

(2010) 09 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No. 10643 of 2010

Maganlal V. Lodhiya

APPELLANT

Vs

Chief Controlling Revenue Authority and Others

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Bombay Stamp (Determination of Market Value of Property) Rules, 1984 — Rule 106, 4(2), 94(1), 94(2), 98(1)
Bombay Stamp Act, 1958 — Section 32A, 32A, 32B, 32B
Central Excises and Salt Act, 1944 — Section 35G, 35H
Civil Procedure Code, 1908 (CPC) — Order 22 Rule 9, Order 9 Rule 13
Constitution of India, 1950 — Article 136, 14, 226, 227
Limitation Act, 1963 — Section 10, 12, 14, 16, 18
Maharashtra Rent Control Act, 1999 — Section 40
Presidency Small Cause Courts Act, 1882 — Section 17

Citation : (2010) 3 GLH 303 : (2011) 52 GLR 458

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Sandeep N. Bhatt, for the Appellant; Government Pleader, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. Ashwin Patel with learned Advocate Mr. Sandeep N. Bhatt on behalf of Petitioner and learned A.G.P. Mr. Amit Patel on behalf of Respondent-State Authority. Brief facts of present petition are as under:

2. According to Petitioner, he had purchased property on 16-2-1999 by registered Sale-deed No. 692 by paying requisite stamp duty. Thereafter, Respondent No. 2-Deputy Collector, Stamp Duty Valuation Organization, (City Block-1) had issued notice on 3-1-2002 for determination of market value of property and Petitioner represented himself on date of hearing. Thereafter, on 31-1-2002, Respondent No. 2-Deputy Collector passed final order u/s 32A of Bombay Stamp Act. Thereafter, on 18-6-2002, Petitioner has preferred appeal before Respondent No. 1-Authority against which on 10-5-2006, Respondent No. 2 has issued order while dismissing appeal.

3. Learned Advocate Mr. Ashwin Patel submitted that after order passed by Deputy Collector on 31-1-2002, a request was made by Petitioner on 17-5-2002 to Deputy Collector to permit him to pay 12.5% stamp duty against total amount of deficit stamp duty. This amount requires to be deposited when appeal preferred before Appellate Authority. Learned Advocate Mr. Ashwin Patel submitted that after receiving aforesaid letter dated 6-6-2002, appeal was preferred immediately within 15 days before Appellate Authority, but answer was given (Page 47, Annexure "E") that appeal is beyond a period of limitation, which is not correct looking to facts on record. Therefore, he submitted that Respondent No. 1 not entertained appeal because of limitation, and therefore, letter dated 10-5-2006 required to be quashed and set aside.

4. Learned A.G.P. Mr. Amit Patel submitted that documents as referred in present petition being registered Sale-deed No. 692 by which property was purchased by Petitioner on 16-2-1999, and thereafter, Deputy Collector has issued notice to Petitioner on 3-1-2002 under Rule 4(2) of Bombay Stamp (Determination of Market Value) Rules, 1984, but no representation has been made by Petitioner as mentioned in order dated 31-1-2002 by Deputy Collector. Learned A.G.P. Mr. Amit Patel also emphasized that before final order final notice dated 21-1-2002 was also served to Petitioner, even though, no reply was filed and not remained personally present before Deputy Collector. Therefore, Deputy Collector has rightly examined matter and determined proper stamp duty which requires stamp duty for valuation of property in question. Therefore, order is passed after giving reasonable opportunity of hearing to Petitioner. According to Deputy Collector, total amount of stamp duty comes to Rs. 1,33,008/- but stamp duty which was paid by Petitioner was Rs. 31,900/-, therefore, remaining amount is Rs. 1,01,188/- being deficit stamp duty and with fine Rs. 250/-, it come to Rs. 1,01,438/- which requires to be deposited by Petitioner, but it was not deposited and appeal was preferred by Petitioner beyond period of limitation. Learned A.G.P. Mr. Amit Patel submitted that in appeal dated 18-6-2002, which has been preferred against order dated 31-1-2002 passed by Deputy Collector, Petitioner had no way mentioned that order dated 31-1-2002 was not received by Petitioner. He also submitted that request for reducing amount of deposit was firstly made on 17-5-2002, considering date of order 31-1-2002, then, that application itself is beyond period of limitation, because, at the relevant time appeal was required to be filed within a period of 60 days from the date of order passed as per Section 32B of Bombay Stamp Act. Therefore, learned A.G.P. Mr. Patel submitted that appeal which was filed on 18-6-2002, was beyond a period of limitation of 60 days as prescribed u/s 32B of Bombay Stamp Act. Therefore, Respondent-authority rightly gave answer dated 10-5-2006 to Petitioner that appeal preferred by Petitioner is not to be entertained because it is beyond a period of limitation u/s 32B of Bombay Stamp Act.

5. After appreciating submissions made by both learned Advocates, relevant Sections 32A and 32B are quoted as under:

32A. Determination of market value of property which is the subject-matter of conveyance, etc.

1[(1). Every instrument of conveyance, exchange, gift, certificate of sale, partition, partnership, settlement, power of attorney to sell immovable property when given for consideration or transfer of lease by way of assignment, presented for registration under provisions of the Registration Act, 1908 (XVI of 1908) shall be accompanied by a true copy thereof; 2[and the statement in such form as may be prescribed by rules and if an officer registering such instrument under the aforesaid Act or any person referred to in Section 33 before whom such instrument is produced or come in the performance of his functions, has reason to believe that the consideration set forth therein does not approximate to the market value of the property which is the subject-matter of such instrument or as the case may be the market value of the property which is the subject-matter of such instrument, has not been truly set forth therein, he 3[shall before] registering the instrument or, as the case may be, performing his functions in respect of such instrument, refer the instrument or true copy thereof to the Collector of such district in which either the whole or any part of the property is situated for determining the true market value of such property and the proper duty payable on the instrument under this Section.]

