

(2025) 05 SHI CK 1047

In the High Court Of Himachal Pradesh

Case No : CMPMO No.361 Of 2024 223 Of 2025

Jogindera Central Cooperative Bank Ltd

APPELLANT

Vs

Addl. Registrar (Mon.) Cooperative Societies & Ors

RESPONDENT

Date of Decision : 19-05-2025

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2
Himachal Pradesh Land Revenue Act, 1953 — Section 10, 163, 171
Specific Relief Act, 1963 — Section 41(b)

Citation : (2025) 05 SHI CK 1047

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : P.S. Goverdhan, Chaman Goverdhan, Amandeep Sharma

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. Since pure question of law is involved in both these petitions filed under article 227 of the Constitution of India, therefore, facts of the same need not be gone into and are being disposed of by common judgment.

2 The question of law posed is whether the provisions of the Section 5 of the Limitation Act, 1963 (for short, "the Limitation Act") apply to an appeal under Section 93 of the H.P. Cooperative Societies Act, 1968 (for short, the Act of 1968)?

3 The Additional Registrar-respondent No.1 in CMPMO No. 361/2024 has held the appeal to be not maintainable by holding that he had no power to condone the delay as would be evident from the relevant portion of the impugned order, which reads as under:-

"The impugned order dated 20.06.2022 of the Assistant Registrar Cooperative Societies Solan has been passed in the surcharge proceedings while exercising the statutory powers by affording reasonable opportunity of being heard to all

the concerned parties. As per specific provision contained in Section 93(2) of the Himachal Pradesh Cooperative Societies Act, 1968, an appeal is required to be preferred within 60 days from the decision or order and in contrary to this provision, the Appellant has filed present appeal in the month of March, 2023 after inordinate delay of more than four months. It is settled proposition that in case where there is a lack of power to condone delay in filing appeal beyond the limitation period specified in the statutes. The Appellate Authority is typically bound by the statutory limitations and may not have the discretion to extend the filing deadline. Admittedly, the Appellant Bank was aware about the order in question wherein the Bank representative was duly notified, thus, the Bank failed to assail the order within time as outlined in Section 93 (2) of the Act. Rather the order has attained finality and this Forum has no power to condone the delay as this Forum cannot be construed as Court in terms of the Himachal Pradesh Cooperative Societies Act, 1968. Furthermore, it is well known proposition that when the special Statute does not contain a provision making the provisions of Section 5 of the Limitation Act applicable, the question of condonation of delay invoking that provision does not arise. The period prescribed was no power to condone the delay to entertain an appeal filed beyond the times prescribed in the Statute for filing of appeal has already expired. In these circumstances, when there is under the Act, the delay cannot be condoned by invoking the provisions of Limitation Act.

In view of express provisions contained in the Act an appeal cannot be entertained beyond the prescribed period and there is no inherent right of appeal under the Act and thus, the Appellate authority has no power, express or implied, to condone the delay and entertain an appeal."

4 As regards CMPMO No. 223/2025, the Additional Registrar-respondent No.1 framed the following questions of law for consideration in the appeal:-

- 1) Whether the Registrar Cooperative Societies while hearing the appeal under section 93 of Act, 1968, is a court?
- 2) Whether applicability of section 29 (2) of Limitation Act is with regard to different limitation prescribed in any suit, appeal or application to be filed only in a court or Section 29 (2) can be pressed in service with regards to filing of a suit, appeal or application before statutory authorities provided in special or Local laws?
- 3) Whether Registrar Cooperative Societies while hearing the appeal under section 93 is entitled to condone a delay in filing an appeal applying the provisions of section 5 of the Limitation Act, 1963?
- 4) Whether the statutory scheme of Act, 1968 indicates that section 5 of Limitation Act is applicable to proceedings before its authorities?

5 Question of No.1 was answered by holding that the Registrar, Cooperative Societies was not a Court, whereas questions No. 2 and 3 were answered in the

following manner:-

(a) The applicability of section 29(2) of the Limitation Act is with regard to different limitations prescribed for any suit, appeal or application when to be filed in a court.

(b) Section 29(2) of the Limitation Act cannot be pressed in service with regard to filing of suits, appeals and applications before the statutory authorities provide in a special or local law. This authority while hearing the appeal under Section 93 of The Himachal Pradesh Cooperative Societies Act, 1968 is not entitled to condone the delay in filing appeal, since provision of section 5 shall not be attracted by strength of section 29(2) of the Act.

