

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**CIVIL REVISION PETITION No. 3097 OF 2016**

**ORDER:**

This Civil Revision Petition is directed against the order dated 22.06.2016 by which I.A.No. 112 of 2016 filed under Order VI Rule 17 of the Code of Civil Procedure seeking amendment of the memorandum of grounds of appeal so as to raise the ground of lack of jurisdiction on the part of the Rent Controller, has been dismissed.

The respondent herein is the landlord, who filed R.C.C. No. 2 of 2009 in the Court of the Rent Controller-cum-Principal Junior Civil Judge at Kavali for eviction of the petitioner-tenant from the petition schedule property, the admitted rent of which being Rs.2,130/- per month. The said R.C.C. was allowed by the order dated 04.04.2012, against which, the petitioner herein preferred the Appeal, R.C.A. No. 1 of 2012. He filed I.A. No. 112 of 2016 under Order VI Rule 17 of the Code of Civil Procedure therein, seeking amendment of the memorandum of grounds of appeal for adding the ground of lack of jurisdiction of the Rent Controller. That Application was dismissed by the order impugned in this Revision.

Learned counsel for the petitioner challenges the order under revision mainly on the ground that the learned Rent Controller does not have pecuniary jurisdiction to entertain the R.C.C. According to the learned counsel, the petitioner, by inadvertence, could not raise that ground before the learned Rent Controller and in the memorandum of grounds of Appeal. As it is a well-settled law that the ground of lack of inherent jurisdiction can be raised at any point of time, the dismissal of I.A. filed under Order VI Rule 17 of the Code by the Court below is bad and is liable to be set aside, is what the learned counsel contends.

On the other hand, the learned counsel appearing for the

respondent - land lord submits that the admitted rent Rs.2,130/- consists of two components; one for occupying the premises and the other for providing certain amenities and if the rent is divided into those two components, the question of lack of jurisdiction on the part of the Rent Controller does not arise. Placing reliance upon the judgment rendered in *Madhavan Nayar v. Bathina Hanumantha Rao*<sup>[1]</sup>, the learned counsel contends that the petitioner ought to have raised the plea of jurisdiction in the Court of first instance, but not at this stage. He further contends that knowing fully well that the provisions under Order VI Rule 17 of the Code bars amendment of the grounds of appeal, the petitioner initiated the present Revision only to protract the proceedings, after the enquiry has been commenced.

Having considered the rival submissions and in the facts and circumstances of the case, this Court is of the opinion that the order of the Court below does not call for any interference, inasmuch as, as rightly observed by the learned senior Civil Judge, Order VI Rule 17 of the Code does not provide for amendment of the grounds of appeal. A combined reading of Order VI Rules 17 and 1 clearly makes one understand that the Court may at any stage of the proceedings allow either party to amend either plaint or written statement, but not the grounds of appeal or memorandum of appeal, which is neither a plaint nor a written statement.

Further Section 21(2) of the Code clearly mandates that no objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such an objection has been raised in the Court of first instance at the earliest possible opportunity and in all cases, where issues are settled, at or before such settlement and unless there has been a consequent failure of justice.

In the present case, admittedly, the petitioner had failed to take the ground in relation to lack of jurisdiction of the Rent Controller in

R.C.C. It is also an admitted fact that even at the time of filing the Appeal in 2012, such ground has not been raised. Therefore, the petitioner is not entitled to take such a ground now, at this stage, that too when the R.C.A. has been reserved for orders.

Further, this Court in the judgment rendered in *Madhavan Nayar's case* (cited supra), has also held to the following effect:

“ The learned Rent Controller has committed one more serious legal error by touching the question of jurisdiction when the grounds of eviction were dealt with first and then the question of jurisdiction was dealt with. Presuming that such an objection had been raised by the present petitioner as a tenant, normally there would have been an issue or point for determination to be tried as a preliminary question following the principle from Order 14(3) of CPC. Without such a legal procedure, the learned Rent Controller inspired by his own thinking took up the question of jurisdiction and decided the matter which was set aside by the learned Subordinate Judge without due regard to procedure of law. One more legal infirmity apparent in the order of the learned Rent Controller is that when he came to the conclusion that there was no pecuniary jurisdiction for him to try the matter, he ought to have returned the plaint petition for presenting before the proper Court by virtue of Order 7 Rule 10 CPC. Instead the petition was dismissed under the circumstances.

SECTION 21(2) of CPC makes it obligatory and mandatory that objection as to pecuniary jurisdiction should be taken in the Court of the first instance to otherwise they shall not be allowed to be taken in the appellate Court. Such an objection should also be taken up before the settlement of issues. Unless there is failure of justice, it cannot be cured.

In the considered opinion of this Court, both of them transgressed their powers and jurisdiction in dealing with the matter in accordance with the fundamental juridical principles and therefore, it is a fit case to exercise the powers of this Court under Section 115 CPC to set at naught both the orders and remit back the matter to the learned Rent Controller-cum-Principal District Munsif, Ongole for disposal according to law where the parties will take appropriate steps, if they are so advised, so that the Court can dispose of the matter in accordance with law.”

In view of the abovesaid ratio and also in view of the fact that

the matter has reached the fag-end stage, I am in complete agreement with the view taken by the learned Senior Civil Judge and hence, interference of this Court in exercise of the revisional powers is not at all called for. Therefore, the Civil Revision Petition is liable to be dismissed and it is accordingly, dismissed. No costs.

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**CHALLA KODANDA RAM, J**

19<sup>th</sup> August 2016

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[\[1\]](#) 1999(4) ALT 60