

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.04.2019

Delivered on : 26.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.4336 of 2019

A. Francis Leo Gunaseelan

...Petitioner

Vs.

1. The Special Joint Commissioner of Labour/
Appellate Authority under
TN Shops & Establishment Act,
Commissionerate of Labour,
Teynampet, Chennai-600 006.

2. The Authorized Officer,
GE Power Conversion,
GE Power Conversion India Private Limited,
Reg.Off.Plot No.29 (SP),
Thiru Vi Ka Industrial Estate,
Ekkatuthangal, Guindy,
Chennai-600 032.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the impugned records on the file of the 1st respondent in Appeal Dismissal Order dated 21.08.2018 and consequent proceedings in Letter No.S2/2161/2019, dated 28.01.2019, quash the same and consequently, restore the Appeal in T.S.E.Appeal No.I/IA-11 of 2017 to the file of the first respondent.

For Petitioner : Mrs.D.Geetha

For Respondent : Mr.J.Ramesh, AGP for R1
Mr.Arun Karthik Mohan for R2

ORDER

This Writ Petition has been directed against the order, dated 21.08.2018 passed by the first respondent dismissing the appeal preferred by the petitioner under Section 41(2) of the Tamil Nadu Shops and Establishments Act 1947 (in short, 'the

Act') and also subsequent rejection order dated 28.1.2019, rejecting the application filed for restoring the appeal on the ground that the same has not been filed within the time stipulated in the provisions of the Act and the Tamil Nadu Shops & Establishments Rules, 1948 (in short, 'the Rules').

2. An appeal in TSE Appeal No.1/1A-11 of 2017 has been preferred by the petitioner herein against the order of termination issued by the second respondent company, terminating the services of the petitioner herein who was working as a Project Manager from 19.05.2008. According to the petitioner, his services came to be terminated by the second respondent Management dated 5.4.2017 without following the due process of law. In the said appeal, a notice was ordered and despite several opportunities, there was no appearance on behalf of the second respondent Management and they did not choose to appear in the proceedings before the first respondent.

3. Thereafter, when the matter was adjourned and posted for hearing on 23.07.2018, neither the petitioner nor his counsel was present and later on, the petitioner came to know that the authority had reserved the orders on that day and finally, an order was passed by the authority on 21.08.2018 dismissing the appeal for non-appearance. According to the petitioner, the said order was not served directly to him, but only served on the counsel on record. In the above circumstances, the petitioner enquired with his counsel in November 2018 and thereafter, he came to know about the passing of final orders dismissing the appeal for non-appearance by the first respondent. Immediately, he instructed for filing of the petition for restoring the appeal. But the petition filed for restoring the appeal, came to be rejected on the ground that the same was filed after a period of one month from the date of the original order passed by the authority dated 21.08.2018. According to the first respondent, in terms of Rule 9-A of the Rules, application for restoration of the appeal can be entertained if filed within a period of one month from the date of passing of the original order and not beyond the said period. The order passed by the authority dated 21.8.2018 and the order rejecting the petition filed for restoration of the appeal, dated 28.1.2019 are put to challenge in the present Writ Petition.

4. Smt.D.Geetha, learned counsel appearing for the petitioner would submit that the order rejecting the petition filed for restoration of the appeal by the authority is palpably wrong for the reason that the petitioner had shown sufficient cause for approaching the authority beyond one month period which is prescribed under Rule 9-A of the Rules. She would

submit that the authority has inherent power in the scheme of the Act for exercising his discretion in condoning the delay in approaching the authority for restoration of the appeal if sufficient cause is shown by the aggrieved party.

5. The learned counsel, in this regard, would rely on a decision of the Hon'ble Supreme Court in Civil Appeal No.5650 of 2018 arising out of S.L.P.(C) No.6091 of 2010 dated 18.5.2018. She would rely on paragraph 35 of the judgment, which is extracted hereunder:

"35. Merely because an award has become enforceable, does not necessarily mean that it has become binding. For an award to become binding, it should be passed in compliance with the principles of natural justice. An award passed denying an opportunity of hearing when there was a sufficient cause for non-appearance can be challenged on the ground of it being nullity. An award which is a nullity cannot be and shall not be a binding award. In case a party is able to show sufficient cause within a reasonable time for its non-appearance in the Labour Court/Tribunal when it was set ex parte, the Labour Court/Tribunal is bound to consider such an application and the application cannot be rejected on the ground that it was filed after the award had become enforceable. The Labour Court/Tribunal is not functus officio after the award has become enforceable as far as setting aside an ex parte award is concerned. It is within its powers to entertain an application as per the scheme of the Act and in terms of the rules of natural justice. It needs to be restated that the Industrial Disputes Act, 1947 is a welfare legislation intended to maintain industrial peace. In that view of the matter, certain powers to do justice have to be conceded to the Labour Court/Tribunal, whether we call it ancillary, incidental or inherent."

6. The learned counsel would therefore submit that a beneficial legislation like Tamil Nadu Shops and Establishments Act and the Rules must be construed liberally in order to secure ends of justice.

