(2016) 07 AHC CK 0042

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 26169 of 2001

M.P. Daga APPELLANT

Vs

Pradeshiya Industrial Investment Corporation RESPONDENT

Date of Decision : 21-07-2016

Acts Referred:

Limitation Act, 1963 — Article 19, 3, 5
State Financial Corporations Act, 1951 — Section 29

Citation : (2016) 8 ADJ 386 : (2016) 118 ALR 548 : (2017) 1 DRTC 13 : (2016) 133 RD 605

Hon'ble Judges : Sudhir Agarwal and Shamsher Bahadur Singh, JJ.

Bench : Division Bench

Advocate : V.K. Singh, Amit Daga, G.K. Singh, H.N. Singh and Sumit Daga, Advocates, for the Appellant; C.S.C, A. Khanna and Ashish Mishra, Vivek Saran, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—In this writ petition, an interesting question of application of limitation to recovery proceedings has been raised, which is of wider public implication.

2. Brief facts, giving rise to present case, are that M/s Rainbow Steel Limited (hereinafter referred to as "Company") is a Company incorporated and registered under provisions of Companies Act, 1956 (hereinafter after referred to as "Act, 1956") and petitioners are Directors of aforesaid Company. On 06.08.1990, Company sought financial assistance from Pradeshiya Industrial and Investment Corporation of U.P. Limited (respondent 1) (hereinafter referred to as "PICUP") under Equipment Refinance Scheme initiated by Industrial Development Bank of India (hereinafter referred to as "IDBI") for installation of 15 tons continuous casting machine for the plant used in manufacturing of Ingots/Billots. PICUP sanctioned a loan of Rs. 80.60 lacs on 22.08.1990 under aforesaid Scheme. The bond of guarantee was executed on 29.11.1990 between PICUP and petitioners

wherein guarantors agreed for repayment of loan in case of default by Borrower, i.e., Company.

3. The agreement stipulates that on demand, guarantors shall pay to PICUP, whole of such principal sum and/or interest and/ or other moneys which may be due to PICUP and will indemnify all loss of principal sum/interest or other moneys secured by mortgage and all costs, charges and expenses whatsoever which PICUP may incur by reason of any default on the part of Company.

4. First instalment was released to Company on 31.01.1991. Therefore, repayment schedule as per Deed of Hypothecation commenced on 28.02.1992. Last instalment was payable on 31.08.1995. Company committed default in repayment of loan amount and interest, whereupon PICUP issued notices dated 23.03.1992, 25.05.1992 and 14.10.1992 under Section 29 of State Financial Corporation Act, 1951 (hereinafter referred to as "Act, 1951"). Thereafter, in Company Petition No. 8 of 1994 filed by another person, this Court passed order on 09.03.1995 for winding up. Sale by Official Liquidator, except lot no. 1, was confirmed by Court''s order dated 22.11.1995.

5. A demand notice for the first time was issued to petitioner-1 on 21.03.2001 demanding a sum of Rs. 4,56,19,798.29 in terms of Bond of Guarantee, which was replied by them raising an objection that demand is barred by limitation. PICUP, however, issued recovery certificates whereupon impugned recovery citations dated 02.07.2001 have been issued by Tehsildar and that are under challenge.

6. A counter affidavit has been filed by PICUP giving details of outstanding dues in para 9 as under:

(Rupees in Lacks)

(i)

Loan Sanctioned

80.60

(ii)

Loan Disbursed

77.30

(iii)

Loan Overdue and not paid

77.30

(iv)

Interest at the rate of 15 per cent per annum on overdue principal loan (inclusive of penal interest) Period 01.11.2001 to 31.01.2002

3,40,967.12

(v)

Overdue interest (as on 01.11.2001)

4,32,45,621.00

(vi)

Interest on overdue interest

19,07,546.57

Interest on Overdue Principal (iv)+ Overdue

Interest (v) + Interest on overdue interest (vi)

4,54,94,134.80

Total Overdue = Rs. 77,30,000.00+ Rs. 4,54,94,134.80

= Rs. 5,32,24,134.80 only

7. It is, however, stated that Company approached Board of Industrial Finance and Reconstruction (hereinafter referred to as "BIFR") by filing an application for rehabilitation under Section 15 of Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "Act, 1985"). PICUP also received notice dated 27.05.1994 to appear before BIFR and participate in the proceedings. Reference was ultimately rejected by BIFR on 28.02.1995 as untenable observing that Company is not in a position of rehabilitation. BIFR also decided to forward the matter to High Court for winding up of Company. Thereafter, Company preferred an appeal before Appellate Authority, i.e., Appellate Authority for Industrial and Financial Reconstruction (hereinafter referred to as "AAIFR"). The appeal was dismissed on 10.10.1996. It is also said that recovery proceedings are not time barred, Statute of limitation has no application to the proceedings under U.P. Public Money (Recovery of Dues) Act, 1972 (hereinafter referred to as "UP Act, 1972") and even otherwise proceedings earlier could not be initiated against Company since matter was pending before BIFR and AAIFR under Act, 1985 and also before this Court in Winding up Petition.

