C.R. No.145/2014

12.8.2015

Shri V.K. Jain, learned counsel for the petitioner.

Shri A.K. Sethi, learned senior counsel with Shri S.C. Agrawal, learned counsel for the respondent.

Heard on the following question :-

1. Whether, delay in filing the revision petition under Section 23-E of the M.P. Accommodation Control Act can be condoned by attracting Section 5 of the Limitation Act?

There is a delay of 34 days in filing the present revision, therefore, applicant has filed I.A. No.6730/2014 for condonation of delay under Section 5 of the Limitation Act.

Opposing the I.A., learned counsel for the respondent has raised an issue that the M.P. Accommodation Control Act (for short "the Act") is a self-contained code and though Section 23-E of the Act provides for the limitation for filing the revision petition but there is no provision under the Act for condoning the delay, therefore, the provisions of the Limitation Act has no application and delay cannot be condoned by invoking Section 5 of the Limitation Act.

Having heard the learned counsel for the parties and on the perusal of the record, it is noticed that the M.P.

Accommodation Control Act, 1961 is a special and local act relating to regulation and control of eviction of tenants and the matters connected and incidental thereto. Section 23-E of the Act provides for remedy of filing the Revision before the High Court against the order passed by the Rent Controlling Authority. The proviso to Section 23-E prescribes the limitation for filing the Revision. Section 23-E reads as under:-

> **23-E. Revision by High Court**.-(1) Notwithstanding anything contained in section 31 or section 32, no appeal shall lie from any order passed by the Rent Controlling Authority under this Chapter.
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> (2) The High Court may, at any time "suo motu" or on the application of any person aggrieved, for the purpose of satisfying itself as to the legality, propriety or correctness of any order passed by or as to the regularity of the proceedings of the Rent Controlling Authority, call for and examine the record of the case pending before or disposed of by such Authority and may pass such order in revision in reference thereto as it thinks fit and save as otherwise provided by this section, in disposal of any revision under this section, the High Court shall, as far as may be, exercise the same powers and follow the same procedure as it does for disposal of a revision under section 115 of the Code of Civil Procedure, 1908 (V of 1908) as if any such proceeding of the Rent Controlling Authority is

> of a Court subordinate to such High Court:
>
> Provided that no powers of revision at the instance of person aggrieved shall be exercised unless an application is presented within ninety days of the date of the order sought to be revised."

There is no provision under the Act to condone the delay in filing the revision petition. Section 5 of the Limitation Act is a general provision for extension of period of limitation in appeal or application, except an application under Order 21 of the CPC, on satisfying the Court about sufficient cause for not preferring appeal or application within the prescribed period. Section 29 of the Limitation Act is the saving clause and sub-section 2 of Section 29 provides for application of Section 4 to 24 of the Limitation Act to limitation prescribed in special or local law for any suit, appeal or application different from the one prescribed in the Schedule to the Limitation Act. Section 29(2) reads as under :-

> "**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."

A bare reading of Section 29(2) reveals that in case if the special or local law provides for a limitation in connection with any suit, appeal or application different from the one prescribed by the Schedule to the Limitation Act, then Section 29(2) is attracted and the period of limitation prescribed in special or local law is deemed to be the period prescribed by the Schedule to the Limitation Act and in such an eventuality Section 4 to 24 of the Limitation Act become applicable for determining any period of limitation prescribed for any suit, appeal or application by a special or local law "insofar as, and to the extent to which, they are expressly excluded by special or local law". The applicability of Section 29(2) for determining the period of limitation under local or special laws is automatic, if the conditions mentioned in the Section are satisfied, meaning thereby if the special or local law provides for a period of limitation and the said period of limitation is different from the period of limitation prescribed

by the Schedule to the Limitation Act and the provisions of Section 4 to 24 of the Limitation Act are not expressly excluded by special or local law, then nothing further is required and these provisions are automatically attracted and in such a case by invoking Section 5 of the Limitation Act, the delay can be condoned even though the special or local Act does not contain any provision for condoning the delay.

The Supreme Court in the matter of **Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker**, reported in **1995(5) SCC 5** after noting Section 29(2) has considered the effect of the Section as under :-

> "8. **********. 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 Section 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 a 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.
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> 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 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 Section 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."

