

(2012) 07 JH CK 0083
In the Jharkhand High Court
Case No : LPA No. 611 of 2006

The State of Jharkhand and Others	Vs	APPELLANT
Ashok Kumar Chokhani and Others		RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, Order 41 Rule 13, Order 41 Rule 3A
Limitation Act, 1963 — Section 5

Citation : (2012) 4 JLJR 221

Hon'ble Judges : Prakash Tatia, C.J.; Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : R. Mukhopadhyay, for the Appellant; Alok Lal, Ayush Aditya, for the Respondent

Judgement

Prakash Tatia, C.J.—Heard learned counsel for the parties. The appellant-State is aggrieved against the order dated 30.6.2006 passed by learned Single Judge in C.W.J.C. No. 6793 of 1996(P) Reported in 2006 (4) JLJR whereby the learned Single Judge has fixed the lump sum rent of the premises in question, @ Rs. 4,500/- per month payable from 1.1.1990 till the possession of the premises has been handed over to the landlord i.e., 31.5.2006. The premises in question was initially let out in the year 1945 and had 17,451 sq. ft covered and 20,003 uncovered, total 37,454 sq. ft area.

2. Brief facts of the case are that a property consisting of 17,451 sq. ft. covered area and 20,003 sq. ft. uncovered area, total 37,454 sq. ft., was let out by the landlord to the State for running Sub-Jail at Sahibganj on monthly rent of Rs. 300/- per month with 22.50 paise per month as Latrine Tax.

3. The petitioner filed an application on 11.6.1990 before the Sub-Divisional Officer-cum-House Rent Controller, Sahibganj for enhancement of rent which was registered as H.R. Case No. 10 of 1990. The House Rent Controller by order dated 21.10.1992 fixed 0.15 Paise per sq. ft. as flat rate for the covered area of

17,451 sq. ft. and for the uncovered area of 20,003 sq. ft., total 37,454 sq. ft. which came to about Rs. 5,600/- per month, payable with effect from 1.7.1990.

4. The State aggrieved against the said order of the House Rent Controller, preferred an appeal before the Deputy Commissioner, Sahibganj, who reduced the said fare to Rs. 390/- per month. This increase was 20% of original rent of Rs. 300/- amounting to increase of Rs. 60/- per month + 20% increase in Latrine Tax Rs. 22.50 i.e., increase by Rs. 5 per month, which was made payable from the date of order of House Rent Controller.

5. The State preferred a Revision Petition against the said order, which was allowed by the Commissioner, Santhal Pargana Division, Dumka vide order dated 30th December, 1994.

6. Aggrieved against the dismissal of the Revision Petition by the Commissioner, the landlord preferred a writ petition, being C.W.J.C. No. 6793 of 1996 Reported in 2006 (4) JLJR 157, before this Court. The learned Single Judge after considering the facts of the case held that Deputy Commissioner applied Section 7 of the Act and he took into consideration the irrelevant matters as there is nothing to show that the petitioner or his predecessor-in-interest were ever called upon to make any repair work or to adjust the rent of one month in every year against the expenses of repairing, as provided by law. The learned Single Judge was also of the view that after 15 years of the litigation and that too in a matter where the possession of the premises has been handed over to the landlord, it will be unnecessary to remand the matter to the House Rent Controller again. The learned Single Judge after considering the facts of the case determined the rent at the rate of 15 Paise per sq. ft. for covered area and 10 Paise per sq. ft. for uncovered area as fair and reasonable rent. By this calculation, the fair rent comes to Rs. 4,618/- per month. However, the learned Single Judge reduced this rent also only on the reason that it may be made lump sum amount and determined the fair rent to Rs. 4,500/- per month payable from 1st January, 1990.

7. Not satisfied with this order, the State preferred the present L.P.A. which was dismissed by this Court vide brief order dated 21.2.2007 observing that there is delay of 90 days in preferring the appeal. However, after observing so, the Division Bench also observed that the appeal has no merit and the order suffers from no infirmity.

8. The State not satisfied with the order of Division Bench dated 21.2.2007 preferred Special Leave to Appeal before the Hon''ble Supreme Court, which was converted into Civil Appeal No. 306 of 2009. The Hon''ble Supreme Court allowed the said Civil Appeal vide order dated 19.1.2009 after taking note of both the fact that the appeal was dismissed as barred by time and was also dismissed on merits, but it is well settled law that while deciding an application for condonation of delay in filing the appeal, the appellate court cannot go into the merits of the same. Thereafter, the Hon''ble Supreme Court also observed that

the High Court in the impugned order does not disclose any reason why the subject matter in appeal did not suffer from any infirmity. After remand from Supreme Court, the L.P.A. has come up again for hearing.

