

Jagdish Pershad Vs. Phoolwati Devi

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Court : Delhi

Decided On : Mar-07-1980

Reported in : 17(1980)DLT446; 1980RLR367

Judge : V.S. Deshpande and; Harish Chandra, JJ.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 25B and 25B(4); Limitation Act, 1908 - Sections 5

Appeal No. : Criminal Revision Appeal No. 165 of 1978

Appellant : Jagdish Pershad

Respondent : Phoolwati Devi

Advocate for Pet/Ap. : Arun Kumar and; R. Gupta, Advs

Judgement :

V.S. Deshpande, J.

(1) The question referred to the Division Bench is whether the Controller has power to extend the period of limitation of 15 days prescribed in the Third Schedule to the [Delhi Rent Control Act, 1958](#) (the Act), for obtaining leave to contest the application for eviction filed by the landlord against the tenant on the ground specified in clause (e) of the proviso to Sub-section (1) of Section 14 or under Section 14A thereof either by invoking Section 5 read with Section 29(2) of

the Limitation Act, 1963 or otherwise. The respondent landlady filed a petition for eviction against the petitioner-tenant under clause (e) of Sub-section (1) of Section 14 of the Act. Such an application is governed by the expeditious procedure laid down in Section 25B of the Act. As required by Section 25B(4) the summons to the tenant was issued in the form Specified in the Third Schedule. The tenant was informed thereby that 'You are hereby summoned to appear before the Controller within fifteen days of the service here of and to obtain the leave of the Controller to contest the application for eviction on the ground aforesaid; in default whereof, the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said premises.' The tenant was served on 31-5-1977, but the application for leave to contest the eviction application was filed on 19-7-1977. The tenant sought the extension of the period of limitation of 15 days prescribed in the Third Schedule on the ground that he had gone to Dehra Dun in the third week of June 1977, to see his brother-in-law, where he fell ill and could not reach Delhi till the evening of 18-7-1977. A medical certificate, dated 17-7-1977 from a doctor of Dehra Dun was filed by the tenant stating that the tenant was under the treatment of that doctor since 27-6-1977 and was advised rest for three weeks. The Additional Controller held that he had no power to extend the period of limitation because the period prescribed by the Third Schedule gives a corresponding right to the landlady that if the tenant does not apply for leave to contest within fifteen days the landlord would have the right to evict the tenant. In a revision petition filed by the tenant before the learned Single Judge, a conflict of judicial authorities as to whether the provisions of the Limitation Act applied to the proceedings before the Controller and whether the Controller had any power to extend the period of limitation prescribed by the Act either under Section 5 of the Limitation Act or otherwise was noted and the case was referred to the Division Bench.

(2) Let us first consider if Section 29(2) of the Limitation Act applies the provisions of Section 5 of the Limitation Act to the application to be made to the Controller by the tenant under the Third Schedule. Section 29(2) is as below: '(2) Where any special or local Law prescribed for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule

and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Section 4 to 24 (inclusive) shall apply in so far as, and to the extent to which, they are not expressly excluded by such special or local law. The application of Section 29(2) of the Limitation Act may be analysed as below: '(1) The Delhi Rent Control Act being a special or local law prescribes for an application for leave to defend a period of 15 days. (2) If the Limitation Act were to apply, then the period of limitation prescribed for an application not otherwise provided for is governed by Article 137 of the Limitation Act and is three years there under. The period of 15 days prescribed by the Third Schedule of the Delhi Rent Control Act can then be said to be different from the Limitation Act. (3) The question then arises whether the language of the Third Schedule read with that of Section 25B of the Delhi Rent 450 Control Act expressly excludes the operation of the Limitation Act to the application to be made under the Third Schedule.'