In the above matter it has further been held that :-

"13. As per this sub-section, the provisions contained in certain sections of the Limitation Act were applied automatically to determine the periods under the special laws, and the provisions contained in other sections were stated to apply only if they were not expressly excluded by the special law. The provision (Section 5) relating to the power of the court to condone delay in preferring appeals and making applications came under the latter category. So if the power to condone delay contained in Section 5 had to be exercised by the appellate body it had to be conferred by the special law. That is why we find in a number of special laws a provision to the effect that the provision contained in

Section 5 of the Limitation Act shall apply to the proceeding under the special law. The jurisdiction to entertain proceedings under the special laws is sometimes given to the ordinary courts, and sometimes given to separate tribunals constituted under the special law. When the special law provides that the provision contained in Section 5 shall apply to the proceedings under it, it is really a conferment of the power of the court under Section 5 to the tribunals under the special law – whether these tribunals are courts or not. If these tribunals under the special law should be courts in the ordinary sense an express extension of the provision contained in Section 5 of the Limitation Act will become otiose in cases where the special law has created separate tribunals to adjudicate the rights of parties arising under the special law. That is not the intention of the legislature.

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15. After repealing of Indian Limitation Act, 1908 and its replacement by the present Limitation Act of 1963 a fundamental change was made in Section 29(2). The present Section 29(2) as already extracted earlier clearly indicates that once the requisite conditions for its applicability to given proceedings under special or local law are attracted, the provisions contained in Sections 4 to 24 both inclusive would get attracted which obviously would bring in Section 5 which also shall apply to such proceedings unless applicability of any of the aforesaid sections of the Limitation Act is expressly excluded by

> such special or local law. By this change it is not necessary to expressly state in a special law that the provisions contained in Section 5 of the Limitation Act shall apply to the determination of the periods under it. By the general provision contained in Section 29(2) this provision is made applicable to the periods prescribed under the special laws. An express mention in the special law is necessary only for any exclusion. It is on the basis that when the new Rent Act was passed in 1965 the provision contained in old Section 31 was omitted. It becomes therefore apparent that on a conjoint reading of Section 29(2) of Limitation Act of 1963 and Section 18 of the Rent Act of 1965, provisions of Section 5 would automatically get attracted to those proceedings, as there is nothing in the Rent Act of 1965 expressly excluding the applicability of Section 5 of the Limitation Act to appeals under Section 18 of the Rent Act."

In the present case the proviso to Section 23-E though provides for limitation of 90 days for filing the revision but there is no limitation prescribed in the Schedule to the Limitation Act for filing the revision under Section 23-E of the Act. Thus, on account of the omission to prescribe any limitation under the Limitation Act for filing the Revision under Section 23-E of the Act, Section 29(2) of the Limitation Act is attracted specially when Section 23-E does not exclude the applicability of the provisions of the Limitation

Act.

The ancillary issue is if from the language of proviso to Section 23-E exclusion of Section of of Limitation Act can be inferred? The answer is 'No'. Though the proviso to Section 23-E states that the power of revision will not be exercised unless the application is presented within 90 days of the date of the order sought to be revised but even the imperative language of the proviso is not enough to hold that the applicability of Section 5 of the Limitation Act is excluded. The Supreme Court in the matter of **Mangu Ram Vs. Municipal Corporation of Delhi**, reported in **1976(1) SCC 392** while considering somewhat similar provision in Section 417(4) of Cr.P.C., has already held that mere provision of a period of limitation in however peremptory or imperative language is not sufficient to displace the applicability of Section 5. In this matter Supreme Court while considering sub-section 4 of Section 417 of the Cr.P.C. though has noted that the said section is mandatory and compulsive and provides that no application for grant of special leave to appeal from an order of acquittal will be entertained by the High Court after expiry of 60 days but taking note of the fact that the bar against entertaining the application beyond the period of limitation is created by special law, has held that the aid of Section 5 can be invoked in order that the

application may be entertained despite such bar. In this matter the Supreme Court has considered the change which has been brought about in the Limitation Act, 1963 as compared to the Limitation Act of 1908. Supreme Court in the matter of **Mangu Ram** (supra) has held that :-

> "7. There is an important departure made by the Limitation Act, 1963 in so far as the provision contained in Section 29, sub-section (2), is concerned. Whereas, under the Indian Limitation Act, 1908, Section 29, sub-section (2), clause (*b*) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provision of the Indian Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22, shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded, Section 29, sub-section (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special of local law the provisions contained in Section 4 to 24, which would include Section 5, shall apply in so far as and to the extent to which they are not expressly excluded by such special or local law. Section 29, sub-section (2), clause (*b*) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5 and the ratio of the decision in *Kaushalya Rani's case* (supra) can, therefore, have no

application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section 5 was excluded by reason of Section 29(2)(b) of the Indian Limitation Act, 1908. 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 applicant 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. Here, as pointed out by this Court in *Kaushalya Rani's* case, the time limit of sixty days laid down in sub-section (4) of Section 417 is a special law of limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5. IT is true that the language of sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain tersm that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days form the date of that order of acquittal. But that would be that language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it

> becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it. The High Court, in the present case, did not, therefore, act without jurisdiction in holding that the application preferred by the Municipal Corporation of Delhi was not barred by the time limit of sixty days laid down in sub-Section (4) Section 417 since the Municipal Corporation of Delhi had sufficient cause for not preferring the application within such time limit. The order granting special leave was in the circumstances not an order outside the power of the High Court."