8. Sri H.N. Singh, learned Senior Advocate, has advanced only single submission that under Article 19 of Schedule to Limitation Act, 1963 (hereinafter referred to as "Act, 1963"), period of limitation is three years from the date amount is due. In the present case limitation would commence on 31.08.1995, which was the date of payment of last instalment by Company. Since even demand notice has been issued for the first time only on 21.03.2001, i.e., almost five and half years from the last date of payment of last instalment, recovery proceedings are barred by limitation and in this regard he placed reliance on State of Kerala and

others v. V.R. Kalliyanikutty and another 1999 (3) SCC 657, Maharashtra State Financial Corporation v. Ashok Kumar Agarwal and others JT 2006 (4) SC 197 and a Division Bench judgment of this Court in Narendra Kumar and another v. Collector, Bulandshahar and others 2004 (2) UPLBEC 2037.

9. Learned counsel appearing for PICUP, however, contended that recovery proceedings under UP Act, 1972 are neither quasi judicial nor judicial proceedings. He submitted that Section 3 of Act, 1963 bars a Court from entertaining a suit or other proceedings, if it is barred by limitation. In the present case, when Collector proceeds to recover dues as arrears of land revenue on the basis of recovery certificate received by it from a Financial or Banking Institution, he acts as a Revenue Authority discharging executive function of realization of dues, and, therefore, is not supposed to comply bar under Section 3 of Act, 1963, hence question of application of limitation under Act, 1963 does not arise.

10. We have heard Sri H.N. Singh, learned Senior Advocate, assisted by Sri Sumit Daga, Advocate, for petitioners and Sri Ashish Mishra, Advocate, appearing for respondent-Pradeshiya Industrial Investment Corporation.

11. The issue of limitation raised by learned Senior Advocate has to be examined in the light of the following questions: (i) whether Act, 1963 is applicable to recovery proceedings of certain dues as arrears of land revenue through Revenue Authorities; (ii) whether there is a limitation prescribed for such recovery proceedings; (iii) whether bar under Section 3 of Act, 1963 shall be applicable to the Financial institutions or authorities like PICUP or Collector in proceeding to recover dues under UP Act, 1972; (iv) what is the period of limitation, if any, in the present case, and, (v) when limitation will continue.

12. All these questions we propose to consider together.

13. There are some basic principles with regard to limitation. It is a plea in defence and where limitation apply and has exhausted, the remedy shall stand barred but right will not stand barred. For this purpose, it would be appropriate to have historical evolution of principles and provisions pertaining to limitation. Nature of the statute on limitation has been considered in C. Beepathuma and others v. Valasari Shankaranarayana Kadambolithaya and others, AIR 1965 SC 241 and it says:

"There is no doubt that the Law of Limitation is a procedural law and the provisions existing on the date of the suit apply to it."

14. Before the British, during the period when Muslims ruled the Country, it appears that personal laws governed all matters. Muslim law does not recognize limitation; while in Hindu personal laws, on certain aspects, in different schools, some provisions for limitation were prescribed which are not common to all Hindus. Hindu Law recognises both prescription and limitation while Muslim jurisprudence recognises neither of them. In some of Smritis a period of 20 years

was prescribed for acquisition of title by prescription. It appears that since agriculture was the main occupation of people, Smritis concentrated more on land and on the rights therein.

15. Thus, in ancient scriptures applicable to natives of this land before entry of Muslims and Christians, principles of prescription of limitation were recognised vis-a-vis property, i.e., land and rights thereon. In Christianity, attempt to enforce payment of a debt which, time and misfortune has rendered the debtor unable to discharge, was forbidden.

16. Before 1857 there were Regulations framed by East India Company governing Courts in three Presidencies of Fort William, Madras and Bombay. Courts set up by British Government as also three Supreme Courts adopted English law of limitation. The three Presidencies were governed by Regulations, namely, Bengal; Regulation III of 1793, Regulation II of 1805, Regulation VIII of 1831, Madras; Regulation II of 1802, Bombay; Regulation I of 1800 and Regulation V of 1827. Later on, they came to be governed by Act 1 of 1845, Act 12 of 1848 and Act 11 of 1859. Interestingly, Regulations did not apply to certain Non-Regulation Provinces, like Punjab and Oudh. It is in these circumstances, after Crown took over Indian Territory from East India Company in 1857, it enacted Act 14 of 1859.

17. Cause of action with respect to the statutes of Limitation as applicable in England in one of the earliest cases came to be considered in 1849 as to when it would run. Privy Council in The East India Company v. Oditchurn Paul 1849 (Cases in the Privy Council on Appeal from the East Indies) 43 held that the Statute runs from the time of breach, for that constitutes the cause of action. With reference to East India Company, it observed that statute of limitation was extended to India by Indian Act No. XIV of 1840. The appeal against Supreme Court of Judicature at Fort William in Bengal (Calcutta) was allowed by Privy Council. It also observed therein if the matter would have been tried by Hindu law, the limitation of suits, under Hindu law, would have been twelve years.

18. The first codified statute was Act No. XIV of 1859, enacted to amend and consolidate laws relating to limitation of suits. This Act received the assent of Governor General on 5th May, 1859. It was repealed by Act No. IX of 1871, Act XV of 1877 and thereafter by Act IX of 1908 (hereinafter referred to as "Act, 1908"). Presently, even Act, 1908 has been repealed and Courts in India are now governed by Act, 1963.