(3) The basic question is whether the provisions of the Limitation Act and in particular Section 29(2) thereof apply to applications made to a Tribunal or authority which is not a court. This question has been considered and decided by Supreme Court in a series of cases. In *Town Municipal Council, Ashani v. Presiding Officer, Labour Court, Hubli* : (1969)IILLJ651SC) the view expressed was that the provisions of the Limitation Act would apply to an application which was made under the provisions of the Code of Civil Procedure and secondly which was made to a court. In *Nityanand M. Joshi v. Life Insurance Corporation of India*, : (1969)IILLJ711SC , it was doubtful if the first requirement, namely, the application under the Code of Civil Procedure, was all necessary, but the second requirement was held to be necessary, namely, that an application must be to a court before the provisions of the Limitation Act could apply to it. In both these cases the question was whether applications filed under Section 33C(2) of the Industrial Disputes Act, 1947 were governed by the residuary limitation prescribed for an application by Article 137 of the Schedule to the Limitation Act. It is to be noted that the applications were not made to a court and, therefore, no provisions of the Limitation Act could apply to such an application at all including that of Article 137. The question of the construction of Section 29(2) did not arise because of the non-fulfilment of the basic requirement, namely that unless an

application is made to a court the Limitation Act is not attracted at all to it.

(4) In Kerala Stale Electricity Board v. T.P. Kunhaliumma : [1977]1SCR996 , an application under Section 16(3) of the Telegraph Act was resisted on the ground that it was barred by the residuary limitation prescribed for an application by Article 137 of the Schedule to the Limitation Act. The Supreme Court was at pains to point out in paragraph 20 of the judgment that the District Judge under Section 16 of the Telegraph Act acted as a court. Article 137 of the Schedule to the Limitation Act thereforee, applied to a petition filed under the Telegraph Act to the court of the District Judge.

(5) These three decisions of the Supreme Court settle one limited point. It is this. The question of the application of the provisions of the Limitation Act to an application made under a special or local law would not arise unless the said application is made to a court. The converse may not be true. That is to say, it may not be the inflexible rule that whenever an application is made under a special or a local law to a civil court, the provisions of the Limitation Act would necessarily apply to such an application. This is shown by the following decisions.

(6) In Vidyacharan Shukla v. KhubchandBaghel, : [1964]6SCR129 , a Constitution Bench of the Supreme Court had to consider whether the benefit of Section 12 of the Limitation Act enabling a party to exclude the period of time spent in obtaining the copy of the order to be appealed against from the period of limitation prescribed for the appeal was available to the appellant filing the appeal under Section 116A of the Representation of People Act, 1951. The court observed that the appeal under Section 116A(1) by fiction is equated with an appeal filed under the Code of Civil Procedure in the matter of not only the exercise of the powers, jurisdiction and authority, but also in the matter of procedure to be followed from the date of the receipt of the appeal to its final disposal. The appeal under Section 116A (1) from an order made by an election tribunal lay to the High Court of the State in which the tribunal was situated. The appeal was, thereforee, to a court. The Constitution Bench held that the provisions of Section 29(2) of the Limitation Act were attracted because Section 116A(3) of the Representation of people Act prescribed a period of limitation different from the period prescribed for an appeal

by Article 156 of the First Schedule to the Limitation Act. The Limitation Act, therefore, applied. Consequently the benefit of Section 12 of the Limitation Act could be claimed by the appellant.

(7) The Constitution Bench decision was explained later by the Supreme Court in *K. Venkateswara Rao v. Bakkam Narasimha Reddi*, : [1969]1SCR679 . Under the Representation of people Act, 1951 as amended in 1966, the trial of an election petition is to be in the High Court. Nevertheless, the Supreme Court held that the provisions of the Limitation Act would not apply to the trial of an election petition in the High Court because the provisions of the Representation of people Act, 1951 showed that while some of the provisions of the Code of Civil Procedure were applicable to such a trial court other provisions of the same were not so applicable. Even though, therefore, the election petition was to be made to a court, the provisions of the Limitation Act were held not to apply to that proceeding. The Constitution Bench decision in *Vidyacharan Shukla* was distinguished on the ground that under Section 116A(2) of the Representation of People Act, 1951) as it stood prior to the amendment of 1966, the appeal to the High Court was to be treated as if it were an appeal from the original decree passed by a court within the local limits of the civil appellate jurisdiction of the High Court. The situation obtaining after the amendment of 1966 in an appeal to the Supreme Court from an order of the High Court is different. There is no section in the Representation of People Act, 1951, as it stands after the amendment, which equates an order made by the High Court under Section 98 or Section 99 to a decree passed by a Civil Court subordinate to the High Court. No right is given to the High Court to entertain an election petition which does not comply with the provisions of Sections 81, 82 or Section 117 of the Representation of people Act, 1951. The provisions of the Indian Limitation Act, 1963 were, therefore, held not to apply to an election petition filed in the High Court.

