

# KERALA HIGH COURT

Jokkim Fernandez

Vs

Amina Kunhi Umma

C.R.P. No. 43 and 83 of 1971

(T.C. Raghavan, C.J., V.P. Gopalan Nambiyar and G. Viswanatha Iyer, JJ.)

27.06.1972

## ORDER

### **G. Viswanatha Iyer, J.**

1. (Dissenting) - I regret that I have to disagree with the conclusion reached by my learned brother Gopalan Nambiyar, J.
2. The main contention that is raised by the respondent is that as the appellate authority is not a Court (civil or criminal) the provision contained in Section 5 of the Limitation Act is not applicable for condonation of the delay in filing the appeal. An answer to this contention must depend on a decision regarding the extent of the applicability of the principles contained in the Limitation Act to the proceedings under the Building (Lease and Rent Control) Act.
3. The Limitation Act contains the general law of limitation of actions. The various Articles in the First Schedule of the Act prescribe the period of limitation for suits, appeals and applications. The act also lays down in Sections 4 to 24 the general principles for determination of the period of limitation for suits, appeals and applications. They relate to the powers of the Court to extend, exclude and compute the period of limitation. If on determining the period of limitation it is found that the suit, appeal or application is filed, preferred or made after the period of the limitation prescribed, the Court should dismiss it. In the case of appeals and certain applications a power (under Section 5) is given to the Court to condone delay also. These general principles of limitation and the period of limitation are applicable to proceedings in Court of limitation and the period of limitation are applicable to proceedings in Court in general. But rights, remedies and periods of limitation are provided for and prescribed under various special or local laws also. It is not possible to provide in the Limitation Act for periods of limitation for all types of actions under special law and a repetition of all the general provisions for determining the period of limitation prescribed under special or local laws in these laws will make them cumbersome. Therefore, the Legislature has enacted in the Limitation Act itself a provision by which the general provisions of the Act are made applicable for the purpose of determining the period of limitation prescribed by the special laws. Thus the Limitation Act of 1908, Section 29(2) reads as follows :-

"Where any 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 only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and
- (b) the remaining provisions of this Act shall not apply."

As per this, the provisions contained in certain sections of the Limitation Act were applied automatically to determine the periods under the special laws, and the provisions contained in other sections were stated to apply only if they were extended by the special law. The provision (Section 5) relating to the power of the Court to condone delay in preferring appeals and making applications came under the latter category. So if the power to condone delay contained in Section 5 had to be exercised by the appellate body it had to be conferred by the special law. That is why we find in a number of special laws a provision to the effect that the provision contained in Section 5 of the Limitation Act shall apply to the proceeding under the special law. The jurisdiction to entertain proceedings under the special laws is sometimes given to the ordinary Courts, and sometimes given to separate tribunals constituted under the special law. When the special law provides that the provision contained in Section 5 shall apply to the proceedings under it, it is really a conferment of the power of the Court under Section 5 to the Tribunals under the special law - whether these tribunals are Courts or not. If these tribunals under the special law should be Courts in the ordinary sense an express extension of the provision contained in Section 5 of the Limitation Act will become otiose in cases where the special law has created separate tribunals to adjudicate the rights of parties arising under the special law. That is not the intention of the legislature.

4. Tribunals are very often given powers which are vested in a Court under the Code of Civil Procedure. Section 23 of the Buildings (Lease and Rent Control) Act, 1965, is an instance of this type. In the same manner when the provisions of Section 5 of the Limitation Act are made applicable to proceedings under special laws what is done is that the deciding authorities under the special law are given the power of the Court under Section 5 of the Limitation Act to condone the delay. These deciding authorities may or may not be Courts. This, according to me, is the principle on which the provisions of the Limitation Act are made applicable to proceedings under the various special laws. A conclusion that the proceeding under the special law should be before ordinary (Civil and Criminal) Courts alone in order that the provision of Section 5 can be applied is not warranted by the provisions of the various special laws and the Limitation Act.

5. If the terms of Section 5 are applicable only to Courts, by the same terms they can apply only to cases where the Limitation Act prescribes periods of limitation, for, that section speaks of 'prescribed period' as well. That means the provisions contained in Section 5 cannot be made applicable to periods prescribed by special laws a conclusion not warranted by Section 29(2) of

Limitation Act, 1908.