19. Section I of Act XIV of 1859 says that no suit shall be maintained in any Court of Judicature within any part of British territories in India in which this Act shall be in force, unless the same is instituted within the period of limitation, hereinafter made applicable to a suit of that nature, any Law or Regulation to the contrary notwithstanding. The territory upon which the said Act was made operative, was provided in Section XXIV as under:

"XXIV. This Act shall take effect throughout the Presidencies of Bengal, Madras, and Bombay, including the Presidency Towns and the Straits Settlements; but shall not take effect in any Non-Regulation Province or place until the same shall be extended thereto by public notification by the Governor-General in Council or by the Local Government to which such Province or place is subordinate. Whenever this Act shall be extended to any Non-Regulation Province or place by the Governor-General in Council or by the Local Government to which such Province or place is subordinate, all suits which, within such Province or place, shall be pending at the date of such notification, or shall be instituted within the period of two years from the date thereof, shall be tried and determined as if this Act had not been passed; but all suits to which the provisions of this Act are applicable that shall be instituted within such Province or place after the expiration of the said period, shall be governed by this Act and by no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding."

20. Though Act no. XIV of 1859 was drafted in a language much more precise than the loose phraseology of earlier Regulations, but Privy Council in The Delhi and London Bank v. Orchard, I.L.R. 3 (1876) Calcutta 47 (PC) observed it as an "in artistically drawn statute".

21. Act IX of 1871 extended the scope and made provisions relating to limitation to suits, appeals and certain applications to Courts. It received the assent of Governor General on 24th March, 1871.

22. Some of the feature of Act IX of 1871 are:

(a) Section-3 defines term ''minor means a person who has not completed his age of eighteen years;

(b) Section-7 deals with legal disability, Section 9 provides continuous running of time, Sections 23 and 24 deals with continued cause of action or renewal of cause of action and 29 for the first time provides for extinction of rights of a person in respect to any land or hereditary office and read as under:

"7. If a person entitled to sue be, at the time the right to sue accrued, a minor, or insane, or an idiot, he may institute the suit within the same period after the disability has ceased, or (when he is at the time of the accrual affected by two disabilities) after both disabilities have ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed. When this disability continues upto his death, his representative in interest may institute the suit within the same period after the death as would otherwise have been allowed from the time prescribed therefor in the third column of the same schedule.

Nothing in this section shall be deemed to extend, for more than three years from the cessation of the disabilities or the death of the person affected thereby, the period within which the suit must be brought"

"9.When once time has begun to run, no subsequent disability or inability to sue stops it : Provided that where letters of administration to the stage of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues."

"23. In the case of a suit for the breach of a contract, where there are successive breaches, a fresh right to sue arises, and a fresh period of limitation begins to run, upon every fresh breach; and where the breach is a continuing breach, a fresh right to sue arises, and a fresh period of limitation begins to run, at every moment of the time during which the breach continues.

Nothing in the former part of this section applies to suits for the breach of contracts for the payment of money by instalments, where, on default made in payment of one instalment, the whole becomes due."

"24. In the case of a continuing nuisance a fresh right to sue arises, and a fresh period of limitation begins to run at every moment of the time during which the nuisance continues."

"29. At the determination of the period hereby limited to any person for instituting a suit for possession of any land or hereditary office, his right to such land or office shall be extinguished."

23. Drafting of this statute received better observations from Privy Council in Maharana Futtehsangji v. Dessai Kullianraiji, (1873) LR 1 IA 34 and it commented as a "more carefully drawn statute".

24. The Act gave for the first time some recognition to the doctrine of prescription by the Legislative Council of India, viz. the doctrine of extinctive prescription as to land and hereditary offices, and of positive prescription as to easements. It lived short and was replaced by Act 15 of 1877 which extended principle of extinctive prescription to movable property and the principle of positive or acquisitive prescription to profits a prendre.

25. Law of Prescription prescribes the period at the expiry of which not only the judicial remedy is barred but a substantive right is acquired or extinguished. A prescription by which a right is acquired, is called an "acquisitive prescription". A prescription by which a right is extinguished is called "extinctive prescription". The distinction between the two is not of much practical importance or substance. The extinction of right of one party is often the mode of acquiring it by another. The right extinguished is virtually transferred to the person who claims it by prescription. Prescription implies that the thing prescribed for is the property of another and that it is enjoyed adversely to that other. In this respect it must be distinguished from acquisition by mere occupation as in the case of res nullius. The acquisition in such cases does not depend upon occupation for any particular length of time.

26. Then came Act XV of 1877, which received assent of Governor General on 19th July, 1877 and came into force on 1st October, 1877.

27. Section 2 of Act XV of 1877 makes it very clear that the right to sue if

already barred shall not revive by said enactment. It reads as follows:

"2. All reference to the Indian Limitation Act, 1871, shall be read as if made to this Act; and nothing herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act, or under any enactment, thereby repealed; and nothing herein contained shall be deemed to affect the Indian Contract Act, 1872 section 25."

28. Section 4 makes it obligatory for Court to dismiss a suit if presented after expiry of period of limitation. Section 7 deals with the legal disability which is virtually pari materia with the earlier provision of 1871 Act though slightly worded differently and says:

"7. If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned. A minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

When such representative is at the date of the death affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made."

