

**(2009) 07 AP CK 0069**

**In the Andhra Pradesh High Court**

**Case No :** Company Appeal Miscellaneous Petition No. 658 of 2009 in Company Appeal (SR) No. 2901 of 2009 and Company Appeal (SR) No. 2901 of 2009

Manohar Lal Sharma

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision :** 28-07-2009

**Acts Referred:**

Companies Act, 1956 — Section 10(1), 10F, 29(2), 388B, 397

Limitation Act, 1908 — Section 5

Limitation Act, 1963 — Section 10, 11, 12, 13, 14

**Citation :** (2009) 6 ALD 315 : (2009) 152 CompCas 412 : (2010) 1 CompLJ 19

**Hon'ble Judges :** V.V.S. Rao, J

**Bench :** Single Bench

**Advocate :** Ch. Venkataramana, for the Appellant; Gopal Subrahmanyam, for A. Raja Sekhar Reddy, Assistant Solicitor General for Respondent No. 1 and Siva, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

V.V.S. Rao, J.—The miscellaneous application is filed u/s 5 of the Limitation Act, 1963, praying this Court to condone the delay of 43 days in filing the appeal u/s 10F of the Companies Act, 1956.

2. This Court ordered notice to the respondents, namely, Union of India and Satyam Computer Services Ltd. (hereafter called "Satyam"). After receiving notice the Union of India appeared through the Solicitor General and Additional Solicitor General. A formal counter affidavit is not filed, but the learned Solicitor General made submissions opposing the application.

3. The brief fact of the matter, necessary for appreciating the controversy is as follows. On an application filed by the Union of India under Sections 388B, 397, 398, 402 and 408 of the Companies Act, being Company Petition No. 1 of 2009, the Company Law Board (CLB), Principal Bench, New Delhi, by an order made on

January 9, 2009 (Union of, India v. Satyam Computer Services Ltd. [2009] 148 Comp Cas 252), suspended the board of directors of Satyam and authorised the Government of India to constitute a fresh board with not more than ten persons as directors. It appears, pursuant thereto, the Central Government constituted a fresh board of directors with six persons as directors to manage the affairs of Satyam. Newly constituted board took several steps for financial revival of Satyam. As the board felt that funds are to be infused to avoid erosion of the company's value, it decided to increase the authorised equity capital from Rs. 160 crores to Rs. 280 crores to be allotted on a preferential basis to a strategic investor. Therefore, another application, being Company Application No. 84 of 2009 was moved by the Union of India praying the Company Law board to authorise the board to induct strategic investor(s), exempt the company from obtaining the approval of the shareholders to increase the authorised capital and also make preferential allotments. The Company Law Board considered the matter and passed orders on February 19, 2009 and authorised the board of Satyam to pass a resolution to amend the capital clause of the memorandum of association, to pass a resolution authorising preferential allotment at par or at premium and induct a strategic investor(s) subject to conditions as stipulated therein.

4. The applicant herein holds undisclosed number of shares of Satyam. He is aggrieved by an order of the Company Law Board in Company Application No. 84 of 2009, about which he admittedly came to know on February 21, 2009, after seeing a news item in the Times of India. He, therefore, moved the High Court of Delhi by filing a writ petition being W.P. No. 7416 of 2009. The same was dismissed on March 12, 2009, observing that, "public interest writ petition should not be entertained questioning and challenging the order of Company Law Board " The applicant then filed an appeal u/s 10F of the Companies Act before the Delhi High Court. The same being Co. A. (SB). No. 21 of 2009 was dismissed by the Company Bench on May 27, 2009, for want of territorial jurisdiction. The applicant then moved this Court on June 5, 2009, u/s 10F of the Companies Act with the application for condonation of delay. The affidavit accompanying the application does not give any specific reason or mention sufficient cause for condonation of delay of 43 days except enumerating the events that took place subsequent to the order of the Company Law Board dated February 19, 2009, impugned in the appeal. Learned Counsel for the applicant contends that the applicant has sufficient cause for condonation of delay, in that he was pursuing the remedy in the court which has no jurisdiction. According to him, applying Section 5 read with Section 14 of the Limitation Act, the period during which the matter was pending in the Delhi High Court must be excluded.

