
(1977) 11 KL CK 0022
In the High Court Of Kerala
Case No : C.R.P. No. 3645 of 1976-I

Kadamkothu Valappil Sreedharan

APPELLANT

Vs

Keereerakath Muhammed Kunhi

RESPONDENT

Date of Decision : 14-11-1977

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(2), 23(1)
Limitation Act, 1963 — Section 5

Citation : AIR 1978 Ker 164

Hon'ble Judges : V. Balakrishna Eradi, J;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : M.P. Balagopalan Nambiar, for the Appellant; M.A. Manhu and V.V. Narayanan, for the Respondent

Final Decision : Allowed

Judgement

Balagangadharan Nair, J.—Respondent who is the landlord applied for evicting the petitioner-tenant u/s 11 (2) (b) of the Buildings (Lease and Rent Control) Act (which we will call the Act for short) on the ground that he was in arrears of rent. On Feb. 26, 1974 the petitioner deposited in the Rent Control Court the rent till the end of that month for payment to the respondent. However on Feb. 28, 1974 the Rent Control Court passed an order of eviction on the ground that the amount deposited was insufficient as it did not cover the costs of the proceedings, adding a rider within Section 11" (2) (c) that the petitioner could get the order vacated by making up the deficit amount within one month. The petitioner did not do this within the time but made an application I. A. 192(A)/74 for vacating the order only on June 1, 1974, supporting it with an affidavit explaining the circumstances which led to the delay. He also deposited Rs. 37.10 being the costs and the rent up-to-date. The Rent Control Court dismissed the application in the view that it had no power to condone the delay and allow the application, as it was made only after the period of one month had expired. This conclusion has been confirmed by the Appellate Authority and Revisional Court on substantially the same reasoning, dismissing the appeal and revision taken

"by the petitioner challenging the order of the Rent Control Court.

2. The revision filed by the petitioner has come before us pursuant to a reference made by a learned single Judge for deciding whether "... .. in view of Sections 11 (2) (b) and (c) and 23 (1) (i) of the Kerala Buildings (Lease and Rent Control) Act, 1965, the Rent Control Court, which is a persona designate has all the powers of a civil court u/s 148 of the Civil P. C. read with Section 5 of the Limitation Act for the purpose of "enlargement of time originally fixed or granted". (See Section 23 (1) (i) of the Kerala Buildings (Lease and Rent Control) Act."

3. Section 11 (2) (b) lays down the circumstances under which the Rent Control Court can pass an order directing the tenant to put the landlord in possession on the ground of arrears of rent. The proviso that follows prescribes the conditions precedent to an application by the landlord for eviction. Clause (c) and Section 23 (1) (i) On whose interpretation the revision falls to be decided deserve to be quoted in full:

"Clause (c) The order of the Rent Control Court directing the tenant to put the landlord in possession of the building shall not be executed before the expiry of one month from the date of such order or such further period as the Rent Control Court may in its discretion allow; and if the tenant deposits the arrears of rent with interest and cost of proceedings within the said period of one month or such further period, as the case may be, it shall vacate that order."

"Section 23 (1) Subject to such conditions and limitations as may be prescribed, the Accommodation Controller, the Rent Control Court and the appellate authority shall have the powers which are vested in a Court under the Civil P. C., 1908 (5 of 1908), when trying a suit in respect of the following matters:--

(a) to (h) omitted

(i) enlargement of time originally fixed or granted;

(j) and (k) omitted."

4. That the Rent Control Court under the Act is a persona designata and not a civil court is clear and has been settled by the Full Bench decision Vareed Ouseph Vs. Mary, delivered by one of us (Eradi J.). The question before us is whether it has the power u/s 11 (2) (c) and Section 23 (1) (i) of the Act to enlarge the time originally fixed or granted in terms of Section 11 (2) (c) by the order dated Feb. 28, 1974, on an application made after expiry of that time. Although Section 5 of the Limitation Act had been invoked by the petitioner before the Rent Control Court and it is mentioned in the order of reference, that section in our view has no relevance, for the period of one month granted by the Rent Control Court is no period of limitation and the substance of the petitioner's prayer was to allow in its discretion further period within Section 11 (c) or enlarge the period within Section 23 (1) (i), till he made the deposit and not to condone any delay. Further no period is prescribed for an application of the type made by the petitioner

