

(1977) 11 KL CK 0024

In the High Court Of Kerala

Case No : C.R.P. No"s. 3089, 3091 and 3093 of 1976

Ulahannan Chacko and Others

APPELLANT

Vs

Pareed Marakkar and Others

RESPONDENT

Date of Decision : 21-11-1977

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 18
Limitation Act, 1963 — Section 14, 5

Citation : AIR 1978 Ker 161

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;K.K. Narendran, J

Bench : Division Bench

Advocate : Panicker and Poti, for the Appellant; V. Parameswara Menon, R.S. Shenoi, R.D. Shenoi and C.K. Ravindranath, for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, C.J.—These three revision petitions were adjourned by our learned brother Viswanatha Iyer, J. to be heard by a Division Bench. It was submitted before the learned Judge that the Full Bench decision of this Court in Jokkim Fernandez Vs. Amina Kunhi Umma, required reconsideration in the light of the decision of the Supreme Court in Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, . The learned Judge felt that the question involved was fairly important.

2. The respondent in an application for eviction before the Rent Control Court under the Kerala Buildings (Lease & Rent Control) Act, filed an appeal against the decree to the appellate authority under the Act. Owing to the uncertainty in the identity of the forum where the appeal had to be presented, it flitted between the Sub Court, Parur, and the District Court, Ernakulam, till it was eventually decided by this Court in O. P. Nos. 353, 363, and 364 of 1971 that the proper court for presentation of the appeal was the Sub Court, Ernakulam, and that in view of the delay that had intervened, the appeal had to be presented to that court with a petition, to excuse the delay, u/s 5 of the Limitation Act. This was done.

Meanwhile, a Full Bench of this Court in Jokkim Fernadez Vs. Amina Kunhi Umma, had decided that the Limitation Act had application only to Courts. Following the principle of the said decision, it was ruled by the Sub Court that there was no power to excuse delay in filing the appeal. The application to condone the delay was dismissed; and consequently the appeal was also dismissed. A revision was preferred to the District Court. That Court held that although the Limitation Act and the provisions of Section 5 thereof cannot apply in view of the Full Bench decision in Jokkim Fernandez v. Amina Kunhi Umma (1973 Ker LT 138):AIR 1074 Ker 162 the principle of Section 14 of the Limitation Act would apply and the time spent in bona fide prosecuting the litigation, during the period when the appeals flitted between the Sub Court and the District Court, was liable to be excluded. The applications to excuse delay were accordingly allowed, and the appeals were directed to be taken on file. The Revision Petitions are before us against the said order.

3. In the Full Bench judgment in Jokkim Fernadez Vs. Amina Kunhi Umma, speaking for the majority (Viswa-natha Iyer, J. dissenting), it was observed that the Limitation Act applied only to Courts and prescribed periods of limitations in respect of suits, appeals and applications filed only in Courts. For the said proposition, reliance was placed on the decision of the Supreme Court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., which ruled that the Limitation Act would apply only to proceedings governed by the CPC and only in respect of proceedings taken in Courts. The principle that the Limitation Act would govern only applications made to Courts was restated in Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, . Following these two decisions, the Full Bench had laid down the principle that the Limitation Act would apply only to proceedings under the Code) of Civil Procedure taken in Courts.

4. What is now sought to be contended before us is that a different strand of reasoning was struck in a later ruling of the Supreme Court in The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, . In view of the said decision it was stated that the earlier Full Bench decision requires re-examination. In The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, a petition under Sections 10 and 16(5) of the Indian Telegraph Act, 1885 read with Section 51 of the Indian Electricity Act 1910 claiming compensation was filed before the District Judge, Tellicherry. Objection was raised that the petition was barred by time under Article 137 of the Limitation Act, 1963. For the Electricity Board, it was answered that the said Article did not apply to applications to District Judge under the Telegraph Act. It was ruled by this Court that in view of the decision in Kerala State Electricity Board Vs. Illippadical Parvathi Amma, by a Division Bench of this Court, the Limitation Act would apply only to proceedings under the Civil P. C. This Court in that case referred to the pronouncement of the Supreme Court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., that the Limitation Act applied only to proceedings under the Civil P. C. and only to proceedings in Courts. It also referred to Nityanand M.

Joshi v. Life Insurance Corporation of India AIR 1976 SC 209 which had endorsed the second of these grounds, but expressed doubt as to the first, viz., whether the Act would apply only to applications under the Code of Civil Procedure. In The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, the Supreme Court observed:

"The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two Judge Bench of this Court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Civil P. C. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act. It would be seen that the Court "differed" only from one of the two grounds on which the decision about the non-applicability of the Limitation Act had been rested in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., , namely, that the proceedings must be under the Code of Civil Procedure. The second ground that the proceedings must be in Court was not shaken. Indeed, this aspect of the matter was emphasised by stating that the application under the Telegraph Act was made to a civil court. It is therefore clear that this aspect of the law laid down in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., has not in any way been affected.

