
(1946) 01 MAD CK 0026
In the Madras High Court

Mutyala Venkatramayya

APPELLANT

Vs

Tanguturi Venkatasubbayya and Others

RESPONDENT

Date of Decision : 11-01-1946

Acts Referred:

Citation : AIR 1946 Mad 351 : (1946) 59 LW 202 : (1946) 1 MLJ 271

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The appellant in the appeal who is also the petitioner in the civil revision petition was a debtor who applied to the Court of

the District Munsiff of Bhimavaram for relief under the provisions of Madras Act IV of 1938. The application was dismissed on a legal ground and

as there was then no right of appeal under the Act, the debtor moved this Court in revision. By the time the revision petition came to be heard here,

Madras Act IV of 1938, had been amended and a right of appeal had been given under the new Section 25-A which provides that an order of the

kind by which the petitioner was aggrieved should be subject to appeal as if it was an order falling u/s 47 of the CPC "" The revision petition having

been rejected on the ground that an appeal lay the debtor moved the Subordinate Judge of Narsapur to excuse the delay u/s 5 of the Limitation

Act and to admit an appeal against the original order to the District Munsiff. The learned Subordinate Judge has dismissed the application to

excuse the delay and has consequently rejected the appeal. Against the order refusing to excuse the delay the present revision petition is preferred

and against the dismissal of the appeal the present second appeal is preferred.

2. The only ground on which the learned Subordinate Judge has rejected the

application to excuse the delay is on the strength of a contention based on Section 20 of the Limitation Act. Section 29(2) provides that where a special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of Section 3 shall apply as if such period were prescribed therefor in that schedule and for the purpose of determining any period of limitation prescribed for any suit appeal or application by any special or local law (a) the provisions contained in Section 4, Sections 9 to 18 and Section 22 shall apply ... and (b) the remaining provisions of this Act shall not apply. The learned Subordinate Judge has read this provision of law as having enacted that none of the excluded provisions shall apply to any suit, appeal or application under any special or local law. This is clearly erroneous. All that Section 29(2) lays down is that where a special or local law prescribes a special period of limitation, the excluded provisions of the Limitation Act shall not apply. For instance, it has been held that u/s 20 of Madras Act IV of 1938 a special period of limitation is laid down for the filing of an application u/s 19 by a person who has obtained a stay u/s 20 and consequently Section 5 of the Limitation Act cannot be applied to extend the period therefor prescribed under the special law. In Section 25-A newly introduced into this Act, though a right of appeal is given, no period of limitation different from the period prescribed by the first schedule to the Limitation Act is indicated. Therefore the provisions of Section 29(2) have no application so as to exclude the provisions of Section 5 of the Limitation Act from being applied to appeals under the special law. In this view we allow the civil revision petition and the civil miscella-neous second appeal and remit both the applications u/s 5 and the appeal to the lower Court for disposal on the merits.

3. The petitioner is entitled to his costs in this civil revision petition. No separate costs in the appeal.