
(2016) 08 AHC CK 0033

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 30501 of 2016

K.V. Abraham (Rev.)

APPELLANT

Vs

Commissioner, Varanasi

RESPONDENT

Date of Decision : 23-08-2016

Acts Referred:

Limitation Act, 1963 — Section 14, 5
Societies Registration Act, 1860 — Section 12D(2)

Citation : (2016) 8 ADJ 308 : (2016) 5 AILLJ 773 : (2016) 341 ELT 537

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Ashish Kumar Srivastava, Advocate, for the Appellant; Somesh Khare, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ashwani Kumar Mishra, J.—This writ petition is directed against an order passed by the appellate authority i.e. Commissioner, Varanasi Division, Varanasi, condoning delay in filing of appeal under Section 12-D(2) of the Societies Registration Act, 1860. The order is challenged essentially on the ground that the Divisional Commissioner exercising his jurisdiction under the Societies Registration Act, 1860 (hereinafter referred to as the "Act of 1860") has no authority to condone delay under the Act, and since authority does not act as a "Court", the provisions of the Limitation Act are not attracted, rendering the order illegal for want of jurisdiction.

2. Facts relevant for the present purposes are that Pilgrim's Mission, 12, Bungalow, Varanasi, U.P. is a society registered under the provisions of Societies Registration Act, 1860, bearing Registration No. 2838 of 1973-74. The society was lastly renewed on 10.10.2010, vide certificate of registration dated 19.10.2010. An application was filed by respondent no. 2 before the Registrar, stating that renewal of the society had been obtained by playing fraud, and therefore, it be cancelled. An affidavit was also filed stating facts in support of

such application. The Assistant Registrar, Firms, Societies and Chits rejected the application of respondent no. 2, vide his order dated 12th March, 2012. This order of Assistant Registrar was challenged before this Court in a Writ Petition No. 23181 of 2012, which came to be dismissed, in view of the availability of alternative remedy of filing an appeal, vide order dated 11th May, 2012, which reads as under:-

"1. Learned counsel for the petitioner could not dispute that in the present case the registration of society and its renewal was already over and in effect the petitioner wanted its cancellation, therefore, the application of petitioner was referable to Section 12-D of Societies Registration Act, 1860 and the order passed by Registrar under Section 12-D is appealable under sub-section (2) thereof.

2. Learned counsel for the petitioner states that petitioner would avail the statutory alternative remedy.

3. The writ petition is dismissed on the ground of alternative remedy."

3. In view of the observations made, an appeal has been preferred by respondent no. 2 before the Commissioner, Varanasi Division, Varanasi, on 17th May, 2012, along with an application under Section 5 readwith Section 14 of the Limitation Act, 1963 for condoning delay in filing of appeal. The appeal was admitted by the Commissioner on 13th April, 2015. An application was filed by the present petitioner for recall of the order dated 13th April, 2015, on the ground that no opportunity of contest on the aspect relating to condonation of delay had been granted. The Commissioner vide order dated 6.8.2015 adjourned the matter to 20th August, 2015 for hearing the parties on the aspect relating to condonation of delay. An affidavit in opposition to the delay condonation application was also filed. The appellate authority accordingly proceeded to pass an order on 21st September, 2015 observing that since the appeal has already been admitted, it would be appropriate that all issues be examined together on merits. This order then came to be challenged by filing a Writ Petition No. 56016 of 2015, which was entertained, and following interim protection was granted on 1.10.2015:-

"Sri Somesh Khare and Smt. Komal Khare have put in appearance on behalf of second respondent.

Sri Khare prays for and is granted three days time to file a counter affidavit. Rejoinder affidavit, if any, may be filed within two days thereafter.

Put up on 14 October 2015 in the additional cause list.

The submission of the learned counsel for the petitioner is that an appeal was preferred by the private respondent before the Commissioner, under Section 12-D of the Societies Registration Act assailing the order of Registrar(Societies) which admittedly being time barred could not have been entertained by the Commissioner as the provision provides for filing of appeal within 30 days, there

being no provision for extension of time in case of delay, the Commissioner, therefore was not competent under law to entertain and admit the appeal.

The submission requires consideration.

Till then, further proceedings in Appeal No. 191 of 2012 pending before the Commissioner, Varanasi Division, Varanasi shall remain stayed."

4. Ultimately the writ petition got disposed of on 24.11.2015, vide following order:-

"Heard Sri Ashish Kumar Srivastava, learned counsel for the petitioner, learned Standing Counsel appearing for the State-respondents and Sri Somesh Khare along with Ms.Komal Khare, learned counsel for respondent no. 2.

Through this writ petition the petitioner has prayed for issuing a writ of certiorari quashing the orders dated 13.4.2015 and 21.9.2015 passed in Appeal No. 191 of 2012 (Pilgrim's Mission Inc. California v. Assistant Registrar and others). Vide order dated 13.4.2015 the Divisional Commissioner, Varanasi Division, Varanasi (in short the Commissioner) has admitted the appeal and fixed 11.5.2015 for hearing after issuing notice to the other side whereas vide order dated 21.9.2015 the Commissioner, on the application of the petitioner to decide the question of limitation first, has directed to consider the question of limitation at the time of deciding the appeal on merits.