6. According to me, it was on this principle that while the Limitation Act of 1908 was in force; the Building (Lease and Rent Control) Act, 1959, contained a provision (Section 31) which reads as follows :-

"31. *Application of the Limitation Act.* - The provisions of Section 5 of the Indian Limitation Act, 1908 (9 of 1908) shall apply to all proceedings under the Act."

We find a similar provision in various other statues including the Land Reforms Act 1 of 1954 (See Section 108). Are all these provisions inoperative or ineffective to confer the power on Tribunals to condone delay in filing the appeal ? I do not think so.

7. Limitation Act of 1908 was repealed and replaced by the new Limitation Act of 1963. A fundamental change was made in Section 29(2). The new sub-section 29(2) reads as follows :-

"Where any special or local law prescribed for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law."

While in the old Act some sections were stated to be not applicable to the determination of the periods of limitation under special laws unless expressly extended by a special provision, in the new Act all the provisions contained in Sections 4 to 24 are made applicable to the determination of the periods of limitation prescribed under special laws unless expressly excluded by it. By this change it is not necessary to expressly state in a special law that the provisions contained in Section 5 of the Limitation Act shall apply to the determination of the periods of limitation prescribed under special laws unless expressly excluded by it. By this change it is not necessary to expressly state in a special law that the provisions contained in Section 5 of the Limitation Act shall apply to the determination of the periods under it. By the general provision contained in Section 5, the Limitation Act shall apply to the determination of the periods under it. By the general provision contained in Section 29(2) this provision is made applicable to the periods prescribed under the special laws. An express mention in the special law is necessary only for any exclusion. It is on this basis that when the new Buildings (Lease and Rent Control) Act was passed in 1965 the provision contained in old Section 31 was omitted. So according to me, the provisions contained in Section 5 of the new Limitation Act applies to this case by the force of Section 29(2) of the Limitation Act.

8. It is further argued that Section 18 of the Buildings (Lease and Rent Control) Act 1965

contains a provision to exclude the time necessary to obtain a certified copy of the order for appeal and that therefore the provisions of the Limitation Act are not applicable. This is incorrect. What is required under Section 29(2) of the Limitation Act is an express exclusion of any of the provision contained in Sections 4 to 24 of the Limitation Act for the determination of the period of limitation under the special law. Section 5 of the Limitation Act is not excluded by any provision of the Rent Control Act and so by force of Section 29(2) of the Limitation Act it applies to the proceeding in this case.

9. What I have said about the applicability of Section 5 applies equally to the applicability of the other provisions of Limitation Act for purpose of determining the period of limitation under special laws.

10. This conclusion of mine is also in accordance with the Objects and Reasons given for the new Limitation Act which reads as follows :-

"Clause 28 - Sub-clause (2) amends Section 29(2) of the existing Act to provide that the principles contained in Clauses 4 to 24 apply uniformly to all special or local in the absence of any or all of those provisions in any given case."

11. But it is said that the question involved in this case is covered by two decisions of the Supreme Court, one reported in *Anthani Municipality v. Labour Court, Hubli*<sup>1</sup>, and the other, *Nityanand v. L.I.C. of India*<sup>2</sup>, If these decisions cover the question involved in this case, there is an end of the matter. But, according to me, these decisions are not applicable to the facts of the present case. In the first decision of the Supreme Court, namely, AIR 1969 Supreme Court 1335, a question arose whether Article 137 of the Indian Limitation Act, 1963, would apply to a proceeding before a Labour Court under the Industrial Disputes Act. Their Lordships of the Supreme Court on an interpretation of the various Articles in the Limitation Act relating to applications, took the view that these Articles relating to applications mentioned in the Limitation Act applied only to applications before Courts and therefore Article 137 of the Limitation Act was held to be not applicable to a proceeding before the Labour Court as the later Court was not a "Court" as contemplated under the Limitation Act. In the second Supreme Court decision, namely, AIR 1970 Supreme Court 209, the same question whether Article 137 of the Limitation Act was applicable applications before Labour Court arose for consideration. Their Lordships of the Supreme Court, after referring to their earlier decision reported in AIR 1969 Supreme Court 1335, held as follows :-

