

(1999) 06 KL CK 0025

In the High Court Of Kerala

Case No : C.R.P. No. of 1998 (unnumbered)

Thottoli Moideen Koya and Others

APPELLANT

Vs

Kariatt Kunhammed Haji and Others

RESPONDENT

Date of Decision : 22-06-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 122
Constitution of India, 1950 — Article 225
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 18, 20
Kerala High Court Rules, 1971 — Rule 44
Limitation Act, 1963 — Section 5

Citation : AIR 1999 Ker 324 : (1999) 3 ILR (Ker) 54 : (1999) 4 RCR(Civil) 6 :
(1999) 2 RCR(Rent) 169

Hon'ble Judges : R. Rajendra Babu, J;K.K. Usha, J;D. Sreedevi, J

Bench : Full Bench

Advocate : K.T. Sankaran, for the Appellant;

Judgement

Usha, J.—The question that is referred for consideration of the Full Bench is whether the period of 90 days made mention of in Rule 44 of the Rules of the High Court of Kerala, 1971, hereinafter referred for short as "the Rules," can be treated as prescription of period of limitation in the matter of filing of revision petitions u/s 20 of the Kerala Buildings (Lease and Rent Control) Act, hereinafter referred for short as "the Act" and whether a separate petition to condone the delay u/s 5 of the Limitation Act, 1963 is required, if the revision petition is filed beyond the period of 90 days.

2. Section 20 of the Act which deals with the revisional jurisdiction provides that in cases where the appellate authority empowered u/s 18 is a Subordinate Judge, the District Court, and in other cases the High Court, may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under the Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings, and may pass such order in reference thereto as it thinks fit. The

Government by notification dated 31-8-1989 conferred on the District judge the power of the appellate authorities under the Act. Consequently the power of revision u/s 20 is now vested in the High Court. u/s 18 of the Act a period of 30 days has been fixed for filing an appeal before the appellate authority by a person aggrieved by an order passed by the Rent Control Court. But admittedly there is no provision either under the Act nor under the Kerala Buildings (Lease and Rent Control) Rules, 1979 prescribing any period of limitation for filing a revision u/s 20 of the Act. As early as in 1969 Krishna Iyer, J. had occasion to consider the effect of this lacuna in " Padmanabha Pillai v. Narayana Pillai 1959 KLJ 614 and the learned Judge observed as follows :--

"The revision was filed, as I said earlier, over 2 years after the appeal was disposed of, but was admitted and heard, because by a strange omission in the statute, as both sides submitted, no period of limitation is fixed in the matter of entertaining a revision. Litigation can become a long acting torment if an order can be challenged years later on the pretext that there is no period of limitation fixed in the statute. Of course, it is for the legislature to remedy that lacuna, but it is certainly open to the revisional Court to decline to exercise its discretion when a party moves for relief after a period of indiscrete delay."

The question that has now come up for consideration is whether Rule 44 of the Rules will have the effect of filling up the above referred lacuna. Rule 44 of the Rules reads as follows :--

"44. Revision petitions :-- Where no period of limitation is prescribed by any other law, a revision petition shall be presented within 90 days of the order complained of. The provisions of Sections 5 and 12 of the Limitation Act, 1963, shall apply to such petitions."

3. Before we go into the question whether the Rules would satisfy the requirement of a special law prescribing period of limitation, we will refer to the earlier decisions of this Court which had considered the question regarding the period of limitation for filing a revision u/s 20 of the Act. In Narayanan v. Rent Controller (1988) 21 KLT 74 a single Judge of this Court took the view that the exercise of revisional power u/s 20 is entirely discretionary in the interests of justice. It does not confer any right on the petitioner but only vest a power in the Court. It is a privilege conferred on the petitioner and not a right. Even though there is no period of limitation prescribed for filing the revision, the petitioner is expected to be diligent in invoking the revisional power. He must come to Court without undue delay, at the earliest. The words "at any time" in Section 20 have to be delimited to reasonable levels having regard to prevalent practice and the nature of the power to be exercised. The learned Judge proceeded to hold that a period of 90 days should be treated as a reasonable time, within which an aggrieved party should move u/s 20 of the Act. Any delay, thereafter, has to be explained satisfactorily before the Court can be requested to exercise its discretion in favour of the petitioner. It was pointed out by the learned Judge that under the Limitation Act, 1908 there was no period of limitation prescribed for

revision petition u/s 115 of the Code of Civil Procedure, 1908. Nevertheless it had been the accepted rule of practice and discretion in almost all High Courts that the party aggrieved must approach the High Court for the exercise of its revisional jurisdiction u/s 115 within a period of 90 days. Any application beyond the above conventional period was treated as belated. Later, the Limitation Act, 1963 gave legislative recognition to this conventional period in Article 131 of the Schedule to the Act. The learned Judge also made reference to the practice of the Court to insist that normally a petition under Article 226 of the Constitution has also to be filed within a period of 90 days.