5. Learned Solicitor General orally brought to the notice of this Court the following facts and events. The applicant moved the Supreme Court by filing a writ petition being W.P. (C). No. 35 of 2009 against the Securities and Exchange Board of India (SEBI), which was dismissed as withdrawn. Thereafter, he unsuccessfully moved a public interest writ petition being W.P. (C). No. 7416 of

2009, which, as noticed supra, was dismissed on March 12, 2009. He then filed a company appeal u/s 10F of the Companies Act before the Delhi High Court, which was also dismissed on May 27, 2009, for want of territorial jurisdiction. It is thus pointed out by the learned Solicitor General that when the order was passed on February 19, 2009, the appeal filed with delay without showing sufficient cause cannot be entertained. His next submission is that the Limitation Act has no application to appeals filed u/s 10F of the Companies Act.

6. Whether this Court in exercise of its powers under second proviso to Section 10F of the Companies Act can condone the delay of 43 days in filing the appeal by excluding the period during which the application was pursuing remedy in the Delhi High Court as contemplated u/s 5 read with Section 14 of the Limitation Act? This is the only question that needs to be addressed in this application.

7. Section 10F of the Companies Act reads as below:

10F. Appeals against the orders of the Company Law Board.--Any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

8. An appeal against any decision or order of the Company Law Board is provided to the High Court Section 10(1)(a) of the Act confers appellate jurisdiction on the High Court having jurisdiction in relation to place at which registered office of the company is situated, within sixty days from the date of communication of decision of the Company Law Board on any question of law arising out of impugned order. The proviso confers power on the High Court to entertain an appeal within a further period not exceeding sixty days, if the appellant satisfies that he was prevented by sufficient cause from filing the appeal within a period of sixty days u/s 10F of the Companies Act. Thus an appeal against the order of the Company Law Board has to be filed within a period of sixty days and if the High Court so allows the appeal can be filed within a further period of sixty days. Maximum time within which the appeal can be filed is 120 days. If the appeal is filed beyond 120 days, it would be barred by limitation. In this case, while the impugned order of the Company Law Board is passed on February 19, 2009, appeal is filed on June 5, 2009.

9. In *Mangu Ram Vs. Municipal Corporation of Delhi*, , the Supreme Court considered the question of applicability of the Limitation Act to the proceedings under the special enactments. After referring to *Kaushalya Rani Vs. Gopal Singh*, , the Supreme Court held as under (page 108 of AIR 1976):

The applicability of Section 5 of the Indian Limitation Act, 1908, was thus held to

be excluded in determining the period of limitation of sixty days prescribed in Sub-section (4) of Section 417 by reason of Section 29(2)(b) of that Act, which provided in so many terms that "for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the remaining provisions of this Act" that is sections other than Sections 4, 9 - 18 and 22 "shall not apply". Now, there can be no doubt that if the present case were governed by the Indian Limitation Act, 1908, this decision would wholly apply and the Municipal Corporation of Delhi would not be entitled to invoke the aid of Section 5 of that Act for the purpose of extending the period of limitation of sixty days prescribed in Sub-section (4) of Section 417 for an application by a complainant for special leave to appeal against an order of acquittal. But the Indian Limitation Act, 1908, has clearly no application in the present case, since that Act is repealed by the Limitation Act, 1963, which came into force with effect from January 1, 1964 and the present case must, therefore, be decided by reference to the provisions of the Limitation Act, 1963.

10. In *Union of India Vs. M/s Popular Construction Co.,* , the question which arose for determination was whether the provisions of Section 5 of the Limitation Act are applicable to an application challenging an award. The question was answered holding that when special limitation for the purpose of appeal is prescribed, the power of the court u/s 5 of the Limitation Act stands curtailed and excluded. After referring to *Vidyacharan Shukla Vs. Khubchand Baghel and Others,* , the apex court laid down as follows (page 474 of [2001] 8 SCC):

This decision recognises that it is not essential for the special or local law to, in terms, exclude the provisions of the Limitation Act. It is sufficient if on a consideration of the language of its provisions relating to limitation, the intention to exclude can be necessarily implied. As has been said in *Hukumdev Narain Yadav Vs. Lalit Narain Mishra,* (SCC page 146, paragraph 17):

If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act.

Thus, where the Legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded *Patel Naranbhai Marghabhai and others Vs. Deceased Dhulabhai Galbabbhai and others,* .