29. There were several amendments in the above statute and ultimately it was repealed and replaced by Act 9 of 1908.

30. Act, 1908 came into force on 1st January, 1909. It continued with the provision imposing obligation upon Court to dismiss a suit, if, while it is instituted, is already barred by limitation vide Section 23.

31. The doctrine of limitation is founded on considerations of public policy and expediency. It does not give a right where there exist none, but to impose a bar after a certain period to the remedy for enforcing an existing right. The object is to compel litigants to be diligent for seeking remedies in Courts of law if there is

any infringement of their right and to prevent and prohibit stale claims. It fixes a life span for remedy for redressal of the legal injury, if suffered, but not to continue such remedy for an immemorial length of time. Rules of limitation do not destroy rights of the parties and do not create substantive rights if none existed already. However, there is one exception i.e. Section 28 of Act, 1908, which provides that at the determination of period prescribed for instituting suit for possession of any property, his right to such property shall stand extinguished and the person in possession, after expiry of such period, will stand conferred title. The law of limitation is enshrined in the maxim "interest reipublicae ut sit finis litium" (it is for the general welfare that a period be part to litigation).

32. The statute of limitation, thus, is based upon two broad principles. First, there is a presumption that a right not exercised for a long time is non existent. Where a person has not been in possession of a particular property for a long time, the presumption is that he is not the owner thereof. The owners are usually possessors and possessors are usually owners. Possession thus being normally evidence of ownership. Longer the possession has continued, the greater is its evidentiary value. The law therefore has deemed it expedient to confer upon such evidence of possession for a particular time, a conclusive force.

33. In Motichand v. Munshi, AIR 1970 SC 898, Court noticed the maxim vigilantibus non dormientibus jura subventiunt (the law assists the vigilant not those who sleep over their rights). Though there is a general principle ubi jus ibi remedium i.e. where there is a legal right there is also a remedy, but there are certain exceptions to this general rule.

34. Mere expiry of limitation could have extinguished remedy but the principle embodied in Section 28 extinguishes the right also and thereby makes the said general principle inapplicable. Once the right of getting possession extinguished it cannot be revived by entering into possession again [See Salamat Raj v. Nur Mohamed Khan (1934) ILR 9 Lucknow 475; Ram Murti v. Puran Singh AIR 1963 Punjab 393; Nanhekhan v. Sanpat AIR 1954 Hyd 45 (FB) and Bailochan Karan v. Bansat Kumari Naik 1999 (2) SCC 310].

35. Act, 1908 has been substituted by Act, 1963.

36. Act, 1963 in its "Introduction" part itself says that it is an Act to consolidate and amend law of limitation of suits and other proceedings and for the purposes connected therewith.

37. Bar of limitation under Section 3 is on a Court and it says that subject to provisions of Sections 4 to 24, every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed even if no limitation has been set up as a defence.

38. PICUP, therefore, in common law could not have filed suit after limitation provided for recovery of outstanding dues from Company or guarantors has expired. However, here we are concerned with procedure of recovery under UP

Act, 1972.

39. It has been held time and again that Section 3 of Act, 1963 applies to Courts and not to other bodies, such as quasi judicial Tribunal or even Executive authorities.

40. In A.S.K. Krishnappa Chettiar v. S.V.V. Somiah AIR 1964 SC 227, in para 13 of judgment, the Court said:

"The Limitation Act is a consolidating and amending statute relating to the limitation of suits, appeals and certain types of applications to courts and must, therefore, be regarded as an exhaustive Code. It is a piece of adjective or procedural law and not of substantive law. Rules of procedure, whatever they may be, are to be applied only to matters to which they are made applicable by the legislature expressly or by necessary implication. They cannot be extended by analogy or reference to proceedings to which they do not expressly apply or could be said to apply by necessary implication. It would, therefore, not be correct to apply any of the provisions of the Limitation Act to matters which do not strictly fall within the purview of those provisions. Thus, for instance, period of limitation for various kinds of suits, appeals and applications are prescribed in the First Schedule. A proceeding which does not fall under any of the articles in that schedule could not be said to be barred by time on the analogy of a matter which is governed by a particular article. For the same reasons the provisions of Sections to 28 of Limitation Act cannot be applied to situations which fall outside their purview.

These provisions do not adumbrate any general principles of substantive law nor do they confer any substantive rights on litigants and, therefore, cannot be permitted to have greater application than what is explicit or implicit in them."

(emphasis added)

41. In Town Municipal council, Athani v. Presiding Officer, Labour Court, Hubli and others AIR 1969 SC 1335, in para 12 of judgment, Court has observed, "? we do not think that this addition necessarily implies that the Limitation Act is intended to govern proceedings before any authority, whether executive or quasi-judicial, when, earlier, the old Act was intended to govern proceedings before civil courts only."

42. Court held that application under Section 33C(2) of Industrial Disputes Act, 1947 before Labour Court would not attract limitation under Act, 1963.

43. Similarly, a three-Judge Bench in Nityanand M. Joshi and another v. Life Insurance Corporation of India and other AIR 1970 SC 209 held that scheme of Act, 1963 is that it only deals with applications to Court and Labour Court is not a Court within Act, 1963, hence limitation, if any prescribed therein, shall not be applicable to any proceedings before Labour Court.