6 Whereas, question No.4 was answered by concluding that Section 5 of the Limitation Act is not applicable as per Scheme of the Act of 1968.

7 At the outset, it needs to be noticed that respondent No.1 while answering all the questions has mainly relied upon the judgment of the Hon'ble Supreme Court in Ganesan vs. T. N. Hindu Religious & Charitable Endowment Board (2019) 7 SCC 108, wherein identical question of law, like in the instant case, had been framed regarding applicability of the Limitation Act to the proceedings before the Commissioner in an appeal under Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. It is thereafter that these questions were answered.

8 However the moot question is whether respondent No.1 has taken into consideration the relevant observations or has simply overlooked the same.

9 To answer the question, as framed above, one would have to go to the relevant provisions of the Act of 1968 and the Himachal Pradesh Cooperative Societies Rules, 1971 (for short, "the Rules of 1971") framed thereunder.

10 It shall be apt to reproduce relevant provisions of Sections 49, 93 and 94 of the Act of 1968 and Rule 143 of Rules of 1971 thereof read as under:-

49. Limitation.-

(1) Notwithstanding any other provisions of the Limitation Act, 1963 (36 of 1963), the period of limitation for the institution of a suit to recover any sum including interest thereon due to a society by a member thereof shall be computed from the date on which such member dies or ceases to be a member of the society.

(2) The provisions of the Limitation Act, 1963 (36 of 1963), shall not apply to proceedings taken 1 [under sections 69, 73 and 88] of this Act.

93. Appeal.-

(1) An appeal shall lie under this section against,-

(a) an order of the Registrar made under sub-section (4) of section 8 refusing to register a society;

- (b) an order of the Registrar made under sub-section (4) of section 11 refusing to register an amendment of the bye-laws of a society;
- (c) a decision of a society refusing to admit any person as a member of the society who is otherwise duly qualified for membership under the bye-laws of the society;
- (d) a decision of a society expelling any of its members;
- (e) an order of the Registrar removing the committee of a cooperative society under section 37;
- (f) an order made by the Registrar under section 68 apportioning the cost of the enquiry held under section 67 or an inspection made under 66;
- (g) any order of surcharge under section 69;
- (h) any decision or award made under section 73;
- (i) an order made by the Registrar under section 78 directing the winding up of co-operative society;
- (j) any order made by the liquidator of a society in exercise of the powers conferred on him by section 80;
- (k) any order made under section 74.

[(2) An appeal against any decision or order under sub-section (1) shall be made within sixty days from the date of decision or order,-

- (a) if the decision or order was made by the Assistant Registrar or the Deputy Registrar, to the Registrar or such Additional Registrar or Joint Registrar as may be authorised by him in this behalf; or
- (b) if the decision or order was made by the Joint Registrar, the Additional Registrar or the Registrar, to the Government; or
- (c) if the decision or order was made by any other person, to the Registrar or such Additional Registrar, Joint Registrar, Deputy Registrar or Assistant Registrar as may be authorised by him in this behalf.

(3) No appeal shall lie under this section from any decision or order made by any authority in appeal.

94. Review and revision.-

(1) The State Government except in a case in which an appeal is preferred under section 93 may call for and examine the record of any inquiry or inspection held or made under this Act or any proceedings of the Registrar or of any person subordinate to him or acting on his authority, and may pass thereon such orders as it thinks fit.

(2) The Registrar may, at any time,-

(a) review any order passed by himself; or

(b) call for and examine the record of any inquiry or inspection held or made under this Act or the proceedings of any person subordinate to him or acting on his authority, and if it appears to him that any decision, order or award or any proceedings so called or should for any reason be modified, annulled or reversed, may pass such order thereon as he thinks fit: Provided that, before any order is made under sub-sections (1) and (2), the State Government or the Registrar, as the case may be, shall afford to any person likely to be affected adversely by such order, an opportunity of being heard

Provided further that every application under sub-sections

(1) and (2) to the State Government or the Registrar, as the case may be, shall be made within ninety days from the date of communication of the order sought to be reviewed or revised.

