

(2019) 12 CHH CK 0010
In the Chhattisgarh High Court
Case No : Arbitration Appeal 27 Of 2019

State Of Chhattisgarh Through And Anr	APPELLANT
Vs	
M/S Learn Nature Consultants Partnership Firm	RESPONDENT

Date of Decision : 16-12-2019

Acts Referred:

Limitation Act, 1963 — Article 116, 156
Commercial Courts, Commercial Division And Commercial Appellate Division Of High Courts Act, 2015 — Section 13, 13(1)(A), 15, 34
Arbitration And Conciliation Act, 1996 — Section 9, 16(2), 16(3), 17, 34, 34(1), 34(3), 36, 37, 43, 43(1), 43(2), 43(3), 43(4)
Limitation Act, 1963 — Section 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 12(2), 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 29, 29(2)
Indian Contract Act, 1872 — Section 25, 26
Indian Easements Act, 1882 — Section 2
Limitation Act Of 1908 — Section 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 29(2), 29(2)(b)
Representation Of the People Act, 1951 — Section 81, 82, 82(b), 85, 86, 98, 99, 116A, 117
Code Of Criminal Procedure, 1973 — Section 417, 417(3), 417(4)
Motor Vehicle Act, 1939 — Section 58(2), 58(3)
Central Excise Act, 1944 — Section 35, 35(H)

Citation : (2019) 12 CHH CK 0010

Hon'ble Judges : Manindra Mohan Shrivastava, J; Vimla Singh Kapoor, J

Bench : Division Bench

Advocate : Alok Bakshi, Anup Majumdar

Final Decision : Allowed

Judgement

Manindra Mohan Shrivastava, J

1. Arguments were heard on the application (I.A.No.1) for condonation of delay and preliminary objection to the maintainability of application for condonation of delay in filing appeal.

2. Appellant-State has filed this arbitration appeal under Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of

High Courts Act, 2015, (In short "the Act of 2015") read with Section 37 of the Arbitration and Conciliation Act, 1996 (In short "the Act of 1996") along with an application for condonation of delay in filing an appeal, as the appeal suffers from delay of 100 days.

3. While hearing on application for condonation of delay, learned counsel for the respondent raised preliminary objection to the maintainability of the application for condonation of delay in filing the appeal contending that the statutory scheme of the Act of 2015 is self contained code providing for expeditious disposal of appeal in specified category of commercial disputes in a time bound manner. Learned counsel for the respondent argued that as the aforesaid two Acts are special enactment one exclusively dealing with arbitration matters and other with commercial disputes of specified category, including provision of appeal, there being specific period of limitation of 60 days prescribed for filing an appeal under Section 13 of the Act of 2015, by necessary intendment, application of provisions under Section 5 of the Limitation Act, is excluded, in view of the provisions contained under Section 29(2) of the Limitation Act. Further submission is that though, Section 13 of the Act of 2015 contains special provision with regard to the period, within which, an appeal could be preferred, there is no provision for the condonation of delay in filing appeal beyond the prescribed period of 60 days. Relying upon the decision of the Supreme Court in the cases of *Hukumdev Narain Yadav vs. Lalit Narayan Mishra* (1974) 2 SCC 133, *Fairgrowth Investments Ltd. vs. Custodian* (2004) 11 SCC 472, *Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and others* (2008) 7 SCC 169, *Commissioner of Customs and Central Excise vs. Hongo India Private Limited and another* (2009) 5 SCC 791 and recent judicial pronouncement of the Supreme Court in the case of *M/s Simplex Infrastructure Limited vs. Union of India SLP(C)No.17521 of 2017*, decided on 26-02-2014, it is argued that once special provision of limitation is prescribed under special enactment, provisions of Section 4 to 24 of the Limitation Act stand excluded from application in the matter of availing remedy of appeal. By necessary implication, Special Act intends to exclude applicability of Section 4 to 24 of the Limitation Act, even though, there is no express provision engrafted in the Special Act, excluding application of Section 4 to 24 of the Limitation Act.

