
(2016) 10 BOM CK 0144
In the Bombay High Court
Case No : Writ Petition No.1674 of 2016

Rakhee Gupta

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-10-2016

Acts Referred:

Electricity Act, 2003 — Section 127
Limitation Act, 1963 — Section 29(2)

Citation : (2017) 1 BCR 759 : (2017) 1 MhLJ 268

Hon'ble Judges : R.M. Savant, J.

Bench : Single Bench

Advocate : Mr. Ankit Lohia a/w Ms. Kausar Banatwala i/by Mr. Tushar Goradia, Advocate, for the Petitioner; Mr. U.S. Upadhyay, AGP, for the Respondent No.1/ State; Dr. Abhinav Chandrachud a/w Mr. Rakesh Singh and Mr. Kunal Chheda i/by M. V. Kini and Co, for the Respon

Final Decision : Allowed

Judgement

R.M. Savant, J.(Oral) - The writ jurisdiction of this Court under Article 226 of the Constitution of India is invoked against the order dated 18/01/2016 passed by the Appellate Authority i.e. the Superintendent Engineer, Mumbai Regional Electric Inspection Committee, Industry, Energy and Labour Department, Mumbai by which order, the Appeal filed by the Petitioner under Section 127 of the Indian Electricity Act, 2003 came to be rejected for the reasons mentioned therein.

2. The facts giving rise to filing of the above Petition can in a nutshell be stated thus :

The Petitioner herein is the owner of Flat bearing Nos.605/606 situated at Kingston Towers, G.D.Ambedkar Marg, Kalachowki, Parel, Mumbai - 400 033. The Petitioner had entered into a Leave and License Agreement with one M/s. Laurent & Benon Management Consultants Ltd. It seems that the said Company defaulted in making payment of the license fees, on account which the license came to be terminated by the Petitioner and the Petitioner thereafter took possession of the

said flats in question. The Petitioner in respect of the said flats on 07/04/2015 received a final assessment order dated 30/03/2015 issued by the Respondent No.5 herein. In the said final assessment order a reference is made to the provisional assessment order dated 17/04/2014. It is the case of the Petitioner that she was never served with the provisional assessment order. On receipt of the said final assessment order dated 30/03/2015, the Petitioner addressed a letter to the Respondent No.3 calling upon the Respondent No.3 to furnish copies of the documents relating to the said assessment along with calculations and the provisional assessment order dated 17/04/2014 which was for an amount of Rs.6,23,145/for the period between 07/01/2011 and 24/02/2014. The Petitioner once again vide letter dated 26/11/2015 reiterated the said requisition. The Petitioner thereafter forwarded a cheque bearing No.335571 dated 01/11/2015 for an amount of Rs.2,24,263/being 50% of the amount mentioned in the final assessment order. The Petitioner requested that since there is a delay in filing the Appeal, the Petitioner may be permitted to file the Appeal under the provisions of the Indian Electricity Act, 2003 ("the Electricity Act" for short).

3. The Respondent No.3 in response to the said letter communicated to the Petitioner that it has no objection to the Petitioner filing an Appeal under Section 127 of the said Act. The Petitioner accordingly filed an Appeal under Section 127 of the said Act in respect of the final assessment order dated 30/03/2015. The Respondent No.4 herein i.e. the Appellate Authority by the impugned order dated 18/01/2016 dismissed the Appeal inter alia on the ground that the Appeal was filed beyond the period of limitation; that the Petitioner had not deposited 50% of the amount as required under Section 127 of the said Act and that the Petitioner had not paid 2% of the assessment amount as the fees.

4. The Respondent No.3 thereafter vide letter dated 05/02/2016 demanded the remaining amount of Rs.2,24,263/within a period of 15 days. The Petitioner vide letter dated 11/02/2016 requested the Respondent No.3 not to proceed in terms of their demand letter dated 05/02/2016 as the Petitioner intended to take recourse in law against the said order dated 18/01/2016. That is how the instant Writ Petition has been filed challenging the order dated 18/01/2016 passed by the Respondent No.4 dismissing the Appeal filed by the Petitioner.

