
(1997) 09 MAD CK 0138
In the Madras High Court

Bajranglal Damani and Others	APPELLANT
Vs	
Dhanabakiam Ammal (Deceased) and Others	RESPONDENT

Date of Decision : 25-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1
Limitation Act, 1963 — Section 5
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 23

Citation : (1998) 1 MLJ 285

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Division Bench

Judgement

S.M. Abdul Wahab, J.—C.R.P. No. 530 of 1997 is against the order dated 29.11.1996 in R.C.A. No. 8 of 1995 on the file of the VII Judge, Small Causes Court, Madras, dis-missing the appeal preferred against R.C.O.P. No. 2271 of 1993 on the file of the XIV Judge, Small Causes Court, Madras.

2. C.R.P. No. 531 of 1997 is against the order dated 29.11.1996 in M.P. No. 600 of 1996 in R.C.A. No. 8 of 1995 on the file of the VII Judge, Small Causes Court, Madras. The said M.P. No. 600 of 1996 was filed for condoning the delay of 135 days in filing the certified copy of the order of the Rent Controller in the appeal. Consequently, the appeal itself was dismissed for non-production of the certified copy of the order.

3. C.R.P. No. 583 of 1997 is against the order dated 29.10.1996 in a Memo SR. No. 24726 of 1996 in R.C.A. No. 402 of 1994; C.R.P. No. 485 of 1994 is against the order in M.P.S.R.. No. 24729 of 1996 in R.C.A. No. 402 of 1994; while C.R.P. No. 585 of 1997 is against the order dated 29.10.1996 in M. PS.R. No. 24728 of 1996 in R.C.A. No. 402 of 1994. These three orders relate to the very same appeal i.e., R.C.A. No. 402 of 1994. The said R.C.A. No. 402 of 1994 was filed against the order dated 29.4.1994 in R. CO.P. No. 2981 of 1992 by the tenant against the order of eviction.

4. The tenant in the above R.C.A. No. 402 of 1994 filed a petition u/s 5 of the

Limitation Act under S.R. No. 24728 of 1996 for condoning the delay of 14 days in filing a petition to restore R.C.A. No. 402 of 1994, dismissed for default on 30.8.1996. The tenant filed another petition under S.R. No. 24729 of 1996 to restore the appeal R.C.A. No. 402 of 1994, dismissed for default on 30.8.1996. He filed a memo under S.R. No. 24726 of 1996 for receiving the certified copy of the order in R. CO.P. No. 2981 of 1992 in R.C.A. No. 402 of 1994.

5. C.R.P. No. 779 of 1997 is against the order in M.P. No. 843 of 1996 in R.C.A. No. 169 of 1995, dated 3.3.1997 on the file of the VIIth Judge, Small Causes Court, Madras. While, C.R.P. No. 897 of 1997 is against the order in M.P.S.R. No. 24758 of 1996 in R.C.A. No. 169 of 1995, dated 3.3.1997. M.P. No. 843 of 1996 is for condoning the delay of 473 days in filing the certified copy of the order of the Rent Controller for the purpose of the appeal. M.P.S.R. No. 24758 of 1996 was for setting aside the order of dismissal and restore R.C.A. No. 169 of 1995.

6. C.R.P. No. 1933 of 1997 is against the order dated 25.6.1997 in M.P. No. 316 of 1997 in R.C.A. No. 118 of 1994. The said petition was for dismissing the appeal on the ground of limitation as the certified copy of the order of the Rent Controller was not filed in time in the appeal.