4[Provided that for the purpose of this Sub-section, the consideration set forth in an instrument executed by the State Government, the Central Government, a local authority, Gujarat Housing Board, Gujarat Slum Clearance Board or Gujarat Industrial Development Corporation, shall be deemed to be the true market value of the property which is the subject-matter of such instrument.]

(2) On receipt of the instrument under Sub-section (3) of 5[Section 31 or instrument or true copy of instrument under Sub-section (1) of this Section, the Collector of the district shall, after giving the parties concerned a reasonable opportunity of being heard, and in accordance with the rules made by the State Government in this behalf, determine the true market value of the property which is the subject-matter of the instrument and the proper duty payable thereon.

(3) Upon such determination, the Collector of the district shall require the party liable to pay the duty, to make payment of such amount as is required to make up the difference between the amount duty determined under this Sub-section and the amount of duty already paid by him and shall also require such party to pay a penalty 6[of two hundred and fifty rupees.] 7[or the amount of the proper duty or of the deficient portion thereof whichever is less] and on such payment, return the instrument to the officer referred in Sub-section (5) of Section 31 or, as the case may be, Sub-section (1) of this Section:

Provided that, no such party shall be required to pay any amount to make up the difference or to pay any penalty under this Sub-section if the difference between the amount of the consideration or, as the case may be, the market value as set

forth in the instrument and the market value as determined by the Collector of the district does not exceed ten per cent, of the market value determined by the Collector of the district. This proviso deleted w.e.f. 11-6-2004.

(4) The Collector of the district may, suo motu or on receipt of information from any source, within, 8[six years] from the date of registration of any instrument referred to in Sub-section (1), not being the instrument upon which an endorsement has been made u/s 32 or the instrument in respect of which the proper duty has been determined by him under Sub-section (3) or an instrument executed before the date of the commencement of the Bombay Stamp (Gujarat Amendment) Act, 1982 call for and examine the instrument for the purpose of satisfying himself as to the correctness of the consideration or of the market value of the property which is the subject-matter of such instrument and the duty payable thereon; and if on such examination, he has reason to believe that the consideration does not approximate to the market value of such property or, as the case may be, market value of such property has not been truly and fully set forth in the instrument, he shall proceed as provided in Sub-sections (2) and (3).

32B. Statement of the case by the Collector: (1) Any person aggrieved by an order of the Collector determining the market value u/s 31, or as the case may be, u/s 32A, may, after depositing with the Collector 9[twenty-five per cent.] of the amount of duty or, as the case may be, the amount of the difference of duty payable by him by application presented 10[within a period of ninety days] from the date of such order and accompanied by a fee of one hundred rupees, require the Collector to draw up a statement of the case and refer it to the Chief Controlling Revenue Authority and the Collector shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it to the authority:

Provided that where in any particular case the authority is of the opinion that the deposit of the amount by the applicant will cause undue hardship to him, the authority may, in its discretion, either unconditionally or subject to such conditions as it may think fit to impose, dispense with a part of the amount deposited, so, however, that the part of the amount deposited so however that the part of the amount so dispensed with shall not exceed fifty per cent of the amount deposited or required to be deposited.

6. Deputy Collector has passed an order on 31-1-2002 u/s 32A of Bombay Stamp Act and remedy of appeal is available u/s 32B of Bombay Stamp Act, which requires to file appeal against order of Deputy Collector to Chief Controlling Revenue Authority within 60 days from the date of such order as amendment made 11-6-2004 not applicable and accompanied by a fee of one hundred rupees, require Collector to draw up a statement of the case and refer it to Chief Controlling Revenue Authority and Collector, shall within sixty days of receipt of such application, draw up a statement of the case and refer it to authority. At the time of preferring an appeal before Chief Controlling Revenue Authority, 25% of

amount of stamp duty requires to be deposited by Appellant, which can be reduced, if, it cause undue hardship to Appellant with a discretionary powers exercised by concerned authority. Therefore, learned A.G.P. Mr. Patel submitted that the period of 60 days which was for filing appeal against order passed by Deputy Collector as per Section 32B of Bombay Stamp Act to Chief Controlling Revenue Authority is subsequently amended by Gujarat Act No. 18 of 2004 (w.e.f. 11-6-2004) and period is extended up to 90 days, but, at relevant time, in the year 2002, this amendment was not in existence, therefore, appeal is required to be filed by Petitioner within 60 days from 31-1-2002, which was undisputably not filed by Petitioner. Therefore, Respondent-authority has rightly not entertained appeal because it is beyond a period of limitation prescribed under the statutory provision.

7. Learned A.G.P. Mr. Amit Patel submitted that Chief Controlling Revenue Authority has no power to condone delay because there is no statutory provision made available in Bombay Stamp Act. He submitted that Chief Controlling Revenue Authority is not a Court, but, he is a persona designate. He submitted that whenever time-limit is prescribed in statutory provision and there is no provision that Limitation Act is applied, then, such authority has no jurisdiction to condone delay or entertain appeal, which is filed beyond limitation period. Therefore, if, there is no provision to condone delay made in statutory provision, then, Authority has no power to entertain the appeal, filed beyond a period of limitation. For that learned A.G.P. Mr. Patel has relied upon two decisions of Division Bench of this Court in Letters Patent Appeal No. 2008 of 2009 dated 3-3-2010 and Letters Patent Appeal No. 2009 of 2009 dated 19-3-2009. Observations made by Division Bench of this Court in (Manojkumar Prabhudas Vyas v. Dy. Collector), Letters Patent Appeal No. 2008 of 2009 on 3-3-2010 are quoted as under:

Deputy Collector, Stamp Duty passed order dated 13-3-2003 u/s 32A of the Bombay Stamp Act, 1958 determining the market value of the property. Being aggrieved, the Petitioner preferred appeal on 22nd July 2003 which was dismissed on 10th April, 2006 being barred by limitation. The Petitioner thereafter, did not challenge the order dated 13th March, 2003 before the Writ Court for six years and not challenged the appellate order for three years and in 2009, preferred writ petition against those orders which was not entertained by the learned Single Judge in view of the laches on the part of the Petitioner.