7. At this, the learned counsel appearing for the second respondent Management, would vehemently oppose the grant of any relief to the petitioner since Rule 9-A is very clear that the authority has no power or discretion to entertain any application both at the instance of the employee as well as

employer for hearing of the appeal after a period of one month. He would submit that the said provision is contra distinction compare to proviso to Rule 9 which provides for condonation of delay in entertaining the appeal if sufficient cause is established. He would therefore, emphasize the fact that the framers of the Act had consciously not provided for such condonation of delay in either for restoration of appeal or setting aside the ex parte order after a period of one month. Once there is a clear embargo envisaged in the Act and the Rules, this Court cannot entertain the Writ Petition and direct the authority to hear the appeal on merits. In support of his contentions, the learned counsel would rely on a decision rendered by a learned single Judge as he then was, reported in "1999-3-L.W.795 (The Management, Melur Co-operative Urban Bank Ltd., Melur, Madurai District versus Deputy Commissioner of Labour and others)", wherein, he would refer to paragraph 8 wherein, the learned Judge in respect of the application of same Rule which is the subject matter of present consideration, has held as under:

"8. There is no dispute to the claim made by the petitioner that the applications for restoration came to be made only on 20.12.1989 which was clearly beyond the mandatory period of 30 days under Rule 9-A(3) of the rules. Under the circumstances, the concerned authority could not have entertained the application made beyond 30 days, i.e. On 20.12.1989. The said authority has not at all considered Rule 9-A(3) of the Rules while restoring of the appeals. In the appeals there is no mention of Rule 9-A (3). Learned counsel points out that in fact, these objections were raised by way of a counter. The appellate authority in his restoration order does not seem to have taken note of any of the objections raised on behalf of the employer in the counter opposing the restoration. Thus, it is clear that the authority has acted without jurisdiction in firstly entertaining the restoration application, which was made beyond the period of 30 days, and consequently in not considering the objection raised in that behalf by the employer. This position was not brought to the notice of the learned single Judge who has decided W.P.No.4417 of 1991. Therefore, there would be no escape from the conclusion that the restoration application could not have been entertained at all."

8. He would therefore, submit that the petition filed for restoration of appeal was rightly rejected by the authority and

in the absence of any power for restoration of such appeal, the petitioner could not have expected the authority to entertain the appeal. According to the learned counsel for second respondent, even otherwise, no reasons were spelt out by the petitioner for approaching the authority belatedly in seeking restoration of the appeal. In any event, he would submit that once a statute has not provided any provision for condonation of any delay after a period of limitation of 30 days, in this case, the authority cannot be expected to entertain the petition which is admittedly filed beyond 30 days. He would therefore, submit that the writ petition is not maintainable and liable to be rejected in limine.

9. Heard the learned counsel appearing for the petitioner as well as the learned counsel for the second respondent and the learned Addl. Government Pleader for the first respondent.

10. The issue as raised in the Writ Petition, though apparently is covered by a decision of the learned Judge as he then was in the reported judgment extracted supra, the fallout of conclusion has very serious ramification both for the employee as well as employer in regard to absence of any provision for approaching the authority for re-hearing the appeal after expiry of one month as provided under Rule 9-A of the Rules, ofcourse, the reliance placed by the learned counsel for the second respondent on the decision rendered by a learned single Judge of this Court is supporting his stand, nevertheless, this Court is of the considered view that the beneficial legislation like the Tamil Nadu Shops and Establishments Act, 1948, particularly Section 41 of the Act and the Rules have to be construed liberally in order to achieve larger purpose of the Act. Therefore, the issue as raised in the Writ Petition assumes larger significance in terms of seemingly restricted power imposed on the authority constituted under the Act preventing the authority from entertaining the petition for hearing the appeal even if sufficient cause is shown by the aggrieved party. Therefore, whether such limitation of power as it could be read in the rule is in furtherance of the scheme of the Act or not, is what to be examined in the Writ Petition. Therefore, it has become necessary for this Court to look for general enactment covering the area of limitation and the provisions of the Limitation Act 1963 can be imported into the present Act and the Rules for the purpose of injecting greater legal sense and purpose for the Act to achieve its natural intent and objectives.

11. At the out set, it is relevant to extract Rule 9(A) of the Tamil Nadu Shops and Establishments Rules, 1948 in order to grapple with the issue to be dealt with by this Court as under:

9-A. Re-hearing of appeals.-(1) In any appeal

preferred under the Act, if the employer or his representative fails to appear on the specified date, the appellate authority may proceed to hear and determine the appeal ex-parte.

(2) In any appeal preferred under the Act, if the appellant fails to appear on the specified date, the appellate authority may dismiss the appeal.

(3) Notwithstanding anything contained in sub-rules (1) and (2), an order passed under either of those sub-rules may be set aside and the appeal reheard on good cause being shown within one month of the date of the said order, notice being served on the opposite party of the date fixed for such rehearing."

12. A superficial reading of sub-clause (3) of Rule 9-A read with the precedent quoted may suggest that re-hearing of appeal beyond the one-month period may seem to be a bar. But law would lack life if the context is ignored. Both management and employee would stand to suffer if the sub-clause is read as urged by the management. The counsel for management conceded that it would be so but that he may be on the right side this time.

13. The sub clause cannot be read in isolation. The scheme of the Act and framing of Rules have to be read as a whole. So read, it would be too naive to hold that an appeal cannot be reheard upon lapse of one-month time. But the Act or the Rule does not contain any further restriction or embargo to entertain a petition beyond the one-month period, would make all the difference. This critical distinction has obviously escaped the notice of the cited precedent, which renders it distinguishable. More importantly, a beneficial legislation like Tamil Nadu Shops and Establishments Act, 1948 cannot be rendered impotent in the face of absence of power to condone delay even if sufficient cause is shown by the employee or the employer for re-hearing of the appeal after one month period. It is beneficially plausible that a provision is read having in mind its intent and purpose, the construction of the same ought to result in positive thrust of the legislation and ought not to result in emasculation of its objectives and design. This provision is one of those, which this court is inclined to look at differently, as it deserves to be, for ushering in a beneficial era in the construct of this provision. Not intended or meant to tweak the provision beyond shape to help the cause of the employee. But to read it as it possibly is meant to be, for ushering in a meaningful construct for the employee and the employer, as well. An even-handed treatment or approach as it should be.

