RESPONDENT:

K.C.BABU,
S/O.CHAKRAPANY, KOLLAMPARAMBIL, CHAMPAKKULAM VILLAGE
KUTTANADU TALUK
CONDUCTING MEDICAL SHOP & CLINICAL LABORATORY IN ROOM NOS.454
456, OLD WARD NO.8, NEW WARD NO.28
CHANGANACHERRY MUNICIPALITY, CHANGANACHERY VILLAGE
CHANGANACHERY TALUK, KOTTAYAM DISTRICT.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON
15-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

R.C.R.No.7 OF 2015

Dated this the 15th day of January, 2015

ORDER

Antony Dominic, J.

The unsuccessful petitioner in R.C.O.P11/09 on the file of the Rent Control Court, Changanacherry who also lost before the Appellate Court is the revision petitioner.

2. We heard the counsel for the petitioner and considered the submissions made.

3. Facts of the case are that, the petitioner is the landlord of petition schedule shop rooms which were leased out to the respondent tenant. Seeking eviction of the tenant under Section 11 (3) of the Kerala Buildings (Lease & Rent Control) Act (hereinafter referred to as 'the Act' for short), the petitioner filed R.C.O.P.11/09 before the Rent Control Court, Changanacherry. Tenant filed his objections and from the details furnished by the counsel for the petitioner, we find that the petitioner also filed his proof affidavit on 15.6.2010 and was cross examined on 8.10.2010.

4. On 15.10.2010, the petitioner filed I.A.1721/10 where he merely sought substitution of the Section 11(3) with Section 11(8) of

the Act. That amendment was allowed by order dated 28.10.2010. Evidence was completed and the Rent Control Court by its order dated 30th October, 2010 dismissed the petition, on the ground that there was total dearth of pleading substantiating the prayer for eviction under Section 11(8) of the Rent Control Act. This order of the Rent Control Court was challenged before the Appellate Authority by filing RCA 38/2010. The RCA was dismissed by the Appellate Authority by its judgment dated 17th October 2014. This is the background in which this revision is filed.

5. Though the counsel for the petitioner fairly conceded that fact that there were no pleading whatsoever substantiating the ground under Section 11(8) of the Act, relying on the judgments in **Nagubai Ammal and Others v. B.Shama Rao and others [AIR 1956 SC 593]**, **Ram Narain Arora v. Asha Rani and others [1999 (1) SCC 141]** and **Davis v. Sebastian [1999 (3) SCC 225]**, the contention urged by the counsel for the petitioner that since an issue was raised with reference to Section 11(8) of the Act when the parties went to trial knowing the respective cases, it is not open to one of the parties thereafter to contend that there was lack of pleadings. Therefore, according to the learned counsel, the Rent Control Court and the Appellate Authority

have committed gross illegality in non suiting the appellant petitioner on the ground of absence of pleadings.

6. We have considered the submissions made. As we have already stated, petitioner filed R.C.O.P.11/09, seeking eviction under Section 11(3) of the Act. Section 11(3) entitles a landlord to apply to the Rent Control Court for an order directing the tenant to put landlord in possession of the building if he bonafide needs the building for his own occupation or for the occupation by any member of his family dependent on him. The Rent Control petition, a copy of which was made available by the learned counsel for our perusal, shows that the ingredients of this Section are disclosed in the pleadings in the petition. However, Section 11(8), which was later incorporated, provides that 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.

7. Reading of Section 11(8) of the Act, shows that a landlord who is entitled to seek eviction thereunder is one who is occupying a part of that building and his requirement for the remaining part of the building

is for additional accommodation for his personal use. Comparison of Section 11(3) with Section 11(8) of the Act demonstrates that the contents and ingredients of both the Sections are distinct and different. The distinction between these two sections has also been explained by the Apex Court in **Davis v. Sebastian [1999 (3) SCC 225]**. Suffice it to say that R.C.O.P11/09 filed by the petitioner contained the ingredients of Section 11(3) whereas it did not contain any of the fundamental ingredients of Section 11(8) of the Act.