5. Heard the learned counsel for the parties.

6. Submissions on Behalf of the Petitioner By the Learned Counsel Shri Ankit Lohia :

(A) That the Appellate Authority had erred in rejecting the Appeal filed by the Petitioner on the grounds mentioned in the order.

(B) That in so far as the ground of non-deposit of 50% of the amount due which is a condition precedent for filing of the Appeal is concerned, the said ground is not sustainable in view of the fact that the Petitioner has already deposited the amount of Rs.2,24,263/which is more than 50% of the amount due and that the said fact is acknowledged by the Respondent No.3;

(C) That in so far as ground of nonpayment of the fees is concerned, the Petitioner was always ready and willing to pay the fees, as the Petitioner has already deposited 50% of the amount with the Respondent No.3.

(D) That in so far as the ground of delay is concerned, though Section 127 of the Electricity Act postulates the Appeal to be filed within 30 days, on the application of Sections 5 to 24 of the Limitation Act, the delay can be condoned by the Appellate Authority and therefore the Appellate Authority ought not to have dismissed the Appeal on the said ground. Reliance is sought to be placed on the judgments of the Apex Court reported in (1995) 5 SCC 5 in the matter of Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker; reported in (1974) 2 SCC 133 in the matter of Hukumdev Narain Yadav .. Lalot Narain Mishra and on the judgment of the Division Bench of this Court reported in 2008(3) Bom. C.R. 290 in the matter of UCO Bank v. Kanji Manji Kothari & Co. and ors.

(E) That the language of Section 125 of the Electricity Act being different than the language of Section 127 of the Electricity Act, the said Section 127 would have to be construed differently though may be appearing in the same Act. Reliance is sought to be placed on the judgment of the Apex Court reported in AIR 1956 SC 35 in the matter of The Member, Board of Revenue v. Arthur Paul Benthall and (2015) 3 SCC 274 in the matter of Sher Singh alias Partapa v. State of Haryana.

7. Submissions On Behalf of the Respondent No.3 By the Learned Counsel Dr.A D Chandrachud :

(i) That in terms of the procedure applicable to the filing of an Appeal under the Regulations framed under the Electricity Act, the Petitioner was required to deposit 2% of the amount due as fees. The Petitioner having not done so, the Appeal was liable to be dismissed on the said ground. Reliance is sought to be placed on the judgment of the Apex Court reported in (1995) 5 SCC 284 in the matter of Buta Singh (Dead) by LRs v. Union of India.

(ii) That though the Petitioner having filed the Appeal belatedly had not even filed an application for condonation of delay, therefore, the Petitioner now cannot contend that there is a delay in filing the Appeal which has to be condoned.

(iii) That the Electricity Act is a special act and a self contained code and therefore there has to be strict compliance and hence there can be no application of Sections 5 to 24 of the Limitation Act. Reliance is sought to be placed on the judgments of the Apex Court reported in AIR 1969 SC 872 in the matter K. Venkateswara Rao & Anr. v. Bekkam Narasimha Reddi & ors. reported in (2009) 8 SCC 736 in the matter of G V Sreerama Reddy and Anr. v. Returning Officer & ors, reported in (2011) 15 SCC 30 in the matter of Ketan V Parekh v. Special Director, Directorate of Enforcement & anr, reported in (2012) 6 SCC 782 in the matter of DSR Steel (Pvt.) Ltd. v. State of Rajasthan & ors, reported in (2016) 1 SCC 444 in the matter of Baleshwar Dayal Jaiswal v. Bank of India and ors; reported in (2010) 5 SCC 23 in the matter of Chhattisgarh State Electricity Board

v. Central Electricity Regulatory Commission and others, and reported in (2016) 1 SCC 444 in the matter of Baleshwar Dayal Jaiswal v. Bank of India and others.