(8) In *A.S.K. Krishnappa Chettiar v. S.V. Somiah*, : [1964]2SCR241 , also it was observed by the Supreme Court that the provisions of the Limitation Act cannot be applied by analogy or reference to proceeding to which they do not expressly apply or could be said to apply by necessary implication. The provisions of the Limitation Act do not adumbrate any general principles of substantial law and

cannot be permitted to have a greater application than what is explicit or implicit in them. The provisions of Section 15(1) of the Limitation Act were, therefore, held not applicable to the acceptance by the Insolvency Court of the composition between the parties because it could not be said to have operated as stay of execution of decrees within the meaning of Section 15(1) of the Limitation Act.

(9) We have then another group of decisions of the Supreme Court in which the applicability of Section 29(2) to applications made under a special or a local law was considered by construing Section 29(2) alone. The basic question that the applicability of the provisions of the Limitation Act can arise only to an application made to a court was not considered. In *D.P. Misra v. Kamal Narayan Sharma*, : [1971]1SCR8 was held to apply to an appeal to the High Court under Section 116A of the Representation of people Act. On the other hand, in *Hukumdev Narain Yadav v. Lalit Narain Mishra*, : [1974]3SCR31 , the applicability of Section 29(2) was held to have been excluded by the special provisions of the Representation of people Act. But the question whether the provisions of the Limitation Act, but for their exclusion, would have been applicable to the proceedings under the Representation of people Act because they were in a court, namely, the High Court, was not considered.

(10) We have, lastly, the decision in *Mohd. Ashfaq v. State. Transport Appellate Tribunal, U. P.*, : [1977]1SCR563 , in which the basic question whether the provisions of the Limitation Act cannot be attracted at all if an application is not made to a court was not considered. The applicability of Section 29(2) of the Limitation Act was independently considered in relation to an application under the Motor Vehicles Act for the renewal of a permit. The benefit of Section 5 of the Limitation Act to the applicant was denied only on the ground that the Limitation Act prescribed by Section 58(2) of the Motor Vehicles Act expressly excluded the application of Section 5 of the Limitation Act inasmuch as the extension of limitation was restricted by Section 58(2) only to 15 days which necessarily implied that a larger extension. under Section 5 of the Limitation Act was not contemplated.

(11) In this state of authorities, the safest conclusion to draw seems to be that the question of applying Section 29(2) and through it the provisions of Section 4 to 24 of the Limitation Act to an application made under a special law or local law does not arise unless such an application is made to a court. The Controller or Additional Controller is not a court. The reasons for this view has been explained at length in. Subhash Chander v. Rehmat Ullah, 2nd (1973) 1 Delhi 181. The tenant-applicant in the case before us is not, therefore, entitled to invoke the benefit of Section 5 of the Limitation Act to extend the period of 15 days prescribed in the form of summons set out in the Third Schedule to the [Delhi Rent Control Act, 1958](#).

(12) The next question is whether the Controller has the power to extend such time beyond the 15 days period prescribed in the Third Schedule to the Act otherwise than by invoking the provisions of Section 5 of the Limitation Act. Such power may be sought into Sub-section (1) and (2) of Section 37 which are as below :

'(1) No order which prejudicially affects any person shall be made by the Controller under this Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objections, support of the same have been considered by the Controller. (2) Subject to any rules that may be made under this Act, the Controller shall, while holding an enquiry in any proceeding before him, follow as far as may be the practice and procedure of a court of small causes, including the recording of evidence.'

