

(1993) 11 MAD CK 0004
In the Madras High Court
Case No : C.R.P. No. 1513 of 1993

Hybro Chains (P) Ltd., 64, Thatha Muthiappan Street,
Madras-1

APPELLANT

Vs

Mary Thomas Marattukulam, and 6 others

RESPONDENT

Date of Decision : 01-11-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21, Order 22 Rule 12, 2, 2(11)
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 18

Citation : (1993) 11 MAD CK 0004

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : A. Chidambaram, for the Appellant; M.S. Subramaniam, for the Respondent

Judgement

Raju, J.—The Revision Petition has been filed under Article 227 of the Constitution of India, challenging the Order dated 29-4-1993 made

in M.P. No. 934 of 1991 in E.P.S.R. No. 1553/91 in R.C.O.P. No. 291 of 1983, on the file of the 14th Judge, Court of Small Causes, Madras,

where under the learned judge in the court below allowed the application by bringing on record the respondents herein as legal representatives of

the deceased landlord who obtained an order of eviction in his favour, to pursue the execution proceedings. The erstwhile landlord Mr. Thomas D.

Marattukulam filed R.C.O.P. No. 291 of 1983, praying for eviction of the petitioner herein who was the tenant. The Rent Controller, by his order

dated 24.4.1984, ordered eviction and granted two months time for vacating the premises. Thereupon, it appears that the petitioner herein filed an

appeal before the Appellate Authority under the Rent Control Act, and the same was also dismissed. On further revision filed before this Court, it

appears that the parties have entered into an arrangement of compromise, under which the petitioner herein agreed to vacate and deliver vacant

possession on or before 17-7-1989. In the meantime, the erstwhile landlord appears to have died on 17-2-1988. It is on this account, the

respondents have filed an application along with the execution petition to bring them on record, to enable them to initiate and continue the execution

proceedings pursuant to the order of eviction passed.

2. The petitioner herein has objected to the application on the ground that the same was belated and barred by limitation. It was also contended by

the petitioner that the erstwhile landlord could not be considered to have died at all and that therefore, the application to bring on record the legal

representatives cannot be maintained. Yet another contention which appears to have been made was that though the respondents have claimed that

the deceased has left a will, the same has not seen the light of the day and, therefore, the application ought not to be entertained.

3. The court below conducted an enquiry, in which oral and documentary evidence were produced on either side. The court below, by its order

under challenge, upheld the claim of the respondents and allowed the application and thereby permitted them to come on record as legal

representatives, to enable them to file and pursue the execution proceedings. Hence the above Revision, since, under the provisions of the Act,

there is no remedy available to the petitioner.

4. Mr. A. Chidambaram, Learned Counsel appearing for the petitioner, fairly brought to my notice all the relevant decisions on the subject and

contended that having regard to the decision reported in 1991 1 1 MLJJ 388 A. Ghouse Khan Vs. The Rent Controller and Others, and 1984

T.L.N.J. 60 Krishnan & others v. Kudha Baksh and others, the special period of limitation prescribed under Rule 25 of the Tamil Nadu Buildings

(Lease and Rent Control) Rules, 1974 applies to the case on hand, and having regard to the fact that the application in question came to be filed

only on 28-10-1991, beyond the period fixed under Rule 25 of the Rules the said application ought to have been rejected.

5. Mr. M.S. Subramaniam, the Learned Counsel appearing for the respondents,

contended by placing reliance upon the decisions of this Court

reported in 1991 1 M.L.J. 487 A. Ghouse Khan Vs. The Rent Controller and Others, that the period of limitation prescribed under Rule 25 has

no application to filing of execution petition afresh with application for adding the legal representatives of the landlord and consequently no

exception can be taken to the order of the Court below.

6. I have considered the submissions of the Learned Counsel appearing on either side.

7. The decision of A. Ghouse Khan Vs. The Rent Controller and Others, in my view, contains an illuminating exposition of the principles governing

the filing of the execution petition by the legal representatives of the landlord who died after obtaining the order of eviction, in the course of

pursuing the execution proceedings to enforce the order of eviction passed. The said decision adverts to the judgment relied upon by the Learned

Counsel for the petitioner, and it is only while distinguishing the principles laid down thereunder as confined to the facts and circumstances of the

case, the learned judge held as hereunder:

From the extracts given above from various judgments, I have no doubt that the court below was right in impleading the legal representatives of the

deceased tenant as party respondents in the fresh execution petition though it was not necessary for the court below to condone the delay by

invoking S. 5 of the Limitation Act. On the scope of concluding portion of the order in W.P. Nos. 2620 of 1977, I am of the view, having regard

to the argument advanced by the petitioner in that case, the learned single judge should have meant when he mentioned ""separate proceedings

against the writ petitioners"" fresh execution petition. Even otherwise, as per the catena of decisions cited hereinbefore, nothing prevents the

landlord from filing fresh execution petition by adding the legal representatives of the deceased tenant to execute the order of the Rent Controller.