44. In L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd. And another

(2004) 11 SCC 456, a three-Judge Bench reiterating the law on the subject with regard to Act, 1963 has said:

"The provisions of the said Act are not applicable to the proceedings before bodies other than courts, such as quasi-judicial tribunal or even an executive authority. The Act primarily applies to the civil proceedings or some special criminal proceedings. Even in a Tribunal, where the Code of Civil Procedure or Code of Criminal Procedure is applicable; the Limitation Act, 1963 per se may not be applied to the proceedings before it."

(emphasis added)

45. Here we may also refer to a Single Judge judgment of this Court in Hari Raj Singh v. Sanchalak Panchayat Raj U.P. and others AIR 1968 All 246 wherein plea of limitation in respect of claim of arrears of salary of a Government Servant was raised in defence by State Government. Repealing it, this Court said that Act, 1963 is a complete Code in itself and outside it, there is no law of limitation except specific provisions in specific Statutes. Section 3 makes it clear that Act, 1963 applies only to Suits or Appeals or Applications filed in Courts. It has no application to any proceedings outside the law Court. Act, 1963 is a procedural law. It bars a suit for enforcement of a right but does not extinguish the right itself except where a case is governed by Section 28 of Act, 1963. Relying on Apex Court?s decision in Bombay Dyeing and Manufacturing Co. v. State of Bombay AIR 1958 SC 328, Court said that Statute of limitation bars remedy and does not extinguish debt. Lapse of time does not extinguish right of a person. Having said so, in para 15, Court said:

"15. Since limitation bars a suit for the enforcement of a right but does not destroy the right itself a defendant in a suit can set up a right in defence though he could not have enforced that right by a suit. There is no limitation against a defence. This again indicates how limited is the scope of the law of limitation even in suits."

46. It also considered meaning of the words "time barred" and in para 16 of judgment said that the concept "time-barred" cannot be extended to proceedings outside law Courts. The words "time barred'' only means that a suit for enforcement of a right is no longer available and if a Government servant files a civil suit for recovery of his salary after expiry of prescribed period of limitation, it shall be dismissed by Court as time-barred. But the right is not extinguished and all other lawful means of enforcing the claim are not affected by limitation.

47. In Mohd. Ashfaq v. State Transport Appellate Tribunal UP and others (1976) 4 SCC 330, Court considered a similar provision which required filing of renewal application within fifteen days which could be extended but not beyond 15 days. Court held that Section 5 of Act, 1963 is not applicable since matter was covered by Section 58 (2) and (3) of Motor Vehicles Act 1939. It further held, if application for renewal is beyond time by more than fifteen days, authority shall not be entitled to entertain it or in other words, it shall have no power to

condone delay. There being express provision for making application for renewal, condonable only if it is not more than 15 days, the provision expressly excludes not only power of condonation of delay under section 5 but being special enactment, the said period, even otherwise, cannot be extended. Court held that the provision may look harsh, but in the scheme of Statute, legislature has provided the same and it should not be disturbed by Court.

48. In Sushila Devi v. Ramanandan Prasad and others AIR 1976 SC 177, Court said that provisions of Act, 1963 apply only to proceedings in "Courts" and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or Executive Authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Code of Civil Procedure.

49. In Nityananda M. Joshi v. Life Insurance Corporation of India AIR 1970 SC 209, Court held that in view of Section 4 and 5 of Act, 1963 it would be clear that under the scheme it only deals with applications to Courts. The "Labour Court" is not a "court" within the meaning of Act, 1963 and, therefore, an application under Section 33C(2) of Industrial Disputes Act, 1947 cannot be held barred under Article 137 of Act, 1963 on the plea that claim was for a period beyond three years.

50. In L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd. and another AIR 2005 SC 1209, it was held that provisions of Act, 1963 have no application so far as directions required to be issued by Courts under Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. It held:

"Limitation Act, 1963 is applicable only in relation to certain applications and not all applications despite the fact that the words "other proceedings" were added in the long title of the Act in 1963. The provisions of the said Act are not applicable to the proceedings before bodies other than courts, such as quasi-judicial tribunal or even an executive authority. The Act primarily applies to the civil proceedings or some special criminal proceedings. Even in a Tribunal, where the Code of Civil Procedure or Code of Criminal Procedure is applicable; the Limitation Act, 1963 per se may not be applied to the proceedings before it. Even in relation to certain civil proceedings, the Limitation Act may not have any application."

(emphasis added)

51. In Damodaran Pillai v. South Indian Bank Ltd., (2005) 7 SCC 300, Court while considering, whether provisions of Section 5 of Act, 1963 would be applicable to the proceedings under Order 21 of Code of Civil Procedure, observed:

"It is also trite that the civil court in absence of any express power cannot condone the delay. For the purpose of condonation of delay in absence of applicability of the provisions of Section 5 of the Limitation Act, the court cannot invoke its inherent power."