14. In a quest for rendering an equitable solution, without making a foray into the legislative domain, this Court found many supportive precedents. It may suffice, for the purpose of this verdict, to venture into just three of them, which in turn contain within themselves, a host of decisions referred to and relied upon. In fact, it would appear that there is overwhelming view supportive of the cause of the employee, as in this case, or the employer, in maybe on a different occasion, that there could be re-hearing of the appeal, even beyond the one-month period, as a matter of course. The period of one month cannot be construed as laying down the outer limit for good, with no scope for an application to condone delay seeking re hearing. The simple factum of absence of any such curb or bar in the sub-clause itself would make it clear and evident that one month period is not cast in stone. It can be overcome, on sufficient cause being shown, beyond the said period also. The appellate authority would be wrong in refusing the relief of re hearing on lapse of the one-month period as it would be too harsh and unfair and be contrary to the law as it is understood in many a statute or provision of such kind.

15. The decisions identified for support- among so many- are as in (i) Arya Vysia Samajam, Represented by its President versus Murugesu Mudaliar (1990) 2 MLJ 371, where a Division Bench of this Court has held as to the applicability of Sec.5 Limitation Act, 1963 in the context of Sec.29(2) as found in paragraphs 2 to 4 as under:

"2. Let us now consider the contra decisions referred to in the reference, in Chakrapani v. Gangammal (1978) 91 L.W. 649, Ismail, J., (as he then was) considered the question whether Order 22, Rule 4, Civil Procedure Code as applicable or Rule 25 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 is applicable, for impleading the legal representatives in revision pending under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 before the High Court, and in that connection it was held that a revision petition filed against the order of the Appellate Authority under Section 25 of the Tamil Nadu Act 18 of 1960 is certainly a proceeding and consequently Rule 25 applies to such proceeding. If Rule 25 applies to such a proceeding, the period of limitation for impleading the legal representatives of the deceased respondent in the above quoted case is only 30 days, and as such, the Civil

Miscellaneous petition having been filed beyond 30 days is obviously barred by limitation. It may be stated that the applicability of Section 5 of the Limitation Act to revision under Section 25 of Act 18 of 1960 has not been considered in that decision and no decision was rendered. It is not in dispute that as per Rule 25, the period of limitation of impleading the legal representative is only 30 days. The learned Judge held that since the proceeding was instituted under Section 25 of the Act 18 of 1960, Rule 25 framed under Act 18 of 1960 is applicable and not Order 22, Rule 4, Civil Procedure Code. Hence, it cannot be said that the learned Judge in that case has taken a contrary view that Section 5 of the Limitation Act is not applicable. As already stated, the present question was not at all the subject matter of the revision in that case. The next decision referred to is one rendered by Maheswaran J., in Ratnam T.V. v. P. Janakiraman 98 L.W. 515. That was a case where the petition to bring an record legal representatives of the deceased person was filed after a period of one month of the death of the petitioner. The learned Judge relying on the decision on Chakrapani v. Gangammal (1978) 91 L.W. 649, (rendered by Ismail J. as he then was) already quoted above, held that Rule 25 will apply to the above quoted case to bring on record the legal representatives of the deceased petitioner as the period of limitation for impleading as per Rule 25 is only 30 days and since the petitions were filed admittedly after 30 days they are barred by limitation. The other reasoning given by the learned Judge (Maheswaran, J.,) is that Rule 25 is mandatory and there is no provision in the H.R.C. Act (House Rent Control Act) to condone the delay and therefore the petitions to implead the legal representatives and to condone the delay are rejected. It is to be noted that the learned Judge has not considered the applicability of Sections 5 and 29(2) of the Limitation Act. The learned Judge only observed that there is no provision in the H.R.C. Act to condone the delay that as per Rule 25, only 30 days time is provided and that therefore the petitions are barred by limitation. As already observed by the Division Bench of this Court, in Rathnasamy v.

Komalavalli 95 L.W. 552 : 1981 T.L.N.J. 288, in Section 29(2) of the new Act, there is no restriction as found in the old Act Section 29 (2) (b). Thus Sections 4 to 24 are made applicable to the period of limitation prescribed for any suit, appeal or application by any special or local law, whereas under the old Section 29(2), only Sections 4, 9 to 18 and 22 are made applicable to the special or local law. The Bench categorically held that Section 29(2) of the Limitation Act enables the application of Sections 4 to 24 of the Limitation Act to the Rent Control Act. Since there is no provision to condone the delay in the Special Act, namely, Rent Control Act, certainly Section 5 of the Limitation Act is applicable. The learned single Judge, Maheswaran, J. has not considered the scope of the provisions of the Limitation Act, particularly, Sections 5 and 29 as well as the case-laws on the subject, while observing that Rule 25 is mandatory and there is no provision in the H.R.C. Act to condone the delay. Since the learned single Judge has not considered the question of applicability of Section 5 of the Limitation Act, the reasoning of the learned single Judge that since there is no provision in the Act, the application is barred by limitation is, in our view, not sound reasoning. As observed already, Section 5 of the new Act, in view of Section 29(2), is applicable to local laws, and in view of the fact that there is no specific exclusion of the provision of Limitation Act and no specific period is prescribed under the Act to condone the delay, certainly Section 5 of the Limitation Act is applicable. The mere fact that there is no provision in special Act to condone the delay is not a ground to hold that Section 5 is not applicable.