4. On the other hand, while replying objection to the maintainability and applicability of application under Section 5 of the Limitation Act, learned Additional Advocate General for the State would argue that though, Section 37 of the Act of 1996, provides for an appeal against the order passed under Section 34 of the Act of 2015, it neither provides any special provision of limitation nor expressly excludes application of Section 5 of the Limitation Act. Further submission is that even under the Act of 2015, though Section 15 specially provides for the period of limitation, by application of Section 29(2) of the Limitation Act, provision under Section 3 of the Limitation Act shall apply and such special period shall be read as if it was the period specified in the schedule, but for the purpose of determining period of limitation prescribed for appeal by

any special or local law, provisions contained under Section 4 to 24 of the Limitation Act shall apply, unless they are expressly included by any special or local law. His contention is that there is nothing in the Act of 1996 or in the Act of 2015, excluding the application of Section 4 to 24 of the Limitation Act, nor there being any other provision contained under the two Acts, warranting exclusion by necessary application, application under Section 5 of the Limitation Act would not be excluded and the appellant would be entitled to seek condonation of delay by taking recourse to that provision. In support of his submission, he places reliance upon the recent decision of the Bombay High Court reported in Kalpesh R. Jain & Ors. vs. Mandev Tubes Private Limited 2017 SCC Online Bom 8882, wherein it is held that in the matter of appeal under Section 37 of the Act of 1996, provisions of Section 5 of the Limitation Act, would not stand excluded and would be applicable.

5. In order to appreciate the submission advanced before us by the learned counsel for the parties in deciding the issue with regard to applicability of Section 5 of the Limitation Act in the matter of appeal under Section 15 of the Act of 1915, read with Section 37 of the Act of 1996, examination of relevant provisions contained in the Act of 1996 and Act of 2015 on the bedrock of scheme of Section 29 of the Limitation Act would be necessary.

6. Section 29 of the Limitation Act, which is in the nature of savings, provides as below:-

29. "Savings.-

(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(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.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."

7. The aforesaid provision is contained in the Limitation Act of 1963, which repealed Limitation Act of 1908 as amended in 1922. Provision contained under Section 29(2) of the Old Act provided as below:-

Section 29(2) of old Act

"Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefore in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law -

(a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply."

The aforesaid sub section only enacted the general principle enunciated by the maxim *generalia specialibus non derogant* - general words do not deviate from the special. It provides that where any special or local law prescribes for any suit, appeal or application, a period different from the period prescribed in the schedule, the provisions of Section 4 to 24 of the Limitation Act shall apply in so far as and to the extent to which they are not expressly excluded by special or local law. This legal position was declared by various High Courts in decisions in *Amiya Bikash Datta and Others vs. Mohaluxmi Bank Ltd.* AIR 1940 Cal 587, *S. Fakhruddin Hussain vs. Abdul Wahid* AIR 1938 All 213, *Sri Rajah Vatchavaya Venkata Suryanarayana Jagapathiraju Bahadur vs. Maddukuri Tirupatayya and others* AIR 1940 Mad 819 and *Mt. Deorati Kure vs. Dasarath Dubey and another* AIR 1940 Pat 476.

8. If the old provisions as contained under Section 29(2) of the Limitation Act of 1908 is read in juxtaposition with Section 29(2) of the new Limitation Act i.e. Limitation Act of 1963, it is revealed that under the old provision, only some of the provisions of the Limitation Act applied ordinarily, unless expressed by special or local law. Clause (b) of Section 29(2) of the old Limitation Act provided that remaining provisions of the Act would not apply. But, under the new Act, the exclusionary part as contained in (a) of the provisions of old Act has been expanded. While clause(b) of the old provision provided that remaining parts of Limitation would not apply, there is no such provision in Section 29(2) of the Limitation Act, 1963.

