

Shaju Vs. Ravindran

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Court : Kerala

Decided On : Oct-06-2015

Judge : P.N. Ravindran & Babu Mathew P. Joseph

Appeal No. : O.P.(RC) No. 125 of 2015

Appellant : Shaju

Respondent : Ravindran

Advocate for Pet/Ap. : Shri. Binoy Ram

Judgement :

P.N. Ravindran, J.

1. The petitioner is the tenant in R.C.P.No.168 of 2013 on the file of the Rent Control Court, Thrissur. The respondent/landlord has in R.C.P.No.168 of 2013, prayed for an order evicting the tenant under section 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965, hereinafter referred to as 'the Act' for short. After filing a counter statement resisting the prayer for eviction, the tenant filed I.A.No.15910 of 2015 in R.C.P.No.168 of 2013 under Order XXXIX Rule 1 read with section 151 of the Code of Civil Procedure and section 13 of the Act, praying for an order directing the landlord to remove the obstruction caused by him and to restore the access to the common toilet and the area where the electricity meter and the main switch are fixed. The tenant had, in the affidavit filed in support of the

said application, averred that the landlord has, with a view to cut off or withhold the amenities enjoyed by him, erected a grill and thereby blocked the access to the common toilet which was available to all the tenants of the building and the area where the electricity meter and the main switch are fixed and that it amounts to withholding the amenities enjoyed by him.

2. The landlord resisted I.A.No.15910 of 2015 by filing Ext.P5 objections. The landlord denied and disputed the averments in the affidavit filed by the tenant and contended that there is no common bathroom in existence in the petition schedule building, that he has only erected a grill to provide security to the electricity meter and the main switch and that as and when required, the access can be restored and for that purpose he has appointed one of his employees. He also contended that the remedy of the tenant, if he is aggrieved thereby, is to move the Accommodation Controller and not the rent control court. The rent control court considered the rival contentions and held that the remedy of the tenant lies before the Accommodation Controller. I.A. No.15910 of 2015 accordingly was dismissed by Ext.P6 order passed on 17.9.2015. The tenant has, aggrieved thereby, filed this original petition under Article 227 of the Constitution of India.

3. We heard Shri Binoy Ram, learned counsel for the petitioner. We have also gone through the pleadings and the materials on record. The rent control court has, by the impugned order, dismissed the application filed by the tenant for restoration of the amenities enjoyed by him, on the ground that he should move the Accommodation Controller. Section 13 of the Act provides that the landlord shall not, without just or sufficient cause, cut off or withhold any of the amenities enjoyed by the tenant. If the said stipulation is contravened, the tenant is entitled to move the Accommodation Controller complaining of such contravention. The Accommodation Controller is empowered to inspect the building and even pass interim orders without notice to the landlord, directing the landlord to restore the amenities. The Accommodation Controller is also empowered to direct either of the parties to pay compensation to the other. The tenant can be asked to pay compensation to the landlord if the application is made frivolously and vexatiously and the landlord can be asked to pay compensation to the tenant if the landlord has cut off or withheld the amenities without just or sufficient cause. Section 13 of

the Act also provides for an appeal from the order passed by the Accommodation Controller, to the District Collector. Section 13 of the Act thus creates a special forum where a tenant who is aggrieved by the action of the landlord in withholding or cutting off the amenities can seek appropriate reliefs. Section 13 of the Act does not stipulate that it will apply only in cases where the parties are not litigating before the rent control court. There is no indication whatsoever in section 13 of the Act that the rent control court can pass an order directing the landlord to restore the amenities. In this context, it is relevant to note that where the landlord does not attend to the periodical maintenance or carry out the necessary repairs to the building and the amenities thereto, within a reasonable time after notice in that regard is given by the tenant, the tenant is entitled to move the Accommodation Controller under section 17(2) of the Act for permission to carry out the repairs. The expenses incurred by the tenant in that regard together with interest can be deducted from the rent payable by the tenant. Neither in section 13 nor in section 17 of the Act it is provided that the jurisdiction of the Accommodation Controller cannot be invoked where a petition for eviction filed by the landlord or a petition for fixation of fair rent or appeals therefrom are pending.

4. Section 13 of the Act is a complete code by itself and in our opinion excludes the jurisdiction of the rent control court or the rent control appellate authority to entertain disputes regarding cutting off or withholding of the amenities. In such eventualities, the aggrieved tenant will have to necessarily invoke the jurisdiction of the Accommodation Controller and if he or she is aggrieved by the order passed by the Accommodation Controller, to move the appellate authority, viz. the District Collector. The tenant cannot, in our opinion, move the rent control court or the rent control appellate authority in that regard. Though section 13 of the Act does not expressly bar the jurisdiction of the rent control court, as it creates a special forum and provides an alternate remedy and an appellate remedy which are sufficient and adequate, the jurisdiction of the rent control court/rent control appellate authority to interfere in such matters stands impliedly barred. Therefore, a tenant who is aggrieved by the action of the landlord in cutting off or withholding the amenities enjoyed by him or her, cannot invoke the jurisdiction of the rent control court or the appellate authority and will have to move the Accommodation Controller for redressal of his or her grievances in that regard.

For the reasons stated above, we hold that there is no merit in the instant original petition. It fails and is accordingly dismissed, but without prejudice to the right of the petitioner/tenant to move the Accommodation Controller for appropriate reliefs.

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