7. C.R.P. No. 1952 of 1997 is against the order dated 17.3.1997 in R. CO.P. No. 60 of 1996, confirming the order of the Rent Controller, dated 16.11.1995 in R. CO.P. No. 1911 of 1994. While C.R.P. No. 1953 of 1997 is against the order in M.P. No. 1040 of 1996, dated 17.3.1997 in R.C.A. No. 60 of 1996, dismissing the said petition filed for condoning the delay of 139 days in filing the certified copy of the fair and decretal order in R.C.O.P. No. 1911 of 1994. The appellate authority was not satisfied with the reasons for condoning the delay of 139 days in filing the certified copies. Since the said petition was rejected, the appellate authority by a consequential order rejected the appeal itself i.e., R.C.A. No. 60 of 1996. Hence, the aggrieved tenant suffering an eviction order is the petitioner in both these revision petitions.

8. In C.R.P. Nos. 779 and 897 of 1997 and C.R.P. No. 1728 of 1997, the point for consideration is: Whether the delay of 473 days and 199 days in filing the certified copy is to be condoned or not.

9. In C.R.P. No. 1933 of 1997, the point involved is: Whether the filing of the certified copy on 28.2.1995, which was made ready on 27.10.1994 and obtained on 3.2.1995, without a petition for condoning the delay is proper.

10. In all the above cases, the Rent Control appeals were filed before the appellate authority without the certified copy of the order of the Rent Controller. Along with the appeal, the appellants filed a petition for dispensing with the certified copy of the order of the Rent Controller. The appellate authorities in these cases have passed orders on those petitions dispensing with the certified copies of the orders for the present. The appeals were numbered and taken on file. The appellate authorities have been giving chance from time to time for the purpose of filing the certified copy of the order.

11. In C.R.P. No. 583 of 1997, a memo was filed before the appellate authority in R.C.A. No. 402 of 1994 for receiving the certified copy of the order in the said case. The certified copy was obtained on 11.9.1995, but it was produced before the Court only on 14.10.1996 with the aforesaid memo. From the dates mentioned above, it is seen that the certified copy was not filed within 14 days from the date on which it was made ready. The appellate authority passed the order on the memo on 29.10.1996, stating that since no petition for condoning the delay was filed, the production of the certified copy after the expiry of the period of limitation was not acceptable. He has relied upon a judgment reported in *Hajee Sahib v. Mohammed Haneef* (1991) 1 M.L.J. 466. Since the memo was rejected, the appeal was also rejected.

12. In these cases, the counsels for the petitioners urged the following contentions: (1) Since the appellate authority has dispensed with the production of the certified copy of the order and has been granting time for filing the certified copy, if the certified copy is filed before the said date, there is no necessity for filing any petition to condone the delay. The counsel for the petitioner in C.R.P. Nos. 583 to 585 of 1997 urged this contention. (2) The appeal has been filed after filing petition for the certified copy of the order of the Rent Controller. Since the appeal has been taken on file and admitted the same cannot be rejected there-after for some defect, namely, want of production of the certified copy of the order of the Rent Controller. (3) After there entertaining of the appeal and posting it for hearing, the production of the certified copy need not be within a particular time; if it is filed or produced before the appellate authority, before the final hearing of the appeal, it is sufficient. (4) There is no question of condoning the delay in filing the certified copy. The question of delay and application u/s 5 of the Limitation Act would arise only in the case of filing the appeal and not in the production of the certified copy of the order challenged in the appeal. Hence, a memo for production of the same is sufficient.

13. The learned Counsel for the respondents contended that when a dispense with order was passed by the appellate authority, dispensing with the production of the certified copy of the order of the Rent Controller, it was "For the present only". Hence, the petitioners were bound to produce the certified copy. As they did not produce and as there was enormous delay in some cases, the appellate authority was justified in rejecting them. The certified copies can be dispensed for the present as per Order 41, Rule 1 of Civil Procedure Code. There is the question of limitation also involved in the production of certified copy.

14. The relevant portion of Section 23 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, reads as follows:

23. Appeal:- (1)(a) The Government may, by general or special order notified in the (Tamil Nadu Government Gazette) confer on such officer and authorities as they think fit, the powers of the Appellate Authorities for the purpose of this Act, in such areas and in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Controller may, within fifteen days from the date of such order, prefer an appeal in writing to the Appellate Authority having jurisdiction. In computing the fifteen days aforesaid, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the Appellate Authority may order stay of further proceedings in the matter pending decision on the appeal.

