

(1974) 04 AP CK 0007

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 868 of 1973

Gedda Durga Malleswara Rao

APPELLANT

Vs

Ranga Panaiah and Bros.

RESPONDENT

Date of Decision : 09-04-1974

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 22(1)
Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961 — Rule 8(3)
Limitation Act, 1963 — Section 5

Citation : AIR 1975 AP 13

Hon'ble Judges : Ramachandra Rao, J

Bench : Single Bench

Advocate : N. Rajeswara Rao, for the Appellant; J.V. Suryanarayana Rao, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandra Rao, J.—The question that arises in this revision petition filed u/s 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (Act IV of 1960). is whether the provisions of Section 5 of the Limitation Act (hereinafter called the Act), are applicable to proceedings before the Rent Controller exercising powers under the Rent. Control Act. The question arises on the following facts.

2. The petitioner herein filed the application H. R. C. No. 95/1972 on the file of the House Rent Controller. Vijayawada, for eviction of the respondent from a non-residential building. The application was ordered ex parte on 19-7-1972 and possession was taken over by evicting the respondent on 9-9-1972. The respondent filed the petition. I. A. No. 4518 of 1972 u/s 5 of the Act. on 15-9-1972 for condoning the delay in filing the application for setting aside the ex parte order of eviction. In the affidavit "filed in support of the petition, it was alleged by the respondent that he had no notice of the eviction petition, that no such notice was served on him, that until 9-9-1972 on which date he was forcibly

evicted, he was not aware of the order of eviction passed against him and that the landlord had in fact come to his shop on 7-9-1972 and received rent but he did not disclose that he had obtained an order of eviction on 19-7-1972 and therefore the ex parte order should be set aside after condoning the delay in filing the petition.

3. This petition was opposed by the landlord alleging that the respondent refused every notice issued from Court, that he was called on 19-7-1972 but he was absent and therefore he was set ex parte that the respondent did not raise any objection to the said proceedings taken on 9-9-1972 and that there were no valid reasons made out for condoning the delay and setting aside the ex parte order.

4. The Rent Controller condoned the delay and allowed the petition subject to the respondent paying a sum of Rs-. 10/- to the petitioner as costs.

5. The petitioner carried the matter in appeal to the learned Subordinate Judge. Vijayawada, and the order of the Rent Controller was confirmed and the appeal dismissed. Hence the revision petition.

6. Sri N. Rajeswara Rao. the learned counsel for the petitioner submitted that the Rent Controller is not a "Court" and therefore Section 5 of the Act, is not applicable to the case. The submission of the learned counsel is that under Rule 8 (3) of the rules framed under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, an ex parte order can be set aside on the affected party's filing of an application within 30 days from the date of pronouncement of the order in open Court, that there is no provision made under the rules for condoning the delay in filing such an application, and that the provisions of Section 5 of the Act are not made applicable to the proceedings under the Rent Control Act and hence the Rent Controller had no jurisdiction to entertain an application filed u/s 5 of the Act.

7. On the other hand, it is contended by Sri J. V. Suryanaravana Rao, the learned counsel for the respondent that the Rent Controller exercising powers under the Rent Control Act, is a "Court" within the meaning of Section 5 of the Act and by virtue of Section 29(2) of the Act, the provisions of Section 5 are applicable to proceedings under the Rent Control Act, and in support of this submission, the learned counsel invited my attention to the several rulings of this Court and of the Supreme Court.

8. On a consideration of all the rival contentions, I think the contention of the learned counsel for the respondent that the Rent Controller is a "Court" and that the provisions of Section 5 of the Act, are applicable to proceedings under the Rent Control Act, has to be accepted.

9. In K. Chalapathi Rao v. B. N. Reddy (1968) 2 An WR 587 a Division Bench of this Court consisting of Narasimham, J., (as he then was) and Vaidya, J. held that "Rent Controller" is a "Court" subordinate to High Court within the terms of Section 3 of the Contempt of Courts Act. The learned Judges referred to the

several provisions of the Rent Control Act and the rules made thereunder and the several rulings of the Supreme Court, and the four tests laid down in *Cooper v. Wilson*, (1937) 2 KB 309 340 and came to the conclusion that the Rent Controller, having regard to the several provisions of the Act and the rules made thereunder, possesses all the attributes of a "Court". This ruling is therefore a clear authority in support of the contention of the learned counsel for the respondent that the "Rent Controller" is a "Court."

10. In *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, , it was held that the Assistant Registrar functioning under Bihar and Orissa Co-operative Societies Act, is a "Court" subordinate to High Court for purposes of Section 3 of Contempt of Courts Act.