3. The other decision referred to was rendered by Ratnam, J., in Sakthivel v. R.S. Govindan 1988, 2 L.W. 52. That was a case where the question that arose for consideration was whether the application for impleading the legal representatives under Order 22, Rule 4, Civil Procedure Code was maintainable or whether the application was to be filed only under Rule 25, of the Tamil Nadu Buildings (Lease and Rent

Control) Rules. It was held that the application filed under Order 22, Rule 4, Civil Procedure Code was not maintainable and the same could not be entertained as it was beyond the time prescribed under Rule 25 of the Rules framed under the Tamil Nadu Buildings (Lease and Rent Control) Act, It may be noted that applicability of Section 5 of the Limitation Act to the application under Rule 25 has not at all been considered. The learned Judge further held in the above case that the filing of an application to bring on record the legal representative of a deceased party is only to assist further prosecution of the proceedings and to regulate the procedure and does not in any manner affect any right or liability. Further, the effect of an order either bringing or declining to bring on record a legal representative in the proceeding under the Act is that the order passed is merely procedural assisting the continuation of the proceeding without in any manner affecting rights of parties would not be appealable. The said decision cannot be taken as one where it is laid that Section 5 of the Limitation Act is not applicable to the application filed under Rule 25 of the Rules framed under the Act for bringing legal representatives on record. As such, it cannot be said that a contrary view has been taken in the said decision.

"4. Learned Counsel for the respondent drew our attention to the decision of the Division Bench of this Court in Settlement Officer, Salem v. K.V.K. Iyer and submitted that it was held in that case that Section 5 of the Limitation Act to condone the delay in filing revision against the grant of patta under Section 11 of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 26 of 1948 was excluded, relying on the decision in K.V. Krishna Iyer v. The President, Panchayat Board, Meyyanur, Salem District and Ors. 1974 I M.L.J. 218, rendered by Ismail J., We have gone through the above decision. We find that a specific rule has been framed under the rule-making power provided in Section 67 on the reference to Section 11 that the revision petition to the Settlement Officer or a revision to the Director should be filed within a specified time. We find

that specific provision excluding applicability of Section 5 of the Limitation Act in respect of filing revision against the grant of patta is incorporated, and in view of the specific proviso excluding the applicability of Section 5 of the Limitation Act in respect of revision against the order passed under Section 11 of the Act, it was that there was specific exclusion and only on that ground Section 5 of the Limitation Act is not applicable to the said proceedings. As already said, there is no specific exclusion of Section 5 of the Limitation Act to Rule 25, of the Tamil Nadu Buildings (Lease and Rent Control) Act, and as such, the said decision is not helpful to the respondents and on the other hand, it supports the view that when there is no specific exclusion of Section 5 of the Limitation Act and there is no provision for condoning the delay under the said Rules, certainly Section 5 of the Limitation Act is applicable. For the foregoing reasons, we are of the view that since there is no specific exclusion of Section 5 of the Limitation Act, just as there is an exclusion in Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act and in view of the new provision, namely, Section 29 (2) of the Limitation Act which governs special period under special and local laws, of which the Tamil Nadu Buildings (Lease and Rent Control) Act is one, Section 5 of the Limitation Act is certainly applicable for impleading legal representative under Rule 25 to the proceedings in revision under Section 25 of the Act before this Court. We answer the reference accordingly. The office is directed to post the revisions before learned single Judge who is dealing with civil revision petitions and the single Judge who is dealing with civil revision petitions for deciding the applications under Rule 25 on merits."

ii) "Order of this Court in C.R.P.Nos.1430 to 1432 of 2002 dated 05.01.2011 (S.M.Jaffar Mohideen vs E. Fathima)", wherein, this Court has held as under in paragraphs 10 to 15:

10. The Hon'ble Supreme Court in Shantilal M.Bhayani vs. Shanti Bai, 1995 Supp(4) SCC 578,

also considered the question as to whether the provision of Section 5 of the Limitation Act, 1963, can be made applicable, to file an appeal before the Appellate Authority. Answering the question, the Hon'ble Supreme Court held as follows:-

2. Admittedly, there is no specific exclusion of the provisions of Section 5 of the Limitation Act under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Section 29(2) of the Limitation Act clearly provides that 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.

11. A learned Single Judge of this Court in *Rathakrishnan vs. A. Chelladurai*, 1997 (1) CTC 244, followed by the Hon'ble Division Bench of this court in *Arya Vysia Samajam vs. Murugesu Mudaliar and 10 Others*, 1990 TNLJ 82 and held that the provision of Section 5 of the Limitation Act are applicable to a petition Rule 25 of the Rules. The case of the respondent is that the provision of Section 5 of the Limitation Act has been specifically excluded and has no application to the provision of the Rent Control Act in support of the said decision, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in *The Commissioner of Sales Tax, U.P., vs. M/s. Parson Tools and Plants, Kanpur*, AIR 1975 SCC 1039. The said case before the Hon'ble Supreme Court arose out of a proceedings under U.P. Sales Tax Act. The Hon'ble Supreme Court while considering the said statue held that the provisions of the Limitation Act cannot be imported into the U.P. Sales Tax Act even by

analogy, since, the U.P. Sales Tax Act is a special statute prescribed certain period of limitation for filing certain applications and beyond the maximum time-limit specified in the statute the provisions of the Limitation act are excluded. This decision of the Hon'ble Supreme Court in The Commissioner of Sales Tax, U.P., referred supra, was followed by this Court in M.M.Handalappa, A.G.Balasubramania Mudaliar and company vs. M/s.H.G.Krishna Reddy and Company, 1984 1 MLJ 85. In the case of M.M.Handalappa, referred supra, a petition was filed for condonation of delay of 128 days in filing of the revision petition before this Court against an order of Appellate Authority. This Court after examining Section 25(2) took note of the fact that the proviso to Sub-Section 2 of Section 25 specified an outer time-limit and therefore such express exclusion is in-built in proviso to Section 25(2) and Section 5 of the Limitation Act would not be applicable. However, the facts and circumstances of the present case are entirely different. Admittedly, the proceedings kept pending before the Appellate Authority under the Act.