Rule 15 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974, provides the procedure for filing appeal. It is as follows:

15. Procedure for filing of appeals: (1) Every appeal against an order of the controller shall, in addition to the grounds of appeal, specify the date on which the order was received by the appellant. The appeal shall be signed by the appellant and his counsel, if any, and presented to the appellate authority or to such officer as he appoints in this behalf, by the appellant himself personally or by his recognized agent or by counsel at any time during office hours on a working day. The appeal shall be accompanied by a copy of the order of the controller appealed from.

(2) Every appeal under the Act shall be accompanied by a spare copy or sufficient number of spare copies thereof for service on the respondent or respondents mentioned therein.

The second paragraph of Section 23(1)(b) of the Act and the last sentence in Rule 15(1) of the Rules indicate that the appeal should be accompanied by a copy of the order of the Controller appealed from. For getting and producing the copy, for the purpose of appeal, the time taken for obtaining the certified copy of the order is excluded.

15. Order 41, Rule 1 of Civil Procedure Code, reads as follows:

1. Form of appeal:- What to accompany memorandum, (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the appellate court dispenses therewith) of the judgment on which it is founded.

Provided that where two or more suits have been tried together and a common judgment has been delivered thereof and two or more appeals are filed against any decree covered by the judgment.

By an amendment dated 21.8.1980, the Sub-Rule 1(1) has been substituted with the following provision in Madras:

Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the court or to such officer, as it appoints in this behalf. The memorandum of appeal shall be accompanied by a

certified copy of the decree appealed from and (unless the appellate court dispenses therewith) by a certified copy of the judgment on which it is founded and by such number of typewritten or cyclostyled or printed or mechanically reproduced copies of the judgment as are necessary to serve on the respondents to the appeal and four additional copies for the use of the court. The copies so filed shall be neatly and legibly prepared without any error of which four copies intended for the use of the court, shall be on thick paper. In case the judgment is typed or cyclostyled, the four copies intended for the use of the court must be typed or cyclostyled on one side of the paper only; Provided that where two or more suits have been tried together and a common judgment has been delivered therefore and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, it shall not be necessary to file more than one set of copies of the judgment as provided for in this rule;

Provided further that the court shall have the copies of the judgment so filed compared with the certified copy of the judgment on payment of the prescribed charges. " (Amendment dated 23.12.1983).

As per the above, the CPC provides for dispensing with the certified copy of the judgment by the appellate court. Here it should be noticed that there is no indication in the above provisions for production of the certified copy of the judgment at a later point of time.

16. It is no doubt true that the above procedure prescribed by the CPC is not applicable to the Rent Control appeals. The appellate authorities are *persona designata* and not court, because of this position, Section 5 of the Limitation Act was not made applicable when a Rent Control appeal was filed beyond the period of 15 days as provided in Section 23(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. But the Supreme Court has changed this position and laid down that Section 5 of the Limitation Act is applicable to the Rent Control proceedings. Vide: Supreme Court judgment in *Santhilal M. Bhayani v. Shanthi Bai*, Civil Appeal No. 3421 of 1979, dated 7.2.1992. In the said case, the Apex Court has taken note of the fact that the decision in *J. Easwaran v. Palaniammal* 1974 T.L.N.J. 380, which held the view that the appellate authority is only a *persona designata* was overruled by the judgment reported in *Rethinasamy Vs. Komalavalli and Another*, .

17. Section 23 of the Tamil Nadu Buildings, (Lease and Rent Control) Act, 1960, which provides for the appeal, does not contain a specific provision for producing the certified copy of the order appealed against. Rule 15 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974, only states that the appeal should be accompanied by a copy of the order of the Rent Controller.