Learned Advocate appearing on behalf of the Petitioner submitted that under the Rules, the authorities were obliged to serve the order by registered post acknowledgment due. It was never served on the Petitioner particularly when the Petitioner was out of India during that period. It has been brought to the notice of the Court by the learned Counsel for the Respondent that in the appeal preferred by the Petitioner, he has accepted that the order dated 13th March, 2003 was forwarded to him. It is stated in the appeal that he was out of India.

From the aforesaid facts, it is evident that the copy of the order dated 13th

March, 2003 was forwarded to the Petitioner on the same day, and therefore, the Petitioner cannot derive advantage of the ground that it was not forwarded by the authority. Admittedly, the appeal was barred by limitation and the writ petition was preferred after long delay of 6 years. In this background, we are not inclined to interfere with the order passed by the learned single Judge. In absence of merits, the appeal is dismissed. Notice is discharged.

8. Observations made by Division Bench of this Court in (Jaysukhlal Manilal Shigala v. Dy. Collector), Letters Patent Appeal No. 2009 of 2009 on 19-3-2009 are quoted as under:

Admittedly, the final order was passed on 22-3-2003, though 25% amount was deposited on 90th day (20-6-2003), but the application against the final order having preferred on 26-6-2003, being barred by limitation, was rightly rejected by the authorities on 8-4-2006. We find no ground to interfere with the order passed by the learned Single Judge.

Both the appeal and the Civil Application stand dismissed. No costs.

9. He also relied upon recent decision given by this Court in Special Civil Application No. 12456 of 2009 dated 27-11-2009 in the case of Bharatkumar Nanalal Vyas v. Chief Controlling Revenue Authority. It is also related to same issues, which has been examined by this Court that if, appeal is preferred by Petitioner beyond a period of limitation, then, Appellate Authority has no power or jurisdiction to condone delay caused in filing appeal, because, there is no specific statutory provision made in Bombay Stamp Act. Aforesaid judgment is quoted as under:

1. By way of this application, the Petitioner has prayed to quash and set aside the order dated 13-3-2003 passed by the Respondent No. 2 and/or the order passed in the appeal dated 4-4-2006 passed by the Respondent No. 1. Further, the Petitioner has prayed for the direction to Respondent No. 2 to hear the Petitioner afresh.

2. The Petitioner purchased a property in Raiya village in Revenue Survey No. 83 of Raiya, Rajkot in consideration of Rs. 4,96,000/- by executing sale-deed and been registered at serial No. 4002 on 16-8-2001. The said sale-deed was sent to the Collector for determination of value and recovery of the deficit stamp duty under the provision of Section 32A of the Bombay Stamp Act.

3. The Deputy Collector, Respondent No. 2 issued notices dated 25-2-2002 and 10-10-2002 under Rule 4(2) of the Bombay Stamp (Determination of Market Value) Rules, 1984 to the Petitioner and asked the Petitioner for the deficit stamp duty. Without giving reasonable opportunity for hearing the Petitioner the final order u/s 32A has been passed by the Respondent No. 2. Against which the Petitioner has preferred an appeal before the Respondent No. 1 authority which came to be rejected on the ground of delay by order dated 4-4-2006. Hence, this petition.

4. Heard learned Advocates for the respective parties.

5. From the evidence on the record, it revealed that the order dated 13-3-2003 has been challenged by the Petitioner by way of appeal, which came to be rejected by the appeal authority on the ground of delay. I am in complete agreement with the reasoning adopted by the appeal authority. Therefore, only on the ground of delay this application deserves to be dismissed and the same is dismissed accordingly.

10. Learned A.G.P. Mr. Patel also submitted that against aforesaid decision, Letters Patent Appeal was preferred by Appellant being Letters Patent Appeal No. 1199 of 2010 in Special Civil Application No. 12456 of 2009 and Division Bench of this Court also rejected said Letters Patent Appeal by its order dated 14-5-2010. Order passed by Division Bench is quoted as under:

1. Against the order passed on 30-3-2003 pursuant to the notices dated 25-2-2002 and 10-10-2002 issued under Rule 4(2) of the Bombay Stamp (Determination of Market Value) Rules, 1984 for depositing the deficit stamp duty, the Petitioner preferred an appeal u/s 32A of the Bombay Stamp Act. The appeal was dismissed on 4-4-2006 on the ground of delay and the same having unsuccessfully challenged, the Appellant preferred the present appeal.

2. The learned Counsel appearing on behalf of the Appellant submits that in many other cases, taking into consideration the facts and circumstances, the Court had remitted to the appellate authority to decide the appeal on merits.

3. Mr A.J. Desai, learned A.G.P. appearing on behalf of the Respondents submits that though one or other orders might have been passed by the Court, but the Appellant cannot derive any benefit of the same as statutory period of limitation of 90 days having fixed u/s 32B.