143. Certain proceedings under the Act and the rules to be judicial proceedings - Proceedings of inspection under section 66 and inquiry sections 67 and 69, proceedings under section 73, 74, 93, 94, 95 and execution proceedings under section 87 shall be deemed to be judicial proceedings within the meaning of section 228 of the Indian Penal Code, 1860

11 A perusal of Section 49 of the Act of 1968 would make it crystal clear that provisions of the Limitation Act have been excluded in its applicability only qua Sections 69, 73 and 88 of the Act of 1968. Meaning thereby that the provisions of the Limitation Act excluding the aforesaid Sections would be applicable to all the other provisions of the Act of 1968 including the appeals and reviews filed thereunder.

12 The legislature has taken a conscious decision by excluding the provisions of the Limitation Act only to three sections of the Act of 1968 and making other provisions applicable as contained in the Act of 1968. Meaning thereby that from the scheme of the Act of 1968, it can be found that the legislative intent was not to exclude the applicability of the provisions of the Limitation Act. There cannot be any dispute to the proposition that if the legislative scheme of special or local law indicates that enactment intended applicability of Section 5 of the Limitation Act, then Section 5 of the Limitation Act shall be applicable independent with operation of Section 29 thereof.

13 Here, it shall be apt to reproduce Sections 5 and 29 of the Limitation Act, which read as under:-

5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.—The fact that the appellant or the applicant was

misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

29. Savings.—

(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.

14 The question whether respondent No.1, while hearing an appeal under Section 93 of the Act of 1968 is a Court, does not arise for consideration because of the provisions contained in Section 49 of the Act of 1968.

15 Respondent No.1 while relying upon judgment in Ganesan's case (supra) has failed to consider the ratio laid down in para 59(4) of the judgment, which reads as under:-

59(4). However, special or local law vide statutory scheme can make applicable any provision of the Limitation Act or exclude applicability of any provision of Limitation Act which can be decided only after looking into the scheme of particular, special or local law.

16 Further, respondent No.1 has also failed to take note of relevant observations of the Hon'ble Supreme Court in Ganesan's case while deciding question No.4, (which is *pari materia* to the question, framed in the instant case as contained in para 61), which reads as under:-

"A special or local law can very well provide for applicability of any provision of Limitation Act or exclude applicability of any provision of Limitation Act. The provisions of Limitation Act including Section 5 can very well be applied in deciding an appeal by statutory authority which is not a Court by the statutory scheme of special or local law."

17 In addition to the above, precise issue regarding competence of the Court to condone the delay in filing of the appeal even in absence of any enabling provisions, (unlike Section 49 of the Act of 1968 in the instant case), was subject matter of consideration before the learned Single Judge of Punjab and Haryana High Court in batch of petitions lead being CWP No. 1187/2017, titled as Punjab State Co-op Supply Marketing Federation (Marked) vs. Financial Commissioner (Co-operation), Punjab and ors, wherein while dealing with some what identical provisions of the Punjab Co-operative Societies, Act 1961, the learned Single Judge observed as under:-

8. It will be apposite to first peruse scheme of 1961 Act under which the present proceedings have been initiated. Chapter VIII thereof deals with settlement of disputes. The same reads as under:-

"Section 55 - Disputes which may be referred to arbitration :-

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or

(d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society; such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purpose of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of co-operative society, namely -

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not ;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not; and

(c) any dispute arising in connection with the election of any officer of the society.

(3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

SECTION – 56

56. Reference of disputes to arbitration :- (1) The Registrar may, on receipt of the reference of dispute under section 55.-

(a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf, or

(c) refer it for disposal to one arbitrator.

(2) The Registrar may withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause

(c) of that sub-section and decide it himself or refer the same to another arbitrator for decision.

(3) The Registrar or any other person to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice.

9. Chapter 11 provides for appeals and revision. Section 68 which is relevant for the adjudication of the present case reads as under:-

"68. Appeals.- (1) An appeal shall lie under this section against

xx xx xx xx (h) any decision or award made under section 56;

xx xx xx xx

(2) An appeal against any decision or order under sub-section

(1) shall be made within sixty days from the date of decision or order,

(a) if the decision or order was made by the Assistant Registrar to the Deputy Registrar;

(b) if the decision or order was made by the Deputy Registrar to the Registrar or such Additional Registrar or Joint Registrar as may be authorised by the Registrar in this behalf;

(c) if the decision or order was made by the Joint Registrar or Additional Registrar, to the Registrar;

(d) if the decision or order was made by the Registrar, to the Government;

(e) if the decision or order was made by any other person, to the Registrar or such Additional Registrar or Joint Registrar or Deputy Registrar or Assistant Registrar as may be authorised by the Registrar in this behalf.