18. Section 23 of the Act containing four sub-sections is exhaustive with reference to the filing of the appeal. As per Section 23(1)(b) of the Act, an appeal can be filed in 15 days from the date of such order. The said sub-section

does not state that the appeal should be accompanied by a certified copy of the Rent Controller's order. But the second paragraph of Section 23(1)(b) of the Act enables a person to exclude the time for obtaining the certified copy, if he chooses to file the appeal with the certified copy. The second paragraph of Section 23(1)(b) cannot be construed to limit the right conferred to file the appeal provided under the first paragraph as it does not state that certified copy must be filed along with the appeal. Hence an appeal can be filed within 15 days from the date of the order of the Rent Controller.

19. It is contended that a combined reading of Section 23(1) and Rule 15 indicates that certified copy of the order must accompany the appeal, otherwise the second paragraph of Section 23(1)(b) of the Act is redundant, and unnecessary. The Legislature in its wisdom would not have contemplated an unnecessary provision.

20. Now, we will come to Rule 15 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974. Rule 15 of the Rules has been incorporated pursuant to Section 34 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Section 34 of the Act, gives the Government the rule making power for certain purposes. Sub-section (2) of the Section 34 of the Act contemplates the procedure to be followed by the Rent Controller and appellate authority in performance of their functions and the manner in which the notices and orders to be served; setting aside ex parte orders and orders of dismissal for default; applications for making legal representatives of the deceased as parties to the proceedings and the time-limit for the same; the procedure to be followed in taking possession of the building and disposing of the articles found in the building and the fee payable in respect of applications and appeals.

21. The procedure to be followed in filing the appeal is not mentioned under the said section. But at the same time the procedure prescribed under Rule 15 of the Rules cannot be said to be ultra vires, because Section 34(2)(a) contemplates rule making, for carrying out the purpose of the Act. The provision of appeal is one of the purpose. But the section itself has provided the procedure for filing the appeal. Rule 16 of the Rules provides for the procedure for disposal of the appeal. This rule squarely comes under the purview of Section 34(2)(b) of the Act, which empowers the Government to make rules for the procedure to be followed by the Rent Controller and the appellate authority. Even though Rule 15 of the Rules does not fall within the scope of Section 34 of the Act, it can be brought u/s 34(2)(a) in a round about manner by construing that the procedure for filing an appeal is to carry out the purpose of the Act. But the said rule directing the appeal to be accompanied by a copy of the order of the Controller cannot limit or abridge the scope of Section 23(1)(b) of the Act. As per Section 23(1)(b) of the Act, the appeal can be filed within 15 days from the date of the order of the Rent Controller. If a person files an appeal within 15 days, his appeal cannot be rejected for the reason that it is not accompanied by the certified copy of the order appealed against.

22. The second paragraph of Section 23(1)(b) of the Act can only mean that if the appeal is accompanied by the certified copy, the time taken for obtaining the certified copy can be excluded in calculating the period of 15 days. Further Rule 15 of the Rules, also does not insist that the certified copy of the order should be filed. What it requires is the copy of the order of the Rent Controller. It does not refer to the certified copy of the order. We cannot assume that the omission of the word "certified" before the word "copy" in Rule. 15 of the Rules, is due to some inadvertence, or mistake. Because the rules are all subject to scrutiny and approval by both the Houses of Legislature. When the word "certified" is not there in the rules, as framed by the rule makers, it could have been supplied by the Legislature, but the Legislature has also not chosen to provide for the omission. In that circumstances, the omission to add the word "certified" in Rule 15 of the Rules, cannot be construed to be a mistake, but has to be construed as a deliberate omission.

23. As we have seen have, the position is that there is no necessity for filing the certified copy of the Rent Controller's order in an appeal preferred to the appellate authority. If so, can the appellate authority insist upon the production of the certified copy, the answer that has to, necessarily, follow is "No".

24. In this situation, can the order of the Rent Controller filed before the appellate authority as per Rule 15 be dispensed with?

