Devaki Vs. Kalyani

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Court : Karnataka

Decided On : Jun-21-1984

Reported in : AIR1985Kant70; ILR1984KAR349; 1984(2)KarLJ162

Judge : M.S. Nesargi and ;Murlidhar Rao, JJ.

Acts : Karnataka Rent Control Act, 1961 - Sections 50, 50(1) and 50(2); High Court of Karnataka Rules, 1959 - Rules 6, 6(1) and 6(2)

Appeal No. : Civil Revn. Petn. No. 3571 of 1982

Appellant : Devaki

Respondent : Kalyani

Advocate for Def. : K. Krishna Bhat, Adv.

Advocate for Pet/Ap. : P. Ganapathy Bhat, Adv.

Judgement :

Nesargi, J.

1. This petition has come up for final hearing before this Bench on an order of reference dated 10-6-1983.

2. The petitioner has challenged the order dated 4-8-1982 passed by the District Judge, Dakshina Kannada. Mangalore on I. A. No. III in C.R.P. 109 of 1980. I. A.

No. III had been filed by the petitioner under S. 5 of the Limitation Act, 1963 (hereinafter referred to as the Limitation Act), requesting the Court to condone the delay in filing the revision petition before the District Judge.

3. On facts it is seen that the revision petition had been filed on 17-9-1980 beyond 90 days from the date of the impugned order dated 26-8-1978 passed by the Principal Munsiff, Mangalore in H.R.C. No. 267 of 1975 allowing the petition for eviction of the present petitioner. I.A. No. III was opposed by the landlady respondent on merits. The District Judge held an enquiry on I.A. No. III by recording evidence also. Ultimately he concluded that in view of the decision of this Court in Karmaswamy P. v. Shankaranarayana Shetty reported in : AIR1977 Kant72 , an application under S. 5 of the Lim. Act in the revision petition under S.50(2) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as the Act) ought to have been filed within 90 days from the date of the passing of the order as that would be the period prescribed under the Limitation Act. Further on merits, i.e., on the material available during the enquiry, he held that the petitioner had failed to show sufficient cause to condone the delay as required by S. 5 of the Limitation Act and also as required by R. 6(2) of Chapter VII of the High Court of Karnataka Rules, 1959 (hereinafter referred to as the Karnataka High Court Rules).

4. The question that has arisen is: whether period of limitation has been prescribed to apply for revision of an order under S. 50 of the Act and if so, whether that period is 90 days?

5. Section 50 of the Act consists of two parts. Sub-sec. (1) provides for exercise of revisional powers by the High Court while sub-sec.(2) provides for exercise of revisional, powers by the District Judge. There is no provision in the Act or the Rules which are called Karnataka Rent Control Rules framed under the Act, prescribing a period of limitation for filing an application to either the High Court or to the District Judge requesting that a particular order may be revised in exercise of the revisional powers under S. 50 of the Act, Except Art.131 and 137 in the Schedule to the Limitation Act there is no other provision in this regard. Art.131 provides the period of Limitation for filing an application requesting a Court to

exercise powers of revision under the Code of Civil Procedure or the Code of Criminal Procedure. It is evident that Art. 131 of the Limitation Act would be inapplicable to ail application made requesting to exercise revisional powers under S. 50 of the Act.Art. 137 provides for a period of limitation to any other application for which no period of limitation is prescribed in the Schedule. particularly for revision. This is a residuary article. The commencement of time from which period is made to run is stated as 'when the right to apply accrues'. There must be a right in party to make such an application and then only Article 137 of the Schedule to the Limitation Act would be attracted. Section 50 does not vest any such right in the party. Therefore Article 137 also is not applicable.

6. In the decision in Kannaswaniy's case reported in : AIR1977 Kant72 , the learned single Judge has applied R. 6 under Chapter VII of the Karnataka High Court Rules. R. 6(l) and (2) of the Karnataka High, Court Rules read as follows :

'6(1). Petitions to revise the order or proceedings of any Court for which no period of limitation is prescribed by any law applicable to it shall be presented to the High Court within a period of 90 (ninety) days from the date of the order complained of in computing which period, provisions of S. 12 of the Indian Limitation Act shall apply.