Consideration :

8. The question that arises in the above Petition is whether the delay in filing the Appeal under Section 127 of the Electricity Act can be condoned. Incidental to the said question is the applicability of Section 29(2) of the Limitation Act to an Appeal filed under Section 127 of the Electricity Act. In the said context Section 127 of the Electricity Act and Section 29(2) of the Limitation Act assume relevance. The same are therefore reproduced herein under for the sake of ready reference:

"127. Appeal to appellate authority. - (1) Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under subsection (1) shall be entertained unless an amount equal to [half of the assessed amount] is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in subsection (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in subsection (1) passed under subsection (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in subsection (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount, shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent. per annum compounded every six months."

"29 Savings (1)

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

In so far as the Electricity Act is concerned, it inter alia governs the generation, transmission, distribution of electricity, tariff fixation, protecting the interest of consumers, constitution of Central Electricity Authority, Regulatory Commission and Appellate Tribunal. Hence it is a special law enacted for the aforesaid purposes. In so far as Section 29 of the Limitation Act is concerned, it becomes applicable in two contingencies that there must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application; and secondly when the said special or local law prescribes the period of limitation for an appeal or application for which there is no provision in the Schedule to the Limitation Act. In such cases all the provisions of Sections 4 to 24 of the Limitation Act would become applicable. The application of Section 29(2) of the Limitation Act had come up for consideration before the Apex Court in Cheppilat Puthanpurayil Aboobacker's case (supra). In the said case, Section 18 of the Kerala Rent Control Act was in contention. The said provision is reproduced herein under:

"18. Appeal. (1) (a) The Government may, by general or special order notified in the Gazette, confer on such officers and authorities not below the rank of a Subordinate Judge the powers of appellate authorities for the purposes of this Act in such areas or in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Rent Control Court, may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the thirty days aforesaid, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall send for the records of the case from the Rent Control Court and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either directly or through the Rent Control Court, shall decide the appeal.

Explanation:- The appellate authority may, while confirming the order of eviction passed by the Rent Control Court, grant an extension of time to the tenant for putting the landlord in possession of the building.

(4) The appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent.

(5) The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to be called in question in any court of law, except as provided in Section 20."

The Apex Court adverted to the two requirements necessary to be satisfied for the applicability of Section 29(2) of the Limitation Act which have been adverted to herein above and observed that if the two requirements are satisfied, the

consequences namely that Section 3 of the Limitation Act would apply as if the period prescribed by the special or local law was the period prescribed by the Schedule, for the purpose of determining any period of limitation which is prescribed by such special or local law for any suit, appeal or application, all the provisions contained in Sections 4 to 24 would apply only in so far as and to the extent to which, they are not expressly excluded by such special or local law. The relevant paragraphs of the said judgment are paragraphs 10 and 11 which are reproduced herein under for the sake of ready reference :

"10. In the light of the aforesaid analysis of the relevant clauses of Section 29(2) of the Limitation Act, let us see whether Section 18 of the Rent Act providing for a statutory appeal to the appellate authority satisfies the aforesaid twin conditions for attracting the applicability of Section 29(2) of the Limitation Act. It cannot be disputed that Kerala Rent Act is a special Act or a local law. It also cannot be disputed that it prescribes for appeal under Section 18 a period of limitation which is different from the period prescribed by the schedule as the schedule to the Limitation Act does not contemplate any period of limitation for filing appeal before the appellate authority under Section 18 of the Rent Act or in other words it prescribes nil period of limitation for such an appeal. It is now well settled that a situation wherein a period of limitation is prescribed by a special or local law for an appeal or application and for which there is no provision made in the schedule to the Act, the second condition for attracting Section 29(2) would get satisfied. As laid down by a majority decision of the Constitution Bench of this court in the case of *Vidyacharan Shukla v. Khubchand Baghel and Ors.* (AIR 1964 SC 1099), when the first schedule of the Limitation Act prescribes no time limit for a particular appeal, but the special law prescribes a time limit for it, it can be said that under the first schedule of the Limitation Act all appeals can be filed at any time, but the special law by limiting it provides for a different period. While the former permits the filing of an appeal at any time, the latter limits it to be filed within the prescribed period. It is therefore, different from that prescribed in the former and thus Section 29(2) would apply even to a case where a difference between the special law and Limitation Act arose by the omission to provide for limitation to a particular proceeding under the Limitation Act.