(13) Section 37(1) applies the rule of audi alteram partem to proceedings before the Controller under the Act. As held by a Full Bench of this Court in Indian Institute of Technology v. Mangat Singh, 2nd (1973) 1 Delhi 6, every statute affecting adversely rights of the person has to be so interpreted as to contain within it the rule of audi alteram partem, unless the statute excludes its application either expressly or by necessary implication. Section 37(1) is a statutory recognition of this rule of interpretation. The hearing to a party which would be adversely affected by the order to be passed under the Act is to be such as would be an adequate opportunity for the party to show cause why the order should not

be passed against him. Sometimes such an opportunity would consist only of show cause notice. At other times, it may give the party to be affected the right to lead evidence and even to cross-examine witnesses. Section 37(1) does not mean that before passing every order a full length trial should be held to consider the objections of the party against the proposed order. Section 37(1) is in accordance with the well established law that the rules of natural justice are not set and rigid. How much opportunity is to be given in a particular case depends on the nature of the case and the statutory provision applicable to it. So far as the Third Schedule to the Act is concerned, an opportunity to show cause against the proposed eviction of the tenant is given by the issue of the summons itself. According to the scheme of the Act this is the opportunity which the tenant is to have. The period of limitation prescribed in the Third Schedule cannot be extended by the Controller for the simple reason that it is not an ordinary period of limitation but a special period of limitation to suit special occasion. Section 25B has prescribed a specially expeditious procedure for the trial of eviction petitions which are filed either under clause (e) of the proviso to sub-section (1) of Section 14 or under clause 14A. The presumption in respect of these grounds pleaded by the landlord for the eviction of the tenant is that these grounds are urgent and the landlord cannot be made to wait as much as he can be made to wait if his eviction petition had been preferred on the other grounds listed in the various other clauses of the proviso to Sub-section (1) of Section 14. The distinction between these two sets of grounds has been recognised by judicial decisions holding that the permission by the Competent Authority, under Section 19 of the Slum Areas (Improvement & Clearance) Act before this petition can be filed though it was held to be necessary if the petition were to be filed on other grounds under the Act. The Third Schedule and Section 25B give the landlord the right to obtain an order of eviction solely on the ground that the tenant has failed to apply within 15 days for leave to. contest. Under Section 25B(4) the tenant on whom the summons under the Third Schedule is served and who fails to obtain leave to contest shall be liable to be evicted as he shall be deemed to have admitted the ground for eviction pleaded by the landlord. This is a very drastic right which has been given by law to the landlord. This right cannot be diluted.

(14) In *Hem Chand v. Delhi Cloth & General Mills Co. Ltd.* : [1978]1SCR241 , para 9, the Supreme Court held that the Controller had no power to extend time to the tenant who has failed to deposit the rent within one month under Section 15(1) of the Act. The court observed that 'This statutory provision cannot be modified as rights of the parties depend on the compliance with an order under Section 15(1).' The same view applies to the inability of the Controller to modify the provisions of Section 25B(4) and the Third Schedule in respect of the limitation prescribed in the Third Schedule.

(15) We conclude, therefore, that the provisions of natural justice statutorily supported by Section 37(1) do not help the petitioner to obtain an extension of the period of limitation beyond the 15 days prescribed under the Third Schedule to the Act.

(16) Section 37(2), however, applies the analogy of the practice and procedure of the court of Small Causes, namely, the Code of Civil Procedure, to the proceedings before the Controller. Though Section 25B has prescribed a special procedure for the disposal of application for eviction on the ground of bona fide requirement and Sub-section (1) of Section 25B says that an application there under shall be dealt with in accordance with the procedure specified in Section 25B) nevertheless Sub-section (7) of Section 25B is in pari materia with sub-section (2) of Section 37. Just as a practice and procedure of the court of a Small Causes is to be followed by the Controller in dealing with applications under Section 14 of the Act, in the same way, the practice and procedure of a court of Small Causes has to be followed by the Controller in dealing with an application under Section 25B except in so far as Section 25B departs from such practice and procedure. The result is that the analogy of the provisions of the Code of Civil Procedure is applicable to the procedure of the Controller, in view of Section 37(2) as well as Section 25(b)(7) of the Act. There is some similarity in the scheme of Order 37 of the Code of Civil Procedure and Section 25B of the Act. The purpose of both is to dispense with full trial procedure unless the defendant or the respondent first obtains the leave of the court to defend. Order 37 of the Code of Civil Procedure, 1908 has always contained Rule 4 which gives the court the power to set aside the decree and thereafter give leave to the defendant to defend

the suit, if special circumstances justify such a course. Rule 4 of Order 37 existed before the Delhi Rent Control Act, J 958 was enacted and also before it was amended from 1st December, 1975 by the insertion of Section 25B. Thus both Sections 37(2) and 25B(7) contemplate that the Controller shall follow the procedure laid down in Order 37 Rule 4, Civil Procedure Code, if the special circumstances of the case before him justify such a course.