25. We have seen that Order 41, Rule 1 of Civil Procedure Code empowers the appellate Court to dispense with the production of the judgment of the trial court in the appeal. The Rent Controller is an appellate authority and it has also been construed to be a Court for the purpose of application of Section 5 of the Limitation Act as has been held by the Supreme Court. Further, excepting the City of Madras, where Small Cause Courts are the appellate authority, regular Civil Courts governed by the CPC are the appellate authorities. It is true that the CPC is not applicable in its entirety to the Rent Control proceedings. In *Kannappa Nadar v. Krishnaswami* (1981) 1 M.L.J. (S.N.) 18, it has been held that though the entire procedure applicable to civil courts cannot be applied to those authorities, yet the rules of justice, equity and good conscience shall be invoked to relieve difficulties in a statute like the present.

26. In Order 41, Rule 1 of Civil Procedure Code, there is no indication as to whether the certified copy should be produced at any time before the final hearing of the appeal or not. A plain reading of it shows that it is dispensed with once for all and there is no necessity for production of the same at any time during the pendency of the appeal. In *Hajee Sahib v. Mohammed Haneef* (1991) 1 M.L.J. 466 a learned Single Judge of this Court has held that if the certified copy of the Rent Controller is produced before the appellate authority within the time-limit for filing the appeal i.e., within 15 days from the date on which the certified copy was made ready, the defect of not filing a certified copy will not be there. He has also held that the appeal cannot be dismissed for the technical deviation from the procedural requirements prescribed in Rule 15 of the Rules.

The view of the learned Judge appears to be reasonable. But there is no answer in that case to the question as to whether the certified copy is necessary at all. In the said case, the certified copy of the order was produced within the time i.e., 15 days from the date on which the certified copy was made ready. But here we are having cases where the certified copies are sought to be produced not within the time, but beyond the time-limit. Petitions are filed for condoning the delay.

27. In *Puran Singh Vs. Jagrar Singh*, , it has been held that once an appeal is duly entertained without the production of a certified copy of the decree sheet with it and neither the memorandum of appeal is rejected, nor returned, as provided under Order 41, Rule 3 of the Code, then, subsequently, the appeal cannot be dismissed on the ground that at the time of the presentation of the appeal the same was not accompanied with a certified copy of the decree under appeal, because by that time the stage for dismissing the appeal for non-compliance of the provisions of Order 41, Rule 1 of the Code had already passed, and at that stage, the appellant could only be directed to file the certified copy of the decree under appeal after obtaining the same from the trial court. The learned Judge has relied upon the observations of the Supreme Court in *Jagat Dhish Bhargava Vs. Jawahar Lal Bhargava and Others*, . In paragraph 14 of the said judgment of the Apex Court, it has been held as follows:

If at the time when the appeal is preferred a decree has already been drawn up by the trial court and the appellant has not applied for it in time it would be a clear case where the appeal would be incompetent and a penalty of dismissal would be justified. The position would, however, be sub-stantially different if at the time when the appeal is presented before the appellate court a decree in fact had not been drawn up by the trial court; in such a case if an application has been made by the appellant for a certified copy of the decree, "then all that can be said against the appeal preferred by him is that the appeal is premature since a decree has not been drawn up, and it is the decree against which an appeal lies. In such a case, if the office of the High Court examines the appeal carefully and discovers the defect the appeal may be returned to the appellant for presentation with the certified copy of the decree after it is obtained. In the case like the present, if the appeal has passed through the stage of admission through oversight of the office, then only fair and rational course to adopt would be to adjourn the hearing of the appeal with a direction that the appellant should produce the certified copy of the decree as soon as it is supplied to him.... On the other hand, if a decree has been drawn up and an application for its certified copy has been made by the appellant after the decree was drawn up, the office of the appellate court should return the appeal to the appellant as defective, and when the decree is filed by him the question of limitation may be examined on the merits.... It would thus be clear that no hard and fast rule of general applicability can be laid down for dealing with appeals defectively filed under Order 41, Rule 1. Appropriate orders will have to be passed having regard to the circumstances of each case, but the most important step to take in cases of defective presentation of appeals is that they should be carefully scrutinised at

the initial stage soon after they are filed and the appellant required to remedy the defects... However, as we have indicated, the question about the competence of the appeal has to be judged in each case on its own facts and appropriate orders must be passed at the initial stage soon after the appeal is presented in the appellate court.