12. As noticed above, the Hon'ble Division Bench of this Court in the case of Rethinasamy vs. Komalavalli and another, 1982 (2) MLJ 406, has held that the provision of Section 5 of the Limitation Act is applicable to a proceeding before the Appellate Authority constituted under Section 23(1)(b) of the Act and Section 5 of the Limitation Act could be applicable. Therefore, the decision in the case of M.M.Handalappa, referred supra, would not have any application to the facts of the case. The learned counsel for the respondents placed reliance on the decision of this Court in T.V.Rathnam (deceased) and others vs. P.Janakiraman, 98 LW 515, contended that this Court has held that Rule 25 of the Rules specifically excludes Section 5 of the Limitation Act and the period of 30 days prescribed in Rule 25 is mandatory in nature, in view of the decision rendered by this Court in T.V.Rathnam (deceased) and others, referred supra, has been rendered without noticing the Division Bench Judgment rendered by the Hon'ble Division Bench of this Court in the case of

Arya Vysia Samajam vs. Murugesu Mudaliar and 10 Others, 1990 TNLJ 82.

13. It is to be noted that the decision rendered in T.V.Rathnam (deceased) and others, referred supra, was also one of the conflicting decision, which was taken note and a reference was made by the Division Bench in the case of Arya Vysia Samajam, referred supra. In fact the Hon'ble Division Bench has considered the case of T.V.Rathnam (deceased) and others, and held as follows:-

...The other reasoning given by the learned Judge (Maheswaran, J.) is that Rule 25 is mandatory and there is no provision in the H.R.C. Act to condone the delay and therefore the petitions to implead the legal representatives and to condone the delay are rejected. It is to be noted that the learned Judge has not considered the applicability of Sections 5 and 29(2) of the Limitation Act. The learned Judge only observed that there is no provision in H.R.C. Act to condone the delay, that as per Rule 25, only 30 days time is provided and that therefore the petitioners are barred by limitation. As already observed by the Division Bench of this Court in 95 L.W. 552 in Section 29 (2) of the new Act, there is no restriction as found in the old Act S.29 (2)(b). Thus Sections 4 to 24 are made applicable to the period of limitation prescribed for any suit, appeal or application by any special or local law, whereas under the old Sec.29 (2) only Sections 4, 9 to 18 and 22 are made applicable to the Special or local law. The Bench categorically held that Section 29(2) of the Limitation Act enables the application of Sections 4 to 24 of the Limitation Act to the Rent Control Act. Since there is no provision to condone the delay in the Special Act, namely, Rent Control Act, certainly Section 5 of the Limitation Act is applicable. The learned single Judge, Maheswaran, J., has not considered the scope of the provisions of the Limitation Act, particularly, Sections 5

and 29 as well as the case-laws on the subject, while observing that Rule 25 is mandatory and there is no provision in the H.R.C. Act to condone the delay. Since the learned Single Judge has not considered the question of applicability of Section 5 of the Limitation Act, the reasoning of the learned single Judge that since there is no provision in the Act, the application is barred by limitation is, in our view, not sound reasoning. As observed already, Section 5 of the new Act, in view of Section 29 (2), is applicable to local laws, and in view of the fact that there is no specific exclusion of the provision of Limitation Act and no specific period is prescribed under the Act to condone the delay. Certainly Section 5 of the Limitation Act is applicable. The mere fact that there is no provision in the special Act to condone the delay is not a ground to hold that Section 5 is not applicable.

"14. After giving the above finding, the Hon'ble Division Bench held that Section 5 of the Limitation Act is applicable to a proceeding under Rule 25. Therefore, the contention raised by the learned counsel for the respondents by placing reliance on the decision in T.V.Rathnam (deceased) and others, referred supra, cannot be countenanced.

"15. This Court in Sakthivel vs. R.S.Govindan and another, (1988) 2 LW 52, considered the applicability of Order 22, Rule 4 CPC to a proceeding under the Rent Control Act and this Court held that neither under the provisions of the Act nor the Rules, Order 22, Rule 4 CPC has been made applicable to proceedings under the Act. Presumably in view of its non-applicability, Rule 25 had been framed to the effect that the application should be filed within 30 days. As noticed above, though the period of 30 days has been prescribed in Rule 25, the Hon'ble Division Bench in the case of Arya Vysia Samajam, referred supra, has held that Section 5 of the Limitation Act would be applicable to such proceedings.

iii) "T. Alamelu Ammal vs Mangalakshmi" reported in (2001) 3 MLJ 673, wherein, this Court has held as under:

An important question to be considered in this revision is, whether Section 5 of the Limitation Act is applicable when there is a delay in filing petition by the tenant under Section 9(1)(a)(i) of the Madras City Tenants Protection Act, 1922, (in short "the Act") after a period of one month as prescribed therein.

11. In order to appreciate the rival contentions and to resolve the question in issue, it is, but proper to refer the relevant provision, namely Section 9(1)(a)(i) of the Act.

"9. Application to Court for directing the landlord to sell land. - (1) (a) (i) Any tenant who is entitled to compensation under Section 3 and against whom a suit in ejectment has been instituted or proceeding under Section 41 of the Presidency Small Cause Courts Act, 1882, taken by the landlord, may (within one month of the date of the publication of Madras City Tenants Protection (Amendment) Act, 1979 in the Tamil Nadu Government Gazette or of the date with effect from which this Act is extended to the municipal town township or village in which the land is situate) or within (one month) after the service on him of summons apply to the court for an order that the landlord shall be directed (to sell for a price to be fixed by the court, the whole or part of, the extent of land specified in the application.)"