(3) No appeal shall lie under this section from any decision or order made by any authority in appeal.

(4) Any appeal under sub-section (1) pending immediately before the commencement of the Punjab Co-operative Societies (Amendment) Act, 1969, before any authority shall stand transferred to the authority to whom such appeal lies on such commencement.].

10. As per Section 68(2), the appeal against any decision or order under subsection 1 has to be made within 60 days from the date of decision or order. The Act is silent on the issue of condoning delay in filing appeal. Counsel for the petitioner relies upon Section 29(2) of the Limitation Act, 1963 to make provisions of Section 5 applicable to the appellate proceedings under the 1961 Act.

11. The appellate authority under the provisions of 1961 Act being not a Court, provisions of Section 29(2) of the Limitation Act will not be applicable. Thus, the contention raised by counsel for the petitioner(s) cannot be accepted.

12. Having held that, does it mean that the authority entertaining the appeal under Section 68 of the 1961 Act is precluded from entertaining appeal beyond 60 days even when the appellant has sufficient cause to satisfy the Court for not preferring the appeal within 60 days?

13. Counsel for the respondents have relied upon judgment dated 13.07.2015 passed by Division Bench of this Court in Balbir Singh Jammu's case (supra) to contend that once there is no provision in the Act enabling the Appellate Authority to condone the delay even if the facts and circumstances of the case so warrants such power cannot be exercised. The Division Bench relied upon law laid down in Commissioner of Customs & Central Excise vs. Hongo India (P) Ltd. and another 2009 (5) SCC 791 and Popat Bahiru Govardhane Etc. vs. Special Land Acquisition Officer and another 2013 (10) SCC 765.

14. The precise issue regarding competence of the Courts to condone the delay in filing of appeal in the absence of any enabling provision alongwith the law laid down in Hongo's case (supra) was reconsidered by three judges bench of Supreme Court in the case of Government of Maharashtra vs. M/s. Borse Brothers Engineers and Contractors Pvt. Ltd. Reported as 2021 (6) SCC 460. The Apex Court specifically holding that Hongo's case was distinguishable and interpreting somewhat similar provision as is contained in the present case held as under:-

"xx xx xx

34. The vexed question which faces us is whether, first and foremost, the

application of section 5 of the Limitation Act is excluded by the scheme of the Commercial Courts Act, as has been argued by Dr. George. The first important thing to note is that section 13(1A) of the Commercial Courts Act does not contain any provision akin to section 34(3) of the Arbitration Act. Section 13(1A) of the Commercial Courts Act only provides for a limitation period of 60 days from the date of the judgment or order appealed against, without further going into whether delay beyond this period can or cannot be condoned.

35. It may also be pointed out that though the object of expeditious disposal of appeals is laid down in section 14 of the Commercial Courts Act, the language of section 14 makes it clear that the period of six months spoken of is directory and not mandatory. By way of contrast, section

16 of the Commercial Courts Act read with the Schedule thereof and the amendment made to Order 8, Rule 1 of the CPC, would make it clear that the defendant in a suit is given 30 days to file a written statement, which period cannot be extended beyond 120 days from the date of service of the summons; and on expiry of the said period, the defendant forfeits the right to file the written statement and the court cannot allow the written statement to be taken on record. This provision was enacted as a result of the judgment of this Court in Salem Advocate Bar Assn. (2) v. Union of India. 36. In a recent judgment of this Court namely, SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd., a Division Bench of this Court referred to the aforesaid amendment and its hard and fast nature as follows: (SCC pp.214-15, paras 8-11)

"8. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23-10-2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order 5, Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

"Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record."

Equally, in Order 8, Rule 1, a new proviso was substituted as follows:

"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of

summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record."

This was re-emphasised by re-inserting yet another proviso in Order 8, Rule 10 CPC, which reads as under: "10. Procedure when party fails to present written statement called for by court.-Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the court, as the case may be, the court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:

Provided further that no court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement."

A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order 8, Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.