In the said case, the High Court did not choose to penalise the party because the mistake was committed by the office in not detecting the defect at the time of the presentation of the appeal. The Supreme Court also has refused to interfere. It is to be noticed that the aforesaid guidelines have been issued by the Apex Court as regards the decree and not the judgment. The distinction is, production of decree is mandatory but the production of judgment can be dis-pensed with under Order 41, Rule 1 of Civil Procedure Code.

28. The problem is if the copy of the Order is dis-pensed with relying upon Order 41, Rule 1, Civil Procedure Code, firstly CPC is not applicable to the proceedings before the Rent Control appellate authority. Secondly, even if the said section is made applicable on the principle of justice, equity and good conscience, it will be against the specific provisions contained in the Rule 15. In certain cases, urgent orders are to be obtained against the order of eviction and at the same time the court is not in a position to furnish the certified copy even though applied for. In such a situation, the only way open without detriment to the provisions to Rule 15 and the interest of the appellant is to allow the appellant to file the appeal with an undertaking to produce the copy of the order appealed against before the final disposal of the appeal.

29. As we have been have, in the Rent Control proceedings, before the appellate authority, production of the decree copy is not necessary. Even as regards the judgment, the production of a copy alone is insisted in Rule 15 of the Rules. The certificate copy is not contemplated by the Rules. The ideal probably behind the non-insisting of the certified copy of the order of the Rent Controller is that when the records are called for, the original order will be produced. Therefore, at the initial stage, for considering the grant of stay etc., only the copies are required. Nowadays at the initial stages certified copy is dis-pensed with and stays are granted. Dispensing with the certified copy is unwarranted, when there is necessity to provide a copy only. To avoid the difficulties faced by the appellants, the appeal can be filed with an undertaking to file the copy of the order before final hearing of the appeal. But a question may arise as to how to find out whether an appeal presented is within the time or not. This is not a problem at all.

30. We have seen that the appeal can be filed within 15 days from the date of the order of the Rent Controller as per Section 21(1)(b) of the Act or within 15 days after the certified copy is made ready. If it is filed within 15 days from the date of the order, limitation question can be checked up from the memo-randum of appeal itself. If the appeal is filed after getting the certified copy and when it is produced along with the appeal, there will be no difficulty in calculating the

period of limitation. In case of emergency, the first method can be adopted with an undertaking to produce a copy of the order as soon as the certified copy is received or before the final hearing of the appeal. It is needless to point out that even when the certified copies are filed, typed clean copies for the use of the court at the time of final disposal of the appeal are filed. This practice is continued even in the absence of any rule for the said purpose. The same time honoured practice can be continued.

31. In the High Court of Judicature at Madras, for filing writ appeal this kind of double method is adopted. Order 9, Rule 3(v) of the Appellate Side Rules does not contemplate the filing of the certified copy of the judgment. The said Rule is as follows:

Preparation of record in proceedings (other than Original Side Appeal and appeals against original decrees of Subordinate Courts in suits) including references.

3 (v) In appeals under Clause 15 of the Letters Patent against judgments in petitions for writs under Article 226 of the Constitution, the papers filed by the appellant shall include the petition, affidavit, counter-affidavit, reply affidavit and other papers, if any, filed in the writ petition, the judgment of the High Court and the memorandum of grounds of appeal.

The limitation prescribed for the writ appeal is contained in Article 17 of the Limitation Act, 1963. The said Article is as follows:

From a decree or order of any High Court to the same court, period of limitation is thirty days from the date of the decree or order.

