

Pattanswami Vs. Amirtha Jothi

Pattanswami Vs. Amirtha Jothi

SooperKanoon Citation : sooperkanoon.com/777523

Court : Chennai

Decided On : Feb-21-1997

Reported in : AIR1997Mad308; (1997)IMLJ435

Judge : AR. Lakshmanan, J.

Acts : T.N. Buildings (Lease and Rent Control) Act, 1960 - Sections 25(2); [Limitation Act, 1963](#) - Schedule - Sections 4, 5 and 23

Appeal No. : C.M.P. No. 13020 of 1996

Appellant : Pattanswami

Respondent : Amirtha Jothi

Advocate for Def. : M/s. K.V. Ananthakrishnan and ;V. Chandrasekar, Adv.

Advocate for Pet/Ap. : Ms. G. Latha, Adv.

Judgement :

ORDER

1. The matter arises under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as the Act). The above Civil Revision Petition has been filed against the judgment and decree in R.C. A. No. 57 of 1993 dated 6-3-1996 on the file of the Appellate Authority/Principal Subordinate Judge, Tirunelveli, confirming the order dated 13-8-1993 of the Rent Controller/Additional District

Munsif, Tirunelveli, in R.C.O.P. No. 12 of 1991. To condone the delay of 47 days in filing the revision, C.M.P. No. 13020 of 1996 has been filed.

2. Notice was ordered in the condone delay petition on 30-10-1996 to the respondent returnable by four weeks. On service of notice, the respondent entered appearance through M/s. K. V. Ananthakrishnan and V. Chandrasekar. The respondent has also filed a counter-affidavit opposing the petition to condone the delay.

3. In this case, the judgment in the appeal was passed on 6-3-1996. The Copy Application was made on 7-3-1996. The copy was made ready on 18-4-1996. The revision was filed in this Court on 4-7-1996 with a delay of 47 days. The petitioner filed an affidavit explaining the reasons for the delay. It is stated in the affidavit that the counsel appearing for the petitioner in the Court below has not forwarded the certified copies of the judgment in time to the petitioner which occasioned the delay in filing the revision. It is also stated in the affidavit that since the last date for filing the revision was on 10-6-1996, i.e., on the date of reopening of the High Court, there is a delay of 23 days in filing the revision. It is contended by the learned Counsel for the petitioner that since there is no specific exclusion of Section 5 of the Limitation Act, to the Act in question, the principles laid down by the Supreme Court in the decision, reported in *Siamilal M. Bhayani v. Shanti Bai* 1995 Suppl (4) SCC 578. can be made applicable to a revision to this Court under Section 25 of the Act.

4. The respondent contended in the counter-affidavit that the present revision filed with a delay of 47 days is not maintainable under the provisions of the Act and therefore, the petition to condone the delay is liable to be dismissed.

5. The only question, therefore, arises for consideration in this matter is:

Whether the delay of 47 days in filing the revision should be condoned and whether this Court has power to condone the delay under Section 25(2) of the Act. which prescribes only 30 days for filing the revision?

6. Point:-- According to the respondent, the copy was made ready on 18-4-1996 and under Section 25(2) of the Act, the revision should have been filed within thirty days, i.e. on or before 17-5-1996. However, this Court, in exercise of its discretion, can allow a further time not exceeding one month. Therefore, the revision should have been filed on 17-6-1996. Since the revision is filed on 4-7-1996, there is delay in filing the revision excluding the time limit granted under the statute, which delay, this Court has no power to condone.

7. I have considered the rival submissions. In my opinion, Section 5 of the Limitation Act has no application at all to the revisions filed under Section 25 of the Act. Section 25 of the Act reads thus :

'25. Revision.-- (1) The High Court may, on the application of any person aggrieved by an order of the Appellate Authority, call for and examine the record of the Appellate Authority, to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and if, in any case, it appears to the High Court that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly,

(2) every application to the High Court for the exercise of its power under sub-section (1) shall be preferred within one month from the date on which the order or proceeding to which the application relates is communicated to the applicant:

Provided that the High Court may, in its discretion, allow further time not exceeding one month for the filing of any such application, if it is satisfied that the applicant had sufficient cause for not preferring the application within the time specified in this sub-section.'