While assailing these orders Sri Srivastava, learned counsel for the petitioner submits that the respondent-appellant has filed an application for condonation of delay in filing the appeal before the Commissioner, therefore, without condonation of delay there could be no appeal and unless there was an appeal it could not be entertained. In his submissions the court below has erred in admitting the appeal vide order dated 13.4.2015 without condoning the delay in filing the appeal. In support of his submission he has placed reliance upon the judgment of Full Bench of this Court in Commissioner of Income Tax, Kanpur v. Mohd. Farooq (2009) 84 Taxman 191 (All) and another decision of this Court in Prabhu and another v. Deputy Director of Consolidation, Ghazipur and others (2013 (1) ADJ 554).

Sri Khare, who appears for respondent no. 2 submits that in view of subsection (2) of Section 29 of the Limitation Act read with Section 12-D of the Societies Registration Act the appeal is within time and if it is treated to be beyond time the Commissioner has power to condone the delay. In support of his submission he has placed reliance upon the judgment the Apex Court in Mukri Gopalan v. Cheppilat Pathanpurayil Aboobacher (AIR 1995 SC 2272).

Without addressing myself on the points and the cases cited by the learned counsel for the parties, considering the fact that the appeal has been filed along with an application for condonation of delay and without condoning the delay the appeal has been admitted, in view of the settled legal position that without condoning the delay appeal could not be admitted, reference may be had in the

case of Shambhu Sharan Chaubey and others v. State of U.P. and others (2012 (10)ADJ 742, the Commissioner has erred in admitting the appeal. However taking note of the concept of speedy justice without disturbing the order of admission, it is provided that before deciding the appeal on merit the question of limitation shall be decided first by the Commissioner after hearing both the sides, if possible within a period of three months from the date of production of a certified copy of the order of this Court. Further fate of the appeal would depend upon the fate of the order passed on the point of limitation.

With the aforesaid observation, the writ petition is disposed of."

5. Pursuant to the directions issued by this Court, the appellate authority has considered the application for condonation of delay. It has observed that against the order dated 12th March, 2012, a writ petition had been filed before this Court, which had been dismissed on the ground of alternative remedy of filing appeal, on 11th May, 2012, and immediately thereafter, an appeal was preferred on 18th May, 2012. Accordingly, delay has been condoned by allowing the application under Section 5/14 of the Limitation Act with the observation that there was no intentional delay in filing of the appeal, and sufficient grounds for its condonation was disclosed. It is this order of Commissioner dated 13th June, 2016, which is put to challenge in the present writ petition.

6. Learned counsel for the petitioner submits that the Divisional Commissioner while exercising his powers under Section 12-D(2) of the Act does not act as a court, and consequently, the provisions of Limitation Act are not attracted. It is also contended that Societies Registration Act is a special law, which specifically provides for a period of 30 days limitation for filing of appeal, and does not confer jurisdiction upon the appellate authority to condone delay, and consequently, in absence of applicability of Section 14(2) of the Limitation Act 1963 (hereinafter referred to as the "Act of 1963"), the delay on account of pursuing a wrong remedy could not be condoned. Learned counsel in support of such contention placed reliance upon judgments of the Apex Court in *Hukumdev Narain Yadav v. Lalit Narain Mishra* [AIR 1974 SC 480], *The Commissioner of Sales Tax, Uttar Pradesh, Lucknow v. M/s Parson Tools and Plants, Kanpur* [AIR 1975 SC 1039], *Anwari Basavaraj Patil and others v. Siddaramaiah and others* [1993(1) SCC 636], *Gopal Sardar v. Karuna Sardar* [2004 (4) SCC 252], *L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd. And another* [2004(11) SCC 456], *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and others* [2008 (7) SCC 169], *Commissioner of Customs and Central Excise v. Hongo India Private Limited and another* [2009(5) SCC 791], as well as judgments of this Court in *Commissioner of Income Tax, Kanpur v. Mohd. Farooq* in IT Appeal Nos. 11 of 2001, 78 of 2002, 5 and 6 of 2003, decided on 3.9.2009, *Commissioner of Central Excise, Meerut v. M/s. Salora International Limited* in Central Excise Reference Application No. (4) of 2001, decided on 13.9.2005, *Mantri Khadi Gram Udyog Samiti, Harijan Gurukul Heera Patti, Sadar, District Azamgarh v. The Prescribed Authority, Azamgarh and others* in Writ

Petition No. 45385 of 2012, decided on 25.9.2012, as well as judgment of the Madhya Pradesh High Court in Seth Banshidhar Kedia Rice Mills Pvt. Ltd. v. State Bank of India in Writ Petition No. 2393 of 2011, decided on 5.9.2011.