5. Attention was then called to Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, . The question there considered was regarding the applicability of Section 5 of the Limitation Act to an application filed before the Regional Transport Authority for renewal of a permit, u/s 58 (2) & (3) of the Motor Vehicles Act. Under Sub-clause (2) the application for renewal of a permit had to be made within a specified time; and under sub-Clause (3) the R. T. A., may entertain an application for renewal of a permit after the specified date, if the application is made not more than 15 days after the said date and is accompanied by the prescribed fee. The question considered was whether Section 29(2) of the Limitation Act could permit the Regional Transport Authority to entertain an application even beyond the outer limit of more than 15 days from the time specified for making an application for renewal. The Court observed :

"Section 29, Sub-section (2) of the Limitation Act, 1963 makes Section 5 applicable in the case of an application for renewal unless its applicability can be said to be expressly excluded by any provision of the Act. The only provision of the Act sought to be pressed into service for this purpose was Sub-section (3). Does Sub-section (3) expressly exclude further extension of time u/s 5 ? If it does, then Section 5 cannot be availed of by the appellant for condonation of the

delay. Sub-section (3) in so many terms says that the Regional Transport Authority may condone the delay in making of an application for renewal and entertain it on merits provided the delay is of not more than 15 days. This clearly means that if the application for renewal is beyond time by more than 15 days, the R. T. A. shall not be entitled to entertain it, or in other words, it shall have no power to condone the delay. There is thus an express provision in Sub-section (3) that delay in making an application for renewal shall be condonable only if it is of not more than 15 days and that expressly excludes the applicability of Section 5 in cases where an application for renewal is delayed by more than 15 days." (para 8) We do not see anything in the above decision to hold that an application to excuse delay would lie to the Regional Transport Authority u/s 5 read with Section 29(2) of the Limitation Act. On the other hand, if the Limitation Act would apply proprio vigore even to the Regional Transport Authority, the principle stated by the Supreme Court and its conclusion should have been different.

6. Counsel for the respondents placed reliance on the decision of the Privy Council in *Ramdutt v. E. D. Sassoon and Co.* (AIR 1929 PC 103) to contend that the principle of Section 14 of the Limitation Act would be attracted and delay could be excused on the said basis. In that case it was ruled by the Privy Council that although the Limitation Act does not in terms apply to arbitrations in mercantile references, it is an implied term of the contract that the arbitrator must decide the dispute in accordance with the existing law of contract, and that every defence which would have been open in a Court of law can be equally proposed for the arbitrator's decision unless the parties have agreed to exclude that defence. Hence it was ruled that Section 3 of the Limitation Act applies to arbitration proceedings. It was pointed out that arbitrations under the Indian Arbitration Act are not prosecuted by filing suits and preferring appeals from the decrees in such suits, but by procuring awards and filing them in Court and resisting applications to set them aside. Therefore, an arbitrator should exclude the time spent in prosecuting in good faith the same claim before the arbitrator who was without jurisdiction. It will be noticed that the fundamental principle on which the decision was rested was quite different, namely, that the arbitrator had to decide in accordance with the existing law and that every defence could be taken before him which would have been open in a Court of law. We are afraid this principle cannot be pressed into service to cover the case of the appeals presented before the appellate authority which had no jurisdiction to entertain those appeals, and therefore returned the same for presentation to the proper authority. It was ruled in *A.S. Krishnappa Chettiar and Others Vs. Nachiappa Chettiar and Others*, that the Limitation Act cannot be extended by analogy to proceedings to which it would not apply. We are seeking to extend the principle of Section 14 from suits to appeals. The same principle was reiterated recently in *The Maharashtra State Road Transport Corporation Vs. Raoji Hari Lad*, . And we have the Full Bench ruling of this Court in *Vareed Ouseph Vs. Mary*, that the appellate authority under the Rent Control Act, with which we are concerned in

this case, is not a Court. We are therefore of the opinion that the order passed in revision by the District Court in proceedings herein impugned, were without jurisdiction and cannot be sustained. We do not think we would yet be justified in troubling a larger Bench with the question of reconsidering Jokkim Fernadez Vs. Amina Kunhi Umma, in so far as it decided that the Limitation Act applies only to Courts. We allow these Revision Petitions, set aside the order of the District Court and direct that the applications to excuse delay which have given rise to these three Revision Petitions, will stand dismissed. There will be no order as to costs.