11. In *Vidya Devi v. Firm Madan Lal* AIR 1971 Pun 150 a Full Bench of the Punjab and Haryana High Court, held that Rent Controller and the Appellate Authority under Punjab Rent Restriction Act are Courts or Civil Courts for purposes of Sections 195(1)(b), 476 and 479A of the Code of Criminal Procedure.

12. In view of the aforesaid rulings, there cannot be any doubt that the Rent Controller acting under the Rent Control Act, is A "Court", and the provisions of Section 5 of the Act, are applicable to the proceedings before the Rent Controller under the said Act.

13. *Sri N. Raieswara Rao*, relies upon a decision of *Gppal Rao Ekbote, J.* (as he then was) in *Firm of S. Mohd. Ali and Sons and Others Vs. V. Madhavarao and Others*, . There it was held by the learned Judge that the Rent Controller is not a Court subordinate to the High Court. within the meaning of Section 24, Civil P. C. This case was distinguished in (1968) 2 An WR 587 on the ground that neither the Rent Control Act nor the rules made thereunder apply to the provisions of the CPC and that the power to transfer cases from one Controller to another Controller vests in the Appellate Authority and that there being a special provision under the rules, Section 24 of the CPC has been manifestly kept out. Therefore this Ruling does not support the contention of the learned counsel for the petitioner that "Rent Controller" is not a "Court" for the purpose of Section 5 of the Act.

14. *Sri N. Rajeswara Rao*, then relied upon the decision of the Supreme Court in *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, where their Lordships held as follows:--

"In view of Sections 4 and 5 of the Limitation Act, it would be clear that the scheme of the Act is that it only deals with applications to Courts and Labour Court is not a Court within the Limitation Act."

Their Lordships held that the Labour Court exercising powers under the Industrial Disputes Act, is not a "Court" within the meaning of the Indian Limitation Act, 1963. This case also does not lend any support to the contention of the learned counsel for the petitioner because in view of the conclusion reached by their

Lordships that the Labour Court is not a Court within the meaning of Limitation Act, the provisions of the Limitation Act were held to be not applicable to proceedings before Labour Court. But the same is not the position with regard to Rent Controller exercising powers under the Rent Control Act. I have already held that the Rent Controller is a "Court" within the meaning of Section 5 of the Act. If so, it follows that the provisions of Section 5, are applicable to the proceedings before Rent Controller.

15. In *Yousufuddin Khan v. Sita Krishnaswamy*. (1966) 2 Andh WR 98. Chandra Sekhara Sastry. J. held that though the Rent Controller may not be a Civil Court, Section 29(2) of the Limitation Act, 1963 applies and therefore the provisions of Section 5 of the Indian Limitation Act would apply to the proceedings before the Rent Controller.

Section 29(2) of the Limitation Act, reads as follows;

"(2) where any special or local law prescribes 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 Sections 4 - 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

XX XX XX Sri J. V. Survanaravana Rao. relying upon Section 29(2) of the Limitation Act, submits that even assuming that the Rent Controller is not a Civil Court, still the provisions of Section 5 of the Act, are applicable by virtue of the provisions of Section 29(2).

16. This argument is no doubt supported by the Judgment of Chandrasekhara Sastry. J. referred to above. But as I have come to the conclusion that the Rent Controller is a "Court" for the purpose of Section 5 of the Act, it is unnecessary to express any opinion on this question, whether the provisions of Section 5 of the Act, apply even if it is to be held that the Rent Controller is not a Civil Court.

17. Sri J. V. Survanaravana Rao, further contended that under Rule 8 (3) of the rules framed under the Rent Control Act, the application for setting aside the ex parte order has to be set aside within 30 days from the date of pronouncement of the order, that inasmuch as the respondent was not served with notice of the petition for eviction, he had no knowledge of the ex parte order of eviction passed against him and that for the first time he came to know about it on 3-9-1972 when he was forcibly dispossessed from the building, and that the petition filed on 15-9-1972 for setting aside the ex parte order within 30 days from the date of knowledge of the order of eviction, would be within time. He submits that though Rule 8 (3) of the rules framed under the Rent Control Act provides that the application should be filed within 30 days from the date of pronouncement of the order in open Court, still when the party against whom the

order was passed, had no knowledge of the proceeding and was not served with notice, the period of 30 days should be computed from the date on which he became aware of the said order: and in support of this submission, he relies upon the decision of M. S. Ramachandra Rao, J. in *Satyanarayana v. Venkatasubbaiah*. (1961) 2 An WR 55.

18. There is considerable force in this submission of the learned counsel. But as I have come to the conclusion that Section 5 of the Act is applicable to proceedings under the Act, the petition I. A. No. 4518 of 1972 filed u/s 5 of the Act, is maintainable.

19. In the result, the revision petition fails and is dismissed with costs.