

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.M.(M) No.938/2009 and C.M.No.12662/2009

% 28th November, 2014

SH. MUKESH KUMAR Petitioner

Through: Mr.Pankaj Gupta, Advocate.

VERSUS

M/S AGGARWAL PAPERS Respondent

Through: Mr.C.S.Bhandari, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? (Yes)

VALMIKI J. MEHTA, J (ORAL)

1. The limited issue in this petition, filed under Article 227 of the Constitution of India impugning the judgment of the Rent Control Tribunal dated 21.7.2009, is whether the petitioner/landlord is entitled to the benefit of the provision of Section 15(2) of the Limitation Act, 1963 (hereinafter referred to as 'the Limitation Act') by excluding the period spent before the slum authority in obtaining permission under Section 19 of the Slum Areas (Improvement & Clearance) Act, 1956 (hereinafter referred to 'the Slum Areas Act') for the purpose of filing an eviction petition under Section

14(1)(a) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the DRC Act').

2. The heat question is whether the Limitation Act applies to the proceedings under the DRC Act.

3. I do not have to labour hard on this issue because counsel for the petitioner has drawn my attention to the judgment of the Supreme Court in the case of ***Kashi Ram Vs. Rakesh Arora (1987) 4 SCC 84*** wherein the Supreme Court has held that the provisions of the Limitation Act will apply to the proceedings under the DRC Act. Para no.12 of the judgment in ***Kashi Ram***'s case (*supra*) reads as under:-

“ 12. So far as the first question about the applicability of the Limitation Act, it is necessary to refer to Section 42 of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act') which provided that an order of eviction has to be executed like a decree of the civil court. The provisions of the Code of Civil Procedure executing the decree are made applicable by legal fiction recognized by virtue of Section 42 of the Act. In any case procedure of the Small Causes is adopted by the Controllers under the provisions of the Act wherein also in execution the provisions of the Code of Civil Procedure are applicable and as such law of limitation would be attracted. The question is when the limitation starts running. Once the limitation starts running then unless the statute comes to the rescue of a person the period would expire after the efflux of time.”

4. A reading of the aforesaid para of the Supreme court judgment makes it more than clear that the Limitation Act applies to the proceedings under

the DRC Act. Once the Limitation Act applies, the provision of Section 15(2) of the Limitation Act will also apply and hence the period which is taken by the petitioner/landlord in pursuing a petition under Section 19 of the Slum Areas Act, and which is a precondition for filing of an eviction petition under the DRC Act, will be a period which can be excluded in terms of Section 15(2) of the Limitation Act, which reads as under:-

“15(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.”

5. Since obtaining of a permission of the Slum Authority under Section 19 of the Slum Areas Act is a *sine qua non* for filing of an eviction petition under Section 14 of the DRC Act, Section 15(2) of the Limitation Act squarely applies and the period taken for pursuing the provision of Section 19 of the Slum Areas Act will get added to the period for filing of a petition under Section 14(1)(a) of the DRC Act.

6. No doubt, the provision of Section 14(1)(a) of the DRC Act uses the expression “legally recoverable rent”, but the legally recoverable rent means rent recoverable either for three years or even earlier to the period of three

years as the law permits, and the period which is taken for obtaining a prior permission to file a petition under Section 14(1)(a) of the DRC Act has to be added to the ordinary period of three years prescribed for recovery of arrears of rent.

7. The issue with respect to the applicability of the Limitation Act to the Rent Control proceedings was also dealt by the Supreme Court in the case of ***Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker (1995) 5 SCC 5.*** The Supreme Court has observed that once the Tribunal which decides the cases has trappings of a court and since the Limitation Act applies to the courts, the Limitation Act will also apply to the proceedings before the Tribunal under the Rent Control proceedings. The relevant paras of the judgment of the Supreme Court in the case of ***Mukri Gopalan (supra)*** are paras 7, 8 & 9, and which read as under:-