It is clear that any tenant who is entitled compensation under Section 3 of the Act or against whom ejectment suit has been instituted within one month after the service on him of summons, can apply to the court for an order that the landlord shall be directed to sell for a price to be fixed by the court, the whole or part of the extent of land specified in the application. Among those conditions mentioned therein, we are concerned with condition (1), namely that an application for direction to the landlord is to be filed within one month, after the service of the summons. Admittedly, in our

case the defendant therein did not file an application under Section 9(1)(a)(i) of the Act within time. Except the period "one month after the service of summons" there is no other provision in the Act for filing an application after the expiry of the said period and condonation of the same, if sufficient cause is shown. In view of the fact that the defendant has not filed an application within 30 days from the date of summons and there is a delay of 278 days in filing the same, the question to be considered is whether in the absence of any provision regarding applicability of the Limitation Act, the Court is competent to condone the delay or not?

12. Mr.S.K. Raghunathan, learned counsel appearing for the petitioner has straight-away relied on two decisions of this court, namely, in the cases of (i) Nagammal v. Govindarajulu Naicker, 1958 (71) L.W. 163 and (ii) Gulam Mohamood v. Ammani Ammal, 1960 (73) L.W. 688 respectively. In Nagammal v. Govindarajulu Naicker, 1958 (71) L.W. 163, the tenant therein filed an application for an order that the landlord be directed to sell the land for the price to be fixed by the court. The tenant's application MP.No.2082 of 1956 had not been made within one month period. Since the application came to be made after coming into force of the Amendment Act, 1955, it was contended before the learned Judge that the rule that the application should be made within one month is a mere rule of pleading which need not be enforced. Rejecting the said contention, Subrahmanyam, J., has held that, the rule is a rule of limitation, which the Court does not have power to relieve a person against, in the absence of express jurisdiction conferred on the court to grant such relief for sufficient cause. The learned Judge after holding that no such jurisdiction is conferred on the Court to extend the time for applying for relief under Section 9, dismissed the revision filed by the tenant. The effect of the judgment is that the Court has no power to deal with the application filed after one month after the service of summons on him.

13. In the latter case, namely Gulam Mohamood v. Ammani Ammal, 1960 (73) L.W. 688, Anantanarayanan, J., (as he then was) in similar

circumstance has observed, "Here, we have a case of a tenant, who actually could not obtain the benefit of S.9 of the Act, because his application was out of time. The Court has no power to condone such a delay. Vide observations of Subrahmanyam, J., in Nagammal v. Govindarajulu, 1958 (71) L.W. 163. The result is that the tenant was not able to exercise any option and to obtain the benefits of S.9 of the Act."

Both the decisions show that if the tenant was to exercise the option, namely to purchase the suit property, he has to make an application within one month from the date of service of summons on him and beyond one month the court has no power to consider his application.

14. Subsequent to the above decisions, this Court is consistently taking the view that in the absence of any specific exclusion of the application of Section 5 of the Limitation Act, even after one month, if sufficient cause is shown, the application of the tenant under Section 9(1)(a)(i) of the Act can be considered. Before considering the latter decisions, it is also relevant to refer Section 29(2) of the Limitation Act.

"29. Savings - (1) (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 Section 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."

Section 3(1) of the Limitation Act speaks about "Bar of Limitation".

"3. Bar of Limitation - (1) Subject to the provisions contained in Section 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after prescribed period shall be dismissed although limitation has not been set up as a defence."

It is clear from these provisions that, in the absence of specific provision expressly excluding the provisions of the Limitation Act, particularly Section 3, it is presumed that Section 5 of the Limitation Act is applicable.

15. The first leading judgment on this aspect is of N.S.Ramaswami, J., in the case of Mrs. Johari Bi v. Vinayakam (Died), 1976 (89) L.W 108. The said decision arose in an appeal, which is filed against an order of remand in a suit where the defendant is a tenant entitled to the benefits of Section 9 of the Act. The trial court held, on the basis of a particular covenant in the written lease agreement that the provision to Section 12 of the Parent Act would apply, and that, therefore, he was not entitled to the benefits of S.9 thereof. So, a decree for possession was granted. The appeal filed by the tenant was before the first appellate Court, Act 4 of 1972 had come into force and that Act had deleted the proviso to S.12. That meant, that in spite of the covenant in the lease deed, the tenant was entitled to file an application under S.9 of the Parent Act. However, the application had been filed by the tenant in the trial Court, only after a delay of 60 days. It had been contended before the first appellate Court, on behalf of the landlord, that such delay cannot be excused, because Section 5 of the Limitation Act has no application. The contention was that the provision under S.9 that an application shall be filed within 30 days from the receipt of the summons in the suit, is not a period of limitation, but a condition precedent, and that, therefore, there is no scope for applying S. 5 of the Limitation Act. This was not accepted by the first appellate court and it said that S. 5 of the Limitation Act applied, and there was sufficient cause shown by the tenant to excuse the delay in filing the application under Section 9. Therefore, it set aside the judgment and decree of the trial court and remitted the matter to the trial court for a fresh disposal. The landlord has filed a civil miscellaneous appeal questioning the said remand. The learned Judge has observed, "3. It is contended on the basis of the decision of Raghavan, J., in C.R.P.2354 of 1972, dated 28th April, 1973, that the period