9. In Bihar Rajya Bhumi Vikas Bank Samiti, a question was raised as to whether section 34(5) of the Arbitration and Conciliation Act, 1996, inserted by Amending Act 3 of 2016 is mandatory or directory. In para 11 of the said judgment, this Court referred to Kailash v. Nanhku, referring to the text of Order 8, Rule 1 as it stood pre the amendment made by the Commercial Courts Act. It also referred (in para 12) to Salem Advocate Bar Assn. (2) v. Union of India, which, like the Kailash judgment, held that the mere expression "shall" in Order 8, Rule 1 would not make the provision mandatory. This Court then went on to discuss in para 17 of State v. N.S. Ganeswaran, in which section 154(2) of the Code of Criminal Procedure, 1973 was held to be directory inasmuch as no consequence was provided if the section was breached. In para 22 by way of contrast to Section 34, Section 29- A of the Arbitration Act was set out. This Court then noted in para 23 as under: (Bihar Rajya Bhumi Vikas Bank Samiti case, SCC p. 489)

"23. It will be seen from this provision that, unlike Sections 34(5) and (6), if an award is made beyond the stipulated or extended period contained in the section, the consequence of the mandate of the arbitrator being terminated is expressly provided. This provision is in stark contrast to Sections 34(5) and (6) where, as has been stated hereinabove, if the period for deciding the application under Section 34 has elapsed, no consequence is provided. This is one more indicator that the same Amendment Act, when it provided time periods in different situations, did so intending different consequences."

10. Several High Court judgments on the amended Order 8, Rule 1 have now held that given the consequence of nonfiling of written statement, the amended provisions of the CPC will have to be held to be mandatory. See *Oku Tech (P) Ltd. v. Sangeet Agarwal* by a learned Single Judge of the Delhi High Court dated 11-8-2016 in CS (OS) No. 3390 of 2015 as followed by several other judgments including a judgment of the Delhi High Court in *Maja Cosmetics v. Oasis Commercial (P) Ltd.*

11. We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order 8, Rule 1 on the filing of written statement under Order 8, Rule 1 has now been set at naught."

37. By way of contrast, there is no such provision contained in section 13 of the Commercial Courts Act. The judgment in *Hongo*, strongly relied upon by Dr. George, is clearly distinguishable. In *Hongo*, Section 35-H of the Central Excise Act provided for a period of 180 days for filing a reference application to the High Court. The scheme of the Central Excise Act was adverted to in paragraph 15 of the judgment, which reads as follows: (SCC p.796)

"15. We have already pointed out that in the case of appeal to the Commissioner, Section 35 provides 60 days' time and in addition to the same, the Commissioner has power to condone the delay up to 30 days, if sufficient cause is shown. Likewise, Section 35-B provides 90 days' time for filing appeal to the Appellate Tribunal and sub-section (5) therein enables the Appellate Tribunal to condone the delay irrespective of the number of days, if sufficient cause is shown. Likewise, Section 35-EE which provides 90 days' time for filing revision by the Central Government and, proviso to the same enables the revisional authority to condone the delay for a further period of 90 days, if sufficient cause is shown, whereas in the case of appeal to the High Court under Section 35-G and reference to the High Court under Section 35-H of the Act, total period of 180 days has been provided for availing the remedy of appeal and the reference. However, there is no further clause empowering the High Court to condone the delay after the period of 180 days."

38. The Court then went on to observe: (*Hongo* case, SCC pp. 801-802, paras 33-36)

"33. Even otherwise, for filing an appeal to the Commissioner, and to the Appellate Tribunal as well as revision to the Central Government, the legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided with to enable the Commissioner and the other party to avail the same. We are of the view that the legislature provided sufficient time, namely, 180 days for filing reference to the High Court which is more than the period prescribed for

an appeal and revision.

34. Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted, what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to the High Court.

35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.

36. The scheme of the Central Excise Act, 1944 supports the conclusion that the time-limit prescribed under Section 35- H(1) to make a reference to the High Court is absolute and unextendable by a court under Section 5 of the Limitation Act. It is well-settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act."

39. Unlike the scheme of the Central Excise Act relied upon in Hongo, there are no other provisions in the Commercial Courts Act which provide for a period of limitation coupled with a condonation of delay provision which is either open-ended or capped. Also, the period of 180 days provided was one indicia which led the Court to exclude the application of section 5 of the Limitation Act, as it was double and triple the period provided for appeals under the other provisions of the same Act. Section 13(1A) of the Commercial Courts Act, by way of contrast, applies an intermediate period of 60 days for filing an appeal, that is, a period that is halfway between 30 days and 90 days provided by Articles 116 and 117 of the Limitation Act.