While considering Section 19 of the M.P. Madhyastham Adhikaran Adhiniyam (29 of 1983) which provides for filing an application for revision within 3 months of the award, the

Supreme Court in the matter of **State of M.P. and another Vs. Anshuman Shukla** reported in **2015(2) MPLJ 1** has held that Section 19 does not expressly exclude the application of Section 4 to 24 of the Limitation Act. The Supreme Court in the above matter has held that :-

> "37. Section 19 of the Act of 1983, does not contain any express rider on the power of the High Court to entertain an application for revision after the expiry of the prescribed period of three months. On the contrary, the High Court is conferred with suo motu power, to call for the record of an award at any time. It cannot, therefore, be said that the legislative intent was to exclude the applicability of section 5 of the Limitation Act to section 19 of the Act of 1983."

The Section 23-E in the present case also contains the similar provisions, therefore, applicability of Section 5 of the Limitation Act cannot be excluded.

The similar issued had come up before the Division Bench of this Court in the matter of **Beharilal Chaurasia Vs. R.T.A. Rewa** reported in **1961 JLJ 94** while considering Section 64-A of the Motor Vehicles Act which provides that the State Transport Authority will not entertain any application from a person aggrieved by the order of the Regional Transport Authority unless application is made within 30 days from the date of the order. Language of

Section 64-A of the Motor Vehicles Act under consideration in that case is also similar to the proviso to Section 23-E in the present case. The Division Bench taking note of Section 29(2) of the Limitation Act has held that it is not necessary for the applicability of Section 29 that the difference in the period of limitation should arise by a reason of specific prescription of the limitation in the first Schedule to the Limitation Act, but what is essential for the purpose of Section 29(2) is that the special or local law must vary or differ from Schedule 1 to the Limitation Act by prescribing specific limitation period. The variation or difference may arise either because first Schedule prescribes a different period of limitation or because it omits to prescribe any period of limitation. It has further been held that in construing the statute of limitation equitable considerations are out of place and the strict grammatical meaning of the words is the only safe guide.

The Full Bench of this Court in the matter of **Mohammad Sagir Vs. Bharat Heavy Electricals and others** reported in **2004(2) MPLJ 359** while considering Section 29(2) and Section 5 of the Limitation Act in reference to Section 62 of the M.P. Industrial Relations Act, has held that Section 5 of the Limitation Act is attracted. Learned counsel for the applicant referring to the judgment of the

Single Bench in the matter of **Bimla Bai wd/o Trilokchand Jain Vs. Baijnath Singh Chandel** reported in **2000(3) MPLJ 180** has also pointed out that as a matter of practice the delay in filing the revision petition under Section 23-E of the Act has been condoned by attracting Section 5 of the Limitation Act till now.

There is another line of judgments by the courts in the matters where the special or local law prescribes the period of limitation and also confers restricted power to the court to condone the delay or extend the period of limitation for a further prescribed period. In those cases since the intention of the legislation to exclude applicability of provisions of the Limitation Act becomes clear, therefore, it has been held that the applicability of Section 5 of the Limitation Act has been expressly excluded. The Supreme Court in the matter of **Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others**, reported in **2008(7) SCC 169** considering Section 34(3) of the Arbitration and Conciliation Act, 1996 and taking note of the fact that the sub-section provides for the limitation as also the further period which can be extended on sufficient cause being shown but not thereafter, has held that Section 5 of the Limitation Act would not be applicable. Similarly Supreme Court, while considering Section 35(1) of the Central Excise

Act, 1944 which provide for entertaining the appeal by condoning the delay only up to 30 days after the expiry of 60 days which is the normal period for preferring the appeal, in the matter of **Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others** reported in **2008(3) SCC 70** has held that there is complete exclusion of Section 5 of the Limitation Act. While considering the Section 125 of the Electricity Act, 2003 which provides for filing of appeal before the court against the order of the tribunal within 60 days and empowers the court to entertain appeal within a further period of 60 days, if satisfied, that there was sufficient cause for not filing the appeal within initial period of 60 days, in the matter of **Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and others** reported in **2010(5) SCC 23** Supreme Court has held that since there is an outer limit prescribed, therefore, Section 5 of the Limitation Act is not attracted. Same is the position in the matter of **State of Haryana Vs. Hindustan Machine Tools Limited & Others**, reported in **AIR 2015 Punjab and Haryana 45 (FB)** in which Section 25 of Sick Industrial Companies (Special Provision) Act, 1986 has been considered. These judgments stand on different footing since in all these enactments there was the initial period prescribed for filing the application, appeal or

revision and the special or the local laws further provide for condoning the delay of specified period. But in the present case Section 23-E of the Act does not contain any such provision for condoning the delay, hence the ratio of this judgment is not attracted.