8. In the context of Section 11(3), where an order of eviction was sought for the dependent of a landlord, the Supreme Court has examined the requirement of pleading and proof to sustain the claim for eviction. It was held in **Koyilerian Janaki and others v. Rent Controller (Munsiff), Cannanore and Others [2000(9) SCC 406]** that where an eviction of a tenant is sought by landlord under Section 11(3) of the Act for occupation by any member of his family, the landlord is required to plead and substantiate three ingredients. According to the Supreme Court, the first ingredient is that the person for whose need the premises is required is a member of the landlord's family. The second ingredient is that such member of the family is dependent on the landlord and the third ingredient is that there is a bonafide need. After

explaining these ingredients, the Supreme Court proceeded to hold that in the absence of pleading and proof of anyone of the three ingredients, the petition by a landlord under Section 11(3) would fail. Thereafter referring to the pleadings in the case considered, the Supreme Court held that there was no pleading to the effect that the building was needed for the dependent.

9. This Court had occasion to consider the requirement of pleading and proof in so far as the petitions filed under the Act are concerned in **Ismail v. Kesavan [2004 (2) KLT 56]**. Referring to the earlier judgment, in 1988 2 KLJ 156, a Division Bench of this Court held thus:

“5. In Krishna Iyer v. Parvathy Ammal, 1988 (2) KLJ 156, this Court held that pleadings of the parties form the foundation of their case on which issues are raised, evidence let in and findings arrived at for deciding litigations. Parties are bound by pleadings. A case not set up cannot be allowed to be proved. If evidence is let in outside the pleadings, it cannot normally be looked into. From the pleadings the opposite party must know what is the case he has to answer and prove. On taking the entire circumstances emerged in the case, if the Court feels that no prejudice has been caused to the counter petitioner tenant due to lack of pleadings of the petitioner, it is not proper to deny the relief to the petitioner on the ground that there is no pleading. What emerges is that a landlord may apply to the Rent Control Court for an order of eviction if he bonafide needs the building for his own occupation or the landlord bona fide needs the building for occupation by any member of his family dependent on him. Dependency does not mean

financial dependency, but dependency for the building which belongs to the landlord. In our society generally son, daughter, son-in-law, daughter-in-law, brother, sister etc. are members of the family and would in many cases depend upon the head of the family. The Kerala Rent Control Act does not define the term 'family'. But what constitutes the family in a society depends upon ancestry, birth, blood relations, common lineage, line of descent and the habits and ideas of persons constituting the family. In short its ambit has to be determined with regard to the socio-economic milieu of the parties. But there must be sufficient pleading that they are dependent upon the landlord, so that, in the given case, the tenant could disprove the dependency showing that the landlord or dependent has got his own building in their possession and hence there is no dependency. Though meticulous pleadings may not be insisted upon though landlord has to plead material averments, that is, all the ingredients which are necessary to constitute the grounds for eviction under S.11(3) of which dependency is also material. In other words, the pleadings must be such that essential materials which constitute the ground pleaded must be projected lest it may cause prejudice to the tenant. So far as this case is concerned we are in agreement with the counsel for the tenant that there is lack of pleadings with regard to the dependency of the son.

6. However, we may hasten to add as far as this case is concerned we need not reject the eviction petition for the sole reason that there is no proper pleadings and we need not accept the contention of the tenant that the matter is to be remitted back to the Rent Control Court. This case can be disposed of taking note of the subsequent events. While the matter was pending before the appellate authority the landlord died and the property was enured to the petitioner as per a Will executed by the father. In other words, he is not a dependent now, but the owner and the landlord himself. Consequently lack of pleading would not cause any prejudice to the tenant since the bonafide need has been established.

7. Under such circumstance we are inclined to uphold the order of the Rent Control Court and Appellate Authority

and dismiss the revision. Considering entire facts and circumstances of the case we feel it is only just and proper to grant time to the tenant upto 31.3.2004 for vacating the premises provided he files an undertaking before the Rent Control Court within one month that he would vacate the premises within the aforesaid time and that he would pay arrears of rent if any and also future rent."