8. Even that apart, the decision of Shanmukham, J. reported in 99 L.W. 438 (supra) also has taken a similar view and held as hereunder:

It is true that in Ghouse Khan v. Rent Controller, Coimbatore, Ratnavel Pandian, J., has observed as follows:

Therefore, the Rent Controller ought to have seen that the fiction created by S. 18 of the Act can be extended only for the limited purpose of

exercising the powers vested in a civil Court while executing the orders of eviction, such as those provided under O. 21 of the Code, but cannot be

extended to matters such as those contained in O. 22 and other provisions of the Code relating to the execution of a decree.

It is interesting to note that the decision of V. Ramaswami, J., in Ramanujam Naidu v. Panchanatha Mudaliar, was not brought to the notice of

Ratnavel Pandian, J., when the learned Judge rendered the decision in Ghose Khan v. Rent Controller, Coimbatore. Be that as it may, I prefer to

follow the ratio laid down by V. Ramaswami, J. in Ramanujam Naidu v. Panchanatha Mudaliar. Here are my reasons: O. 22, R. 12 of the C.P.C.

provides that nothing in Rr. 3, 4 and 8 shall apply to proceedings in execution of a decree or order. As already pointed out by me, after a valid

decree is passed, it can be enforced till it is barred by time, as provided in law. As long as a decree can be enforced, it is obvious that an

application to bring on record the legal representatives can be presented within that period.

Again, in view of the ratio of the Supreme Court in Sri Krishna v. Mathura Ahir, the respondent herein is a legal representative within the meaning

of S. 2(sic) of the Code of Civil Procedure. It is relevant to notice that the Act does not define "legal representative. When the order of eviction

shall be deemed to be a decree of civil court and when it is put in execution, S. 2(11) of the CPC is simply attracted. The ratio in Sri Krishna v.

Mathura Ahir cited above, says that an intermeddler can not only be sued, as held in Firm Balkisan v. Mt. Jainabai, Jai Kishen Das v. Karimuddin

and The Kalyammal Mills Ltd. v. Wall Mohammed, but he is also entitled to sue The Learned Counsel for the petitioner would try to distinguish

the Supreme Court decision on the ground that on the facts before the Supreme Court, the legal representative was brought on record pending the

proceeding and not after the decree was passed. The definition of "legal representative" in S. 2(11) of the CPC makes no such distinction. It so,

the ratio of the Supreme Court is simply attracted to the instant case as well. In view of the above authoritative pronouncement of the Supreme

Court the decisions in Firm Balkisan v. Mt. Jainabai, Jai Kishan Dass v. Karimuddin and The Kalyammal Mills Ltd. v. Walt Mohammed cited by

the Learned Counsel for the petitioner may not be good law.

9. In the light of the subsequent clarification and enunciation of the law in the light of the various decisions referred to and relied upon by the

Learned Counsel appearing for the petitioner, I am afraid that I cannot countenance the objection of the petitioner regarding the bar of limitation.

The provisions of Rule 25 of the Rules, as referred to in the above decisions, could be attracted only to a case where it concerns the impleading of

legal representatives in pending execution proceedings or proceedings to avoid any plea of abatement, etc. of such pending proceedings. It will not

stand in the way of an application being filed for execution along with an application to bring on record the legal representatives of the deceased

landlord who obtained an order of eviction. Filing of such an application well within the time within which the execution application itself can be

filed to execute the order of the Rent Controller is legally permissible and Rule 25 is not a Rule which provides a limitation or time-limit, for, the

execution of the order of eviction passed by the Rent Controller which, having regard to S. 18 of the Tamil Nadu Buildings (Lease and Rent

Control) Act, 1960, shall be executed by the Controller as if such an order is an order of a civil court, and for which purpose, the Controller was

empowered to have all the powers of a civil court.

10. As for the other contention that the erstwhile landlord could not be considered to have died, such an objection deserves a mere mention to be

rejected only. The respondents have marked sufficient documents in the nature of Death Certificate from the Competent Authority, to prove the

death of the erstwhile landlord. There is no dispute that the respondents 1 to 7 are the wife and other children of the deceased erstwhile landlord.

In such circumstances, the further plea that in the absence of the production of the will, the respondents could not pursue the execution proceedings

has no meaning or merit. The objections of the petitioner are not only, in my view, far-fetched but also seem to be one made in a desperate attempt

to avoid and stall execution proceedings, to enforce an order which has been challenged upto this Court, and that too when the petitioner has

availed of the benefit of an order of compromise passed in this Court. The order of the Court below does not suffer from any patent error of law

or any perversity of approach, and, in my view, the case does not warrant the interference of this Court under Art. 227 of the Constitution of India.

The Revision, therefore, fails and shall stand dismissed. No costs.