

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 13487 of 2015 (I)

PETITIONER : -

K.V.JOSEPH, AGED 62 YEARS,
S/O VARKEY, KAVALAKKATTU HOUSE,
MUTTAM P.O., THODUPUZHA, PIN:685587.

BY ADVS.SRI.ABRAHAM P.GEORGE
SRI.K.VINODKUMAR (707/89)
SMT.M.SANTHI

RESPONDENT : -

THE SECRETARY,
THODUPUZHA CO-OPERATIVE AGRICULTURAL AND RURAL
DEVELOPMENT BANK LTD. NO.4388, P.B.NO.13, THODUPUZHA.

BY ADV.SRI.A.N.SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 13487 of 2015 (I)

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT P1 : TRUE PHOTO COPY OF THE AWARD DATED 30.3.2013 PASSED IN
A.R.C.NO.283/2010 BY ARBITRATOR/ASSISTANT REGISTRAR
(GENERAL) THODUPUZHA.

EXHIBIT P2 : TRUE PHOTO COPY OF THE ORDER DATED 18.3.2015 PASSED BY
THE HON'BLE KERALA CO-OPERATIVE TRIBUNAL IN REVISION
PETITION NO.58/2013 DISMISSING THE SAME.

RESPONDENT'S EXHIBITS : - NIL.

// TRUE COPY //

P.A TO JUDGE

DMR/-

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 13487 of 2015

Dated this the 30th day of July, 2015

JUDGMENT

This writ petition raises the issue whether delay can be condoned by an Appellate or Revisional forum even in the absence of an application for the said purpose.

2. The petitioner, admittedly, borrowed two loans: (1) Rs.10,000/- in 1995; (2) Rs.2,00,000/- in 2001. Having committed default in repayment of the said loans, the petitioner has, however, applied for the benefit of remission before the Kerala Agricultural Relief Commission, which has eventually scaled down the debt and directed the petitioner to pay Rs.1,13,241/-, as full and final payment, both the loan accounts taken together.

3. The respondent Bank has, despite the remission provided by the Commission, issued a demand notice to the petitioner insisting on his paying Rs.2,96,964/-, that being the total outstanding amount in the two loan accounts.

Aggrieved, the petitioner filed A.R.C. No.283/2010, which was partially allowed by the learned Arbitration Court, through Exhibit P1 award, dated 30.03.2013. Further aggrieved, the petitioner, invoking Section 84 of the Kerala Co-operative Societies Act, filed Revision No.58/2013 before the Tribunal on 18.07.2013. Eventually, the learned Tribunal dismissed the revision holding that the petitioner had neither explained the delay in filing the appeal, nor filed any separate application for condonation of delay. Assailing Exhibit P6 order of the Tribunal, the petitioner has filed the present writ petition.

4. The learned counsel for the petitioner has submitted that Section 84 *per se* does not impose any temporal limitation against an aggrieved person's invoking the Revisional jurisdiction of the statutory Tribunal. She has, further, submitted that this Court by way of judicial interpretation has determined that in the absence of any prescriptive period, ninety days should be the accepted period within which time the Revisional jurisdiction is to be invoked.

5. Placing reliance on **Thajuddin Shameer v. Secretary Coastal Urban Co-op. Bank Ltd.**,¹ the learned counsel has strenuously contended that since the delay is only ten days, there is no need, as has been held by this Court, to file a separate application for condonation of delay. According to her, the Tribunal ought to have entertained the Revision Petition in the interest of justice instead of dismissing it on a mere technicality.

6. The learned counsel for the respondent Bank has, however, strenuously opposed the claims and contentions of the petitioner. To begin with, the learned counsel has submitted that in the absence of any separate application for condoning the delay, there is every justification on the part of the Tribunal in dismissing the Revision Petition.