40. The other judgments relied upon by Dr. George are all distinguishable in that they are judgments which deal with provisions that provide for a period of limitation and a period of condonation of delay beyond which delay cannot be

condoned, such as section 125 of the Electricity Act. (See *Suryachakra Power Corpn. Ltd. v. Electricity Deptt.*, at para 10; and *ONGC v. Gujarat Energy Transmission Corpn. Ltd.* at paras 5-10)

41. Section 21 of the Commercial Courts Act was also pressed into service stating that the non-obstante clause contained in the Commercial Courts Act would override other Acts, including the Limitation Act, as a result of which, the applicability of section 5 thereof would be excluded. This argument has been addressed in the context of the IBC in *B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*, as follows: (SCC p. 644, para 41)

"41. Shri Dholakia argued that the Code being complete in itself, an intruder such as the Limitation Act must be shut out also by application of Section 238 of the Code which provides that, "notwithstanding anything inconsistent therewith contained in any other law for the time being in force", the provisions of the Code would override such laws. In fact, Section 60(6) of the Code specifically states as follows:

"60. Adjudicating authority for corporate persons.-(1)-(5) * * *

(6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."

This provision would have been wholly unnecessary if the Limitation Act was otherwise excluded either by reason of the Code being complete in itself or by virtue of Section 238 of the Code. Both, Section 433 of the Companies Act as well as Section 238-A of the Code, apply the provisions of the Limitation Act "as far as may be". Obviously, therefore, where periods of limitation have been laid down in the Code, these periods will apply notwithstanding anything to the contrary contained in the Limitation Act. From this, it does not follow that the baby must be thrown out with the bathwater. This argument, therefore, must also be rejected."

42. For all these reasons we reject the argument made by Shri George that the application of section 5 of the Limitation Act is excluded given the scheme of Commercial Courts Act."

15. The Apex Court was considering the similar provision which provided for a limitation period of 60 days from the date of judgment or order appealed against without further going into whether delay beyond the said period can or cannot be condoned. The Court tested the basic principle underlying Section 5 of the Limitation Act on the touchstone of the scheme of the Commercial Courts Act. It was held that Section 5 of the Limitation Act is not excluded given the scheme of the Commercial Courts Act.

16. Before applying the afore prescribed test, it needs to be reminded that part

II of the Limitation Act contains Section 3 to Section 11. The same deals with limitation of suits, appeal and applications. Section 4 deals with the situation when Court is closed on the day the limitation period prescribed for any suit, appeal or application expires and provides that in such situation, the suit, appeal or application may be instituted, preferred or made on the date when the Court reopens. Section 5 provides for that any appeal, or application may be admitted beyond the prescribed period if the appellant or the applicant satisfies the Court that he has sufficient reason for not preferring the appeal within such period.

Though, the heading of the provision reads "extension of prescribed period in certain cases", however, Section 5 does not extend the period of limitation. It only addresses the situation where an appeal or application could not be preferred within prescribed period for a cause which is sufficient to condone the delay to the satisfaction of the Court. The objective behind law of limitation has been spelled out by Apex Court in the case of *Basawaraj vs. Land Acquisition Officer*, reported as (2013) 14 SCC 81 in the following terms:

"xx xx xx

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:

"605. Policy of Limitation Acts.-The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence".

17. Law of limitation does not extinguish claim but bars the remedy. The claim having been rendered stale is pre-requisite to bar the remedy on account of delay.

18. The issue thus is whether the exercise of power by the Appellate Authority to condone delay for sufficient cause militates against the scheme of the 1961 Act or is rather in sync with the same.

19. The said being the issue, this Court finds that interpreting the provision of limitation so strictly that it ousts even consideration of sufficient cause will amount to ignoring the very concept of co-operative movement. The objectives of cooperative movement and the legislation have been succinctly described by Mr. Watkin in his preface to International Handbook of Cooperative Legislation as under:-

"xx xx xx

"True co-operation draws its inspiration from realms where the State's writ does not run. Co-operative movements are not created by legislation. Nevertheless, without an appropriate legislative framework a co-operative movement in the form of a growing economic organism is not possible or even conceivable. The right of individuals to associate in co-operative societies and the right of the societies to unite in federations must be recognised..... The legal harness must allow for the free play of fundamental cooperative principles and the normal development of cooperative organisations according to the needs of their members and their own laws of growth."