4. Having heard the Counsel for the parties as we find that the period of limitation has been prescribed under the law and the Appellant had preferred the appeal beyond the period of limitation, and the law does not prescribe condonation of delay or to accept the appeal after a period of limitation on any one or other ground, the Appellant cannot not claim for condonation of delay nor the Court can grant relief condoning such delay in absence of such provision. For the reason aforesaid, we are not inclined to interfere with the order passed by the learned Single Judge. The appeal is dismissed. No costs.

11. Learned A.G.P. Mr. Amit Patel raised a contention that there is delay of four years in filing petition against order dated 10-5-2006. He also submitted that delay of four years has not been explained in petition, therefore, according to him this being an additional ground to dismiss present petition only on the ground of delay and laches. He submitted that order dated 10-5-2006 was sent to Petitioner at same address which was received by him as per endorsement made behind that order and merely copy of order dated 10-5-2006 sent to Petitioner in response to his letter dated 28-6-2010, by letter dated 30-6-2010.

Means order dated 10-5-2006 was communicated to Petitioner at the relevant time and same was received by Petitioner as there is no averments made in petition that communication of order dated 10-5-2006 was not received by Petitioner. Therefore, learned A.G.P. Mr. Patel submitted that in present petition, Petitioner challenge communication dated 30-6-2010, but, in fact, prior to that, order dated 10-5-2006 was communicated to Petitioner and was received by him even though not challenged at the relevant time, therefore, there is delay in challenging order dated 10-5-2006 after four years period and communication by letter 30-6-2010 in which order dated 10-5-2006 was already communicated to Petitioner and same is received by him as not denied this fact in present petition, therefore, in fact in present petition order dated 10-5-2006 is challenged after four years, for that, no explanation or sufficient cause shown by Petitioner and for that, no averments made in present petition. Therefore, present petition may be dismissed on the ground of delay and laches. It is not a case of Petitioner that order dated 10-5-2006 is not received by Petitioner at the relevant time and endorsement made in communication dated 30-6-2010 not denied in present petition by Petitioner. In support of his submissions, learned A.G.P. Mr. Patel has relied upon one decision of this Court reported in 2006 (2) GLH 472: 2007 (4) GLR 3712 in case of Gujarat Water Resources Development Corporation Ltd. v. Baldevji Mohanji Solanki. Relevant Para Nos. 6, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6 and 6.7 are quoted as under:

6. The law on the question raised in the present petitions, has been examined by the Apex Court as well as various High Courts. That has been discussed as under:

6.1. In case of Bishnu Charan Mohanty v. State of Orissa, reported in AIR 1973 Ori 1999, the following general principles relating to delay and laches has been laid down:

(i) The Limitation Act has no application to writ petitions. Where, however, a suit for identical relief would be barred by the law of limitation, the Court would ordinarily refuse to exercise discretion to grant relief under Article 226.

(ii) Even if a suit for the same relief is not barred by limitation under the Limitation Act, yet the High Court may refuse to issue a writ, if otherwise the delay is not explainable by satisfactory reasons.

(iii) Two important circumstances to be borne in mind in all such cases are the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other so far as relates to the remedy.

(iv) Where by the conduct of the party, the delay might fairly be regarded as equivalent to a waiver of the remedy, the relief under Article 226 would be refused.

(v) Even if the conduct or act is not equivalent to a waiver, if the neglect of the Petitioner put to opposite party in a situation in which it would not be reasonable

to place him if the remedy is afterwards granted, the relief under Article 226 should be refused on account of delay and laches.

(vi) Utmost expedition is the essence for a claim under Article 226; and

(vii) No hard and fast rule can be laid down. Each case is to be determined on its own facts and circumstances.

6.2. The further view has laid down by the Supreme Court in case of P.S. Sadasivaswamy Vs. State of Tamil Nadu, Relevant observations of the said decision is quoted as under:

It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters.

(Emphasis supplied)

6.3. In the case of Eastern Coal Fields Ltd. v. Central Government Industrial Tribunal reported in 2000 (III) LLJ 3, the Calcutta High Court has held in Paras 6, 7 and 8 as under:

6. Having heard the learned Counsel for the parties we are of the opinion that it is not a fit case where this Court should interfere with the impugned judgment and order as apart from the fact that the learned trial Judge has refused to exercise its power of judicial review it had also recorded a finding as regards the question of delay in the following terms:

Before parting with this case, it should be noted that though the learned Tribunal passed the award as far back as March, 28, 1984 the writ application was not filed before February 8, 1990 on the plea that delay was due to the fact that Government permission could not be obtained before February 7, 1989. The explanation is not satisfactory. The plea of delay on the ground of office formalities is absolutely untenable especially in case of industrial disputes where there was illegal termination of service about 20 years ago. It was submitted on behalf of the Respondent-Union that this long delay on the part of the management of all the workmen not only the wasting of their valuable years of lives but have also caused death to some of them. It is true, that there is no limitation in filing the writ application but that shall not automatically entitle the Petitioner to make limitless delay in filing the writ application, especially, in case of the present nature, where such delay brought untold miseries to the workmen. There being unreasonable delay in filing the application on frivolous ground the writ Court would have refused to grant any relief to the Petitioner, even if it had been otherwise entitled to it. The writ petition is liable to be rejected on the

ground of delay also.

7. Mr. Ginwala submits that delay cannot be considered to be a ground for refusing to exercise its jurisdiction by the High Court in a case where the writ of prohibition is to be issued. The submission of the learned Counsel cannot be accepted for more than one reasons. The Appellant primarily has prayed for issuance of a writ of certiorari for quashing of the aforementioned award dated March 28, 1994 passed by the Industrial Tribunal. Prayer for issuance of a writ of prohibition had been sought for and the same could be issued only in the event the primary prayer of the Appellant viz. A writ of certiorari would be issued. It is now a well settled principle of law that the delay defeats equity. It is further well settled that a person who sleeps over its right cannot claim any equity in enforcing its right before a writ Court.