52. A Division Bench of this Court (in which I was also a member) in M/S Vimal Organics Ltd. v. State of U.P. and others 2008 (2) AWC 1164, considering a similar issue in respect of appeals under Section 13 of Water (Prevention and Control of Pollution) Cess Act, 1977 (hereinafter referred to as "Act, 1977") read with Rule 9 of the Water (Prevention and Control of Pollution) Cess Rules, 1978 (hereinafter referred to as "Rules, 1978"), in para 18 and 19 of judgment, said:

"18. The period of limitation, as contended by learned counsel for the petitioner, cannot be said to be a part of procedure only, as an universal proposition. Rather it would depend upon relevant provisions of the statute and the consequences flowing thereof, i.e., as a result of expiry of the period of limitation. In many cases, it may result in accrual of substantive rights to the other side and in those cases, provisions pertaining to limitation cannot be said to be directory but have to be held mandatory. For example, under Section 6 of Land Acquisition Act, 1894, a declaration has to be made within one year from the date of notification under Section 4. The period of one year limitation gets extended by the period for which some interim order of any nature has been passed by a Court of Law. If such a declaration is not made under Section 6 within the aforesaid period, the proceedings will lapse. This view was taken by the Apex Court in State of Haryana v. Sukhdev, AIR 1994 SC 1255 and General Manager, Department of Telecommunications, Thiruvananthapuram v. Jacob, AIR 2003 SC 1308.

19. A Division Bench of this Court in Mahavir Sahkari Avas Samiti Ltd. v. State of U.P. and others, 2007 (2) AWC 1162, considering the aforesaid provisions in para 54, sub para (iii) held that "the Court does not have the power to extend the period of limitation provided under the Statute." Similarly, in various taxing statutes where the period of limitation expires, thereafter the authorities cannot proceed to pass orders against the assessee treating it to be procedural only. In those cases expiry of period of limitation provided in the statute result in vested right to the assessee like not to be assessed or face any assessment proceedings etc. before the authority concerned under the relevant Act. The illustrations may be multiplied but we do not wish to do so and feel satisfied by observing that it is not always correct to say that whenever the limitation is prescribed, it is in the nature of procedural law and, therefore, has to be read leniently and must be treated to be directory instead of mandatory. In respect to special enactments which contain substantive provisions as well as procedure to give effect to carrying out the purpose of such Act, if period of limitation is provided the same has been held to be mandatory and once such period has expired, the Court is not competent to extend limitation and thereby nullify the otherwise provision(s) under the statute."

53. Similarly, in a reference made to a Division Bench as to whether Section 5 of Act, 1963 would be attracted in contempt proceedings to condone delay if limitation under Section 20 of Contempt of Courts Act, 1971 has expired, this Court in Islamuddin v. Sri Umesh Chandrara Tiwari and another 2009 (4) AWC

3680 held that it would not be applicable.

54. When questioned, learned Senior Counsel could not show that recovery certificate issued to Collector by PICUP is like filing a suit in a Court or an Appeal or any proceedings thereafter. Collector, while proceeding to recover dues communicated to him as arrears of land revenue through a recovery certificate, does not act as a Court.

55. While deciding revenue matters under Provisions of U. P. Land Revenue Act, 1901 (hereinafter referred to as "Act, 1901"), U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act, No. 1 of 1951) (hereinafter referred to as "Act, 1950") and other provisions, Collector may function as a Revenue Court but for all purposes and for all times, in all matters, Collector does not act as a Revenue Court. He also exercises quasi judicial and executive powers under several statutes including U.P. Act, 1972. When a certificate of recovery is issued by a Corporation, as defined under Section 2(a) of U.P. Act, 1972, the Collector proceeds to recover dues as arrears of land revenue through himself and his subordinate authorities and there he functions as an executive Revenue Authority.

Section 3(2) of U.P. Act, 1972 states:

"(2) The Collector on receiving the certificate shall proceed to recover the amount stated therein as an arrear of land revenue."

(emphasis added)

56. Further, Section 3(3) of UP Act, 1972 bars a suit in Civil Court against any person referred to in Sub-section (1) of Section 3. UP Act, 1972 specifically bars a civil suit in respect to dues of a Financial or Banking Institution, which can be recovered as arrears of land revenue under the provisions of UP Act, 1972. Thus, such Financial or Banking Institutions cannot file suit for recovery of outstanding dues and remedy available to them is to issue recovery certificate whereupon Collector shall proceed to recover the amount stated therein as arrears of land revenue. This also shows that Legislature has intended not to provide dual remedy to Banking or Financial Institutions, which may recover dues under the provisions of UP Act, 1972. They need not follow a lengthy procedure of filing a civil suit in a Civil Court and instead they can resort to avail speedy remedy of recovery under the provisions of UP Act, 1972. If a defaulter, from whom recovery is made by Collector, has any grievance that such recovery has wrongly been given effect to and he has been deprived of his property in respect of certain dues, which were not liable to be recovered from him, UP Act, 1972 provides a remedy to such defaulter by stating that he shall pay such amount and thereafter file a suit for refund of the said amount. Limitation for defaulter obviously will commence only when he shall pay the amount or amount is recovered from him and not earlier thereto. We are, therefore, clearly of the view that provisions of Act, 1963 have no application to stage of issuance of recovery certificate by a Corporation, as defined under Section 2(a) of UP Act, 1972 and once such recovery certificate is issued, Collector is under an obligation to

proceed to recover amount stated therein as arrears of land revenue vide Section 3(2) of UP Act, 1972. If at the stage of issuance of recovery certificate, provisions of Act, 1963 are not attracted to a Corporation, as defined under Section 2(a) of UP Act, 1972, consequential recovery proceedings initiated by Collector also would not attract provisions of Act, 1963.