7. Sri Somesh Khare, learned counsel for the respondents, per contra, submits that the provisions of Limitation Act, 1963 are attracted to proceedings undertaken before the Commissioner, by virtue of Section 29(2) of the Act of 1963. Learned counsel submits that there is no express or implied exclusion of the provisions of Limitation Act. Learned counsel further submits that the Commissioner while hearing the appeal under Section 12-D(2) discharges quasi-judicial functions, akin to a "court", under the special law, even if not under the provisions of Code of Civil Procedure, and the time spent in pursuing a wrong remedy since was bona fide, it is liable to be excluded by virtue of Section 14 of the Act. Learned counsel has placed reliance upon Constitution Bench judgment in Vidyacharan Shukla v. Khubchand Baghel reported in AIR 1964 SC 1099, as well as judgment of Apex Court in Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker reported in AIR 1995 SC 2272.

8. I have heard Sri Ashish Kumar Srivastava, learned counsel for the petitioner, Learned Standing Counsel and Sri Somesh Khare for the respondents, and have perused the records as well as the judgments relied upon.

9. Before advertng to the submissions made, it would be appropriate to take note of relevant statutory provisions. Section 12-D has been inserted in the Act of 1860, by way of a State amendment in 1975, which reads as under:-

"12D. Registrar's power to cancel registration in certain circumstance.-

(1) Notwithstanding anything contained in this Act, the Registrar may, by order in writing, cancel the registration of any society on any of the following grounds: -

(a) that the registration of the society or of its name or change of name is contrary to the provisions of this Act or of any other law for the time being in force;

(b) that its activities or proposed activities have been or are or will be subversive of the objects of the society or opposed to public policy;

[(c) that the registration or the certificate of renewal has been obtained by misrepresentation or fraud]:

Provided that no order of cancellation of registration of any society shall be passed until the society has been given a reasonable opportunity of altering its name or object or of showing cause against the action proposed to be taken in regard to it.

[(2) An appeal against an order made under sub-section (1) may be preferred to the Commissioner of the Division in whose jurisdiction the Headquarter of the society lies, within one month from the date of communication of such order.

(3) The decision of the Commissioner under sub-section (2), shall be final and shall not be called in question in any court.]"

10. Section contemplates filing of appeal against an order made under sub-section 1 of Section 12-D, within one month from the date of communication of such order. The Act does not confer jurisdiction upon the appellate authority to condone delay in filing of appeal. According to the respondents, power to condone delay is available to the appellate authority by virtue of Section 29(2) of the Limitation Act, 1963, which reads as under:-

"29(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."

11. Submission is that Act of 1860 is a special law relating to societies, which prescribes a period of limitation in filing of appeal. Since no corresponding provision exists in the schedule to Limitation Act, 1963, as such a different period exists providing for Limitation Act and Act of 1860, and accordingly necessary ingredients exist for Section 29 to operate in the field. Reliance is placed upon following observation of the Supreme Court in para-20 in Mukri Gopalan (supra):-

"20. Our attention was also invited by counsel for the appellant to a later decision of this court in the case of The Sahkari Ganna Vikas Samiti Ltd. v. Mahabir Sugar Mills (P) Ltd., (AIR 1982 SC 119). In that case a bench of two learned Judges was concerned with the question whether Divisional Commissioner acting under the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 acted as a revenue court or whether he was a persona designata. It was held that the Divisional Commissioner had been constituted as appellate authority under the Act. That showed that the Divisional Commissioner was made an appellate court not as persona designata but as a revenue court. That being so it was obvious that Section 5 of the Act applied to appeals before Divisional Commissioner and he could condone the delay in filing appeals. It becomes obvious that this court in the aforesaid decision was dealing with revenue court constituted under U.P. Sugarcane (Regulation of Supply and Purchase) Act which was a special law. It was in terms held that Section 5 of the Limitation Act was applicable to revisional proceedings before such Revenue Courts. It is of course true as pointed out by Mr. Nariman that in the said decision no other decision of this court was cited and Section 29(2) was not expressly referred to but the ratio of the decision is necessarily and implicitly based on the applicability of Section 29(2) but for which Section 5 of the Limitation Act would not have been made applicable to such revision proceedings

before revenue court functioning under the special law. Before parting with the discussion on this question we may also refer to one submission of Shri Nariman. He submitted that Sections 4 to 24 of the Limitation Act would apply to civil courts as duly constituted under the Civil Procedure Code and if that is so even if they are to be made applicable to suit, appeal or application governed by periods of limitation prescribed by any special or local law, they necessarily require such suit, appeal or application to be filed under special or local law before full-fledged civil courts as otherwise Sections 4 to 24 by themselves would not apply to them. It is difficult to agree. It has to be kept in view that Section 29(2) gets attracted for computing the period of limitation for any suit, appeal or application to be filed before authorities under special or local law if the conditions laid down in the said provision are satisfied and once they get satisfied the provisions contained in Sections 4 to 24 shall apply to such proceedings meaning thereby the procedural scheme contemplated by these Sections of the Limitation Act would get telescoped into such provisions of special or local law. It amounts to a legislative shorthand. Consequently, even this contention of Shri Nariman cannot be countenanced."