As against this, counsel for the respondent has placed reliance upon the judgment of the Supreme Court in the matter of **Nasiruddin and others Vs. Sita Ram Agrawal**, reported in **AIR 2003 SC 1543** but that is a case relating to the applicability of Section 5 of the Limitation Act for condoning delay in deposit of rent under Section 13(4) of the Act. The said judgment has duly been considered and distinguished by the subsequent judgment of the Supreme Court in the matter of **Anshuman Shukla** (supra). So far as the judgment in the matter of **Om Prakash Vs. Ashwani Kumar Bassi** reported in **2011(4) SCCD 1897 (SC)** relied upon by counsel for the respondent is concerned, that is a case where rent controller had dismissed the application of the tenant under Section 5 of the Limitation Act for condoning the delay in filing the application for leave to contest the eviction petition. In that case the Supreme Court has held that the Rent Controller being a creature of statute can only act in terms of the powers vested in him by the statute and cannot entertain an application under Section 5

of the Limitation Act. The Rent Controller having been found to be appointed by the State Government and a member of State Civil Services being a *persona designata*, is not found entitled to apply the provision under Section 5 of the Limitation Act, therefore, the said judgment is of no help to the petitioner because present is a case where the applicability of Section 5 is to be seen in filing the revision petition before the Court. Same is the position in respect of the judgment in the matter of **Noharlal Verma Vs. District Co-operative Central Bank Ltd., Jagdalpur**, reported in **AIR 2009 SC 664** relied upon by counsel for the respondent since in that matter also the Section 55 of the M.P. Cooperative Societies Act, 1960 was under consideration relating to filing of application before the Registrar.

Counsel for the respondent has also raised a submission that the intention of the legislature is to be seen and in support of his submission he has submitted that under Section 23(C)(1) and Section 31 of the Act specific provision has been made for condonation of delay whereas under Section 23-E no such provision has been made which indicates that the legislature did not intend to provide for the condonation of delay in filing the revision against the order of the Rent Controlling Authority. Such a contention cannot be accepted because proviso to Section 23(C)(1) of the Act

gives power to the rent controlling authority to condone the delay on the part of the tenant in entering appearance or in applying for leave to defend the application for eviction, if sufficient cause is shown. The said proviso seems to have been incorporated because Rent Controlling Authority is not a court and Section 5 of the Limitation Act applies only to the court. So far as the second proviso to Section 31 is concerned, the said proviso gives power to the District Judge or Additional District Judge to condone the delay in filing the appeal against the order of the Rent Controlling Authority. Section 31 is in the statute since inception, i.e. from the time of coming into force the Act of 1961 when the old Limitation Act of 1908 was in force, under Section 29(2)(b) of which the applicability of Section 5 of the Limitation Act was excluded in respect to the limitation prescribed by a special or local law, therefore, at that time it was necessary for legislation to confer express power in the Act to the appellate court to condone the delay but so far as Section 23-E is concerned, it has been incorporated by the Act No.27 of 1983 w.e.f. 16.8.1983 after coming into force of the Limitation Act, 1963, wherein by virtue of Section 29(2), Section 5 of the Limitation Act applies therefore, there was no need to incorporate any such provision providing for power to condone delay under Section 23-E as contained in second proviso to Section 31 of

the Act.

Thus, in view of the aforesaid analysis, it is held that the provisions of Section 5 of the Limitation Act are applicable for condonation of delay in filing the revision petition under Section 23-E of the M.P. Accommodation Control Act.

Having held thus counsel for the parties are also heard on the application for condonation of delay. The delay of 34 days has duly been explained. It has been stated that the delay was caused since the file was misplaced by the Advocate.

After hearing the learned counsel for the parties and on the perusal of the IA, it is found that the petitioner was prevented from filing the revision petition within time on account of the bonafide reason. The delay is unintentional and it has not taken place on account of any deliberate lapse on the part of the petitioner.

On due consideration, it is found that a good ground is made out for condoning the delay.

Accordingly, I.A. No. is allowed. Delay in filing the revision petition is condoned.

List on 7.9.2015.

(Prakash Shrivastava)
Judge

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