57. Now we come to the decision in State of Kerala and others v. V.R. Kalliyanikutty and another (supra) relied on by learned Senior Counsel. The matter had arisen when recovery was resorted to under Kerala Revenue Recovery Act, 1968 (hereinafter referred to as "Kerala Act, 1968"). Kerala Act, 1968, as originally enacted, applied to arrears of "public revenue due on land". The words "public revenue due on land" were defined in Section 2(j) as land revenue charged on the land and includes all other taxes, fees and cesses on land, whether charged on land or not, and all cesses or other dues payable to the Government on account of water used for purposes of irrigation. Recovery of loan amount advanced by a Bank or Financial Institution was, as such, not included under Kerala Act, 1968. There was an enabling provision under Section 71 which reads as under:

"Power of Government to declare the Act applicable to any institution: The Government may, by notification in the Gazette, declare, if they are satisfied that it is necessary to do so in public interest, that the provisions of this Act shall be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions, and thereupon all the provisions of this Act shall be applicable to such recovery."

58. Kerala Government in exercise of power under Section 71 issued Notifications No. 797 and 851 of 1979, extending provisions of Kerala Act, 1968 for recovery of amount, due from any person to any Bank, on account of loan advanced for agriculture or agricultural purposes and recovery of amount of loan advanced by Kerala Financial Corporation. These provisions, thus, were made applicable to loan advanced for agricultural purposes by Bank or Kerala Financial Corporation for the first time in 1979. It appears that certain dues which could have been recovered by Bank by filing suit before 1979, already became barred by limitation. After extension of Kerala Act, 1968 to the Bank and Kerala Financial Corporation, they issued recovery certificate for recovery of already time barred debts. The issue came to be considered "whether a time barred debt can be said to be "amount due" under Section 71 of Kerala Act, 1968". There was no dispute about the fact that dues were already barred by limitation and now sought to be recovered after extension of provisions of Kerala Act, 1968 to Bank and Kerala Financial Corporation. It is in this backdrop, Court formulated question to be considered and it is evident from Para 8 of judgment which reads as under:

"8. Looking to the object of Section we have to examine whether time-barred claims of the State Financial Corporation and the banks can be recovered under it."

(emphasis added)

59. Court has also referred to arguments advanced by Financial Institution that the words "amount due" in Section 71 is encompassing time-barred claims also. It was negatived by Court. It held that the dues having already become barred by limitation, cannot be said to be ''amount due'' when provisions of Kerala Act, 1968 were extended to Financial Institutions. Such dues cannot be recovered by taking recourse to the said Act after extension of Kerala Act, 1968 to Financial Institutions. Court said that Kerala Act, 1968 does not create any new right. It merely provides a process of speedy recovery of moneys due. If instead of filing a suit, Financial Institution can recover the claim under Kerala Act, 1968 they can do so, but where dues are already barred by limitation, by taking recourse to extension of Kerala Act, 1968 to Financial Institutions, they cannot proceed to recover time barred dues under the provisions of Kerala Act, 1968. Court has decided the matter in the light of specific provisions of Kerala Act, 1968 and, to our mind, aforesaid judgment, as such, is not applicable where matter is governed by U.P. Act, 1972. Moreover UP Act, 1972 bars a civil suit vide Section 3(3) against any person referred to in Sub-section (1) and Section 4(1)(b) states that Section 3 shall not bar a suit etc. against any person other than the person referred to in Section 3. Here also petitioners are admittedly governed and covered by Section 3(1) of U.P. Act, 1972.

60. Similarly, in Maharashtra State Financial Corporation v. Ashok Kumar Agarwal (supra) execution of a decree was up for consideration. Maharashtra State Financial Corporation (hereinafter referred to as "MSFC") moved an application under Sections 31 and 32 of Act, 1951 in the Court of District Judge, praying for order of sale of hypothecated goods of borrower Company. On 11.06.1990, attached property of borrower Company was put on sale since there was a shortfall of realization of dues. MSFC sent notices to sureties on 27.12.1991 and filed application under Section 31(1)(aa) on 02.01.1992. Sureties took objection that said application was barred by limitation provided under Article 137 of Act, 1963. District Judge upheld objection and rejected application filed by MSFC as barred by limitation. The order was confirmed by High Court by dismissing appeal of MSFC and it was also confirmed by Supreme Court. Court observed that Article 136 is applicable for execution of decree or order of any Civil Court. The application under Sections 31 and 32 is not by way of execution of a decree or order of any civil court and, therefore, Article 136 was not applicable. It is in these circumstances, Court held that Article 137 was applicable and hence the application was barred by limitation. The issue raised in this judgment was entirely different, and, in our view, it lends no support to petitioners on the issue raised in the present writ petition.

61. Then we come to Division Bench judgment in Narendra Kumar and another v. Collector, Bulandshahar and others (supra). Here loan was sanctioned by U.P. Financial Corporation (hereinafter referred to as "UPFC") and disbursed in instalments between 07.04.1975 to 17.07.1976. Instalments were not paid.