"In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963, all the other applications mentioned in the various articles are applications filed in a Court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the

<sup>1</sup> AIR 1969 SC 1335

<sup>2</sup> AIR 1970 SC 209

prescribed period for any application expires on a holding and the only contingency contemplated is "when the Court is closed". Again under Section 5 it is only a Court which is enabled to admit an application after the prescribed period has expired if the Court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to Courts, and that the Labour Court is not a Court within the Indian Limitation Act, 1963."

In this decision the correctness of the earlier decision in AIR 1969 Supreme Court 1335 was questioned and regarding that their Lordships observed thus :-

"It is not necessary to express our views on the first ground given by this Court of Civil Appeal Nos. 170 to 173 of 1968, dated 20.3.1969 AIR 1969 Supreme Court 1335. It seems to us that it may require serious consideration whether applications to Courts under other provisions, apart from Civil Procedure Code, are included within Article 137 of the Limitation Act, 1963, or not."

12. These two decisions relate to, as I said earlier, the applicability of Article 137 to proceedings before the Labour Court. The Supreme Court has held that Article 137 could apply only to applications in Courts and not to proceedings before Labour Courts. In the present case none of the Articles of the Limitation Act are relied on as prescribing periods for filing in the appeals before the appellate authority. Under Section 18 of the Rent Control Act a period of thirty days is prescribed for filing an appeal. This is a period prescribed under the special law and not under the Limitation Act. When the special law prescribes a period not prescribed by or different from the period prescribed under the Limitation Act and an appeal is filed under the special law it cannot be said that reliance is placed under the Limitation Act for filing an appeal within the prescribed period stated in the Limitation Act. In these cases the Supreme Court was not called upon to decide the scope and applicability of the provisions of the Limitation Act to periods of limitation prescribed by special laws. So these decisions are not applicable to the present case.

13. My conclusion, therefore, is that the provisions of Section 5 of the Limitation Act apply to the appeal proceedings before the Appellate Authority under the Rent Control Act, 1965. In that view, I would allow the revision petitions and remand them to the appellate authority for consideration of the question whether there was sufficient cause to excuse the delay in not filing the appeal within time.

**Gopalan Nambiyar, J.**

14. An appeal filed before the appellate authority under Section 18 of the Kerala Buildings (Lease and Rent Control) Act 1965 was dismissed, as beyond thirty days from the date of the order within which it had to be preferred under Section 18(1)(b) of the Act. An application to excuse delay in preferring the appeal was also dismissed. Against these orders, these two revisions have been preferred.

15. Section 18(1) of the Act reads as follows :-

"18(1)(a). The Government may, by general or special order notified in the Gazette, confer on such officers and authorities not below the rank of a Subordinate Judge the powers of appellate authorities for the purposes of this Act in such areas or in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Rent Control Court may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the thirty days aforesaid the time taken to obtain as certified copy of the order appealed against shall be excluded."

The predecessor Act, namely the Kerala Buildings (Lease and Rent Control) Act 1959 contained a section - Section 31 which read :-

"31. *Application of the Limitation Act.* The provisions of Section 5 of the Indian Limitation Act 1908 (9 of 1908) shall apply to all proceedings under this Act."

No such section or provision is found in the 1965 Act. Counsel for the petitioners would have it that this was in view of the replacement of the Indian Limitation Act 1908 by the Act of 1963 and the changes in the scope and the operation of the latter Act. Our attention was called to long-title of the Limitation Act of 1963, as compared to its predecessor Act 1908, and to the changed wording of Section 29(2) in the two enactments. The long title evidences an intention to apply the Act to suits and other proceedings; and Section 29(2) enacts a significant change. Where as under the provisions of the said section in the 1908 Act Section 5 of the Limitation Act would not apply unless made expressly applicable, the 1963 Act provides that Section 5 (among others) would apply to the provisions of any special or local law unless the same is expressly excluded. Based on this change in the scope and the intendment of the 1963 Act, it was contended that Section 5 of the Limitation Act was applicable to proceedings before the appellate authority under the Rent Control Act, and that the view taken that it was not, and that there was no power to excuse delay in filing the appeal was unsustainable.