12. Learned counsel for the petitioner, however, submits that Commissioner while deciding the appeal under Section 12-D does not act as a "court", and therefore, provisions of Sections 5 & 14 of the Limitation Act cannot be exercised by him. Judgments relied upon by the counsel for the parties in support of their submissions have already been noticed above.

13. This Court, however, is not required to examine all cited decisions, inasmuch as rival contentions have been answered by the Apex Court in *M.P. Steel Corporation v. Commissioner of Central Excise*, reported in 2015(7) SCC 58. Question as to whether provisions of the Limitation Act would be applicable in proceedings before quasi-judicial tribunal/forum or would be applicable only to a "court", as is understood in strict sense of being part of judicial branch of the State, has been answered. The dispute was examined by Apex Court in the context of an appeal filed under Section 128 of the Customs Act. Their Lordships of the Supreme Court after noticing the statutory scheme as well as the judgments delivered previously on the issue have been pleased to hold that provisions of Limitation Act apply only to suits, appeals and applications filed in "courts" and not to quasi-judicial bodies. The distinction between "court" and "quasi-judicial proceedings" have also been examined, with reference to the judgments delivered previously on the issue. After noticing the scheme of Limitation Act, 1963 in paras-11 onwards their Lordships observed as under in para-19 of the report:-

"19. When it comes to applications, again Articles 124, 130 and 131 throw a great deal of light. Only review of judgments by a "court" is contemplated in the Third Division in the Schedule. Further, leave to appeal as a pauper again can be made either to the High Court or only to any other court vide Article 130. And by Article 131, a revision petition filed only before Courts under the Code of Civil

Procedure Code or the Code of Criminal Procedure are referred to. On a plain reading of the provisions of the Limitation Act, it becomes clear that suits, appeals and applications are only to be considered (from the limitation point of view) if they are filed in courts and not in quasi-judicial bodies."

Issue for consideration is specified in following words in para-21:-

"21. Under our constitutional scheme of things, the judiciary is dealt with in Chapter IV of Part V and Chapter V of Part VI. Chapter IV of Part V deals with the Supreme Court and Chapter V of Part VI deals with the High Courts and courts subordinate thereto. When the Constitution uses the expression "court", it refers to this Court system. As opposed to this court system is a system of quasi-judicial bodies called Tribunals. Thus, Articles 136 and 227 refer to "courts" as distinct from "tribunals". The question in this case is whether the Limitation Act extends beyond the court system mentioned above and embraces within its scope quasi-judicial bodies as well.

Reliance has been placed upon a 3-Judge Bench of Apex Court in para- 23 as under:-

23. In Kerala State Electricity Board v. T.P. Kunhaliumma, (1976) 4 SCC 634, a 3-Judge Bench of this Court followed the aforesaid two judgments and stated:-

"22. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-judge bench of this Court in Athani Municipal Council case [(1969) 1 SCC 873 : (1970) 1 SCR 51] and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act."

This judgment is an authoritative pronouncement by a 3-Judge Bench that the Limitation Act applies only to courts and not to quasi-judicial Tribunals. Athani's case was dissented from on a different proposition ? that Article 137 is not confined to applications under the Code of Civil Procedure alone. So long as an application is made under any statute to a Civil Court, such application will be covered by Article 137 of the Limitation Act."

After noticing the judgments of the Supreme Court in Mukri Gopalan (supra), CST v. Madan Lal Das & Sons [1976(4) SCC 464], and CST v. Parson Tools and Plants [1975(4) SCC 22], their Lordships observed as under in paras-28 to 33 of the report:-

"28. Two other judgments of this Court need to be dealt with at this stage. In Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker, (1995) 5 SCC 5, a 2-Judge Bench of this Court held that the Limitation Act would apply to the appellate authority constituted under Section 13 of the Kerala Buildings (Lease and Rent

Control) Act , 1965. This was done by applying the provision of Section 29(2) of the Limitation Act. Despite referring to various earlier judgments of this Court which held that the Limitation Act applies only to courts and not to Tribunals, this Court in this case held to the contrary. In distinguishing the Parson Tools? case, which is a 3-Judge Bench binding on the Court that decided Mukri Gopalan?s case, the Court held:-

"18. ? If the Limitation Act does not apply then neither Section 29(2) nor Section 14(2) of the Limitation Act would apply to proceedings before him. But so far as this Court is concerned it did not go into the question whether Section 29(2) would not get attracted because the U.P. Sales Tax Act Judge (Revisions) was not a court but it took the view that because of the express provision in Section 10(3) (B) applicability of Section 14(2) of the Sales Tax Act was ruled out. Implicit in this reasoning is the assumption that but for such an express conflict or contrary intention emanating from Section 10(3)(B) of the U.P. Sales Tax Act which was a special law, Section 29(2) would have brought in Section 14(2) of the Limitation Act even for governing period of limitation for such revision applications. In any case, the scope of Section 29(2) was not considered by the aforesaid decision of the three learned Judges and consequently it cannot be held to be an authority for the proposition that in revisional proceedings before the Sales Tax authorities functioning under the U.P. Sales Tax Act Section 29(2) cannot apply as Mr. Nariman would like to have it."