8. Writ of certiorari as is well known is a discretionary remedy. A writ Court does not exercise its jurisdiction under Article 226 of the Constitution of India merely because it is lawful to do so. While exercising its jurisdiction under Article 226 a writ Court may take into account several factors, delay being one of them. As noticed by the learned trial Judge the concerned workmen were refused employment as far back as in the year 1975, and reference was made by the Central Government only on August 1, 1978. The learned Tribunal below made its awards on March, 28, 1984. The writ application had been filed only on February 8, 1990. The only explanation which the Appellant gave before the learned trial Judge was that it was required to obtain permission of the Central Government for filing a writ application which could not be obtained before February 7, 1989. The said explanation, having been offered without any particulars, did not find favour with the learned trial Judge. He, therefore, refused to exercise its discretion.

6.4. In case of M.C.D. v. Rajkumar reported in 2004 Lab. IC 2334, the Delhi High Court has held in Paras 3 and 4 as under:

3. This writ petition challenges the Award dated 10th July, 2000. Learned Counsel for the Petitioner submits that the award was published on 4th January, 2001 and the information relating thereto was received in the office of the Petitioner-Corporation on 14th February, 2001. However, the writ petition was filed in this Court only on 18th February, 2002. There is no other explanation for the delay and laches in filing the writ petition. Mr. Monga has submitted that in matters relating to the movement of files in Government department, files move at their own pace and such delay in the movement of the official files occur because they are required to go through several channels. Consequently, the delay in filing the writ petition is not such which should disentitle the Petitioner to approach this Court under Article 226 of the Constitution.

4. In my view, institutionalized lethargy cannot be any ground to explain the laches of more than one year. Merely because the bureaucratic machinery in M.C.D. moves slowly cannot be a ground for condoning laches.

6.5. In case of Bhoop Singh Vs. Union of India and others, the Apex Court has held in Para 8 as under:

8. There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the Petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the Petitioner's contention would upset the entire service jurisprudence and we are unable to construe Dharampal in the manner suggested by the Petitioner. Article 14 or the principle of non-discrimination is an equitable principle, and therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. In our opinion, grant of the relief to the Petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned Counsel for the Petitioner. We are further of the view that these circumstances also justify refusal of the relief claimed under Article 136 of the Constitution.

6.6. In case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, the Apex Court has held in Para 23 as under:

23. Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the Petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would

decline to interfere, even if the State action complained of is unconstitutional or illegal. We may only mention in the passing two decisions of this Court one in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and the other in Ashok Kumar Mishra and Others Vs. Collector, Raipur and Others, We may point out that in R.D. Shetty's case (supra), even though, the State action was held to be unconstitutional as being violative of Article 14 of the Constitution, this Court refused to grant relief to the Petitioner on the ground that the writ petition had been filed by the Petitioner more than five months after the acceptance of the tender of the fourth Respondent and during that period, the fourth Respondent had incurred considerable expenditure, aggregating to about Rs. 1.25 lakhs, in making arrangements for putting up the restaurant and the snack bar. Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the Petitioner. But such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately, it would be a matter within the discretion of the Court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it.

6.7. In case of Delhi Transport Corporation Vs. Shri Jai Bhagwan, Ex Driver, , the Delhi High Court has held in Paras 4 and 5 as under:

4. My attention has been drawn by Ms. Bajaj to the judgment of the Constitution Bench in State of Madhya Pradesh Vs. Bhailal Bhai and Others, The Apex Court observed that:

It is not easy nor is it desirable to lay down any rule for universal application. It may, however, be stated as a general rule that if there has been unreasonable delay, the Court ought not to ordinarily lend its aid to a party by this extraordinary remedy of mandamus... It appears to us, however, that the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 of the Constitution of India can be measured. This Court may consider the delay unreasonable, even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.

It will be relevant to bear in mind that the Constitution Bench was concerned with a situation where the Petitioner has voiced the grievance that he had been assessed to tax under a void statute. Even in those extraordinary circumstances, the Supreme Court has declined to overlook the laches. Ms. Kittoo Bajaj also relies on the decision of the Supreme Court in Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, In that case, the Apex Court again articulated that:

It is well established that the writ of certiorari will not be granted in a case where there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party.

The Court relied on *Lindsay Petroleum Co. v. Prosper Armstrong Hurd*, *Arbran Farewell and John Kemp* 1874 (5) PC 221 and also specifically noticed in its earlier decision in *Moon Mills Ltd. v. M.R. Neher*, President, Industrial Court, Bombay AIR 1967 SC 1450 : 1967 (II) LLJ 34 . Ms. Kittoo Bajaj relies on the observations of the Apex Court in *Naib Subedar Lachhman Dass Vs. Union of India (UOI)and Others*, there the Court found that the writ petition has been filed after gross delay for which there was no specific explanation, and therefore, endorsed the High Court's decision for a summary dismissal of the action. It may be observed that the laches have not even been attempted to be answered or explained by the D.T.C.