(2) Such petitions presented after the period prescribed by sub-rule (1) shall be accompanied by an application supported by an affidavit setting forth the grounds on which the petitioner relies to get the delay condoned and the petition entertained by Court. The Court may, if it is satisfied that the petitioner was prevented by sufficient cause from presenting the petition within the period prescribed, excuse the delay and entertain the petition with or without issuing the notice of the application to the respondent.'

After noticing this R. 6 the Court held that the period prescribed for filing a revision petition under S. 50(1) of the Act is 90 days from the date of the order and under sub-rule(2) of R. 6 of the Karnataka High Court Rules there is power to condone the delay.

7. In the case on hand, the learned District Judge has come to the conclusion, that the period of limitation prescribed for filing it revision petition in the District Court also. under Sec. 50(2) of the Act, is 90 days. He has based this conclusion on the decision in Kannaswamy's case : AIR1977 Kant72 . He has failed to notice that the said decision dealt with the revision in the High Court under S. 50(1) of the Act and had nothing to do with the revision petition under S. 50(2) of the Act. Rule 6 of the Karnataka High Court Rules, particularly sub-rule (2) uses the words 'The Court'. The District Judge appears to have considered that the words 'The Court' include the District Court also. In this connection, on referring to the head note appearing on page 266 of the Kant LJ 1976(2), he found his reasoning justifiable. That cannot at all be so, in view of the definition under R. l(a) of the same chapter. R. l(a) of the aforesaid Rules reads as follows :

1. In these Rules, unless the context indicates the contrary,

(a) 'High Court', 'This Court' or 'The Court' means the High Court of Karnataka established under the Constitution of India and in accordance with the provisions of sub-sec. (2) of S. 49 of the States Reorganisation Act, 1956 (Central Act 37 of 1956) for the State of Karnataka constituted under the said Act.'

(b) Therefore it is to be held that the conclusion of the District Judge on this aspect of the matter cannot be sustained.

8. As already held the learned District Judge has gone on merits for condonation of delay after holding an enquiry and recording evidence. This takes us to the question as to whether, in regard to the revision petition filed under S. 50(2) of the Act, any period of limitation is prescribed. That incidentally covers the question as to whether any period of limitation is prescribed for revision petitions filed under S. 50(1),of the Act also.

9. We have already referred to Kannaswamy's case reported in : AIR1977 Kant72 . The order of reference discloses that a contrary view has been taken by another single Judge of this Court in the decision in Obalappa v. Alamelamma. reported in (1983) 1 Kant LJ 193 and therefore reference to a division bench became necessary.

10. It has been held in Obalappa's case that in regard to revision petition under S. 50 whether it be under sub-sec. (1) or (2). no period of limitation has been prescribed and a party is enabled to file a revision petition at any time. Rule 6 of the Karnataka High Court Rules has been considered in para 10 of the judgment. The learned single Judge has held that in view of the decision in Prabhunarayan v. A. K. Srivatsava. : [1975]3SCR552 , rules framed under Art. 225 of the Constitution of India cannot make any substantive law. He has also followed the principle laid down by a Division Bench of this Court in Shivarudrappa Girimallappa v. Kapurchand Meghaji (1965) 1 Mys LJ 158 : (AIR 1965 Mys 76). wherein it has been held that the Rules made by the High Court would cease to have any force if the legislature makes any rule or any law on the subject. Thereafter the learned Judge has proceeded to conclude that even under S. 50(1) of the Act there is no prescribed period of limitation. In other words. the learned single Judge has taken the view. though not expressed in so many words, that R. 6 of the Karnataka High Court Rules would not have any force of law. We are not inclined to agree with this reasoning expressed by the learned single Ridge in view of the following reasons, so far it relates to R.6 of the Karnataka High Court Rules :