10. The issue was again considered by this Court in **Fathima Beevi v. Stella John [2006 (2) KLT 285]**. In that case, a Division Bench of this Court held thus:

" 11. Particulars as may be necessary are to be given and the landlord is required to state the grounds on which the application is made, when the application is under S.11 or 11A of the Act. Therefore, requirement of detailed pleadings are not envisaged but only the grounds which are relevant alone need be stated. Interpretative decisions show that the legal position is undisputable, viz., that in an application for eviction, to the extent relevant, subsequent events to a very great extent become decisive. The cardinal principle is that when an application is filed, the grounds on which eviction is sought are to be clearly pleaded, and objection can be only in a case when materials are attempted to be introduced seeking relief on additional grounds than that was pleaded. That is not the case here."

11. Again in judgment in **Kallullathil Sasidharan v. Kadeesumma and others [2010 (3) KLC 56 (DB)]**, the question came up for consideration and a Division Bench of this Court held thus:

"8. While appreciating the ground urged by the revision petitioner as above, we are afraid that we cannot entertain such arguments. Eventhough meticulous pleadings are not necessary in a rent control petition, Courts are bound to arrive at conclusions based on pleadings of parties and

evidence adduced on both sides. As stated above, there was neither any pleading nor any evidence adduced on behalf of the tenant setting up any reasonable cause for non-use of the building. On the contra, pleadings and evidence were only to the effect that there was no cessation of occupation and the building was put to regular use by the tenant. In exercise of the revisional jurisdiction vested on this Court, we are not at all justified in appreciating any contention which has no basis on pleadings and evidence."

12. Reading of the Supreme Court judgment *Koyilerian Janaki's case (supra)* discloses that the pleading of the landlord should disclose the ingredients of the Section with reference to which the eviction is sought. The three judgments of this Court referred to above also demonstrates that in summary proceedings under the Rent Control Act, though meticulous pleadings are not insisted, the parties are bound to disclose the grounds and the essential factual particulars on the basis of which eviction is sought in the application filed by them. In the pleadings in R.C.O.P.11/09, no grounds or factual averments required to be made for a prayer of eviction under Section 11(8) of the Act are made. If the pleading in the R.C.O.P.11/09 filed by the landlord is therefore appreciated in the light of the principles laid down in the judgments stated above, the view taken by the Rent Control Court and the Appellate Authority cannot be faulted with.

13. In so far as the three judgments relied on by the learned counsel for the petitioner are concerned, in *Nagubai Ammal and Others v. B.Shama Rao and others* [AIR 1956 SC 593] it was held that since the parties went to trial with full knowledge that the question of lis pendens was in issue, they had ample opportunity to adduce their evidence thereon, and fully availed themselves of the same, and that, in such circumstances, the absence of a specific pleading on the question of lis pendens was a mere irregularity, which resulted in no prejudice to them. On this basis, the Apex Court held that thereafter a complaint of absence of pleading cannot be raised. Similar is the dictum laid down in the other two subsequent judgments referred to above. As we understand, these judgments do not lay down any general principle that even if minimum averments regarding factual basis and grounds are not made, a petition can be maintained if evidence on issues unrelated to the case pleaded is adduced. On the other hand, according to us, it only indicates that in a properly constituted lis, if issues are framed and evidence is adduced by both sides, thereafter one party to the lis cannot complain of absence of pleading on the particular issue.

14. In our view, even otherwise these principles cannot be imported to the facts of this case because in so far as this case is

concerned, the amendment inserting Section 11(8) was allowed only by order dated 28.10.2010, which was long after the proof affidavit was filed on 15.6.2010 and the petitioner was cross examined on 8.10.2010. Final order in case was also passed on 30.10.2010. Therefore, even if it is accepted that one of the issues raised was in relation to Section 11(8), since the amendment was allowed only on 28.10.2010, and final order was passed on 30.10.2010, it cannot be argued that parties went to trial knowing the petitioner's case under Section 11(8) of the Act. Therefore, even if the petitioner has adduced any evidence inconsistent into his pleaded case under Section 11(3), that cannot legitimize his case for eviction under Section 11(8) of the Act.

15. In the result, we do not find any error in the view taken by both the Rent Control Court and the Appellate Authority.

Revision petition fails and it is dismissed accordingly.

Sd/-
ANTONY DOMINIC,
Judge

Sd/-
ALEXANDER THOMAS,
Judge

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