It would be interesting to make reference to the speech of Sir Denzil Ibbeston introducing Co-operative Credit Societies Bill, 1904, which sets out broad principles and precautions in respect of legislation regarding co-operative societies :

"The people must in the main be left to work out their own salvation on their own lines, the function of Government being confined to hearty sympathy, assistance and advice."

20. The legislation of co-operative was enacted by introduction of Co-operative Credit Societies Bill 1904. It prescribes the basic rule that the bye-laws of a co-operative expresses its real intention of the participating members, and should be framed within the parameter of the Act and the Rules. The cooperative laws do not attempt a legal definition of co-operative, but the basic principles characteristic of co-operatives are incorporated in the law. The Commission on Co-operative Principles appointed by the International Co-operative Alliance and which was presided over by the renowned Indian Co-operator, late Prof. D.G. Karve, has re-enunciated these principles as follows :

"(i) Membership of a co-operative society should be voluntary and available without artificial restriction or any social, political racial or religious discrimination, to all persons who can make use of its services and are willing to accept the responsibilities of membership;

(ii) Co-operative societies are democratic organisations, their affairs should be administered by persons elected or appointed in the manner agreed by the members;

(iii) the members should provide for development of the business of the cooperative, provide for common services and distribute amongst the members the profits made."

21. Recognizing the aforesaid principles, arbitration has been provided as the dispute resolution and the underlying objective is to keep disputes out of purview of ordeal of facing Court proceedings and strict principles of law. Guidelines for disposal of Arbitration cases under the Punjab Cooperative Societies Act, 1961 to provided as under:-

"Arbitration is a settlement of dispute by the decision of a person Or persons

chosen and accepted as Judges or Umpires. The need for arbitration arises due to failure of adherence to procedures and rules laid down under the Punjab Cooperative Societies Act, 1961. The recourse to arbitration indicates a failure to attain the Cooperative ideal of strict supervision and mutual control. Careful selection of members, regular insistence on security and active pressure on sureties and other members or defaulters should reduce the need for such legal measures to a minimum. Slackness in any of these conditions involves the trouble of attendance in Courts and the burden of contest. 2.0 The objective of Cooperative Societies is to improve the economic condition of the members by inculcating among them the habits of thrift, self and mutual help.”

22. Thus, the very foundation of co-operative movement is based upon mutual cooperation punctuated with an objective to minimise interference from outside. It is based upon organizing the ‘units’ into unity. Cooperative societies engage employees for their business. It is these employees who act as their arms, mind and thus are responsible for filing appeals within prescribed period of limitation. Thus, to interpret Section 68 by closing doors even for entertaining the plea of there being a sufficient cause for condoning the delay would be an anti thesis to the very objective of the co-operative movement itself i.e. ‘mutual co-operation’. Resultantly, the remedy of appeal should not be rendered redundant in cases where there is a sufficient cause to explain the delay in filing appeal.

23. In view of above, when the basic principle underlying Section 5 is tested on the touchstone of the scheme of 1961 Act, this Court finds that condoning the delay for sufficient cause not only advances the object of the Act, but rather taking the other view would militate the very soul of the co-operative movement i.e. mutual co-operation. Without doubt speedy disposal is essence of judicial process, yet the doors cannot be closed to entertain the plea based upon sufficient cause.

24. Thus, the authority erred in law in rejecting the appeals without testing the sufficient cause shown by the petitioner for not preferring the appeal within the prescribed period.

18 In view of aforesaid discussions and for the reasons stated hereinabove, findings regarding non-applicability of the provisions of Limitation Act including Section 5 thereof to the proceedings conducted under the Act of 1968 more particularly Section 93 and Rules framed thereunder are perverse and accordingly set aside and it is specially held that the provisions of the Limitation Act in terms of Section 49 of the Act of 1968 are excluded to its applicability to proceedings taken under Sections 69, 73 and 88 of the Act of 1968 and are not applicable to all other provisions of the Act of 1968 including Sections 93, 94 etc. The questions of law is answered accordingly.

19 Consequently, both these petitions are allowed and the impugned orders are set side. The matters are remanded back to respondent No.1 (appellate authority) to consider the appeal(s) afresh and to decide whether sufficient cause

has been shown by the petitioner(s) for not preferring the appeal(s) within prescribed period of time in accordance with law.

Pending application(s), if any, also stands disposed of.