4. In *Thomas v. Mukunda Menon* (1992) 2 KLT 9 a Division Bench of this Court approved the above decision of the single Judge. It was also held that since no time limit is prescribed for filing a revision u/s 20, an application u/s 5 of the Limitation Act is not maintainable when the revision is not filed within 90 days. If the revision petitioner has shown sufficient cause for the delay in filing the revision, it is open to the revisional Court to condone the delay and consider the petition on merits. Another Division Bench had occasion to dismiss an application C.M.P. No. 3825/90 filed in C.R.P. No. 2427/90 to condone the delay of 28 days in filing the revision petition by order dated 6-12-1990 holding that such petition is unnecessary.

5. It is relevant to note that in none of the above cases Rule 44 of the Rules was adverted to. The office note in a C.R.P. referring to Rule 44 and taking the view that a revision u/s 20 should be filed within 90 days as per Rule 44 and a separate petition u/s 5 of the Limitation Act to condone the delay in filing the revision petition is necessary was accepted by a Division Bench of this Court on 21-1-1998. The petitioner was directed to file a petition to condone the delay of 8 days in filing the revision. The above order does not refer to the earlier decisions of this Court. We do not also find any contention raised before the learned Judges regarding the scope of Rule 44.

6. The Rules of the High Court of Kerala, 1971 are issued by the High Court of Kerala by virtue of the powers conferred under Article 225 of the Constitution of India, Section 122 of the Code of Civil Procedure, 1908 and all other powers enabling in this behalf with the previous approval of the Government of Kerala. Section 122 of the Code of Civil Procedure, 1908 empowers the High Court to make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule. Since Rule 44 does not vary any of the Rules under the First Schedule to the C.P.C. it has to be taken that the source of power for promulgating Rule 44 is Article 225 of the Constitution. The above Article reads as follows :--

"225. Jurisdiction of existing High Courts :-- Subject to the provisions of this Constitution and to the provisions of any law of the appropriate legislature made by virtue of powers conferred on that legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the

respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution ;

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction."

The scope of power under Article 225 of the Constitution was subject-matter of consideration by the Supreme Court in *Prabhu Narayan Vs. A.K. Srivastava*, . The question that came up for consideration was whether failure to conform to Rule 9 and Rule 7 of the Madhya Pradesh High Court Rules in the matter of an election petition was to be fatal to the election petition. Going by the High Court Rules the allegations in the election petition should find a place in the affidavit also, but as per the form prescribed under Rule 94-A of the Conduct of Election Rules issued under the Representation of the People Act, 1951 it was not necessary to repeat in the affidavit the allegations made in the petition. Supreme Court rejected an objection raised on non-compliance with the provisions of the Madhya Pradesh High Court Rules. It was then observed that the High Court Rules are made under Article 225 of the Constitution and cannot make any substantive law and the rules themselves on a perusal of them would show that they relate to merely on procedural matters unlike rules made u/s 122 of the C.P.C.

7. If Rule 44 has to be taken as a provision prescribing period of limitation, it would certainly take the colour of substantive law, A reading of Article 225 would clearly show that the power given to the High Court thereunder is only for making rules regarding procedural matters. Therefore, we are of the view that the provisions contained under Rule 44 cannot be taken as one providing a period of limitation in the matter of filing revision petitions u/s 20 of the Act. More so, while the legislature has specifically made a provision for limitation in the matter of filing appeal u/s 18 of the Act, no such period is prescribed u/s 20. A reading of Section 20 would further make it clear that while power is given to the revisional authority to call for and examine the records relating to any order passed by the appellate authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order, no right as such is given to the aggrieved party to file a revision. As mentioned earlier, under the Limitation Act, 1908 no period of limitation was prescribed for revision u/s 115 of the C.P.C., even though Courts have accepted 90 days as a conventional period. But in the Limitation Act, 1963 provision was made regarding period of limitation for revisions u/s 115 of the C.P.C. Yet as far as the Kerala Buildings (Lease and Rent Control) Act is concerned, no provision is incorporated under the Act prescribing