As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to Sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the

court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

11. In Pawan Goel Vs. KMG Milk Food Ltd. and Others, , the facts are as follows. The Company Law Board Principal Bench, New Delhi, pending company petition under Sections 397 and 398 of the Companies Act, passed an interim order on November 24, 2006. Pawan Goel filed an appeal before the Delhi High Court, with an application to condone the delay. The same was dismissed (as withdrawn) on April 16, 2007, for want of jurisdiction with liberty to move the jurisdictional court. The appeal was then filed before the High Court of Punjab and Haryana with an application to condone the delay u/s 5 of the Limitation Act seeking condonation of delay of 140 days in filing the appeal. Another application was moved u/s 14 of the Limitation Act seeking exclusion of time during which the appellant was pursuing the appeal before the Delhi High Court. The question before the Punjab and Haryana High Court was whether the period spent in pursuing the appeal before the Delhi High Court could be excluded u/s 14 of the Limitation Act. After elaborate consideration of the matter, it was held (page 452 of 142 Comp Cas):

As a matter of fact, the appellant seems to have pursued his remedy before the Hon?ble Delhi High Court in a callous and negligent manner. It was not that the question of jurisdiction was raised in routine, the objection of jurisdiction of the Hon?ble Delhi High Court was based upon a judgment of the apex court in a similar matter and the judgment in case Stridewell Leathers (P) Ltd. and others Vs. Bhankerpur Simbhaoli Beverages (P) Ltd., , was also noticed by the Hon?ble Delhi High Court in the interlocutory order dated February 19, 2007, even then the appellant chose to continue with the appeal till April 16, 2007. This conduct of the appellant is sufficient to deny him the benefit of Section 14 as he has not pursued the remedy with due diligence but in a callous and negligent manner, even if it is presumed that his initial approach was due to ignorance of law. Even otherwise, the appellant cannot claim the benefit of Section 14, he having filed the appeal before the Hon?ble Delhi High Court beyond limitation. There is no affidavit of counsel who filed appeal before the Delhi High Court to show bona fide mistake regarding period of limitation as stated in the application u/s 5 of the Limitation Act filed before the Delhi High Court.

12. As to the applicability of Section 5 of the Limitation Act, the learned judge considered the question in the light of the law laid down by the apex court in Union of India Vs. M/s Popular Construction Co., and Gopal Sardar Vs. Karuna Sardar, , and laid down as follows (page 454 of 142 Comp Cas):

There is no dispute that the Companies Act, 1956, is a special law. Under the normal circumstances, the provisions of the Limitation Act will have application to all appeals and applications under the Companies Act, unless a different period of limitation is prescribed. As noticed herein above, the company law itself has prescribed a period of limitation for filing the appeal and also for condonation of

delay. Hence, condonation of delay for filing the appeal beyond the prescribed period of limitation is by virtue of the proviso to Section 10F. This proviso can be considered to be akin to Section 5 of the Limitation Act. However, the proviso imposes limitation for extension of time in filing the appeal beyond the prescribed period of limitation, the expression used in Section 10F being "further period not exceeding, sixty days"... The proviso to Section 10F has created an absolute bar for extension of period of limitation beyond sixty days apart from the period of limitation of sixty days prescribed u/s 10F. The expression "not exceeding" does not permit any further extension and it seems that the true import, purport and construction of the proviso is to restrict the total period of limitation to 120 days, i.e., sixty days principal and sixty days by extension subject to existence of sufficient cause in a given case. Any other interpretation would amount to committing violence to the statute itself which is impermissible under law.

13. Yet again, the court ruled (page 456 of 142 Comp Cas):

...it is abundantly clear that where particular statute does not apply to Section 5 of the Limitation Act expressly or even impliedly in a special or local law itself, it shall be presumed that the exclusion is express. Section 29(2) of the Act not only excludes the application of Section 5 of the Limitation Act but also other sections from Sections 4 - 24 (inclusive). Thus, Section 14 also stands excluded from its application for purposes of either condoning the delay or exclusion of the period on the ground envisaged therein notwithstanding existence of sufficient cause. Thus, even if the period spent before the Hon?ble Delhi High Court constitutes sufficient cause for extension of period u/s 5 read with Section 14 of the Limitation Act, these sections cannot be applied de hors proviso to Section 10F to extend the limitation beyond sixty days in addition to the original period of sixty days (total 120 days) for filing an appeal as proviso to Section 10F does not permit such extension.

14. Admittedly, the Company Law Board passed orders on February 19, 2009 and appeal presented in this Court on June 5, 2009, is clearly barred u/s 10F of the Companies Act. The applicant has not shown any sufficient cause for condonation of delay. He allowed wide ranging structural changes in the management, operations and administration of Satyam and filed the instant appeal, instead of approaching the Company Law Board, for redressal. Therefore, the company appeal miscellaneous petition is dismissed and consequently Company Appeal (SR) No. 2901 of 2009 is also dismissed without any order as to costs.