7. As noted earlier the appellate authority, namely the District Judge, Tahlassery has taken the view that since he is a persona designata he cannot resort to Section 5 of the Limitation Act for condoning the delay in filing appeal before him. So far as this reasoning of the appellate authority is concerned Mr. Nariman, learned Counsel for respondent fairly stated that he does not support this reasoning and it is not his say that the appellate authority exercising powers under Section 18 of the Rent Act is a persona designata. In our view the said fair stand taken by learned Counsel for respondent is fully justified. It is now well settled that an authority can be styled to be persona designata if powers are conferred on a named person or authority and such powers cannot be exercised by anyone else. The

scheme of the Act to which we have referred earlier contra indicates such appellate authority to be a persona designata. It is clear that the appellate authority constituted under Section 18(1) has to decide between parties in a judicial manner and subject to the revision of its order, the decision would remain final between the parties. Such an authority is constituted by designation as the District Judge of the district having jurisdiction over the area over which the said Act has been extended. It becomes obvious that even though the concerned District Judge might retire or get transferred or may otherwise cease to hold the office of the District Judge his successor in office can pick up the thread of the proceedings from the stage where it was left by his predecessor and can function as an appellate authority under Section 18. If the District Judge was constituted as an appellate authority being a persona designata or as a named person being the appellate authority as assumed in the present case, such a consequence, on the scheme of the Act would not follow. In this connection, it is useful to refer to a decision of this court in the case of *Central Talkies Ltd., Kanpur v. Dwarka Prasad*: AIR 1961 SC 606.. In that case Hidayatullah, J speaking for the court had to consider whether Additional District Magistrate empowered under Section 10(2) of Criminal Procedure Code to exercise powers of district Magistrate was a persona designata. Repelling the contention that he was a persona designata the learned Judge made the following pertinent observations:

“...A persona designata is a "a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character." (See *Osborn's Concise Law Dictionary*, 4th Edn., p.253). In the words of Schwabe, C.J. in *Parthasaradhi Naidu v. Koteswara Rao*: ILR (1924) 47 Mad 369, personae designate are "persons selected to act in their private capacity and not in their capacity as Judges." The same consideration applies also to a well known officer like the District Magistrate named by virtue of his office, and whose powers the Additional District Magistrate can also exercise and who can create other officers equal to himself for the purposes of the Eviction Act. The decision of Sapru, J. in the Allahabad case, with respect, was erroneous.”

Applying the said test to the facts of the present case it becomes obvious that appellate authorities as constituted under Section 18 of

the Rent Act being the District Judges they constituted a class and cannot be considered to be persona designata. It is true that in this connection, the majority decision of the High Court in *Jokkim Fernandez v. Amina Kunhi Umma: AIR 1974 Ker 162* (supra) also took a contrary view. But the said view also does not stand scrutiny in the light of the statutory scheme regarding Constitution of appellate authority under the Act and the powers conferred on and the decisions rendered by it.

8. Once it is held that the appellate authority functioning under Section 18 of the Rent Act is not a persona designata, it becomes obvious that it functions as a court. In the present case all the District Judges having jurisdiction over the areas within which the provisions of the Rent Act have been extended are constituted as appellate authorities under Section 18 by the Govt. notification noted earlier. These District Judges have been conferred the powers of the appellate authorities. It becomes therefore, obvious that while adjudicating upon the dispute between the landlord and tenant and while deciding the question whether the Rent Control Court's order is justified or not such appellate authorities would be functioning as courts. The test for determining whether the authority is functioning as a court or not has been laid down by a series of decisions of this court. We may refer to one of them, in the case of *Thakur Jugal Kishore Sinha v. Sitamarhi Central Coop. Bank Ltd: AIR 1967 SC 1494*. In that case this court was concerned with the question whether the Assistant Registrar of Cooperative Societies functioning under Section 48 of the Bihar and Orissa Cooperative Societies Act, 1935 was a court subordinate to the High Court for the purpose of Contempt of Courts Act, 1952. While answering the question in the affirmative, a division bench of this court speaking through Mitter, J placed reliance amongst other on the observations found in the case of *Brajnandan Sinha v. Jyoti Narain: AIR 1956 SC 66* wherein it was observed as under:-

“ It is clear, therefore, that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.”