(17) On the one hand, it may be argued that the non-inclusion of a provision analogous to Rule 4 of Order 37, Code of Civil Procedure, in S. 25B would show the legislative intention to exclude it from the procedure to be followed by the Controller under Section 25B. If such an argument can be made in respect of Section 25B, it is difficult to see why the same argument cannot be made in respect of Section 37(2). For Section 25B(7) is in the same terms as Section 37(2). No distinction can be drawn between them. Since Section 37(2) implies that the Controller will follow the ordinary procedure of a Small Causes Court, it is governed by the Code of Civil Procedure. It would follow that the same presumption would apply to the procedure to be followed by the Controller under Section 25B, in view of subsection (7) of Section 25B. In fact, Section 37(2) directs the Controller to follow the practice and procedure of a court of Small Causes 'as far as may be'. That is to say, if in view of the special provisions of the Delhi Rent Control Act a particular provision of the Code of Civil Procedure cannot be followed, the Controller need not do so. Section 25B(7) opens with the words 'notwithstanding anything contained in sub-section (2) of Section 37'. Section 25B(7), therefore, prevails over Section 37(2). It omits the words 'as far as may be' which are contained in Section 37(2). This would mean that the Controller while holding an enquiry in a proceeding under Section 25B has to follow the practice and procedure of the court of Small Causes and does not have the discretion to depart from such procedure except when he is bound to act in variance to the Code of Civil Procedure by the provisions of Chapter Iii, of the Act inserted by the amendment of 1975-76. The benefit of Order 37 Rule 4, of the Code of Civil Procedure is not excluded by any provisions of the Delhi Rent Control Act or any provisions of Chapter Iii thereof. It must be held, therefore, that the Controller has the discretion to give the benefit of the provisions of Order 37 Rule 4, Civil Procedure Code, to a tenant-defendant seeking leave to defend

himself against application by the landlord against him under the provisions of Chapter 1f IA.. We find so.

(18) The question now to be considered is whether the facts of this case are such that after the Controller passed the order of eviction against the tenant, the tenant could have applied on the analogy of Order 37 Rule 4, Civil Procedure Code, for getting the eviction order set aside and to obtain leave to defend. Since he did not make such an application but filed a revision in this court, the revision can be considered as being urged on two separate grounds. Firstly, that on a proper interpretation of the provisions of Section 37(2) of the Act the Controller was wrong in refusing to extend the time to the petitioner for making an application for leave to defend. Secondly, it could be urged that even if the Controller had no power to extend the prescribed period of limitation, nevertheless the Controller should now be asked to consider the setting aside of the order of eviction under Order 37 Rule 4, Civil Procedure Code. On the first ground we are in agreement with the Controller that he did not have power to extend the prescribed period of limitation for making an application for leave to defend. On the second ground, however, we are in favor of the view that in a proper case the Controller has the power to set aside his own order of eviction and grant leave to defend to the tenant. The questions whether the affidavit filed by the petitioner before the Controller and the medical certificate supporting the said affidavit are such circumstances as would persuade us to allow the revision and to remand the case to the Controller to consider if under these circumstances he would set aside the order of eviction and grant leave to defend on the analogy of Order 37 Rule 4, Civil Procedure Code. An order of remand should not be lightly passed unless we are convinced that the circumstances disclosed before us are such as necessitate a reconsideration of the case by the Controller resulting in the setting aside of the order of eviction and granting the leave to defend. We have, therefore, ourselves decided to consider the circumstances urged by the petitioner.