a period of limitation for revision u/s 20. Under such circumstances, by incorporating a provision like Rule 44 no period of limitation can be prescribed for filing the revision. If no period of limitation is prescribed under law, there is no question of filing an application u/s 5 of the Limitation Act, 1963 to condone the delay in filing the revision.

8. We are supported in our above view by a Bench decision of the Madras High Court in *V. K. Elayalwar v. Registrar*, Madras High Court, Madras LJ (1970) 2 Mad 343. The question that arose for consideration was whether Rule 2-A framed under Article 225 prescribing a time limit of six months for regulating proceedings under Article 226 of the Constitution was ultra vires. Their Lordships took the view that the power to frame rules under Article 225 with regard to procedure cannot take within its ambit the power to prescribe a period of limitation. Their Lordships also took the view that it was unnecessary to declare the Rule as ultra vires the power under Article 225, if the Rule can be understood not as a period of limitation as such but only intended to impress upon the petitioners seeking the discretionary relief at the hands of the Courts to approach the Court as early as circumstances would permit. It was also held that requiring a separate petition to be filed seeking to excuse the delay would indicate that the main petition has been filed beyond time fixed by the Statute. Since Rule 2-A cannot be equated to such a provision in the Statute, the petitioner cannot be compelled to file a separate petition to excuse the delay. It was then observed that if the writ petitioner is asked to include in the affidavit such material as would enable the Court to decide whether the petitioner has been guilty of laches or not in the circumstances of the particular case, it would be sufficient. The practice of not numbering the writ petition till the petition, to excuse the delay was disposed of was held to be opposed to the true legal position.

9. In the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 25 deals with the revisional power of the High Court on an application by a person aggrieved by an order of the appellate authority. But a period of limitation is prescribed under Sub-section (2) of Section 25. Every application to the High Court for exercise of its power under Sub-section (1) shall be preferred within one month from the date on which the order of the proceeding to which the application relates is communicated to the applicant. In the Mysore (Karnataka) Rent Control Act, 1961 revisional power given to the High Court u/s 50 is similar to Section 20 of the Kerala Act. There is no period of limitation prescribed. So also in Andhra Pradesh Buildings (Lease and Rent Control) Act, 1960 no period of limitation is prescribed for moving the High Court to exercise its revisional power provided u/s 22. In the Pondicherry Buildings (Lease and Rent Control) Act, 1969, Section 25 provides for a revision to the District Court. But no period of limitation is prescribed. It will be open to the legislature to bring in a provision u/s 20 of the Kerala Act prescribing a period of limitation for filing the revision petitions as it was done in the Limitation Act, 1963 for revisions u/s 115 of the C.P.C. So long as no such provision is made in the statute it has to be taken that there is no period of limitation prescribed by law for filing a revision u/s 20 of the

Act.

10. It was not argued before us by the learned counsel for the petitioner that fixing a conventional period of 90 days as was being done in the case of revisions u/s 115 of the C.P.C. at a time when no period of limitation was prescribed under the Limitation Act can be objected to. We feel that it will be sufficient that an affidavit is filed by the petitioner along with the revision petition explaining the delay in filing the revision petition. The averments in the affidavit can be taken into consideration along with the civil revision petition when it comes up for admission and if the Court is satisfied that there are justifiable reasons for the delay, notice can be issued in the civil revision petition itself, if it is otherwise liable to be admitted on merits.

11. We therefore hold that Rule 44 of the Rules cannot be taken as prescribing period of limitation for a revision petition u/s 20 of the Act. It has only the effect of indicating a conventional period within which revision has to be filed. Since Rule 44 does not prescribe a period of limitation, no application u/s 5 of the Limitation Act, 1963 is also necessary, but the petitioner will explain the reason for the delay in an affidavit that will be filed along with the revision petition.

12. The reference is answered as above. The revision petitioner herein will file an affidavit explaining the delay caused in filing the revision.

13. Office will number the revision and sent it up for admission along with the affidavit.