7. In addition, the learned counsel has made elaborate submissions on the merits of the matter contending that there are no *bona fides* on the part of the petitioner. In elaboration of his submissions, he has submitted that before approaching the Tribunal or even at the time of seeking condonation of delay, if such a remedy is available for the

¹ 2004 (1) KLT 909

petitioner, he ought to have paid, at least, the amount quantified by the Commission.

8. Be that as it may, this Court does not propose to enter into the arena of merits of the matter, for the scope of the writ petition is very much limited. All that this Court is called upon in the writ petition to decide is whether Exhibit P2 order of the Revisional Court refusing to condone the delay be sustained.

9. Section 84 of the Kerala Co-operative Societies Act confers revisional powers on the Tribunal, which is also an Appellate Authority. It is apposite to examine the said provision, which reads as under:

"84. Revision by Tribunal : - The Tribunal may call for and examine the record of any proceedings in which an appeal lies to it for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appear to the Tribunal that any such decision or order should be modified, annulled or revised, the Tribunal may pass such order thereon as it may deem fit."

Is it 'an' appeal or 'no' appeal? For an analogous provision, see Section 115 of CPC. It appears to be incongruous to hold that the same issue can be agitated either in appeal or revision before the same forum or authority, when the adjudicatory parameters are entirely different. Revision, in its scope, is severely restricted, when compared to appeal. Is it a drafting error?

10. Indeed, a plain reading of the above provision makes it very clear that no specific time frame has been fixed for invoking the revisional jurisdiction of the Tribunal. In that context, it is an established principle of law that, in the absence of any time frame having been fixed for approaching a judicial or quasi-judicial authority, especially invoking revisional jurisdiction, a *lis* cannot be agitated *ad infinitum* after a long lapse of time. Thus, the Courts have held that the Tribunal should be approached within a reasonable time—the said expression having been very subjective in nature. In other words, the concept of reasonable time may vary from case to case.

11. In *State of Gujarat v. Patil Raghav Natha*² the Hon'ble Supreme Court has held that once a provision conferring the power of revision does not prescribe for any limitation for exercising such revisional powers, the said power must be exercised in a reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order sought to be revised. In *Santoshkumar Shivgonda Patil v. Balasaheb*

² AIR 1969 SC 1297

*Tukaram Shevale*³, the Supreme Court has held thus:

“11. It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein.”

12. Without further burdening the judgment with more references, I may conclude the issue of invoking the revisional jurisdiction in the absence of statutorily prescribed limitation, by extracting the felicitous exposition of the Supreme Court in *Pune Municipal Corpn. v. State of Maharashtra*⁴, wherein it has been held thus:

“27. Now it is true that no period for revision is provided in the Act. It was, therefore, submitted on behalf of the landowners that when the legislature did not think it fit to prescribe period of limitation, such power can

³ (2009) 9 SCC 352

⁴ (2007) 5 SCC 211

be exercised "*at any time*" and no court by a "judicial fiat" can usurp legislative power and prescribe period of limitation. It is no doubt true that the statute does not fix period of limitation within which revisional power should be exercised under Section 34 of the Act. The legislature, in its wisdom, has not fixed period of limitation as it had empowered the State Government to exercise revisional power suo motu. In our judgment, however, only in such cases i.e. where the period of limitation is not prescribed that the concept of "*reasonable time*" can be invoked and power must be exercised within such period.

. . .

30. [W]e may, however, hasten to add that what is the length of the reasonable time would depend upon the facts and circumstances of each case and no rule of universal application can be laid down..."