Sub-section (3) of Section 12 of Limitation Act, 1963 is also relevant, which reads as follows:

12(3). Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment on which the decree or order is founded shall also be excluded.

The aforesaid provisions are similar to the provisions contained in the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 and the Rules made thereunder with reference to the filing of appeals.

32. Since the certified copy of the judgment or order appealed against in a writ appeal is not insisted, appeals are filed within thirty days from the date of the order or judgment in the writ petition, without production of the certified copy of the order or judgment appealed against. But this method is resorted to in emergent cases. In other cases, the parties wait for the certified copy of the judgment or order passed in the writ petition and then file the writ appeal after the expiry of the period of thirty days from the date of the certified copy of the judgment or order sought to be appealed against is made ready.

33. In the former case, the writ appeals are not returned endorsing to be defective for want of certified copy of the order or judgment appealed against. Limitation is calculated in such cases by looking at the date of filing and the date of the order or judgment appealed against. In the latter case, the limitation is calculated with the help of the endorsements made on the certified copy of the order or judgment appealed against.

34. If the two methods indicated above are adopted, it will avoid the difficulties like furnishing the certified copy beyond 15 days time, resulting in filing a petition for condonation of the delay u/s 5 of the Limitation Act. When there is delay in producing the certified copy of the Rent Controller's order after obtaining it from the court, Section 5 of the Limitation Act is resorted to. For example M.P. No. 843 of 1996 in R.C.A. No. 169 of 1995 on the file of the VII Judge, Small Causes Court, Madras. How Section 5 can be invoked for condonation of this kind of delay. Section 5 reads as follows:

5. Extension of prescribed period in certain cases: Any appeal or any application, other than an application under any of the provisions of Order 21 of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation:- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

A reading of this section shows that this Section can be resorted to only when an appeal or application other than one under Rule 21 of the Civil Procedure Code, 1908 is filed. What is sought to be filed is only the certified copy. Further, invariably in such cases, where certified copy is sought to be produced with a delay, the appeal would have been already preferred. If the appeal is preferred within 15 days from the date of the order of the Rent Controller, there will be no necessity at all for filing a petition to condone the delay in filing the certified copy. Cases where the appeal is filed after 15 days from the date of the order in the already filed appeal, the petition to condone delay in producing the certified copy is filed. Section 5 of Limitation Act is not at all applicable for such production. Section 5 applies to applications or petitions, appeals etc., only.

35. Another strange or anomalous practise is to dis-miss the appeal itself for non-production of the certified copy. Where is the need to file the certified copy. Then why the dismissal on that ground?

36. To avoid complication and confusions as I have indicated above, the following procedure can be adopted:

(1) The appeal can be filed in two methods:

(i) Within 15 days from the date of the order without the certified copy;

(ii) within 15 days after getting the certified copy of the order also with the certified copy; For the above two modes, Section 5 of the Limitation Act can be invoked if there is delay in both the cases.

(2) The filing of the petition to dispense with the certified copy of the order is not necessary.

(3) When the appeal is filed without the copy of the order appealed against, an undertaking should be given by the appellant to produce a copy of the order appealed against as early as possible and at any rate before the final hearing of the appeal.

(4) The appeals after being taken on file and num-bered should not be dismissed for want of filing the certified copy of the order appealed against. This is in view of the dictum of the Supreme Court set out earlier that no appeal should be rejected after it was received and posted for hearing for some defect in the presentation of the appeal and the defect was not noticed by mistake or negligence in the office. In some of the cases before me appeals were rejected after numbering, on the ground that certified copies were not filed in time. Here, the numbering of the appeals was under a mistake that certified copy is necessary and the same could be dispensed with for the present. For the mistake committed by the office and court, the appellants cannot be blamed.