9. Heard learned counsel for the parties on merit of the appeal.

10. Learned counsel for the appellant submitted that it may be true that property in question was let out as back in the year 1945 on monthly rent of Rs. 300/- + Rs. 22.50 Latrine Tax and this property was taken by the appellant-State for running a Sub-Jail at Sahibganj. It is also not disputed by learned counsel for the appellant that total 17,451 sq. ft. covered area and 20,003 sq. ft. uncovered area, total 37,454 sq. ft. was let out to the appellant-State. The landlord let out the property in the year 1945 and admittedly this rent was not increased from 1945 till 1990 i.e., for 45 years. If rent of Rs. 300/- per month in the year 1945 was just and reasonable rent and was agreed rent then how such rent can continue for such a long period i.e., for 45 years? Obviously, reason for this is the provisions of State's Rent Control Acts, which were in force in most of the States in India. Under the State Rent Act's, the interest of the tenants were/are protected not only against their eviction but also against the indiscriminate increase in rent by the landlords by taking advantage of situation. Increase permissible in the Rent Control Acts were so nominal that litigation cost and time became more dearer to the landlords in place of increase in the rent. Therefore, the rent of 1945 of Rs. 300/- had no relevance in the year 1990, when in this case landlord filed the petition for increase of rent against mighty tenant-State for whose protection the State Rent Act became shield. By compulsion, the rent could not be increased in view of Section Buildings (Lease, Rent & Eviction) Control Act of the Buildings (Lease, Rent & Eviction) Control Act, 1982, which was the law in force at the relevant time in unified State of Bihar and which has been adopted with modification by the State of Jharkhand by the Act of 2000.

11. It appears from Section 5 of the Act of 1982, that an application can be filed for enhancement of the rent on the ground on it being low. In that situation, the Rent Controller can determine the fair rent who is guided by the principles laid down in Section 8, which clearly provides that while determining the fair rent of any building the Controller shall have due regard to the prevailing rates of rent in the locality for the same or similar accommodation in similar circumstances at any time during the twelve months preceding the first day of November, 1941. However, the Rent Controller was given power to increase the rent by taking into account the cost of repair etc. But as per the proviso the rent can be increased by 25% to rent which was the rent of the premises as on 1st December, 1980, in addition to enhancement, if any, on account of increased cost of repair or any cost of said buildings constructions.

12. Be that as it may, it is well known that at a relevant point of time there were restrictions imposed against the increase of the rent by statutory provision which normally would not have permitted the increase of the rent of the premises to the extent of market rate of the land. Because of the reason of great hardship,

even such provisions of the various State Acts have been declared unconstitutional subsequently, after several decades from their enactment. We are referring these provisions only to show that in a case of a property of 30,454 sq. ft. when rent was increased to Rs. 4,500/- per month from 1.1.1990, after 45 years of letting out of the premises, it has been objected by the State by filing the Letters Patent Appeal and then the matter was taken up, up to the Hon''ble Supreme Court.

13. It is the settled legal position that appellate court cannot decide the appeal on merits without condoning the delay in filing the appeal if it is filed after period of limitation. This legal position has far reaching consequence. As per provisions in Civil Procedure Code, appellate court can dismiss the appeal on merit without notice to other party at admission stage. A clever litigant may take away Court's this power by filing appeal after delay, without risk of dismissal of his appeal and the appellate court which otherwise may not issue notice to respondent is bound to issue notice on application for condonation of slightest delay. In absolutely frivolous case, a person files an appeal after a delay of one day or a few days only, the High Court cannot look into the merit of the case but if such frivolous appeal is filed without there being any delay in filing of the appeal, the High Court can look into the merit of the appeal and can dismiss the appeal on merit without issuing notice to other party. Therefore, the persons who are clever enough, get the golden opportunity by deliberately filing the appeal late by one or a few days only so that their appeal may not be dismissed by the High Court on merit in spite of finding that there is no merit in the appeal. In such a situation on filing the appeal after a delay of few days only, the Court cannot allow the application for condonation of delay without giving notice to other party. Therefore, in that situation, the Court is compelled to issue notice on application for condonation of delay and in consequence thereto, the other party stands dragged into the Court in absolutely frivolous appeal matter which otherwise would have been dismissed by the Court if it would have been within the period of limitation, at initial stage, itself without issuing notice to the other party. It is well known that once notice on application u/s 5 of Limitation Act is issued, the party will have to engage the advocate to appear in the Court and normally advocates do not charge the fees for contesting the application for condonation of delay only. This legal position requires serious reconsideration by the law framers.

14. At this juncture, we would like to quote Order XLI Rule 3A which is as under:--

3A. Application for condonation of delay.--(1) When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a

notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under Rule 11 or 13, as the case may be.

(3) Where an application has been made under sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under Rule 11, decide to hear the appeal.