before the Rent Control Court. And yet again S. 5, Limitation Act, applies only to courts and not to authorities like the Rent Control Court or the appellate authority. We might refer to *Jokkim Fernandez v. Amina Kunhi Umma* 1973 Ker LT 138 : AIR 1974 Ker 1621 (FB) holding that Section 5, Limitation Act has no application to the appellate authority and to *Smt. Sushila Devi Vs. Ramanandan Prasad and Others*, , holding that a Collector to whom an application is made u/s 3 of the Kosi Area (Restoration of Lands to Raiyats) Act, even though he is vested with certain specified powers under the Civil P. C., is not a court within Section 5 of the Limitation Act. An earlier decision *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, , had ruled, in a case arising under the Industrial Disputes Act, that the "scheme of the Indian Limitation Act is that it only deals with applications to courts and that the Labour Court is not a court within the Indian Limitation Act 1963". This decision and a prior decision *Athani Municipality v. Labour Court, Hubli* AIR 1969 SC 133S were followed in *Jokkim Fernandez v. Amina Kunhi Umma* (supra) to hold that the Limitation Act applies only to courts and that consequently Section 5 had no application to appellate authority under the Act. as it is not a court but only a persona designata. *Jokkim Fernandez Vs. Amina Kunhi Umma*, has itself been followed in *S. Ganapathi Vs. N. Kumaraswami*, , for the same purpose. Section 5 of the Limitation Act therefore creates no problem.

5. The point is thus narrowed to the question whether the Rent Control Court has the power to grant the petitioner's application in the light of Section 11 (2) (c) and Section 23 (1) (i) of the Act. Section 11 (2) (c) while suspending the execution of the order of eviction for a month empowers the Rent Control Court to allow in its discretion such further period during which the order shall not be executed. *Cheriyann v. Mahadeva Iyer*, 1971 Ker LT 199, has held that the expression "such further period" which was added by Act 7 of 1966 in Section 11 (2) (c) replacing the expression "such other period" that had occurred in Clause (c), empowers the Rent Control Court to enlarge the period and not merely to substitute a longer period than one month. The circumstance that the one month period of suspension of execution is laid down by the statute does not deprive the Rent Control Court's power to enlarge the period as the power to enlarge or to grant "such further period" is conferred by the statute itself. There is nothing in the expression "such further period" to suggest that the power to enlarge the period could be exercised only before and not after its expiry. Even though the expression "such other period" would have only empowered the Rent Control Court to substitute a different period by the order of eviction, the words "such further period" by which it was substituted, permits an enlargement by subsequent order. The power to enlarge thus flows from Section 11 (2) (c) itself. Nor is this the sole source of power for Section 23 (1) (i) expressly confers the power to enlarge the time originally fixed or granted as is vested in a court under the Civil P. C. As for the Civil Court, it has got the power to enlarge the time after expiry of the time originally fixed or granted and this can be done even on a motion made after the time has run out. as will be clear from *Subramonian*

Chettiar v. Krishnaveni Animal, 1964 Ker LJ 882 following an earlier decision of this Court *Kathyee Cotton Mills Ltd. Vs. R. Padmanabha Pillai and Others*, and *Mahanth Ram Das Vs. Ganga Das*, . The same power must therefore vest in the Rent Control Court by virtue of Section 23 (1) (i). In C. R. P. 1910 of 1977-1, one of us (myself), after considering the relevant provisions and discussing *Mahanth Ram Das Vs. Ganga Das*, ; *B.C. Kame Vs. Nemi Chand Jain*, and *Gobardhan Singh Vs. Barsati*, , took the view that the appellate authority under the Act had power, even after expiry of the time originally fixed or granted, to allow an enlargement even on a motion made after such expiry and that the power had to be exercised in the proper exercise of its discretion. Of these cases *B.C. Kame Vs. Nemi Chand Jain*, arose under the Madhya Pradesh Accommodation Control Act and the decision was concerned with the construction of the expression "within such further time as the court may allow" which bears close correspondence with the expression "such further period as the Rent Control Court may in its discretion allow" in Section 11 (2) (c) of the Act. What applies to the appellate authority applies to the Rent Control Court as well. The decision in C. R. P. No. 1910 of 1977-I is therefore in accord with the view which we have expressed earlier. We hold that the Rent Control Court had power to allow the petitioner's application.

6. On the merits of the application, the ground alleged by the petitioner for the delayed deposit was that he bona fide thought that the amount deposited by him on 26-2-1974 was sufficient and that he was not informed by his lawyer or clerk about the order of eviction. This allegation has not been disbelieved but would even appear to be accepted by the Rent Control Court and Revisional Judge. Although the appellate authority does not seem fully to endorse the approach of the Rent Control Court we are satisfied that the ground could be accepted particularly as the petitioner's bona fides is manifest from his conduct in depositing the entire amount along with the application. The application could therefore be allowed.

We set aside the impugned orders, allow I. A. No. 192 (A)/74, vacate the order of eviction dated 28-2-1974 and dismiss O. P. (R. C. 232 of 1973). The revision is thus allowed but in the circumstances without costs.