

Rathakrishnan Vs. A. Chelladurai

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Court : Chennai

Decided On : Jan-18-1997

Reported in : 1997(1)CTC244

Judge : T.N. Vallinayagam, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Sections 2(8) and 23; Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 - Rule 25; [Limitation Act, 1963](#) - Sections 5

Appeal No. : C.R.P. No. 3238 of 1988

Appellant : Rathakrishnan

Respondent : A. Chelladurai

Advocate for Def. : P. Peppin Fernando, Adv.

Advocate for Pet/Ap. : Malarvizhi, Adv. for ;G. Ethirajulu, Adv.

Disposition : Revision allowed

Judgement :

ORDER

T.N. Vallinayagam, J.

1. The civil revision petition is filed by one Rathakrishnan, who claimed to be the brother/legal representative within the meaning of Rent Control Act of the deceased tenant Selvaraj. The attempt made by the revision petitioner herein to bring him on record as legal representative when the matter was pending in the appellate stage was negated by the Appellate Authority. Hence the revision petition.

2. At the time when the revision petition came up for hearing on 2.1.1997, the learned counsel Mr. P. Peppin Fernando appearing for the respondent represented that possession of the property has been delivered as early as on 29.8.1988 and therefore, the petition has become infructuous. The counsel for the petitioner took time to verify. But, even today the counsel is not able to make any verification. The only way left to the counsel for the petitioner is to argue the matter on merits. The Appellate Authority has rejected the petition without even numbering the petition but yet holding that the brother cannot be the legal representative to continue the proceedings on behalf of the deceased tenant. His rejection is wholly unwarranted and on prima facie illegal. The Appellate Authority ought to have numbered the petition, ordered notice to the other side and decide the matter on merits. The learned Counsel for the respondent submits that as per the affidavit of the revision petitioner, his brother died on 8.1.1988 and his application was filed on 4.4.1988 i.e., beyond the time prescribed under Rule 25 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974. But, unfortunately, the Appellate Authority has not taken into consideration this aspect also. The learned counsel further submits that a petition to excuse the delay under Section 5 of the Limitation Act ought to have been filed and as and when the same is filed, it should have been numbered and disposed of first and then only the next petition to bring on the legal representatives after deciding whether the brother could be a legal representative. This submission is correct. But, at the same time, I would like to make it clear that the non-application of mind by the Appellate Authority is thoroughly wrong and disposal is quite unsatisfactory. Therefore, I want to give a clear direction. This petition rejected should be taken on file on the SR. stage and should be returned to the petitioner saying that the petition to excuse the delay under Section 5 of the Limitation Act is quite necessary. As and when such petition is filed, the other petition may be numbered and disposed of

and then the present petition, which is now remitted back can be taken on file and disposed of. The question whether Section 5 of the Limitation Act is applicable to such proceedings has been answered in- the affirmative by the Division Bench of this Honourable Court in 'Arya Vysia Samajam, rep. by President S.K. Dhandapani Chettiar v. Murugesu Mudaliar and 10 Ors., 1990 TLNJ 82. The Division Bench has observed at page 89 as follows:-

'For the foregoing discussion, we are of the view that since there is no specific exclusion of Section 5 of the Limitation Act, just as there is an exclusion in Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act and in view of the new provision, namely, Section 29(2) of the Limitation Act which governs special period under special and local laws, of which the Tamil Nadu Buildings (lease and Rent Control) Act is one. Section 5 of the Limitation Act is certainly applicable for impleading legal representatives under Rule 25 to the proceedings in revision under Section 25 of the Act before this Court'.

3. While considering the application for limitation, the lower court should take into consideration the period of pendency of this petition before the lower court as well as the appellate court, and if at all there is a delay, the delay in filing the petition on 4.4.1988 instead of 8.2.1988 must alone be explained, i.e. period of delay should be considered to be between 8.2.1988 and 4.4.1988. Another point was raised by the counsel for the respondent that the brother cannot be the legal representative. As is claimed by him, the appellate authority also has come to the conclusion that the brother is not the legal representative. This view is prima facie wrong in Section 2(8) of the Act. Section 2(8) says 'the legal representative of the deceased tenant who

(ii) in the case of a non-residential building had been in continuous association with the tenant for the purpose of carrying on the business of the tenant upto the death of the tenant and continues to run such business thereafter'.

Therefore, I do not think the appellate authority is right in saying that the brother, who has come forward with the averment in the petition that 'I was carrying on the business in the said premises along with my brother till his death. I am continuing the business' is not the legal representative. These two averments satisfy the

requirements of Section 2(8) of the Act and the revision petitioner is certainly the legal representative for the purpose of the Act and is entitled to continue the proceedings against the deceased tenant.

4. The civil revision petition is therefore, allowed and the lower court is directed to take the petition on file as indicated above and dispose of the same within a month from the date of receipt of the copy of order and report such compliance to this court. No costs.

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