37. Now in the light of the above, we will take up the individual civil revision petitions. C.R.P. No. 530 of 1997 is against the order dismissing the appeal itself, since the petition for condoning the delay in filing the certified copy was dismissed. As we have seen, petition for condoning the delay in filing the certified copy is unnecessary. If the appeal is within 15 days from the date of the order, then there is no necessity for filing petition u/s 5 of the Limitation Act. If the appeal is after 15 days, the appellant has to show sufficient cause for not filing the appeal in time. But as the procedure to be adopted was in an indefinite and confused stage, the appellant cannot be blamed for not filing the appeal in time. But as the procedure to be adopted was in an indefinite and con-fused stage, the appellant cannot be blamed for not filing the appeal in time. He should be given a chance for contesting the appeal on merits, since the appeals have been already numbered. Hence, both the C.R.P. Nos. 530 and 531 of 1997 are allowed.

38. C.R.P. No. 583 of 1997 is against the order rejecting the memo for receiving the certified copy. The reason stated is that petitioner has not filed a petition for condoning the delay. Since the petition to condone the delay in filing the certified copy is not at all maintainable and also not necessary, the said civil revision petition has to be allowed. C.R.P. No. 584 of 1997 is against the order in M.P. SR. No. 24729 of 1996 refusing to restore the appeal. The appeal has to be restored and disposal of one merits, C.R.P. No. 585 of 1997 is against the order in M.P. SR. No. 24728 of 1996 refusing to condone the delay of 14 days in filing the petition to restore R.C.A. No. 402 of 1994. These two petitions have been

dismissed, since the memo for production of the certified copy was rejected. Hence, these two petitions have to be allowed. Accordingly, the two civil revision petitions are allowed.

39. C.R.P. No. 779 of 1997 is against the order in M.P. No. 843 of 1996 refusing to condone the delay of 473 days in filing the certified copy. C.R.P. No. 1728 of 1997 is against the order in M.P. No. 181 of 1997 refusing to condone the delay of 199 days in filing the certified copy of the order. In view of the above finding, that petition u/s 5 is not necessary, the orders cannot be sustained. Accordingly, these civil revision petitions are allowed.

40. C.R.P. No. 897 of 1997 is the consequential order dismissing the petition M.P. SR. No. 24758 of 1996 to restore the R.C.A. No. 169 of 1995, which was dismissed for not furnishing the certified copy in time. Hence, the said civil revision petition has to be allowed. Accordingly, it is allowed.

41. C.R.P. No. 1933 of 1997 is against the order in M.P. No. 316 of 1997 dismissing the appeal itself as the certified copy was not produced within 15 days from the date of receipt. Since, such a petition is unnecessary, the said civil revision petition is also allowed, and the appellate authority is directed to dispose of the appeal on merits.

42. C.R.P. No. 1953 of 1997 is against the order in M.P. No. 1040 of 1996 refusing to condone the delay in filing the certified copy. Since, such petition is not necessary, the civil revision petition is allowed.

43. C.R.P. No. 1952 of 1997 is against the order dismissing the appeal itself for not furnishing the certified copy of the order. Hence, this civil revision petition is also allowed.

44. In all the above civil revision petitions, there will be no order as to costs.

45. In view of the disposal of the main petitions, C.M.P. No. 2653 of 1997 in C.R.P. No. 530 of 1997; C.M.P. No. 2899 of 1997 in C.R.P. No. 585 of 1997; C.M.P. Nos. 3921 and 6540 of 1997 in C.R.P. No. 779 of 1997; C.M.P. Nos. 9044 and 11750 of 1997 in C.R.P. No. 1728 of 1997; C.M.P. No. 4544 of 1997 in C.R.P. No. 897 of 1997; C.M.P. No. 9835 of 1997 in C.R.P. No. 1933 of 1997; C.M.P. No. 9911 of 1997 in C.R.P. No. 1953 of 1997 and C.M.P. No. 9910 of 1997 in C.R.P. No. 1952 of 1997 are all dismissed as unnecessary.