8. Section 25(2) of the Act provides that every application to this Court for the exercise of its power under sub-section (1) of Section 25 of the Act shall be preferred within one month from the date on which the order or proceeding, to which the application relates, is communicated to the applicant. The Proviso to Section 25(2) of the Act provides that this Court may in its discretion allow further time not exceeding one month for the filing of any such application if it is

satisfied that the applicant had sufficient cause for not preferring the application within the time specified in Section 25(2) of the Act. Thus, it is seen, that Section 25 of the Act provides for a period of one month for filing a revision to this Court and the maximum period which is liable to be condoned by this Court is one month under the Proviso to Section 25(2) of the Act. The Proviso is to be given effect and the period of delay exceeding the period of one month is not liable to be excused under the Act.

9. In the instant case, the judgment was pronounced by the Appellate Authority after notice to the petitioner. Therefore, it would amount to communication to the petitioner. In fact, the petitioner made the Copy Application on 7-3-1996 and the copy was made ready on 18-4-1996. Therefore, the time begins to run from 18-4-1996 onwards. Section 5 of the Limitation Act will not apply to a revision under Section 25 of the Act. Section 25 of the Act confirms power to the revision Court only for a delay of thirty days,

10. Learned Counsel for the petitioner cited the ruling of the Supreme Court reported in *Shantilal M. Bhayani v. Shahti Bai* 1995 Suppl (4) SCC 578. In that case, the Supreme Court held that the provisions of Section 5 of the Limitation Act can be made applicable to an appeal filed before the Appellate Authority functioning under the Act, under Section 23 of the Act. In that case, the question whether Section 5 of the Limitation Act can be invoked in a revision petition filed in the High Court under Section 25 of the Act has not come up for decision. Sections 23 and 25 of the Act present a study in contrast. To Section 23 of the Act, Section 5 of the Limitation Act fully applies. Section 25 of the Act rules out Section 5 of the Limitation Act and it expressly legislates on the very subject which is to be dealt with by Section 5 of the Limitation Act. Therefore, Section 5 of the Limitation Act cannot be invoked to a revision petition filed in this Court under Section 25 of the Act because Section 5 of the Limitation Act is implicitly excluded by prescribing special period of limitation.

11. We have already noticed the scope and ambit of Section 25(2) of the Act, which not only prescribes special period of limitation for preferring revision petitions to the High Court but also contains an inbuilt provision of an extended

period within which petitions beyond the period of limitation could be instituted by conferring a discretion in the High Court to condone the delay within the prescribed period on sufficient cause shown, it being unlike what has been provided under Section 23 of the Act. In my opinion, Section 25(2) of the Act itself contemplates an express exclusion of Section 5 of the Limitation Act. A Division Bench of this Court in *Rethinaswami v. Komalavalli*, (1982) 95 Mad LW 552, in dealing with the scope of Section 23 of the Act, held that Section 5 of the Limitation Act would apply, there being no specific exclusion of its applicability in the Act. In this decision, it was held that since there is a specific exclusion in Section 25 and in Section 23 of the Act, only a special period of limitation being provided, there was no specific exclusion of Section 5 of the Limitation Act, when appeals are filed under Section 23 of the Act to the Appellate Authority.

12. A Division Bench of this Court consisting of S. Nainar Sundaram, J., as he then was, and T. Somasundaram, J., in the decision reported in *Lakshmikanthan v. Jayarama Odayar* 1992 (2) MLW 563, had occasion to consider the question of condoning the delay in preferring a revision beyond the time prescribed under Section 25 of the Act and answered the said question in the negative. The Division Bench has approved the earlier decisions of this Court reported in *Rakhu v. Vasanthalakshmi* 1975 (2) MLJ Short Notes 19 by Sethuraman, J.; *Ramanatha Rao v. Janarlhanan*, (1982) 95 M LW 742 by K.B.N. Singh, C.J.; and *Ratnasaba pathi v. Ramiah* in C.M.P.S.R. No. 119324/84 in C.R.P.S.R. No. 118214/84 dated 2-12-1985 of Sengottuvelan, J.