The Supreme Court has in Prabhunarayan's case : [1975]3SCR552 considered R.9 of the Madhya Pradesh High Court Rules, regarding Election Petitions framed under Art. 225 of the Constitution of India. Those Rules were not framed in exercise of the powers of the Madhya Pradesh High Court under S. 122 of the C.P.C. The High Court of Karnataka Rules, 1959 as already referred, have been framed in exercise of the powers of the High Court under Art. 225 of the Constitution of India and S. 54 of the States Reorganisation Act. 1956 (Central Act 37 of 1956) read with Ss. 122 and 129 of the C.P.C. 1908 and S. 19 of the Karnataka High Court Act (I of 1884).

What is to be specifically noted is that whether the powers of this Court is available under S. 122 of the C.P.C. have also been exercised in framing these rules. S. 122 of the C.P.C. reads as follows :

'122. High Courts not being the Court of a Judicial Commissioner may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence and may by such rules annul alter or add to all or any of the Rules in the First Schedule.' (Underlining is ours)

This Section vests the High Court with ample powers to make rules to regulate its own procedure and the procedure of the Courts subordinate to it. The reasoning of his Lordship in para 10 appears to proceed on the principle laid down by the Supreme Court in Prabhunarayan's case : [1975]3SCR552 , that rules made under Art. 225 of the Constitution cannot make substantive law. Rule 6 of the Karnataka High Court Rules would not be of much assistance. Further implied reasoning as we understand is, that R. 6 is substantive law. It is plain that R. 6(l) of the High Court Rules prescribes period of limitation for presentation of a revision petition under S.50(l) of the Act; while R. 6(2) empowers this Court to condone any delay occurring in filing the revision petition, when the petitioner satisfies the Court that he was prevented by sufficient cause from presenting the petition within the period prescribed. Therefore, it is plain that R. 6 deals with prescribing the period of limitation and also provides that, delay in filing a revision petition under S.50(l) of the Act, beyond the period of limitation, may be condoned by the High Court. It cannot be disputed that a provision of law, regarding limitation or prescribing the period of limitation is not substantive law but procedural law. A Full Bench of the Allahabad High Court has in the decision in Bankey Lal v. Babu, : AIR1953 All747 , laid down as follows :

'Rules of limitation are, 'prima facie' rules of procedure and do not create any rights in favour of any person nor do they define or create causes of action but simply prescribe that the remedy could be exercised only up to a certain period and not subsequently.'

This Court has, in the decision in Gokul Singh City Municipality, Basavakalyan (Bidar Dist.), (1968) 2 Mys 259, held as follows:

'The law relating to limitation is a law governing procedure and the law of limitation applicable is the law in force on the date of the institution of the proceeding. This

principle is not confined to suits but applies to all types of proceedings.'

The Supreme Court has, in the decision in Beepathuma v. Velasari Shankarnairayana Kadambodithaya, : [1964]5SCR836 , laid down as follows:

'There is no doubt that the law of limitation is a procedural law and the provisions existing on the date of the suit apply to it.'

Therefore, the reasoning found in para 10 of the decision in Obalappa's case (1983) 1 Kant LJ 193) based on R. 6 of the High Court Rule being substantive law, on the impression that the Rules having been framed in exercise of the powers of this Court under Art. 225 of the Constitution, cannot be sustained. This Court has ample powers to frame such a rule particularly in exercise of its power under S. 122 of the C.P.C. Hence R. 6 of the Karnataka High Court Rules does not attract the principleq laid down by the Supreme Court in Prabhunarayan's case : [1975]3SCR552 . The other reasoning found in para 10. as already noted, is based on the principle propounded in Shivarudrappa Girimallappa's case. that the rules made by the High Court would cease to have any force if the legislature makes any rule or law on the subject. This reasoning cannot be applicable on the question of law for consideration because the legislature has not taken a step in that regard. Hence, we have no hesitation in concluding that so far as the revision petition under S. 50(1) of the Act is concerned, the prescribed period of limitation for a party to file an application requesting this Court to exercise its revisional power is found in R. 6(l) of the Rules and if there is any delay the provisions of R. 6(2) would apply.