It then went on to follow the judgment reported in The Commissioner of Sales Tax, U.P. v. M/s. Madan Lal Das & Sons, Bareilly, (1976) 4 SCC 464 which, as has been pointed out earlier, is not an authority for the proposition that the Limitation Act would apply to Tribunals. In fact, Mukri Gopalan?s case was distinguished in Om Prakash v. Ashwani Kumar Bassi, (2010) 9 SCC 183 at paragraph 22 as follows:

"22. The decision in Mukri Gopalan case [(1995) 5 SCC 5] relied upon by Mr. Ujjal Singh is distinguishable from the facts of this case. In the facts of the said case, it was the District Judges who were discharging the functions of the appellate authority and being a court, it was held that the District Judge, functioning as the appellate authority, was a court and not persona designata and was, therefore, entitled to resort to Section 5 of the Limitation Act. That is not so in the instant case where the Rent Controller appointed by the State Government is a member of the Punjab Civil Services and, therefore, a persona designata who would not be entitled to apply the provisions of Section 5 of the Limitation Act, 1963, as in the other case."

The fact that the District Judge himself also happened to be the appellate authority under the Rent Act would have been sufficient on the facts of the case for the Limitation Act to apply without going into the proposition that the Limitation Act would apply to tribunals.

29. Quite apart from Mukri Gopalan?s case being out of step with at least five

earlier binding judgments of this Court, it does not square also with the subsequent judgment in *Consolidated Engg. Enterprises v. Principal secy., Irrigation Deptt.*, (2008) 7 SCC 169. A 3-Judge Bench of this Court was asked to decide whether Section 14 of the Limitation Act would apply to Section 34(3) of the Arbitration and Conciliation Act, 1996. After discussing the various provisions of the Arbitration Act and the Limitation Act, this Court held:

"23. At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a suit in a court. Hence, Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section (4) of Section 43, *inter alia*, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the powers under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised *suo motu*. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of Section 34 of the Act of 1996, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that

the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award."

30. While discussing Parson Tools, this Court held:

"25??In appeal, this Court held that (1) if the legislature in a special statute prescribes a certain period of limitation, then the Tribunal concerned has no jurisdiction to treat within limitation, an application, by excluding the time spent in prosecuting in good faith, on the analogy of Section 14(2) of the Limitation Act, and (2) the appellate authority and the revisional authority were not "courts" but were merely administrative tribunals and, therefore, Section 14 of the Limitation Act did not, in terms, apply to the proceedings before such tribunals.

26. From the judgment of the Supreme Court in CST [(1975) 4 SCC 22 : 1975 SCC (Tax) 185 : (1975) 3 SCR 743] it is evident that essentially what weighed with the Court in holding that Section 14 of the Limitation Act was not applicable, was that the appellate authority and the revisional authority were not "courts". The stark features of the revisional powers pointed out by the Court, showed that the legislature had deliberately excluded the application of the principles underlying Sections 5 and 14 of the Limitation Act. Here in this case, the Court is not called upon to examine scope of revisional powers. The Court in this case is dealing with Section 34 of the Act which confers powers on the court of the first instance to set aside an award rendered by an arbitrator on specified grounds. It is not the case of the contractor that the forums before which the Government of India undertaking had initiated proceedings for setting aside the arbitral award are not "courts". In view of these glaring distinguishing features, this Court is of the opinion that the decision rendered in CST [(1975) 4 SCC 22 : 1975 SCC (Tax) 185 : (1975) 3 SCR 743] did not decide the issue which falls for consideration of this Court and, therefore, the said decision cannot be construed to mean that the provisions of Section 14 of the Limitation Act are not applicable to an application submitted under Section 34 of the Act of 1996."

31. In a separate concurring judgment Justice Raveendran specifically held:

"44. It may be noticed at this juncture that the Schedule to the Limitation Act prescribes the period of limitation only to proceedings in courts and not to any proceeding before a tribunal or quasi-judicial authority. Consequently Sections 3 and 29(2) of the Limitation Act will not apply to proceedings before the tribunal. This means that the Limitation Act will not apply to appeals or applications before the tribunals, unless expressly provided."