13. From a reading of Section 25(2) of the Act, it is clear that every revision petition under this Act shall be preferred to this Court within one month from the date on which the order was communicated to the petitioner and the Proviso to Section 25(2) of the Act empowers the High Court in its discretion to allow a further period not exceeding one month from the date of any such application. In the instant case, the time for filing the revision expired on 17-5-1996, which was during the summer vacation of this Court. Therefore, under Section 4 of the Limitation Act, the revision petition should have been filed on the day when the Court reopened on 10-6-1996 when it would be well within time. This, however, will not have the effect of extending the period of thirty days of limitation up to 17-6-

1996 as contended by the learned Counsel for the petitioner. If this contention of the learned Counsel for the petitioner is accepted, the petitioner will have the double advantage of extended period of limitation for filing the revision on the day when the Court reopens after summer vacation under Section 4 of the Limitation Act when the period of limitation expired during the vacation of the Court, and again filing a petition under the Proviso to Section 25(2) of the Act, seeking the discretionary power of the High Court to allow a further time of one month from the date of reopening of the Court after vacation.

14. In my opinion, the argument of the learned Counsel for the petitioner in this regard cannot at all be countenanced. This is not contemplated by the provisions of the Act. It is settled law that what is not permitted to be done directly cannot be permitted to be done indirectly. If the original period of limitation expired during the vacation on 17-5-1996 and if the revision has not been filed on the day when the Court reopened on 10-6-1996, the discretionary period of one month as provided for in the Proviso to Section 25(2) of the Act will start running from the date of expiration of the original period of limitation during the vacation viz., 17-5-1996. The power of this Court is restricted and not unlimited as in the case of appeals under the Code of Civil Procedure, by the application of Section 5 of the Limitation Act, where the Court can condone any delay for sufficient reasons. In the instant case, the last date for filing of revision was on 17-5-1996 and the revision not having been filed on the date of reopening of the Court on 10-6-1996, there is no discretion left to this Court but to reject it on the ground that it is barred by limitation.

15. Section 4 of imitation Act can also be beneficially looked into in this context. It reads thus:

'4. Expiry of prescribed period when Court is closed.-- Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the Court reopens.'

This section enables a party to a legal proceedings to initiate the same on the next day if the previous day happened to be the last day and on that day the Court

remained closed for any part of the day. The language of the section indicates that it does not extend the period prescribed for the presentation at any suit or appeal or application but that it only provides that where the period prescribed expires on a particular day when the Court is closed, notwithstanding that fact the application may be made on the day the Court reopens. Thus, Section 4 of the Limitation Act does not extend the period of limitation. It provides for the contingency when the prescribed period expires on a holiday and the only contingency contemplated is 'when the Court is closed'. The expression 'when the Court is closed' refers to the Court in which the revision ought to have been made.

16. For the foregoing reasons, I fully endorse the opinion expressed and the ratio laid down in the above cited judgments. Applying the ratio expressed in the abovesaid pronouncements of this Court to the case on hand, which also arises under the very same Act, I hold that the petition to condone the delay in filing the revision is liable to be rejected. The point is answered in favour of the respondent and against the petitioner.

17. Since I decided the matter on the question of limitation and answered against the petitioner, I am not considering the averments made by the petitioner in the affidavit for the delay in filing the revision and the counter averments made by the respondent in the counter-affidavit.

18. In the result, C.M.P. No. 13020 of 1996 is dismissed. Consequently, C.R.P.S.R. No. 44976 of 1996 is rejected. No costs.

19. Petition dismissed.