11. It is also obvious that once the aforesaid two conditions are satisfied Section 29(2) on its own force will get attracted to appeals filed before appellate authority under Section 18 of the Rent Act. When Section 29(2) applies to appeals under Section 18 of the Rent Act, for computing the period of limitation prescribed for appeals under that Section, all the provisions of Sections 4 to 24 of the Limitation Act would apply. Section 5 being one of them would therefore get attracted. It is also obvious that there is no express exclusion anywhere in the Rent Act taking out the applicability of Section 5 of the Limitation Act to appeals filed before appellate authority under Section 18 of the Act. Consequently, all the legal requirements for applicability of Section 5 of the Limitation Act to such appeals in the light of Section 29(2) of Limitation Act can

be said to have been satisfied. That was the view taken by the minority decision of the learned single Judge of Kerala High Court in *Jokkim Fernandez v. Amina Kunhi Umma* (supra). The majority did not agree on account of its wrong supposition that appellate authority functioning under Section 18 of the Rent Act is a *persona designata*. Once that presumption is found to be erroneous as discussed by us earlier, it becomes at once clear that minority view in the said decision was the correct view and the majority view was an erroneous view.

9. The Division Bench of this Court in *UCO Bank's case* (supra) in the context of Section 17 of the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 which provides for an Appeal to be filed within 45 days from the date on which measures were taken, held that Section 5 of the Limitation Act gets attracted. The Division Bench in the said case has referred to the judgment of the Apex Court in *Cheppilat Puthanpurayil Aboobacker's case* (supra). The Apex Court in *Baleshwar Dayal Jaiswal's case* (supra) observed that it differed from the view taken by the Andhra Pradesh High Court, the Madras High Court and the Bombay High Court (*UCO Bank v. Kanji Manji Kothari & Co. and ors*) but confirmed the applicability of Section 5 on a different ground.

10. Thereafter in *Municipal Corporation of Delhi's case* (supra) in the context of Section 417(4) of the Code of Criminal Procedure 1898 which provides for an Appeal against the order of acquittal and which stipulates the period of 45 days for the filing of the said Appeal, held that the provisions of the Limitation Act 1963 which had by then come into force replacing the Limitation Act 1908, would apply, as the application of the Limitation Act was not explicitly excluded, whereas Section 29(2)(b) of the Limitation Act 1908 provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the application of Section 5 was in clear and specific terms excluded.

11. Per contra, on behalf of the Respondent No.3 judgments were cited in support of the contention that application of Section 29(2) of the Limitation Act is ruled out where the limitation is fixed under a special law which is a self contained Code. In *Bekkam Narasimha Reedi's case* (supra) the Apex Court was concerned with the issue whether an Election Petition could be permitted to be filed beyond the period of 45 days as prescribed by Section 81 of the Representation of the People Act. The Apex Court adverted to the scheme encompassed within the Representation of People Act governing the holding of elections, the nature of the right to contest for elections, the redressal of disputes regarding elections under the said Act, how the elections can be called in question, which courts have jurisdiction, how an election petition is to be presented, who are the parties to the election petition as also the relief claimed in the election petition. On an analysis of the provisions of the said Act the Apex Court held that the trial of the election petition is not the same thing as a trial of a suit. The Apex Court then concluded that Section 29(2) would have no

application to the filing of an election petition inasmuch as the Representation of People Act is a complete Code in itself which does not admit of the introduction of the provisions of the Limitation Act.

12. The view taken by the Apex Court in Bekkam Narasimha Reddi's case (supra) was reiterated by the Apex Court in G.V. Sreerama Reddy's case (supra) wherein the Apex Court held that the provisions of Section 29(2) would not apply to the provisions of Section 81 of the Representation of People Act.

