
(2004) 03 AP CK 0121
In the Andhra Pradesh High Court
Case No : CRP No. 4523 of 1996

Jagati Thimma Raju

APPELLANT

Vs

Dronamraju Sitabhai and Others

RESPONDENT

Date of Decision : 22-03-2004

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 16

Citation : (2004) 3 ALD 735 : (2004) 3 ALT 634

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : M.V.S. Suresh Kumar, for the Appellant; C.C.S. Sastry, for the Respondent

Final Decision : Allowed

Judgement

B. Prakash Rao, J.—Heard Sri M.R.S. Srinivas, and Sri C.C.S. Sastry, learned Counsel appearing on behalf of the petitioner and the respondents respectively.

2. The petitioner herein is a tenant who seeks to assail the orders rejecting an application in I.A. No. 2394 of 1994 in A.T.A. No. 89 of 1990 dated 8-11-1996 on the file of District Judge, West Godavari, Eluru filed u/s 5 of the Limitation Act to condone the delay of 92 days in filing the petition to set aside the abatement in filing an application to bring legal representatives of the deceased landlord.

3. It is the case of the petitioner is that he filed a regular appeal in A.T.A. No. 89 of 1990 under the provisions of Andhra Pradesh (Andhra Area) Tenancy Act, hereinafter referred to as "the Tenancy Act" against the orders of eviction passed by the Primary Tribunal in A.T.C. No. 24 of 1984 on the file of Special Officer (Principal District Munsif), Kovvur. During pendency of the appeal, sole respondent-landlord died. After making an enquiry, he came to know that the respondents herein are his legal representatives, but are residing at different places, so he could not get their complete addresses and particulars, as a result of which said delay occurred, which is purely accidental and unintentional.

4. Contesting the same, the respondents denied the allegations of the petitioner. The Court below, by placing reliance on the judgment in *G. Sriramamurthy Vs. Majji Narasaiah (Tenant) and Another*, , dismissed the application on the ground that the provisions of the limitation Act have no application to the proceedings under the Tenancy Act.

5. Learned Counsel for the petitioner contended that the provisions of the Limitation Act would apply to the case on hand having regard to the law laid down by the Apex Court in *Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker*, , where it was held that by applying the provisions of Section 29(2) of Limitation Act in respect of the proceedings arising out of Kerala Buildings (Lease and Rent Control) Act, 1965, the District Judge, who is appointed as Appellate Authority, constitute a class and cannot be regarded as *persona designata* and therefore, the provisions of the Limitation Act can be extended. Thus, it is stated by the learned Counsel for the petitioner that having regard to the same, it cannot be said that the Limitation Act has no application to the proceedings arise out of Tenancy Act.

6. Learned Counsel for the respondents sought to distinguish the above said decision mainly on the ground that the Rent Control Legislation is a self contained Code with provisions for filing all such interlocutory applications, like to bring the legal representatives on record, for condonation of delay etc., whereas there are no provisions in the Tenancy Act for similar reliefs.

7. Considering the submissions made on either side and on perusal of the record, the question that falls for consideration in this revision is - whether the provisions of the Limitation Act will have any application to the proceedings arise out of Andhra Pradesh (Andhra Area) Tenancy Act and if the answer is in negative, then what is the remedy to bring the legal representatives on record, to seek condonation of delay or to set aside the abatement.

8. In the present case, admittedly the landlord died during pendency of the appeal and the case of the petitioner is that it is only after an investigation made by him he could get the particulars of the legal representatives of the deceased landlord, who are scattered at different places, the delay of 92 days has occurred, which is not intentional, but quite incidental and therefore, he sought for condonation of the said delay, for setting aside the abatement and to bring the legal representatives of the deceased landlord on record.

9. As rightly pointed out by the learned Counsel for the petitioner, on a reading, it is obvious that there is ample distinction in regard to various provisions of both under the Rent Control Act and Tenancy Act. For making applications like for condonation of delay, seeking to set aside the order of abatement and to bring the legal representatives of the deceased on record were not provided under the Tenancy Act or the Rules made thereunder as provided for, on comparison, under the Rent Control Act and the Rules made thereunder.

10. I am not prepared to accept that the principles laid by this Court in the

decision referred to in *Sriramamurthy v. M. Narasiah* case (supra) are not applicable to the present case in view of the decision of the Apex Court in *Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker* case (supra). Both the decisions dealt the issue contextually under different statutes of which one i.e., Rent Control Act is a self contained one unlike other. Be that as it may, if it is to be held that the provisions of the Limitation Act have no application to the proceedings arise out of Tenancy Act, then the provision contemplating period of limitation for filing application to bring the legal representatives cannot be made applicable. Thus, where there is no period of limitation for filing such applications under the Tenancy Act, the applications shall have to be filed within a reasonable time. The reasonableness differ from case to case, depending on facts and circumstances. In this case, the petitioner came forward with reasons for condonation of the delay in filing the application to set aside the abatement order. On the merits of the case, it cannot be said that the cause of action does not survive, nor can it be said that it comes to an end with persons' death. Whenever cause survives, necessarily the proceedings have to be pursued by or against the legal representatives. Therefore, necessarily the steps have to be taken to add them as parties. Further, where there is no prescribed period for filing such applications, there will not be any abatement. Thus, faced with no delay or abatement, it is stated by the petitioner that since the legal representatives of the deceased landlord are residing in different places the delay has occurred in securing their particulars. Having regard to the same and there being no serious challenge to the reason, as shown in the affidavit, the Court below ought to have accepted the said reason as a reasonable one.

11. Accordingly, this revision petition is allowed holding that the applications seeking condonation of delay in filing the application or to set aside the abatement are not necessary and that the application to bring Respondents 2 to 8 as legal representatives of first respondent on record shall stand allowed. Lower Appellate Court shall dispose of the appeal on merits, after giving notice and opportunity to both the parties within a period of two months from the date of receipt of a copy of this order. No costs.