UPFC recalled entire loan on 14.09.1978. Recovery certificate was issued on 02.01.1979 under U.P. Act, 1972. Deputy Collector on 20.08.1981 auctioned the unit of borrower as also mortgaged land belong to a guarantor. Sale certificate was issued by Collector on 20.08.1981. Tehsildar, thereafter, certified that borrower has nothing left with him wherefrom further recovery is possible and thereafter recovery certificate was returned by Collector to UPFC. It kept silence for about 18 years and thereafter sent a notice on 29.06.2000 to Narendra Kumar and another that they had taken loan of Rs. 1,38,700/- and have not paid the same which has swollen till 20.3.2000 to Rs. 48,03,281.94. Notice also detailed earlier recovery proceedings and invited Narendra Kumar and another to come for one time settlement. Collector issued order of recovery on 30.08.2000 whereon citation was issued by Tehsildar on 12.09.2000. These orders of Collector and Tehsildar were challenged. It had also come before Court that after Collector returned recovery certificate in 1979, Board of Directors of UPFC considered the matter and in its meeting dated 31.03.1986 resolved to waive off/ write off remaining un-recovered loan amount. Court then proceeded to consider the argument of limitation with respect to recovery initiated on 30.08.2000. Relying on the decision in State of Kerala and others v. V.R. Kalliyanikutty and another (supra), Division Bench held that limitation will apply to such recovery proceedings and said as under:

"12. The law of limitation makes available a right of defence with the debtor to claim that after the expiry of period of limitation the remedy to recover the amount by the creditor from him had become time barred. The Act has been enforced for speedy recovery of dues of the State Government, U.P. Financial Corporation etc. as mentioned in the Act. It has not been enacted with a purpose to enlarge the limitation nor the rights of the creditor had been enlarged to recover claims of sum due that had become time barred. It is a settled law, that no one can extend the period of limitation by taking advantage of his own wrong."

62. It has further said as under:

"Even assuming that the revenue authorities failed to discharge their duty in accordance with law, it could not stop the limitation. The cause of action for recovery of the loan arose when the petitioner committed default. The respondents initiated recovery within time. But once the recovery certificate was returned after sale of petitioners'' assets, the recovery proceedings came to an end. If something remained or any property was not sold, the proceedings could have started but in accordance with law. The time taken to recover the amount was arrested when recovery proceedings were started. It started running again when recovery certificate was returned. Since no proceedings were initiated for nearly eighteen years, the proceedings for recovery became barred by time."

(emphasis added)

63. The distinction between Kerala Act, 1968 and U.P. Act, 1972 has not been examined in the aforesaid Division Bench judgment. Court also had no occasion

to examine that Section 3 of Act, 1963 does not apply to executive authorities and Financial Institutions etc. It is applicable only to Courts. There was no period of limitation prescribed within which a Financial or Banking Institution should have issued recovery certificate, failing which, same would have become barred by limitation. It has also not examined as to when, Act, 1963 will apply, i.e., at the stage when recovery certificate is issued or at the stage when Collector proceeds to recover the amount mentioned in recovery certificate as arrears of land revenue. In fact, we find that though Court applied Act, 1963, but in fact it has laid stress upon the fact that recovery proceedings earlier initiated already attained finality and Financial Institution also waived unrecovered amount and thereafter fresh proceedings could not have been initiated after more than 18 years, but in general it has also discussed application of limitation under Act, 1963 without any specific reference to provisions thereof. Some of observations, therefore, in our view, are not correct.

64. In normal course, we could have referred the matter to a Larger Bench, but we find that even if we apply Act, 1963 to the proceedings in question, it has still to be seen, what is period of limitation which will apply in the case in hand and when it will commence and whether such period had expired or not.

65. Learned Senior Counsel referred to Article 19 and 21 stating that it is three years, while learned counsel appearing for respondent-PICUP referred to Article 62 which provides limitation of 12 years.

66. Articles 19, 21 and 62 read as under:

Article

Description of suit

Period of limitation

Time from which period begins to run

19

For money payable for money lent.

Three years

21

For money lent under an agreement that it shall be payable on demand.

Three years

When the loan is made.

62

To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.

Twelve years

When the money sued for becomes due.

(emphasis added)

67. It is not in dispute that here is a case of amount of loan in respect whereto Company executed a Deed of Hypothecation in respect of its movable assets, as is evident from Annexure-7 to the writ petition which is a copy of deed of hypothecation dated 24.11.1990. However, petitioners executed Bond of Guarantee dated 29.11.1990 (Annexure 8 to the writ petition), creating equitable mortgage of their assets which included immovable property also. This is evident from Clause-3 of the said Bond. When recovery proceedings have been initiated against guarantors, i.e., petitioners, it cannot be doubted that Bank has proceeded to enforce payment of money secured by a charge upon immovable property of guarantors and that being so, it apparently attracts Article 62 of Schedule of Act, 1963 and not Article 19 or 21, as relied by learned counsel for petitioners. We reiterate that it is Article 62 which will apply and limitation would be 12 years.

68. Taking limitation as 12 years, learned Senior Counsel could not dispute that recovery proceedings are well within such period of limitation since his submission proceeds with assumption that limitation period is only three years. In these facts and circumstances, we are of the view that recovery in question is not barred by limitation.

69. We, therefore, find no reason to interfere with the same.

70. The writ petition lacks merits. Dismissed with cost, which we quantify to Rs. 10,000/-.

71. Interim order, if any, stands vacated.