While dealing with Parson Tools, the learned Judge held:

"56. In Parson Tools [(1975) 4 SCC 22] this Court did not hold that Section 14(2) was excluded by reason of the wording of Section 10(3-B) of the Sales Tax Act. This Court was considering an appeal against the Full Bench decision of the

Allahabad High Court. Two Judges of the High Court had held that the time spent in prosecuting the application for setting aside the order of dismissal of appeals in default, could be excluded when computing the period of limitation for filing a revision under Section 10 of the said Act, by application of the principle underlying Section 14(2) of the Limitation Act. The minority view of the third Judge was that the revisional authority under Section 10 of the U.P. Sales Tax Act did not act as a court but only as a Revenue Tribunal and therefore the Limitation Act did not apply to the proceedings before such Tribunal, and consequently, neither Section 29(2) nor Section 14(2) of the Limitation Act applied. The decision of the Full Bench was challenged by the Commissioner of Sales Tax before this Court, contending that the Limitation Act did not apply to tribunals, and Section 14(2) of the Limitation Act was excluded in principle or by analogy. This Court upheld the view that the Limitation Act did not apply to tribunals, and that as the revisional authority under Section 10 of the U.P. Sales Tax Act was a tribunal and not a court, the Limitation Act was inapplicable. This Court further held that the period of pendency of proceedings before the wrong forum could not be excluded while computing the period of limitation by applying Section 14(2) of the Limitation Act. This Court, however, held that by applying the principle underlying Section 14(2), the period of pendency before the wrong forum may be considered as a "sufficient cause" for condoning the delay, but then having regard to Section 10(3-B), the extension on that ground could not extend beyond six months. The observation that pendency of proceedings of the nature contemplated by Section 14(2) of the Limitation Act, may amount to a sufficient cause for condoning the delay and extending the limitation and such extension cannot be for a period in excess of the ceiling period prescribed, is in the light of its finding that Section 14(2) of the Limitation Act was inapplicable to revisions under Section 10(3-B) of the U.P. Sales Tax Act. These observations cannot be interpreted as laying down a proposition that even where Section 14(2) of the Limitation Act in terms applied and the period spent before wrong forum could therefore be excluded while computing the period of limitation, the pendency before the wrong forum should be considered only as a sufficient cause for extension of period of limitation and therefore, subjected to the ceiling relating to the extension of the period of limitation. As we are concerned with a proceeding before a court to which Section 14(2) of the Limitation Act applies, the decision in *Parson Tools* [(1975) 4 SCC 22 : 1975 SCC (Tax) 185 : (1975) 3 SCR 743] which related to a proceeding before a Tribunal to which Section 14(2) of the Limitation Act did not apply, has no application."

32. Obviously, the ratio of *Mukri Gopalan* does not square with the observations of the 3-Judge Bench in *Consolidated Engineering Enterprises*. In the latter case, this Court has unequivocally held that *Parson Tools* is an authority for the proposition that the Limitation Act will not apply to quasi-judicial bodies or Tribunals. To the extent that *Mukri Gopalan* is in conflict with the judgment in the *Consolidated Engineering Enterprises* case, it is no longer good law.

33. The sheet anchor in *Mukri Gopalan* was Section 29(2) of the Limitation Act.

Section 29(2) states:-

"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 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."

A bare reading of this Section would show that the special or local law described therein should prescribe for any suit, appeal or application a period of limitation different from the period prescribed by the schedule. This would necessarily mean that such special or local law would have to lay down that the suit, appeal or application to be instituted under it should be a suit, appeal or application of the nature described in the schedule. We have already held that such suits, appeals or applications as are referred to in the schedule are only to courts and not to quasi-judicial bodies or Tribunals. It is clear, therefore, that only when a suit, appeal or application of the description in the schedule is to be filed in a court under a special or local law that the provision gets attracted. This is made even clearer by a reading of Section 29(3). Section 29(3) states:-

"29. Savings. - (1)-(2) * * *

(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."

When it comes to the law of marriage and divorce, the Section speaks not only of suits but other proceedings as well. Such proceedings may be proceedings which are neither appeals nor applications thus making it clear that the laws relating to marriage and divorce, unlike the law of limitation, may contain proceedings other than suits, appeals or applications filed in courts. This again is an important pointer to the fact that the entirety of the Limitation Act including Section 29(2) would apply only to the three kinds of proceedings mentioned all of which are to be filed in courts."

14. In view of clear annunciation of law by the Supreme Court in *M.P. Steel Corporation (supra)*, argument advanced on behalf of respondents that the appellate authority has jurisdiction to condone delay under the provisions of the Limitation Act, in view of the judgment in *Mukri Gopalan (supra)* must fail. Admittedly, the Commissioner under Section 12-D(2) while functioning as the appellate authority is not a "court" in strict sense, as a "court" constituted under the constitutional scheme, but would at best be a quasi-judicial body. This is so as under the Act of 1860, the appellate authority is to pass orders after affording

reasonable opportunity of showing cause and opportunity of hearing, and the decision taken in appeal becomes final and is not open to be questioned in any court. Jurisdiction of civil court in the matter is excluded.