13. In Ketan v. Parekh's case (supra) the Apex Court was concerned with Section 35 of the Foreign Exchange Management Act, 1999. The said provision reads thus :

"35. Appeal to High Court - Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal 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.

Explanation - In this section "High Court" means-

(a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(b) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain."

The Apex Court in the said case relied upon its judgment in the matter of Union of India v. Popular Construction Company reported in (2001) 8 SCC 470 amongst other judgments and held that the issue of applicability of Section 29(2) of the Limitation Act would have to be held against the Appellant. In Popular Construction Company's case (supra) the issue was as regards the applicability of Section 29(2) of the Limitation Act to a proceeding under Section 34 of the Arbitration and Conciliation Act 1996. The said provision reads thus :

"34 Application for setting aside arbitral award. - (1)

(2)

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain

the application within a further period of thirty days, but not thereafter".

(emphasis supplied)

The Apex Court held that having regard to the crucial words in Section 34 of the Arbitration and Conciliation Act 1996 which were to the effect "but not thereafter" would amount to an exclusion of the applicability of Section 29(2) of the Limitation Act and would therefore be a bar to the application of Section 5 of the Limitation Act.

14. From a reading of the aforesaid judgments, the special laws can be carved out into two categories, one category of special laws are those where the Appeal provision lays down a period of limitation couched in a peremptory or imperative language which as held by the Apex Court is not sufficient to displace the applicability of Section 5 of the Limitation Act and the 2nd category is of those special laws where on account of the language used in the Appeal provision the applicability of the limitation Act is ruled out or are those special laws where the applicability of Section 5 of the Limitation Act is specifically excluded. Reference could be made to Section 34 of the Arbitration and Conciliation Act 1996 and Section 35 of the FEMA 1999.

In so far as the judgment of the Apex Court in Chhattisgarh State Electricity Board's case (supra) is concerned, the Apex Court in the said case was dealing with an Appeal filed under Section 125 of the Electricity Act before it. The question before the Apex Court was whether the delay in filing the Appeal could be condoned. In so far as Section 125 of the Electricity Act is concerned, it provides for an Appeal to the Apex Court against the order passed by the Appellate Tribunal. The said Section 125 of the Electricity Act reads thus :

"125. Appeal to Supreme Court. - Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908).

Provided that the Supreme 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"

Having regard to the language of Section 125 the Apex Court held that normal limitation period is 60 days, which under the proviso to the said Section can be extended by a further period of 60 days . The Apex Court held that there cannot be an extension beyond the period of 120 days and Section 5 of the Limitation Act cannot be invoked for condoning the delay beyond 120 days.

In the instant case, the Appeal is under a different provision namely Section 127 of the Electricity Act. The said Appeal lies against the final assessment order passed by the Assessing Officer. The language of Section 127 of the Electricity Act stands in contradistinction to the language of Section 125 of the Electricity

Act. The scheme encompassed within the said two provisions is therefore different. Though Section 127 is couched in a peremptory or imperative manner, Sections 5 to 24 of the Limitation Act would have to be applied for determining the period of limitation to file an Appeal under the said provision, though the Electricity Act is held to be a special law. Having regard to the tests laid down for applicability of Section 29(2) of the Limitation Act which have already been adverted to herein above, the said tests can be said to have been satisfied in so far as the applicability of Section 29(2) to a proceeding under Section 127 of the Electricity Act is concerned.