of 30 days mentioned in S.9 of the Parent Act is a condition precedent and not a period of limitation. In view of S. 29(2) of the Limitation Act, 1963, which is different from the corresponding provision in the Limitation Act 1908, there can be no dispute that if the period of 30 days mentioned in S.9 is one of limitation, then S. 5 of the Limitation Act is attracted as there is no specific exclusion, S. 29(2) of the Limitation Act says that when the special or local law prescribes a different period of limitation, then what is contained in the Schedules to the Limitation Act, unless the special or local law expressly excludes the operation of S.4 to S. 24 of the Limitation Act, all these sections would apply even to proceedings coming under the special or local law in determining the period of limitation. However, undoubtedly, the proceedings must be before a civil court for invoking S. 5 of the Limitation Act. In the present case, the matter is before a civil court and, therefore, if what is contained in S.9 of the Parent Act, is a period of Limitation for filing an application for getting the benefits under that Act, then undoubtedly S. 5 of the Limitation Act is applicable, and if the court is satisfied that there is sufficient cause for excusing the delay, it shall excuse. But the contention is, as I said that S.9 does not prescribe a period of limitation for filing an application for getting the benefits of the Parent Act, but it is a condition precedent. A reading of the section itself does not indicate that it is a condition precedent. All that S.9 says is that an application shall be filed within one month after the service of the suit summons."

4.

"5. Raghavan, J., has referred to the above decision and without further discussion has stated that he was of opinion that S.9(1) of Madras City Tenants' Protection Act provides only a condition precedent and not a period of limitation."

"6. With respect to the learned Judge, I am not in a position to readily agree to this view. Under such circumstances, my duty would be to refer the matter to a Division Bench, but in the present case, that would not be necessary,

because of the provision contained in the Amending Act, Act 24 of 1973. As I said earlier, the Amending Act of 1972 (Act 4 of 1972) deleted the proviso to S.12 of the Parent Act. It is because of such deletion, the tenant in this case gets a right to apply under S.9 for relief. No doubt, he had applied even before the amendment. Under the present definition of the word "tenant" in Sub-S.4 of S.2, as amended by Act 24 of 1973, a person who gets a right to the benefits of the Act, because of the deletion of the proviso in actual physical possession of the land and buildings. The amendment made by the Act 24 of 1973 to S.9 of the Parent Act says that any such person as is referred above, is entitled to file an application for the necessary relief under the Parent Act within two months from the date of the publication of the said amending Act. The present application having been filed very much prior to the coming into force of the Amending Act, Act 24 of 1973, there is no difficulty in holding that such application is maintainable, even without an application to excuse the delay. Therefore, the order of remand has to be upheld.

It is clear that, in view of Section 29(2) of the Limitation Act, if the period of 30 days mentioned in Section 9 of the Act is exceeded then Section 5 of the Limitation Act is attracted, as there is no specific exclusion.

16. Similar question came up before Kailasam, J., (as he then was) in the case of P.S. Angalya Raja v. A.K.D. Algaraja, 1976 (89) LW 362. The question before the learned Judge was, whether the application of Section 5 of the Limitation Act, 1963 has been expressly excluded by the special or local law, namely, by the provisions of S.9 of the Tamil Nadu City Tenants' Protection Act. After referring the relevant provisions of the Act as well as the Limitation Act and judgment of N.S.Ramaswami, J., in P.S. Angalya Raja v. A.K.D. Algaraja, 1976 (89) LW 108, the learned Judge has held that, "On a careful reading of S.9(1) of the City Tenants Protection Act, I am unable to construe the wording of S.9 as imposing a condition precedent or expressly excluding the operation of S. 5 of the Limitation Act."

The learned Judge further held that,

"Therefore, the provisions of Section 5 of the Limitation Act, 1963 will apply to an application under Section 9(1) of the City Tenants' Protection Act."

17. In the case of G. Venkataswamy v. Thangammal, 1977 T.L.N.J. 417, A. Varadarajan, J., (as he then was), following the decision of N.S. Ramaswami, J., in P.S. Angalya Raja v. A.K.D. Algaraja, 1976 (89) L.W. 108 and K.P. Kailasam, J., (as he then was) in 81 L.W. 362 has held that, "The period of one month mentioned in Section 9(1) of the Act, is one of the limitation and not a condition."

18. In the case of R. Govindaswamy v. Bhoopalan and others, 1977 (1) M.L.J. 206, V. Ramaswami, J., (as he then was) had an occasion to consider the very same question. After referring Amendment ActXXIV of 1973, the learned Judge has observed,

"4. Thus, in a case where an Act was extended for the first time, the right to file arises by reason of the extension of the Act to the Municipal town and in other cases on receipt of the summons and if we test it with reference to such cause of action, certainly it would be a period of limitation from the date when the cause of action arose and it could not be said that it is a condition for the applicability of Section 9. Therefore, even in a case where the application is filed after receipt of the summons, it would be case of limitation and not a condition for invoking section 9. I am, therefore, of the opinion that it will be a period of limitation prescribed by Section 9. Under Section 29(2) of the Limitation Act, 1963 where any special or local law prescribes for any application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 of the Act 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 such application, the provisions contained in Sections 4 to 24 shall apply, unless the applicability of any of those provisions is excluded or modified. Section 5 of the Limitation Act is, therefore, clearly applicable to an application under Section 9 of the Act. I may add that this was

also the view taken by Kailasam, J., (as he then was) in CRP.Nos.1762 and 1763 of 1973 dated 2nd January, 1976. (since reported in P.S. Angalya Raja v. A.K.D. Algaraja, 1976 (89) L.W. 362)"

19. In the case of M/s. Jayabharatham & Co., v. Susila Chari, 1985 (I) M.L.J. 63, similar question was considered by M.A. Sathar Sayeed, J. The learned Judge has held that, since under the Limitation Act, 1963, section 5 is specifically made applicable by section 29 sub-section (2) it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law if the application can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced. A petition under Section 5 of the Limitation Act, 1963, is not barred to seek condonation of the delay in filing the petition under Section 9(1) of the Madras City Tenants' Protection Act.