15. After holding that provisions of Limitation Act, 1963 would not apply to proceedings before the quasi-judicial authorities, Hon"ble Supreme Court proceeded further in the matter and observed as under in para-38 of the judgment in M.P. Steel Corporation (supra):-

"38. We have already held that the Limitation Act including Section 14 would not apply to appeals filed before a quasi-judicial Tribunal such as the Collector (Appeals) mentioned in Section 128 of the Customs Act. However, this does not conclude the issue. There is authority for the proposition that even where Section 14 may not apply, the principles on which Section 14 is based, being principles which advance the cause of justice, would nevertheless apply. We must never forget, as stated in *Bhudan Singh & Anr. v. Nabi Bux & Anr.*, (1970) 2 SCR 10, that justice and reason is at the heart of all legislation by Parliament. This was put in very felicitous terms by Hegde, J. as follows:

"Before considering the meaning of the word "held" in Section 9, it is necessary to mention that it is proper to assume that the lawmakers who are the representatives of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on Statutory Constructions the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instances, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law-makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent."

After noticing various judgments on the issue, their Lordships have been pleased to hold that principle of Section 14 nevertheless apply to proceedings before the quasi-judicial authorities/tribunal. Para-43 of the judgment in M.P. Steel Corporation (supra) is reproduced:-

"43. Merely because Parson Tools also dealt with a provision in a tax statute does not make the ratio of the said decision apply to a completely differently worded tax statute with a much shorter period of limitation ? Section 128 of the Customs Act. Also, the principle of Section 14 would apply not merely in condoning delay within the outer period prescribed for condonation but would apply de hors such period for the reason pointed out in Consolidated Engineering above, being the difference between exclusion of a certain period altogether under Section 14 principles and condoning delay. As has been pointed out in the said judgment,

when a certain period is excluded by applying the principles contained in Section 14, there is no delay to be attributed to the appellant and the limitation period provided by the concerned statute continues to be the stated period and not more than the stated period. We conclude, therefore, that the principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case."

16. Following the judgments aforesaid, this Court finds that in the facts of the present case, principles of Section 14 of the Limitation Act, 1963 would be attracted. Section 14 of the Act reads as under:-

"14. Exclusion of time of proceeding bona fide in court without jurisdiction. - (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order 23 of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation. - For the purposes of this section, -

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

17. In the facts of the present case, immediately after the order had been passed by the Registrar, the respondent preferred a Writ Petition No. 23181 of

2012, which was dismissed on the ground of alternative remedy of preferring an appeal under Section 12-D(2) of the Act of 1860. After passing of such order, petitioner has immediately preferred an appeal, and delay has been condoned. Since the principles underlying Section 14 of the Limitation Act are attracted, as such, the period spent in pursuing a wrong remedy is liable to be condoned.

18. In the present case, if principles of Section 14 are not applied, grave hardship would be otherwise caused to respondent Pilgrim's Mission. The respondent in this case was diligently pursuing remedy against the order of Registrar by filing a writ petition, and unless delay is condoned, it would not be possible to challenge the order. In *Consolidated Engg. Enterprises v. Irrigation Department*, reported in 2008(7) SCC 169, following conditions have been held to be met before Section 14 could be pressed into service:-

"21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;

(5) Both the proceedings are in a court."

Except for the exclusion of last condition that appellate authority is not a "court", all other conditions of Section 14 are met. However, if the principles of Section 14 are made applicable upon quasi-judicial bodies, then power to condone delay on account of pursuing a wrong remedy would be available to Commissioner. Such construction would subserve the larger cause and save the provision itself from the vice of unreasonableness.

19. In *M.P. Steel Corporation (supra)*, Apex Court has also examined as to what periods are to be excluded under Section 14 of the Act. The issue has been answered in para-52 of the judgment, which is conveniently reproduced:-

"52. As has been already noticed, *Sarathy's case* i.e. (2000) 5 SCC 355 has also held that the court referred to in Section 14 would include a quasi-judicial tribunal. There appears to be no reason for limiting the reach of the expression "prosecuting with due diligence" to institution of a proceeding alone and not to the date on which the cause of action for such proceeding might arise in the case of appellate or revisional proceedings from original proceedings which prove to

be abortive. Explanation (a) to Section 14 was only meant to clarify that the day on which a proceeding is instituted and the day on which it ends are also to be counted for the purposes of Section 14. This does not lead to the conclusion that the period from the cause of action to the institution of such proceeding should be left out. In fact, as has been noticed above, the explanation expands the scope of Section 14 by liberalizing it. Thus, under explanation (b) a person resisting an appeal is also deemed to be prosecuting a proceeding. But for explanation (b), on a literal reading of Section 14, if a person has won in the first round of litigation and an appeal is filed by his opponent, the period of such appeal would not be liable to be excluded under the Section, leading to an absurd result. That is why a plaintiff or an applicant resisting an appeal filed by a defendant shall also be deemed to prosecute a proceeding so that the time taken in the appeal can also be the subject matter of exclusion under Section 14. Equally, explanation (c) which deems misjoinder of parties or a cause of action to be a cause of a like nature with defect of jurisdiction, expands the scope of the section. We have already noticed that the India Electric Works Ltd. judgment has held that strictly speaking misjoinder of parties or of causes of action can hardly be regarded as a defect of jurisdiction or something similar to it. Therefore properly construed, explanation (a) also confers a benefit and does not by a side wind seek to take away any other benefit that a purposive reading of Section 14 might give. We, therefore, agree with the decision of the Madhya Pradesh High Court that the period from the cause of action till the institution of appellate or revisional proceedings from original proceedings which prove to be abortive are also liable to exclusion under the Section. The view of the Andhra Pradesh High Court is too broadly stated. The period prior to institution of the initiation of any abortive proceeding cannot be excluded for the simple reason that Section 14 does not enable a litigant to get a benefit beyond what is contemplated by the Section - that is to put the litigant in the same position as if the abortive proceeding had never taken place."