13. This Court in *Narayanan v. Rent Controller*⁵ has interpreted Section 20 of the Buildings (Lease and Rent Control) Act, an analogous provision, and has held as follows:

"13. It is well to remember at this stage that the Limitation Act, 1908 had not prescribed any period of limitation for a Revision Petition

⁵ 1988 (2) KLT 74

under Section 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 under Section 115 within a period of 90 days, namely the period prescribed for filing an appeal. (Vide Mulla on the Code of Civil Procedure 14th Edition, Volume I, page 696, Note 37 and AIR Commentaries on the Code of Civil Procedure 10th Edition Volume Two, page 388, Note 17). This was the conventional period within which any suitor was required to approach the High Court, subject of course to extension of the time on sufficient cause being shown. Any application for revision beyond this period was treated as belated. The Limitation Act of 1963 gave legislative recognition to this conventional period by its Article 131 in the Schedule to the Act. Even a petition under Article 226 of the Constitution has normally to be filed within a period of 90 days. It has been so held in the decisions in *Vekitasubramonia Iyer v. Catholic Bank of India Ltd.* 1957 KLT 411 and *Gopalakrishnan v. State of Kerala* 1986 KLT 817.

. . .

16. It is axiomatic that any authority exercising discretionary powers should act

reasonably. Reasonableness is the touchstone of all judicial and quasi-judicial actions. (See in this connection: *Secretary of State v. Metropolitan Borough of Tameside* 1976 (3) All Eng L R 665. The District Court functioning under Section 20 should therefore, exercise its power in a reasonable manner. Any delay in invoking the power makes its exercise oppressive, arbitrary and unreasonable. Since ninety days has all along been accepted as a reasonable period for invoking the power of revision, the District Court should act only if approached by the aggrieved party within ninety days. That is not to say that it will not, in appropriate cases, where the delay, is properly and satisfactorily explained, interfere, or exercise its discretion, even if approached beyond this period. Sufficient cause should be established in all such cases."

14. Later, relying on *Narayanan* (supra), another learned Single Judge of this Court in *Thajuddin Shameer v. Secretary Coastal Urban Co-op. Bank Ltd.*,⁶ has interpreted the very Section 84 of the Act. Applying the same analogy, his Lordship has held to the following effect:

"9. Since there is no binding decision on this point under Section 84, I think the principle laid down by this Court under Section 20 of

⁶ 2004 (1) KLT 909

the Buildings (Lease and Rent Control) Act can be safely followed in this case also. So, if a revision is filed beyond a reasonable time limit, say 90 days, the petitioner should explain in the revision, the reason for the delay. Since there is no limitation prescribed, there need not be any separate petition to condone the delay. The facts which will explain the reasons for the delay should be pleaded in the Revision Petition. If the Tribunal is satisfied that the petitioner was prevented by good reasons from approaching it earlier, the revision can be entertained.”

15. At any rate, this Court, through judicial interpretation of Section 84, after analysing the provisions of other statutes has felt that ninety days could be appropriate period of limitation for invoking the revisional jurisdiction of the Tribunal.

16. Chronologically examined, it is evident that Exhibit P1 award, which was passed on 30.03.2013, is said to have been communicated to the petitioner on 08.04.2013. The petitioner, in turn, filed a revision on 18.07.2013, admittedly beyond 90 days. Going by the ratio in *Thajuddin Shameer* (supra) it is clear that as the delay is ten days, it may not require a separate application for its condonation.

17. Indeed, the learned Tribunal has observed in Exhibit P6 judgment that no reasons have been put forward even in the Revision Petition concerning the delay on the part of the petitioner in approaching the Revisional Court. As the petitioner has not filed a copy of the revision before this Court, I am unable to examine the said issue. I, however, take the observation of the learned Tribunal on its face value that no substantive reason was set out in the pleadings of the Revision Petition concerning the delay. The fact, however, remains that the delay is only ten days, going by the judicially imposed limitation.

18. It only sub-serves the cause of justice if the writ petition is allowed by setting aside Exhibit P2, so that the Tribunal can hear the petitioner on the issue of ten days' delay in filing the revision. If no specific grounds have been set out in the Revision Petition, it is entirely for the petitioner to file a separate application for condonation of delay. It is further observed that it is equally open for the respondent Bank to insist on suitable conditions, such as depositing a part of the amount due, either for condoning the delay or for granting any stay in the main revision, if

such a course of action is permissible, before the claim of the petitioner could be entertained by the Revisional Court.

With the above observations, this writ petition stands allowed. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-