16. I am afraid the above contention must fail. It has been ruled that the Limitation Act 1963 applies only to Courts and prescribes periods of Limitations in respect of suits, appeals and applications filed only in Courts. Section 18 of the Kerala Buildings (Lease and Rent Control) Act is clear that the appellate authority constituted under it is not a Court but only an authority *persona designata*. The Full Bench decision of this Court in *Vareed v. Mary*<sup>3</sup>, has also ruled to that effect. In *Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli*<sup>4</sup>, the Supreme Court observed :-

"11. This point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the schedule, including Article 181 of the Limitation Act of 1908 governed

<sup>3</sup>1968 KLJ 579

applications under the Code of Civil Procedure only, it clearly implied that the applications must be presented to a Court governed by the Code of Civil Procedure. Even the applications third division by amendment of Articles 158 to 178 were to be presented to Courts whose proceedings were governed by the Code of Civil Procedure. At best the further amendment now made enlarges the scope of the third division of the schedule so as also to include some applications presented to Courts governed by the Code of Criminal procedure. One factor at least remains constant and that is that the applications must be to Courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than Courts, such as a quasi judicial tribunal, or even an executive authority. An Industrial Tribunal, or a Labour Court dealing with applications or references under the Act are not Courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a labour Court. The alterations made in the articles and in the new Act cannot, in our opinion justify the interpretation that even applications presented to bodies, other than Courts, are now to be governed for purposes of Limitation by Article 137.

12. .... Under the Old Limitation Act, no doubt, the long title was "An Act to consolidate and amend the law for the Limitation of suits and for other purposes" while in the new Act of 1963, the long title is "An Act" to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith. In the long title, thus, the words "other proceedings" have been added; but we do not think that this addition necessarily implies that the Limitation Act is intended to govern proceedings before any authority, whether executive or quasi judicial, when earlier the old Act was intended to govern proceedings before civil Courts only. It is also true that the preamble which existed in the old Limitation Act of 1908 has been omitted in the new Act of 1963. The Bombay High Court also attached importance to the circumstance that the scope of the new omission of the preamble does not however, indicate that there was any intention of the legislative to change the purposes for which the Limitation Act has been enforced. Limitation Act has been enlarged by changing the definition of "applicant" in Section 2(1) of the new Act so as to include even a petitioner and the word "Application" so as to include a petition. The question still remains whether this alteration can be held to be intended to cover petitions by a petitioner to authorities other than Courts. We are unable to find any provision in the new Limitation which would justify holding that these changes in definition were intended to make the Limitation Act applicable to proceedings before bodies other than Courts...." Again in *Nityanand M. Johsi v. L.I.C. of India*, AIR 1970 Supreme Court 209 the Supreme Court observed that from Sections 4 and 5 of the Limitation Act 1963 it was clear that the Limitation Act deals only with applications to Courts. This being the position, even if the power under Section 5 were to be read into a special local law by reasons of the provisions of Section 29 of the Limitation Act, that power is exercisable only by Courts and not by tribunals or

other authorities such as the appellate authority in this case.

17. The provisions of Section 18(1)(b) of the Kerala Buildings (Lease and Rent Control) Act 1965 itself seems to contain an indication in support of the above conclusion. The said provision which I have extracted earlier, enacts that in computing the thirty days prescribed for appeal, the time taken to obtain a certified copy of the order appealed against shall be excluded. This special provisions would be unnecessary if Section 29(2) copy of the judgment. The provisions of Section 18(1)(b) therefore show that the Kerala Buildings (Lease and Rent Control) Act, was meant to be a self contained code in the matter of prescribing the periods of Limitation and granting exemption therefrom.

18. The view taken by the appellate authority is correct and calls for no interference. These revisions are dismissed with costs.

**Raghavan, C.J.**

19. (Concurring with Gopalan Nambiyar, J.) - I agree.

*By the Court* - In accordance with the majority opinion, the revision petitions are dismissed with costs.