Reliance was also placed on another decision of this court in the case of *Virindar Kumar Satyawadi v. The State of Punjab: AIR 1956 SC*

153. Following observations found at page 1018 therein were pressed in service.

“It may be stated broadly that what distinguishes a court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declares the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a court.”

When the aforesaid well settled tests for deciding whether an authority is a court or not are applied to the powers and functions of the appellate authority constituted under Section 18 of the Rent Act, it becomes obvious that all the aforesaid essential trappings to constitute such an authority as a court are found to be present. In fact, Mr. Nariman learned Counsel for respondent also fairly stated that these appellate authorities would be courts and would not be persona designata. But in his submission as they are not civil courts constituted and functioning under the Civil Procedure Code as such, they are outside the sweep of Section 29(2) of the Limitation Act. It is therefore, necessary for us to turn to the aforesaid provision of the Limitation Act. It reads as under :

“ Section 29(2). Where any special or local law prescribes 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 insofar as, and to the extent to which, they are not expressly excluded by such special or local law.”

A mere look at the aforesaid provision shows for its applicability to the facts of a given case and for importing the machinery of the provisions containing Sections 4 to 24 of the Limitation Act the following two requirements have to be satisfied by the authority invoking the said provision.

(i) There must be provision for period of limitation under any special or local law in connection with any suit, appeal or application.

(ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the schedule to the Limitation Act.

9. If the aforesaid two requirements are satisfied the consequences contemplated by Section 29(2) would automatically follow. These consequences are as under:

(i) In such a case Section 3 of the Limitation Act would apply as if the period prescribed by the special or local law was the period prescribed by the Schedule.

(ii) For determining any period of limitation prescribed by such special or local law for a suit, appeal or application all the provisions containing Sections 4 to 24 (inclusive) would apply insofar as and to the extent to which they are not expressly excluded by such special or local law.

(emphasis supplied)

8. Since the Rent Controller has all the trappings of a civil court, and in fact only the civil judges and the ADJs are appointed to man the courts of the Rent Controllers/ Additional Rent Controllers/Rent Control Tribunals/Additional Rent Control Tribunals, and who are guided by the procedure of the Code of Civil Procedure, 1908 (CPC) as per Rule 23 of the Rules framed under the DRC Act; it is clear that the Rent Controllers/

Additional Rent Controllers/Rent Control Tribunals/Additional Rent Control Tribunals are courts before which provisions of the Limitation Act will apply.

9. At this stage, I would like to clarify one aspect and observe that the provisions of the Limitation Act apply generally to every proceeding under the DRC Act except with respect to the *bonafide* necessity eviction petitions for which a special procedure is specifically provided in the Chapter III A of the DRC Act, which contains the provisions of Section 25 A to 25C of the DRC Act. The Supreme Court in the case of ***Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15*** has held that the provisions of the Limitation Act will not apply to the exhaustive procedure with respect to the *bonafide* necessity eviction petitions which are to be dealt with as per the exhaustive procedure in the sections provided in Chapter III A of the DRC Act. I may also note that the Section 25A of the DRC Act specifically states that the provisions of Chapter III A will have effect notwithstanding anything inconsistent therewith contained elsewhere in the DRC Act or in any other law for the time being in force. It is because of this provision of Section 25A of the DRC Act that the Supreme Court in the case of ***Prithipal Singh (supra)*** held that the provisions of the Limitation Act will not apply

to the procedure for *bonafide* necessity eviction petitions which are filed under Sections 14(1)(e), 14A, 14B, 14C and 14D of the DRC Act read with provisions of Sections 25A to 25C of the DRC Act in Chapter III A of the said Act.

10. In view of the above, the present petition is allowed and the impugned order of the Rent Control Tribunal dated 21.7.2009 is set aside. It is ordered that the tenant is liable to deposit the rent as per Section 15(1) of the DRC Act in the subject eviction proceedings for the period not only for three years prior to filing of the petition but the period of three years the time taken in pursuing the proceedings under Section 19 of the Slum Areas Act, will also be added. I may clarify that the judgment of the Additional Rent Controller dated 30.9.2008 would stand revived. Parties are left to bear their own costs.

VALMIKI J. MEHTA, J

NOVEMBER 28, 2014
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