

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.1057 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner/respondent in the RC, is directed against the order dated 21.01.2015 of the learned IV Additional Rent Controller at Hyderabad passed in I.A.No.150 of 2015 in R.C.No.183 of 2006 filed for amendment of the counter in the main rent control case.

2. I have heard the submissions of the learned counsel for the revision petitioner. None appeared for the respondents/Government though notices are served. I have perused the material record.

3. The petitioner herein, who is the respondent in the Rent Control case, sought amendment of the counter to take the following additional plea on the aspect of jurisdiction.

“This Hon’ble Court has no jurisdiction to entertain the above R.C. petition under Section 32 (a) of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (Amendment) 2005, as the petition schedule property is belonging to the State Government represented by the petitioners and as such the petitioners are barred seeking eviction of the Respondent from the petition schedule property in view of the aforesaid provision of law of the said Act. Therefore, the petition is deserved to be dismissed on the said ground alone.”

(Reproduced verbatim)

4. The said application was resisted by the Government/landlords by filing a detailed counter denying all the allegations and by *inter alia* contending that the rent control case is pending since the year 2006; and that at a stage when the matter is coming for the evidence of RW1, that is, the petitioner herein, the present petition for amendment of the counter was belatedly filed; and that even without seeking the amendment of the counter, the petitioner, that is, the respondent in the rent control case can submit the legal position and contend that the Court of the learned Rent

Controller lacks jurisdiction to entertain the eviction proceedings; and, hence, the petition is liable to be dismissed.

5. The learned Rent Controller dismissed the application *inter alia* holding that in view of the newly introduced proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the respondent could not have raised the matter before the commencement of the trial. It was also observed in the order impugned that on account of delay also, the amendment cannot be permitted.

5. The learned counsel for the revision petitioner would contend that merely on the ground of delay, the Court below ought not to have refused to permit the amendment of the Counter as sought for, more particularly, when the facts of the case warranted granting of the amendment sought for and when the amendment sought for in regard to the lack of jurisdiction of the Rent Control Court is necessary for the effective adjudication of the controversy involved. He would further submit that at the time when the counter was filed, the counsel for the petitioner could not take the plea in regard to jurisdiction due to inadvertence as he was by then under an anxious and confused state as his cousin went into coma and was hospitalized with multiple injuries after involvement in major accident and that therefore, the existence of the jurisdictional fact viz., 'the matter covered by the proposed amendment could not be raised inspite of due diligence' is sufficiently explained in the affidavit filed in support of the petition and that the trial Court had erroneously dismissed the petition without properly appreciating the facts and the law.

6. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

7. The law is well settled that even though the issue of jurisdiction is not raised in the defence, it is the duty of the court to examine the

jurisdictional issue before adjudicating the *lis* as any adjudication is impermissible unless the Court is conferred with jurisdiction to adjudicate the *lis*. 'It is well settled that essentially the jurisdiction is an authority to decide a given case one way or the other. Further, even though no party has raised objection with regard to jurisdiction of the court, the court has power to determine its own jurisdiction. In other words, in a case where the Court has no jurisdiction; it cannot confer upon it by consent or waiver of the parties.' [*vide* **Foreshore Co-operative Housing Society Limited v. Praveen D. Desai (Dead) through LRs and others**^[1]]. Even in the counter filed on behalf of the Government, it is stated that the legal position can be argued even without seeking the amendment of the Counter. However, if the amendment is granted, in the well considered view of this Court, the Government will have the advantage of meeting the contentions in the amended counter by filing an additional pleading, if necessary and if it so chooses; and such a course would meet the ends of justice.

8. Having regard to the submission now made and the submissions in the affidavit, which are extracted supra, this Court is satisfied that sufficient grounds are made out and the petitioner is able to establish that in spite of due diligence, he could not raise the pleading, which is now being sought to be introduced by way of amendment of the counter. Viewed thus, this Court finds that sufficient case is made out for setting aside the order impugned and permitting the petitioner to amend the counter.

8. **In the result**, the Civil Revision Petition allowed and the order impugned is set aside accordingly. As a sequel to the said finding, the I.A.No.150 of 2014 in R.C.No.183 of 2006 on the file of the IV Additional Rent Controller, Hyderabad is allowed. It is made clear that the petitioner shall make an endeavour to file the amended counter within a period of 25 (twenty five) days from today; and on filing of such amended counter, the learned Rent Controller shall give an opportunity to the Government

to file additional pleading, if any, and make an endeavour to dispose of the RC as expeditiously as possible and preferably within a period of three (03) months from today. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

M.Seetharama Murti, J

19th February, 2016
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Copy by Friday.

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