

## K. Devappa Vs K. Narayana Rao and Others

**Court:** High Court Of Kerala

**Date of Decision:** June 28, 1989

**Acts Referred:** Kerala Land Reforms Act, 1963 " Section 102, 108, 72B, 99A

**Citation:** (1989) 2 KLJ 123

**Hon'ble Judges:** K.P. Radhakrishna Menon, J

**Bench:** Single Bench

**Advocate:** V.P. Mohan Kumar and K.P. Sreekumar, for the Appellant; P.A. Mohammed (T), P.V. Madhavan Nambiar, P.K. Balasubramanyan and Govt. Pleader, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

K.P. Radhakrishna Menon, J.

The questions arising for consideration in these revision petitions are identical and therefore those revisions

are disposed of by a common order. Aggrieved by the order of the Land Tribunal dismissing the applications u/s 72B the petitioners filed appeals

before the Appellate Authority. As the appeals were filed out of time, the petitioners were obliged to file petitions to condone the delay in filing the

appeals. One of the petitions to condone the delay was allowed on 27-10-1978. The other petitions were allowed later.

2. This was the state of affairs when the contesting respondents moved the Appellate Authority, petitions to review the orders allowing the petitions

to condone the delay. The Appellate Authority by the orders under challenge reviewed the orders and consequently dismissed the applications to

condone the delay in filing the appeals. These orders are under challenge in these revision petitions.

3. The learned counsel for the petitioners, argues that the Appellate Authority being a creature of statute and since the statute does not contain a

specific provision conferring power on the authority to review the orders, the orders reviewing the orders allowing the petitions to condone the

delay must be held to be orders passed without jurisdiction. This argument at the first blush is attractive, but going deep into the question, one

could see that there is no substance in it. In this context, it is relevant to consider the arguments advanced by the learned counsel for the contesting

respondents. Though the Appellate Authority is a creature of the statute, there are provisions in the K.L.R. Act conferring power on the Appellate

Authority to review its orders. I think he is well founded in his argument.

4. I shall now consider the relevant provisions of the K.L.R. Act. The Appellate Authority is constituted u/s 99A. Subsection 1 of this Section

provides (1) the Government may, by notification in the Gazette, constitute as many Appellate Authorities as may be necessary for the purpose of

this Act. (2) The Appellate Authority shall consist of a sole member who shall be a judicial officer not below the rank of a Subordinate Judge. The

Appellate Authority thus constituted is a quasi judicial authority. It is this Appellate Authority which is to hear the appeals filed u/s 102 K.L.R. Act

Sub-section 2 of Section 102 confers power on the Appellate Authority to entertain an appeal filed beyond time provided the appellant

satisfactorily explains the delay in filing the appeal.

5. Having understood the powers of the Appellate Authority, the further question that arises for consideration is, Has the Appellate Authority the

power to review its orders ? A reference in this connection to subsection 3 of Section 102 is profitable. This section says that in deciding appeals,

under sub-section (1) the Appellate Authority shall exercise all the powers which a court has and follow the same procedure which a court follows

in deciding appeals against the decree of an original court under the Code of Civil Procedure, 1980. A court within the meaning of the C.P.C.

undoubtedly has the power to review its order by invoking the provisions of Order 47 Rule 1. This power must be deemed to be there in the

Appellate Authority by virtue of the specific provisions contained in sub-section 3 of Section 102. The Appellate Authority to my mind, therefore

has the power to review its orders. In short, the Appellate Authority can review its orders.

6. The petition for review however, requires to be filed within 30 days of the date of the order. It has thus been provided under Article 124 of the

Limitation Act. Can the Appellate Authority entertain a review application filed beyond 30 days is the further question that requires to be tackled.

The answer to this question depends upon the construction of Section 108 K.L.R. Act. This section provides that unless otherwise specifically

provided in the Act, the provisions of Section 5 of The Indian Limitation Act, 1908, shall apply to all proceedings under the Act. It is not the case

of either party that the Act contains specific provision enabling a party to file an application to condone the delay in filing the receiver application.

That means, a party filing an application for review out of time, can file a petition u/s 5 Limitation Act to condone the delay. It therefore follows that

the petition for review filed out of time shall be accompanied by a petition u/s 5 Limitation Act.

7. To sum up the Appellate Authority has the power to review its orders and the review application filed beyond time can be entertained provided

a petition u/s 5 Limitation Act accompanies the same. The question before me is whether the Appellate Authority in passing the order reviewing its

order condoning the delay in filing the appeal has discharged its function properly. It is not the case of the contesting respondents that their

applications for review were accompanied by applications u/s 5 Limitation Act, Nonetheless, the Appellate Authority has reviewed the orders and

dismissed the applications of the petitioners to condone the delay in filing the appeals. The orders under challenge under the circumstances must be

held to be orders passed without jurisdiction and as such they are liable to be set aside. I accordingly set aside the orders under challenge and

restore the appeals to file. The Appellate Authority is directed to dispose of the appeals on merits. The Appellate Authority shall give the parties to

the proceedings an opportunity of being heard before the appeals are finally disposed of.

The C. R. Ps are allowed to the extent indicated above.