(1987) 11 MAD CK 0054

In the Madras High Court

The Collector of Madras — APPELLANT

Vs

N. Sundaram — RESPONDENT

Date of Decision : 10-11-1987

Acts Referred:

Citation : (1988) 2 LW 461 : (1988) 2 MLJ 122

Hon'ble Judges : K.M. Natarajan, J

Bench : Division Bench

Judgement

K.M. Natarajan, J.—On a reference made by the office, the matter is posted before this Court regarding the maintainability of the revision-petition on the question of limitation. The short point that arises for consideration in this matter is whether the civil revision petition filed u/s 25 of the Madras Buildings (Lease and Rent Control) Act against the order passed by the Appellate Authority after a delay of 268 days, which is beyond the period of 60 days prescribed u/s 25(2) of the Act, is maintainable. It is seen from Section 25 of the Act that the revision has to be filed within 60 days even after the provision to extend the time limit of 30 days is taken into consideration. In the instant case, even after deducting60 days, there is a delay of 269 days. The limitation provided under the Special Act for filing revision, inclusive of the permitted period u/s 25 of the Act is only 60 days. In C.M.P. Nos. 2618 and 2619 of 1983. M.M. Thimmiah v. M.G. Krishna Reddy and Company (1983) 2 M.L.J. (N.R.C.)4, Sathiadev, J., held:

Held that the Supreme Court has taken the view in Hukumdev Narain Yadav Vs. Lalit Narain Mishra, that if on an examination of the relevant provisions of the special enactment and by taking into the scheme of the special enactment and each of the remidies provided therein, it appears that the Legislature has intended to be a complete Code, then necessarily the provisions of the Limitation Act would be excluded, even in the absence of an express exclusion. There is no section in the Act XVIII of 1960 to the effect that Sections 4 to 24 of the Limitation Act would not apply in respect of matters arising under the Act. But when Section 25(2) not only prohibits and special period of limitation for preferring revision petitions to the High Court, to condone the delay in filing the revision within the prescribed period on sufficient cause shown, it being unlike what has been provided u/s 23 of the Act and having regard to the decisions of the Supreme Court in Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, and The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, , it has to be held that Section 25(2) confers a discretion in the High Court to allow further time not exceeding one month for filing of any such application, it is satisfied that the applicant has sufficient cause for not preferring the application within the time limit of one month, as specified in that sub-section. This provision being similar to what came before the Supreme Court in The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, and Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, , it has to be held that when such express exclusion is in-built in the proviso to Section 25(2), Section 5 of the Limitation Act would not be applicable, and hence the petition filed to condone the delay has to be dismissed as not maintainable.

I am in respectful agreement with the view expressed by the learned Judge and held that Section 5 of the Limitation Act cannot be invoked when such express exclusion is in-built in the proviso to Section 25(2) of the Madras Buildings (Lease and Rent Control) Act. Hence the provision is liable to be rejected as barred by limitation and it cannot be taken on file. Accordingly, the un-numbered C.R.P. is rejected on the ground that it is barred by limitation.