5. On the issue of delay and laches, Mr. Vibhu Shankar, learned Counsel for the Petitioners, has relied heavily on Para 6 of the judgment in *Moon Mills Ltd. v. M.R. Meher*, President, Industrial Court, Bombay (*supra*) which reads as under at 38 of 1967 (II) LLJ 34:

On behalf of the Respondents Mr. B. Sen, however, pointed out that the conduct of the Appellant does not entitle it to the grant of a writ, because it has been guilty of acquiescence or delay. It was pointed out that the award of Mr. Bhat was given on April 25, 1958 but an application to the High Court for grant of a writ was made long after on November 16, 1959. We do not think there is any substance in this argument, because the second Respondents had made an application, dated August 19, 1958 to the Labour Court for enforcement of the award and the Appellant had contested that application by a written statement, dated September 15, 1958. The Labour Court allowed the application on August 4, 1959 and the Appellant had preferred an appeal to the Industrial Court on August 31, 1959. The decision of the Industrial Court was given on October 24, 1959 and after the appeal was dismissed the Appellant moved the High Court for grant of a writ on November 16, 1959. Mr. B. Sen then put forward the argument that the Appellant itself had acted on the bonus agreement and on October 14, 1957 had issued a notice informing its workers that "pursuant to the award of the Industrial Court in terms of the agreement, dated March, 1, 1956 reached between the Millowners" Association, Bombay, and the Rashtriya Mill Mazdoor Sangh, regarding payment of bonus would be paid to them at 4.8 per cent of the total basic earning during 1956.

On October 27, 1956 the Appellant and the Secretary of the second Respondents signed a joint statement in which it was stated as follows:

Since, it has not yet been possible to complete bonus calculations for all these years, it is hereby agreed between the Rashtriya Mill Mazdoor Sangh, Bombay, and the Moon Mills Ltd. Bombay, that under the bonus agreement the Moon Mills

should pay a bonus at the rate of 4.8 per cent for each of the years 1953, 1954 and 1955 as a tentative payment.

It was, therefore, contended that the Appellant itself had agreed with the second Respondents to pay bonus for 1953, 1954, 1955 and 1956 according to the terms of the bonus agreement. It was also pointed out that the Appellant had not pressed its objection with regard to jurisdiction before the Labour Court or the Industrial Court. But it appears that the decision of this Court in *The Prakash Cotton Mills (Private) Ltd. and Others Vs. The State of Bombay (Now Maharashtra)*, was given on February 16, 1961 after the decision of K.K. Desai, J. on July 1, 1960 and before the decision of the Letters Patent Bench on February 6, 1962. In the circumstances of this case, we do not consider that there is such acquiescence on the part of the Appellant as to disentitle it to a grant of a writ under Article 226 of the Constitution. It is true that the issue of a writ of certiorari is largely a matter of sound discretion. It is also true that the writ will not be granted if there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent, though not identical with, similar to the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewell, and John Kemp* 1874 (5) PC 221 at 239, as follows:

Now, the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as related to the remedy.

In the present case, we are of opinion that there is no such negligence or laches or acquiescence on the part of the Appellant as may disentitle it to the grant of a writ.

12. Recently, delay of two years not condoned by Hon"ble Apex Court in case of *Balwant Singh (Dead) v. Jagdish Singh* reported in AIR 2010 SCW 4848. The relevant observations made are as under:

Even if the term "sufficient cause" has to receive liberal construction, it must

squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once, a valuable right, has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then, alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

Sometimes, the Courts have taken a view that delay should be condoned with a liberal attitude, while on certain occasions the Courts have taken a stricter view and wherever the explanation was not satisfactory, have dismissed the application for condonation of delay. Thus, it is evident that it is difficult to state any straight-jacket formula which can uniformly be applied to all cases without reference to the peculiar facts and circumstances of a given case. It must be kept in mind that whenever a law is enacted by the Legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision ineffective or odious. Once, the Legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the learned Counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22, Rule 9 of the CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. *Ganeshprasad Badrinarayan Lahoti (D) by LRs. Vs. Sanjeevprasad Jamnuprasad Chourasiya and Another*, held per incuriam.

Delay is just one of the ingredients which has to be considered by the Court. In addition to this, Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory

provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner.

(C) Limitation Act (36 of 1963), Section 5- Condonation of delay-Sufficient cause-Means presence of legal adequate reasons.

The expression "sufficient cause" implies the presence of legal and adequate reasons. The word "sufficient" means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done suffices to accomplish the purpose in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated.

13. Learned A.G.P. Mr. Patel also relied upon one decision of Hon''ble Apex Court reported in AIR 2009 SCW 5424 in case of MA. Chaudharana Steels (P) Ltd. v. Commissioner of Central Excise, Allahabad where it was held that Appellate Authority has no power and jurisdiction to condone delay caused in filing appeal. That decision given by Hon''ble Apex Court is quoted as under:

1. In this appeal, the only question that arises for consideration is whether there is power for condonation of delay in filing an appeal u/s 35G of the Central Excise Act, 1944 (in short the "Act"). By judgment delivered in Commnr. of Customs, Central Excise, Noida Vs. Punjab Fibres Ltd., Noida, , it was held that the High Court has no power to condone delay in seeking reference u/s 35H of the Act. Doubting correctness of the view reference was made to Larger Bench. By judgment dated 27-3-2009 a three-Judge Bench in Commissioner of Customs and Central Excise Vs. Hongo India (P) Ltd. and Another, concurred with the view taken by the two-Judge Bench in Punjab Fibres case (supra). The decision has full application to the present case also.

2. That being so, this appeal deserves to be dismissed which we direct.

No costs.