By holding that Section 29(2) would be application to a proceeding under Section 127 of the Electricity Act, this Court has construed Section 127 of the Electricity Act is different than Section 125, though both are part of the same special law. Support for the same can be drawn from the judgment of the Apex Court in *The Member, Board of Revenue's case* (supra). In the said case, the Apex Court was concerned with the provisions of the Indian Stamp Act and especially the issue as to under which provision the document in question therein was exigible to stamp duty. The provisions in question were Sections 4 to 6 of the Indian Stamp Act. The Apex Court held that the topics dealt with by the 3 Sections above being different no useful purpose would be served by referring to Section 4 or Section 6 of the Indian Stamp Act for determining the scope of Section 5 or for construing its terms, as in the said case, the legislature has used three different words in relation to the three sections "transaction" in Section 4, "matter" in Section 5, and "description" in Section 6. Same is the case with Section 125 and Section 127 of the Electricity Act. The language of the said provisions is different and they provide for an Appeal against different orders. In my view, therefore, the applicability of Section 29(2) of the Limitation Act to a proceeding under Section 127 of the Electricity Act cannot be ruled out and the period applicable for filing an Appeal would therefore have to be necessarily construed keeping in mind Sections 5 to 24 of the Limitation Act.

A reference could also be made to the judgment of the Apex Court in *Sher Singh's case* (supra) wherein the Apex Court referred to the well settled canon of interpretation of statutes namely where the same word is used in a section and or in sundry segments of a statute it should be given the same meaning unless there are compelling reasons to do otherwise. The Apex Court observed that the obverse is where different words are employed in the same section or in the same enactment the assumption would be that the legislature intended them to depict different situations and delineate dissimilar and diverse ramifications.

15. Having held that Section 29(2) of the Limitation Act would be applicable to an Appeal filed under Section 127 of the Electricity Act, it would now be necessary to turn to the facts of the instant case. It is an undisputed position that the Petitioner in the instant case has not filed any application for condonation of delay along with the Appeal,. This is sought to be explained away by the Petitioner by contending that the Petitioner having not received the copy

of the provisional assessment order had sought permission from the Respondent No.5 to file an Appeal by depositing 50% of the amount due under the final assessment order. The Respondent No.5 granted such permission to the Petitioner vide letter 01/11/2015. It is in the said circumstances that the application for condonation of delay was not filed by the Petitioner. Though the reason as afore stated does not commend acceptance to this Court, in my view, the interest of justice requires that an opportunity be given to the Petitioner to file an application seeking condonation of delay. In so far as payment of fees is concerned, since the Petitioner has already deposited 50% of the amount due under the final assessment order, some indulgence would have to be shown to the Petitioner in respect of the payment of the fees. The judgment of the Apex Court in Buta Singh (Dead) By LRs" case (supra) would have no application. The judgment in the said case was rendered in the fact situation where the claimants after the arguments had concluded in an Appeal filed under Section 54 of the Land Acquisition Act 1894, after gaining an impression that the Appeal would be allowed had filed an Application for permission to pay additional court fees for claiming enhanced compensation. The Apex Court in the said fact situation had found the application not bona fide. However, as mentioned above, in the instant case the Petitioner has already deposited an amount of Rs.2,24,263/with the Respondent No.3 which is 50% of the amount due from her. Hence the facts in the instant case are clearly distinguishable from the facts in the case before the Apex Court in Buta Singh (Dead) By LRs" case (supra). However, since the Petitioner has not filed an application for condonation of delay and since the final order has been passed as long back as on 18/01/2016, the Petitioner would have to be put to terms. The Petitioner to therefore deposit the balance amount of Rs.2,24,263/with the Respondent No.3 within four weeks from date. The application for condonation of delay to be also filed within the aforesaid time. The said amount would lie with the Respondent No.3 pending consideration of the application for condonation of delay and pending consideration of the Appeal if the delay is condoned. It is clarified that the total amount deposited by the Petitioner would be subject to the result of the Appeal. If the amount as directed by the instant order is not deposited, or the application for condonation of delay is not filed within the time as aforesaid, the right to file the application would stand forfeited.

16. For the reasons stated herein above the impugned order dated 18/01/2016 is set aside. The Petitioner would be entitled to file an application for condonation of delay in terms of the directions as above. Needless to state that the said application, and thereafter the Appeal, if the delay is condoned, would be tried on its own merits and in accordance with law. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.