20. The judgment in M.P. Steel Corporation (supra) has been followed in a subsequent decision of Apex Court in Andhra Pradesh Power Corporation Committee and others v. Lanco Kondapalli Power Limited and others, reported in 2016 (3) SCC 468. Paras- 24 & 32 to 35 of the judgment are reproduced:-

"24. Mr. Sundaram placed reliance upon judgment in the case of M.P. Steel Corporation (supra) to support his submission that Limitation Act applies only to courts *stricto-sensu* and not to quasi-judicial tribunals. It may be noted here that the matter in M.P. Steel Corporation (supra) had arisen from proceedings under the Customs Act and hence in that case there was no occasion to consider the issue whether the Limitation Act is applicable to an action initiated before the Commission by virtue of provisions of the Electricity Act, 2003. However, this judgment does help the respondents to an extent by holding that principles underlying Section 14 of the Limitation Act will be applicable even in matters filed before a quasi-judicial tribunal such as the Commission. But the moot question remains to be answered ? whether the bar of limitation is required to be

respected by the Commission on the ground that there is no provision in the Electricity Act conferring additional rights upon a party moving the Commission for relief so as to claim even such reliefs which stand barred by limitation before the Civil Court or even for arbitral proceedings. The other ancillary issue required to be answered is ? whether by virtue of provisions of the Electricity Act 2003 the Limitation Act has been made applicable to an action before the Commission by express provision or even by necessary intendment?

* * *

32. In the light of above there can be no difficulty in appreciating that M/s. LANCO rightly appreciated the hurdle of limitation in its way when such an objection was taken by the appellant and it rightly chose to seek exclusion of the period it was pursuing arbitration proceeding before the High Court, on the basis of principles underlying Section 14 of the Limitation Act.

33. The issue as to whether the impugned order by APTEL permitting application of principles on Section 14 of the Limitation Act is in accordance with law or warrants interference now requires to be answered on the basis of law as well as facts. In law, the APTEL could grant exclusion of certain period on the basis of principles under Section 14 in view of law laid down or clarified in M.P. Steel Corporation (supra). On facts, although the parties have argued at length, we find no difficulty in holding that APTEL has adopted a just and lawful approach in examining the relevant facts and in excluding the entire period claimed by M/s. LANCO which starts from the notice for arbitration dated 8.9.2003 given by M/s. LANCO, till the application of M/s. LANCO under Section 11 of the Arbitration Act before the High Court was finally disposed of on 18.3.2009.

34. The issue whether the first notice dated 8.9.2003 or the next notice dated 26.3.2004 should be treated as notice for arbitration for the purpose of Section 21 of the Arbitration Act was rightly not pursued further by Mr. Giri after some initial arguments. But since this issue was touched, we have looked at the entire Article 14 of the PPA as well as the notice dated 8.9.2003 and we find no difficulty in holding it as the notice for arbitration which amounted to initiation of arbitral proceedings as contemplated by Section 21 of the Arbitration Act.

35. A spirited argument was advanced on behalf of appellant that after the judgment of this Court in Gujarat Urja (supra) on 13.3.2008, the continuance of the arbitral proceedings before the High Court at the instance of M/s. LANCO should not be accepted as bona fide and that the commission was justified in not excluding this period of about one year on the ground that it was not bona fide and in such facts APTEL should not have taken a contrary view. Having considered submissions of the parties we find no merit in the aforesaid contention advanced on behalf of appellant. The view which we are going to take has been indicated by this Court in several judgments including M.P. Steel Corporation (supra). But the point requires no debate in view of clear stipulation in explanation (a) to sub-section (3) of Section 14 of the Limitation Act. This

explanation reads as follows:-

"Explanation ? For the purposes of this section, -

"(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;"

The same conclusion is inevitable even on other relevant facts. The appellant had notice of the arbitral proceeding and after judgment in Gujarat Urja (supra), the appellant also took no steps to get the application under Section 11 listed and disposed of earlier to 18.3.2009. The averments and the materials are not sufficient to establish the claim of the appellant that the proceeding ceased to be bona fide after 13.3.2008."

21. In the present case, Commissioner has condoned delay in filing of appeal, for which source of power can be traced to the principles contained under Section 14 of the Act of 1963. Although provisions of Section 14 ipso facto do not apply but its principles are clearly attracted. The Commissioner was thus right in condoning delay. No interference is thus warranted in exercise of writ jurisdiction of this Court under Article 226 of the Constitution of India with the order of Commissioner dated 13.6.2016. Writ petition fails and is dismissed. No order as to costs.