14. Learned A.G.P. Mr. Patel also relied upon decision of Hon''ble Apex Court in respect to Section 125 of Electricity Act, where a period of appeal has been specified under provision of statute, beyond that, if appeal is preferred, then, Appellate Authority has no jurisdiction or power to condone it and in such circumstances, where period of limitation is specified in Act, Appellate Authority has no power or jurisdiction to condone it beyond period specified because provision of Limitation Act, 1963 is not applicable. Hon''ble Apex Court has laid

down this principle in case of Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission, reported in AIR 2010 SC 2061. Relevant discussion made in Paras 11, 16, 18 and 19 of aforesaid judgment of Hon'ble Apex Court is quoted as under:

11. The brief analysis of the scheme of the Electricity Act shows that it is a self-contained comprehensive legislation, which not only regulates generation, transmission and distribution of electricity by public bodies and encourages public sector participation in the process but also ensures creation of special adjudicatory mechanism to deal with the grievance of any person aggrieved by an order made by an adjudicating officer under the Act except u/s 127 or an order made by the appropriate commission. Section 110 provides for establishment of a Tribunal to hear such appeals. Sections 111(1) and (2) lays down that any person aggrieved by an order made by an adjudicating officer or an appropriate commission under this Act may prefer an appeal to the Tribunal within a period of 45 days from the date on which a copy of the order made by an adjudicating officer or the appropriate commission is received by him. Section 111(5) mandates that the Tribunal shall deal with the appeal as expeditiously as possible and endeavour to dispose of the same finally within 180 days from the date of receipt thereof. If the appeal is not disposed of within 180 days, the Tribunal is required to record reasons in writing for not doing so. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits etc. The use of the expression "within a further period of not exceeding 60 days" in Proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days. The object underlying establishment of a special adjudicatory forum i.e., the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate Commission with a provision for further appeal to this Court and prescription of special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided by an expert body and no Court, except this Court, may entertain challenge to the decision or order of the Tribunal. The exclusion of the jurisdiction of the Civil Courts (Section 145) qua an order made by an adjudicating officer is also a pointer in that direction. It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act, which lays down that where any special or local law prescribes for

any suit, appeal or application a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and provisions contained in Sections 4 to 24 (inclusive) shall apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law.

16. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory.

18. The next question which requires consideration is as to what is the date of communication of the decision or order of the Tribunal for the purpose of Section 125 of the Electricity Act. The word "communication" has not been defined in the Act and the Rules. Therefore, the same deserves to be interpreted by applying the rule of contextual interpretation and keeping in view the language of the relevant provisions. Rule 94(1) of the Rules lays down that the Bench of the Tribunal which hears an application or petition shall pronounce the order immediately after conclusion of the hearing. Rule 94(2) deals with a situation where the order is reserved. In that event, the date for pronouncement of order is required to be notified in the cause list and the same is treated as a notice of intimation of pronouncement. Rule 98(1) casts a duty upon the Court Master to immediately after pronouncement transmit the order along with the case file to the Deputy Registrar. In terms of Rule 98(2), the Deputy Registrar is required to scrutinize the file, satisfy himself that provisions of Rules have been complied with, and thereafter, send the case file to the Registry for taking steps to prepare copies of the order and their communication to the parties. If Rule 98(2) is read in isolation, one may get an impression that the Registry of the Tribunal is duty-bound to send copies of the order to the parties and the order will be deemed to have been communicated on the date of receipt thereof, but if the same is read in conjunction with Section 125 of the Electricity Act, which enables any aggrieved party to file an appeal within 60 days from the date of communication of the decision or order of the Tribunal, Rule 94(2) which postulates notification of the date of pronouncement of the order in the cause list and Rule 106 under which the Tribunal can allow filing of an appeal or petition or application through electronic media and provide for rectification of the defects by e-mail or net, it becomes clear that once the factum of pronouncement of order by the Tribunal is made known to the parties and they are given opportunity to obtain a copy thereof through e-mail etc., the order will be deemed to have been communicated to the parties and the period of 60 days specified in the main part of Section 125 will commence from that date.

19. The issue deserves to be considered from another angle. As mentioned above, Rule 94(2) requires that when the order is reserved, the date of pronouncement shall be notified in the cause list and that shall be a valid notice of pronouncement of the order. The Counsel appearing for the parties are supposed to take cognizance of the cause list in which the case is shown for pronouncement. If title of the case and name of the Counsel is printed in the cause list, the same will be deemed as a notice regarding pronouncement of order. Once, the order is pronounced after being shown in the cause list with the title of the case and name of the Counsel, the same will be deemed to have been communicated to the parties and they can obtain copy through e-mail or by filing an application for certified copy.

15. Learned A.G.P. Mr. Patel also relied upon one recent decision in a similar circumstances where contest the application is available to opposite party must have to be filed within specific time as prescribed in statute, beyond that, Authority has no power or jurisdiction to condone even 1 (One) day delay and in such circumstances, provision of Limitation Act is not applicable and question of condoning delay does not arise. For that, he relied upon judgment of Om Prakash v. Ashwani Kumar Bassi being unreported judgment in SLP (Civil) No. 24430 of 2008 decided on 27-8-2010 delivered by Hon"ble Mr. Justice Altamas Kabir and Hon"ble Mr. Justice A.K. Patnaik (reported in Om Prakash Vs. Ashwani Kumar Bassi, Relevant discussion made by Hon"ble Apex Court after considering fact and submissions made by respective Advocates are in Paras 12, 13, 14, 15, 16 and 17, which are quoted as under:

12. From the materials on record, it is clear that the application for leave to contest the application u/s 13B of the 1949 Act has to be made within 15 days from the date of service of the summons. In this case, the application for leave to contest the application was made one day after the said period had expired. The issue for consideration before us is whether the Rent Controller was right in rejecting the application on the ground that he had no jurisdiction to condone the delay under the Act. The matter was considered at length by the High Court, which, as indicated hereinabove, came to the conclusion that Section 18A of the 1949 Act would have an overriding effect on all other laws inconsistent therewith and that Sub-section (8) of Section 18A of the 1949 Act and Section 17 of the Presidency Small Causes Courts Act, 1882, were not attracted to the facts of the case.