(19) In the affidavit filed by the tenant on 19.7.1977, paragraph 2. the tenant says that he was not permitted to leave the bed during 27.6.1977 to 17.7.1977. The medical certificate is dated 17.7.1977 and states that the tenant 'is suffering from Enteric Fever. He is under my treatment since 27.6.77 and is recommended three

weeks rest which is absolutely necessary for the restoration of health'. While the affidavit of the tenant is self-serving, the certificate of the doctor has to be after realisation of the responsibility of the doctor. It is significant that the certificate of the doctor has to be after realisation of the responsibility of the doctor. It is significant that the doctor has not said anything as to the seriousness of the illness and particularly whether during the illness or during the three weeks recommended as absolutely necessary for the restoration of the health of the tenant, the tenant was not able to make arrangements for the making of an application for leave to defend. Such arrangement could be made on the instruction of the tenant even by telephone from Dehradun to Delhi. Assuming that every thing that is said in the medical certificate is true the statement by the doctor does not amount to saying that the tenant was unable to arrange for the making of the application for leave to defend during such a long period of 26.6.1977 to 17.7.1977. If the doctor is treating the absolute necessity of rest after 17.7.1977 on the same footing as the illness of the tenant till 17.7.1977, then the very fact that the tenant immediately after 17.7.1977 made an application for leave to defend would show that in the period from 17.7.1977 the absolute necessity of rest advised by the doctor was not there. In the absence of any definite statement by the doctor of the disability of the tenant for making arrangements for the filing of an application in the Controller's court at Delhi, we are unable to see that any prima facie case is made out by the tenant on the strength of this medical certificate. Without the medical certificate a mere self-serving statement of the tenant that he was not permitted to leave the bed during 27.6.1977 to 1 7.7.1977 cannot be deemed to make out a prima facie case. The tenant in the affidavit does not say that it was not possible for him to make arrangements for getting an application for leave to defend filed in Delhi. He does not say that he could not instruct anyone else or that a telephonic communication with his lawyer in Delhi could not be established. Thus, even the affidavit falls insufficient of making out a prima facie case.

(20) In these circumstances, while as a question of law we are of the view that in a proper case the Controller can give benefit of Order 37 Rule 4, Civil Procedure Code, to a tenant even while following the procedure under Section 25B, on the facts of this case we are not convinced that the petitioner has made out a prima

facie case for obtaining the benefit under Order 37 Rule 4, Civil Procedure Code, and are not therefore, prepared to remand the case to the Controller for considering whether the order of eviction should be set aside on the facts of this case under Order 37 Rule 4, Civil Procedure Code.

(21) Mr. Arun Kumar finally has -urged in the revision, though this was not a ground taken before the Controller for leave to defend, that on the summons issued under the Third Schedule while the tenant was asked to make an application for leave to defend within 15 days, at the bottom of the summons the date 19-7-1977 was written. The learned counsel relies on the observation of Rohatgi J. in CR. 91 and 9.2 of 1978, decided on 18th December, 1979, that the new procedure under Section 25B recently introduced could cause a confusion in the mind of the tenant and he could be led to believe that the application for leave to defend can be filed on the date on which the case to be taken up by the court. This of course is a question of fact in each case. The tenant petitioner before us has not urged this as a question of fact ground before the Controller for leave to defend. He has only urged it in the revision which could only be considered as a question of law ground. We are of the view that as a question of law on a construction of the summons under the Third Schedule there is no ground for confusion in the mind of the reader of such a summons. A persual of the summons obviously shows that while the application had to be made on any day suitable to the tenant within 15 days from the service of the summons, so far as the Controller was concerned, the case would be taken up on 19th July, 1977. We, therefore, do not find any question of fact raised in- this case that the tenant was in fact misled by the present summons and are of the view that on a construction of the summons no question of law about its misleading nature can arise.

(22) For the above reasons, the question set out at the beginning of the judgment is answered as below : (a) Section 5 of the Limitation Act is not applicable to extend the period of limitation prescribed by the Third Schedule to the [Delhi Rent Control Act, 1958](#). (b) The benefit of the analogy of Order 37 Rule 4, Civil Procedure Code, can, however, be given to the tenant if the special circumstances of the case justify it. But in the present .case they do not justify it.

(23) The revision of the tenant is, therefore, dismissed with no order as to costs.

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