20. Though in the earlier two decisions, namely Nagammal v. Govindarajulu Naicker, 1958 (71) L.W. 163 and Gulam Mohamood v. Ammani Ammal, 1960 (73) L.W. 688, the learned Judges therein had taken a specific view that the court had no power to entertain an application filed under Section 9(1)(a) (i) of the Act, after one month after the service of summons on him, it is clear that their Lordships have not considered the provisions of the Limitation Act, particularly, saving provision, Section 29(2) of the Act. In the subsequent decisions, starting from N.S. Ramaswami, J., in P.S. Angalya Raja v. A.K.D. Algaraja, 1976 (89) L.W., 108, ending with Sathar Sayeed, J., in M/s. Jayabharatham & Co., v. Susila Chari, 1985 (I) M.L.J. 63, all the learned Judges after noting that there is no express exclusion of the applicability of the provisions of Limitation Act and in view of Section 29(2) of the Limitation Act held that, Section 5 of the Limitation Act is applicable even for application filed under Section 9(1)(a)(i) and if there is sufficient cause, the court is competent to condone the delay and consider the claim of the tenant in an ejectment suit filed by the landlord. It is also clear

that, even in a case where application is filed after receipt of summons, it would be the case of Limitation and not a condition for invoking Section 9 of the Act. In other words, it will be a period of limitation prescribed by Section 9 of the Act and in view of Section 29(2) of the Limitation Act, 1963, where any special or local law prescribes for any application within the limitation prescribed from the schedule of provisions of Section 3 of the Act shall apply as for such period where the period prescribed by the schedule for the purpose of determining any period of limitation prescribed if such application the provisions contained in Sub-Section 4 of Section 24 shall apply, unless the applicability of in all those provisions are excluded or modified. I have already observed that there is no specific provision excluding the applicability of Limitation Act. Accordingly, I hold Section 5 of the Limitation Act is applicable to an application filed under Section 9(1)(a)(i) of the Act.

16. A reading of the above decisions is illuminating. The decisions referred to within those verdicts are also of importance. The upshot of a reading of them can be captured in these words, in the context of Rule 9-A, under the scanner in this judgment. The said Rule cannot be read in isolation. The scheme of the entire Act and Rules based thereon have to be read and given meaning. Equally, mere mention of one-month period for re hearing cannot be read in isolation. It has to be examined whether Sec.5 of Limitation Act, 1963 stands excluded in real or by implication at least. Reference to Sec.29 (2) of Limitation Act, 1963 then becomes relevant. In the context of the TN Shops and Establishments Act, 1947 and the 1948 Rules in question, this court is unable to accept that Sec.5 stands excluded. For this reason alone, an application beyond the one-month period shall be entertainable subject to sufficient cause being shown by the party concerned, for the delay, to seek the remedy of re hearing.

17. Each statute and the delegated legislation vis a vis the Rules have their own construct. There is no room to superimpose the construct from other statutes or Rules. There can be no quarrel on this score. But in the matter of

interpretation, when Sec.5 Limitation Act, 1963 is of common construct and Sec.29 (2) also comes to the fore, the significance of their presence or absence cannot be disregarded. More importantly, the intendment of the TN Shops and Establishment Act is not meaningless. Be it the management or the employee, for many a reason may miss the one-month deadline. But they cannot be non-suited for that reason alone to have the benefit of re hearing, when they can demonstrate sufficient cause for their inability to restore the appeal within that one month. A substantive benefit in the appeal cannot be rejected by the appellate authority unless the statute or the Rule itself was infused with such harshness or rigidity. This Court does see no such element readable in Rule 9-A.

18. Coming to the specifics of this case, it is a classic instance of the employee seeking to question his termination of employment by the respondent Management. The deadline of one month having been missed out, the employee cannot be rendered remediless for all his life time to question the validity and correctness of termination. If the scheme of the Act and the Rules is to be given a constricted interpretation, it would do violence to the beneficial intent of the statute and the provision. Equally, in a given case, for the absence or failure of a counsel on record, the management may go ex parte beyond a month. In such a scenario, the management will surely be justified in seeking a rehearing and the employee cannot succeed on the sole ground that such request was made beyond one month. It would be hyper technical to hold it to be so. Most importantly, the principles of Secs.5 and 29 (2) are not alien to such a jurisdiction. The principles when read in tandem, lead to the inevitable construction that the petitioner in this case shall succeed having the benefit of a rehearing after the one-month period also, subject to sufficient cause being shown for the delayed period beyond one month.

19. In fine, this Court is inclined to hold that the petitioner has a right to be heard after one-month period also on sufficient cause being shown for the delayed period. It is not as if the lapse of one month would sound a death knell to the remedy of rehearing. Be it the employee or the employer, as the case may be, in appropriate cases, on showing sufficient cause, would and should have the benefit of re hearing, beyond the one month period also and Rule 9-A (3) cannot be read to mean that such a remedy for re hearing beyond one month mentioned therein was not available to the aggrieved party.

20. For the foregoing reasons, the Writ Petition stands allowed and the impugned orders are set aside. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Special Joint Commissioner of Labour/
Appellate Authority under
TN Shops & Establishment Act,
Commissionerate of Labour,
Teynampet, Chennai-600 006.

2. The Authorized Officer,
GE Power Conversion,
GE Power Conversion India Private Limited,
Reg.Off.Plot No.29 (SP),
Thiru Vi Ka Industrial Estate,
Ekkatuthangal, Guindy,
Chennai-600 032.

+1cc to Ms.D.Geetha, Advocate sr.40427
+1cc to Mr.Arun Karthik Mohan, Advocate sr.40492
+1cc to Government Pleader sr.41215

WP.No.4336 of 2019

gj(co)

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