13. The views expressed by the High Court also formed the subject-matter of the decision in Prithipal Singh's case (supra), though in the context of the Delhi Rent Control Act, 1958, and the rules framed thereunder. This Court was of the view that Section 25B of the Delhi Rent Control Act was a complete Code by itself and other provisions could not, therefore, be brought into play in such proceedings. In the instant case, the same principle would apply having regard to the fact that the Rent Controller had not been conferred with power under Order 9, Rule 13 CPC to recall an ex-parte order passed earlier.

14. Apart from the above is the view taken by this Court in *Prakash H. Jain Vs. Ms. Marie Fernandes*, where it was specifically held that since the Competent Authority u/s 40 of the Maharashtra Rent Control Act, 1999, was not a Court but a statutory authority with no power to condone the delay in filing an affidavit and application for leave to contest, the Competent Authority had no other option but to pass an order of eviction in the manner envisaged under the Act.

15. The decision in *Mukri Gopalan's* case (supra) 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 designate, 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 designate who would not be entitled to apply the provisions of Section 5 of the Limitation Act, 1963, as in the other case. The decision in *Gaya Prasad Kar's* case (supra) is also of little help to the Petitioner since under the West Bengal Premises Tenancy Act, 1956, powers have been vested in the Rent Controller to extend the time for making deposits of arrears of rent, which would make the provisions of the Limitation Act applicable in such specific instances.

16. The instant case stands on a different footing, and in our view, is covered by the decision of this Court in *Gaya Prasad Kar's* case (supra), wherein it was held that the Competent Authority had no other option but to pass an order of eviction since it had no power to condone the delay in filing an application for leave to contest.

17. Section 13B is a power given to a Non-Resident Indian owner of a building to obtain immediate possession of a residential building or scheduled building when required for his or her use or for the use of any one ordinarily living with and dependent on him or her. The right has been limited to one application only during the life-time of the owner. Section 18A(2) of the aforesaid Act provides that after an application u/s 13B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II. The said form indicates that within 15 days of service of the summons the tenant is required to appear before the Controller and apply for leave to contest the same. There is no specific provision to vest the Rent Controller with authority to extend the time for making of such affidavit and the application. The Rent Controller being a creature of statute can only act in terms of the powers vested in him by statute, and cannot, therefore, entertain an application u/s 5 of the Limitation Act for condonation of delay since the statute does not vest him with such power.

16. I have considered submissions, made by both learned Advocates and I have also considered decisions relied upon by learned A.G.P. Mr. Patel in this case. Undisputably, appeal was preferred by Petitioner, beyond a period of 60 days as order was passed on 31-1-2002, therefore, question is whether in absence of

specific provisions for condoning delay, Chief Controlling Revenue Authority being Appellate Authority has power to extend a period of filing appeal or whether he is having power to condone delay, which is not preferred within specified time. Deputy Collector and Chief Controlling Revenue Authority, both are persona designate having power to determine valuation of property in case if proper stamp duty is not paid or not properly affixed on various documents which requires to be affixed as per Bombay Stamp Act. Therefore, Deputy Collector and Chief Controlling Revenue Authority are not a Court, but both are persona designate authority, and in such circumstances, if before, persona designate authority requires to file an appeal in, specific time-limit is prescribed under statutory provision of Act, but if appeal is preferred beyond a period of limitation, then, such persona designate has no jurisdiction and in such circumstances Limitation Act cannot be made applicable, because, there is no provision made available by legislation in the Bombay Stamp Act to condone delay or entertain appeal beyond period of specified time-limit.

17. Therefore, according to my opinion, order which has been passed by Respondent-Authority on 10-5-2006, not entertaining appeal preferred by Petitioner, which has been filed undisputably after 60 days is legal and valid, and therefore, no interference is required by this Court as it has been rightly decided by Appellate Authority-Chief Controlling Revenue Authority that it has no jurisdiction and power to entertain appeal beyond limitation of 60 days. No interference of this Court while exercising power under Articles 226/227 of Constitution of India is required, therefore, present petition is dismissed having no substance, on both grounds, one is, petition is preferred after four years, challenging order passed on 10-5-2006, without giving any explanation or without establishing sufficient cause of delay as well as Respondent has rightly not entertained appeal which is filed beyond specified period prescribed in Act for which Chief Controlling Revenue Authority has no power and jurisdiction to condone delay u/s 32B of Bombay Stamp Act. Therefore, present petition is not having substance and same is dismissed.

No order as to costs.

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1. Sub-section (1) was submitted by Guj. 13 of 1994, Section 7(1)
 2. These words were inserted by Guj. 19 of 2001 Section 3 w.e.f. 1-9-2001
 3. These words were substituted for the words "may either before or after by Guj. 8 of 2000, Section 2
 4. Proviso in Sub-section (1) inserted by Guj. 18 of 2004. Section 2, w.e.f. 11-6-2004
 5. These words were submitted for the words "Section 31 or" by Guj. 8 of 2002, Section 7(2)

6. The words were substituted by Guj. 4 of 1991, Section 2
7. These words were inserted by Guj. 13 of 1994, Section 7(3)
8. These words were substituted for the "two years" by Guj. 13 of 1994, Section 7(4)
9. As per Noti. No. GHM/2002/32/M/STP/10/2002/690/H dt. 18.4.2002 in Gujarat Stamp Rules, 1978 in Rules 30A, for the words "24% the words" 15% shall be substituted.
10. Substituted for "sixty days" by Guj. 18 of 2004, Section 3 w.e.f. 11-6-2004