15. Sub-rule (2) of Order XLI Rule 3A provides that if the appeal is presented after the expiry of period of limitation and there is application for condonation of delay, then the Court can reject the application without issuing notice to the respondent obviously on the ground that no sufficient cause has been shown for the condonation of delay. It is virtually impossible to reject such application for condonation of delay when the delay is of a few days only and legal predicament is that the Court cannot accept the application after condonation of delay without notice to other party, consequently without calling other party in Court, the Court cannot dismiss the appeal on merit. Now it is well settled in view of the various decisions of the Courts, that the Court should be liberal in condoning the delay and legal proposition requiring explanation for each day's delay, stand overruled. In that fact situation of requirement of being liberal in condoning the delay, the Court had no option but to follow the provisions as provided under sub-rule 2 of Rule 3A of Order XLI which mandatorily requires that in case Court chooses not to reject the application for condonation of delay without calling upon the other party, then it has no option but to give a notice of the application to the respondent for deciding the application for condonation of delay and that too, mandatorily before the appeal is proceeded/heard under Rule 11 or Rule 13 of Order XLI. The further serious consequence is of dragging a party in the Court because of sub-rule 2 of Rule 3A of Order XLI which prohibits the Court from dismissing the appeal even if Court looks into the merit of the appeal and finds no merit but simply because it has been calculatedly or deliberately filed after a delay of one, two or few days.

16. In present time, we have serious doubt about such provisions like sub-rule 2 of Rule 3A of Order XLI but it is for the law framers to look into the matter and it is not for the Court to decide about the law which is not under challenge. The appellate court which has power to reject the frivolous and merit less appeal instantly without calling upon the other party, stands deprived of its power to dismiss the appeal because of the deliberate or even intentional act of litigant by not filing the appeal in time. We are also conscious of the fact that in some of the matters, there may be reasonable reason for not filing the appeal in time but what can be the reason for taking away the power of the Court of looking into the merit of the appeal at the time of considering the application for condonation of delay, is a serious question which requires consideration in view of the reasons stated above.

17. This is one of the case where a tenant let-out the property in the year 1945

and that too, he let-out the property to the State Government. The covered area of the property is 17,451 sq. ft. and uncovered area is 20,003 sq. ft. therefore, total area is 37,454 sq. ft. The landlord got the rent of Rs. 300/- per month only for 45 years and that was not because of the willingness of the landlord or unwillingness of the tenant in enhancing the rent but in view of the restriction imposed by the provisions made in the Rent Control Acts. When the landlord sought increase in rent after 45 years by filing a petition in the year 1990, he could get the rent increased to Rs. 4,500/- per month only and that too, from the date of filing of the petition and not from any earlier date. We may make this clear that this rent of Rs. 4,500/- per month is also not the actual fair rent even as determined by the learned Single Judge but is less than the rent determined by the learned Single Judge who has opined that fair rent of this huge premises is only 15 paise per sq. ft. per month for covered area and 10 paise per sq. ft. per month for uncovered area. Then, increase only to this extent of the rent has been questioned by the State Government because of the reason that such luxury is available to the State Government who need not to pay from its own pocket but the State Government pays from the public money, therefore, they can go to the Supreme Court also where poor litigants cannot think to go in a matter of enhancement of rent of this quantum only. We may observe here that if one looks superficially, then one can certainly feel impressed by the increase of the rent from Rs. 300/- to Rs. 4,500/- per month. But when one looks into the facts in sequence then certainly will know that this increase in the rent is after 45 years of letting out of the premises and after depriving the landlord from getting the periodical increase in the rent during this entire period. We are not on the question of validity of the restriction against the increase of the rent, but we are concern with the merit of the case.

18. Since House Rent Controller assessed the rent @ Rs. 5,600/- per month on the basis of relevant consideration but he may have committed one mistake only that he did not determine the separate rent for constructed and unconstructed area and only that has been corrected by the learned Single Judge by making it clear that 15 paise per sq. ft. will be the fair rent for the constructed area and 10 paise per sq. ft. for the uncovered area and in view of the fact that the property in question was taken by the State Government for running a Sub-Jail and that too at one of the important city of Jharkhand State at Sahibganj and looking to the total area of let-out property, we are of the considered opinion that there was no reason for the State Government to prefer this Letters Patent Appeal as we have already observed that the State Government got the benefit of keeping the litigation pending and dragging the respondent in Court only because the appellant State preferred the appeal after delay and, therefore, the merit could not have been considered by the Division Bench while considering the application for condonation of delay and looking the short delay and looking to fact that appeal was preferred by the State, the landlord was bound to be dragged into Court.

19. In net result, we have considered the merit of the case after notice to the

other party and after hearing the appellant and we are of the considered opinion that fair rent as determined by the learned Single Judge suffers from no error. Thus, this L.P.A. having no merit, is dismissed with cost of Rs. 10,000/-. In case the rent has not been paid to the landlord, even if the premises, possession of which has been vacated by the State Government, the State Government is directed to pay entire rent to the landlord with interest @ 6% per annum from the date when the rent fell due till 31.5.2006 as ordered by the learned Single Judge.