11. Now it is to be seen whether there is any period of limitation prescribed for filing an application by a party requesting the District Judge to exercise his revisional powers available to him under S. 50(2) of the Act. We have already pointed out that there is absence of such provision. Though this Court has power under S. 122 of the C.P.C. to frame a rule to that effect also, in view of the reasons given in the preceding paragraphs, no such rule has been framed either in the High Court of Karnataka Rules or in the Karnataka Civil Rules of Practice. Therefore we reiterate that there is absence of such provision except the rule referred to above. When that is so, the District Judge would not be competent to

reject the application filed by a party complaining against the order failing in the ambit of S. 50(2) of the Act at any time after the date of the order. As that party would be under no obligation to explain the delay, the request that the Court be pleased to condone the delay would be unnecessary. We agree with that part of the reasoning in Obalappa's case, wherein the contention put forth on the basis of S. 29(2) of the 1963 Limitation Act has been rejected. It has been rightly rejected on the basis that it applies only to a case where a local law prescribes a period of limitation different from the period prescribed by the Schedule to the Limitation Act of 1963. The local statute viz., the Rent Control Act does not prescribe the period of limitation which is other than the one prescribed in the provisions of the Limitation Act, so as to substitute the period prescribed by the statute within the definition available in S. 2(j) of the Limitation Act and incorporate the same in the provisions of S. 3 of the Limitation Act, 1963. The other part of the reasoning in the said decision that there would be discretion in the Court to deal with the question of delay on the principle of laches, does not appeal to us for the simple reason that that principle cannot be invoked by the District Judge acting under S. 50(2) of the Act to reject a petition at an initial stage. In this connection it is to be remembered that there is no provision empowering a District Judge to post such applications under S.50(2) of the Act for admission. that is similar to the provision under 0. 41. R.11 of the C.P.C. The District Judge would have, in view of the decided position in law, to enter into merits of the matter and reach a conclusion on proper reasoning.

12. The reasons contained in the foregoing paragraphs take us to the following conclusions

(1) A party filing an application to this Court under S. 50(1) of the Act has to do so within the prescribed period of limitation as found in R. 6 of the Karnataka High Court Rules, 1959.

(2)There is no prescribed period of limitation for a party filing an application under S. 50(2) of the Act.

(3) The High Court has power, particularly in view of S. 122 of the C.P.C. to frame a rule similar to R. 6 of the Karnataka High Court Rules prescribing a period of

limitation and the power to condone the delay. if any, in filing an application beyond the prescribed period of limitation for the purpose of filing an application under S. 50(2) of the Act.

13. In this connection, we desire to express as, in our opinion, we would be failing in our duty if we do not observe, that such rule would be framed by the High Court, that is, in regard to S. 50(2) of the Act, as early as possible, to remove the anomaly that will occur into practice because of the period of limitation of 90 days having been prescribed for filing an application under S. 50(l) of the Act and there being no period of limitation for filing an application under S. 50(2) of the Act.

14. We now proceed to the facts of this case :

We have already observed that the petitioner-tenant had filed an application before the District Judge of South Kanara. under S. 50(2) of the Act long after 90 days had elapsed from the date of the order impugned. The petitioner had also filed I.A, No. III under S. 5 of the Limitation Act. When, in law, it is seen that the petitioner could file such an application before the District Judge, Mangalore, at any time, there being no period of limitation prescribed, the District Judge, was, in law, required to go into the merits of the case and dispose of the matter on merits, because S. 5 of the Limitation Act would have no application.

15. Therefore, we allow the revision petition, set aside the impugned order and remit the matter to the Court of the District Judge, Sourth Kanara, Mangalore with a direction that it be re-registered in its original number and disposed of on merits in accordance with law.

16. No order as to costs.

17. Petition allowed.