9. A comparative study of the old and new statutory scheme of Section 29(2) and the distinguishing features were noted by the Supreme Court in the case of *Hukumdev Narain Yadav* (supra), as below:-

10. ---- xxx----

"Under Section 29(2) of the Limitation Act of 1908 as amended in 1922, only Section 4, Sections 9 to 18 and Section 22 of that Act applied ordinarily unless excluded by a special or local law. Thus unless Section 5 was made applicable by or under any enactment the discretion of the Court to extend time thereunder

would not be available. Similarly Sections 6 to 8 would not apply and neither acknowledgment nor payment (under the former Sections 19 and 20) could give a fresh starting point of limitation. Even Section 5 under the old Act was in terms inapplicable to applications unless the Section was made applicable by or under any of the enactment. The new Section 5 is now of wider applicability and as the objects and reasons state:

"Instead of leaving it to the different States or the High Courts to extend the application of Section 5 to applications other than those enumerated in that Section as now in force, this clause provides for the automatic application of this Section to all applications, other than those arising under Order 21 of the Code of Civil Procedure, 1908, relating to the execution of decrees. In the case of special or local laws, it will be open to such laws to provide that Section 5 will not apply."

The present section incorporates two changes: (1) a uniform rule making it applicable to all applications except those mentioned therein [by defining "application" as including a "petition" in Section 2(b)]; and (2) to all special and local enactments, unless excluded by any of them. The difference in the scheme of the provisions of sub-section (2) of Section 29 under the two Acts will be discernible if they are juxtaposed as under:

Section 29(2) of old Act	Section 29(2) of new Act
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Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefore in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law -	(a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law; and	(b) the remaining provisions of this Act shall not apply.
Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.		

11. ----- xxx ----

" The decision of the Supreme Court in Vidyacharan Shukla v. Khubchand Baghel, AIR 1964 SC 1099, has by a majority held that both parts of Section 29(2) of the old Act should be read as one whole and the conjunction "and" would have to be read as importing into what follows it, the conditions set out earlier and that the words following the conjunction "and" attract the conditions laid down by the opening words of the sub-section. This case was considering the applicability of

Section 12(2) to appeals under Section 116-A of the Act which had provided a time limit for filing an appeal, but the first Schedule to the Limitation Act had not provided any. Even the absence of a provision prescribing a time limit in the First Schedule was considered by the majority as prescribing a different period, because when the First Schedule prescribes no time limit for a particular appeal but the special law prescribes a time limit for it, it prescribes a period different from that prescribed in the former. Where once the special or local law has provided a period different from that prescribed in the Schedule to the Limitation Act, sub-section (2) of Section 29 stands directly attracted and Section 3 and other Sections shall apply insofar as, and to the extent to which, they are not expressly excluded by such special or local law. Though Sinha, C. J., and Ayyangar, J., agreed with Subba Rao, J., as he then was, that even where the First Schedule did not prescribe a period of limitation for an appeal which is different from that prescribed in the special or local law the sub-section applied, and even if it is assumed that for the application of Section 29(2) a period that is different has to be prescribed for an identical appeal, then Article 156 prescribes a different period, they did not agree with him, that the second limb of sub-section (2) is an independent provision providing for that category of proceedings to which the first limb does not apply. Sinha, C.J., Rajagopala Ayyangar and Raghubar Dayal, JJ., by majority held that the entire sub-section (2) of Section 29 of the Limitation Act has to be read as an integrated provision and the conjunction "and" connects the two parts and makes it necessary for attracting clause (a) that the conditions laid down by the opening words of sub-section (2) should be satisfied. Raghubar Dayal and Mudholkar, JJ., also did not agree with the majority that where a right of appeal is given by some other law, the appeal must be regarded as the one under the Code of Civil Procedure, inasmuch as the words under the Code of Civil Procedure cannot be read as meaning "governed in the matter of procedure by the Code of Civil Procedure". Subba Rao and Mudholkar, JJ., held that the second limb of sub-section (2) of Section 29 is wide enough to include a suit, appeal or an application under a special or local law which is of a type for which no period of limitation is prescribed in the First Schedule. In the result, Sinha, C.J., Subba Rao, Raghubar Dayal and Rajagopala Ayyangar, JJ., held that the exclusion of time provided for by Section 12 of the Limitation Act is permissible in computing the period of limitation for filing an appeal in the High Court under Section 116-A of the Act."

Thus, Section 29(2) of the Limitation Act of 1963 rationally construed, does not exclude application of Limitation Act as a whole, merely because, different period of limitation for filing an appeal, suit or application, has been provided under any special or local law. What it provides is that in case of special or local law, the period of limitation as prescribed in special enactment would be read in the schedule and the provisions of Section 3 shall apply, as if such period, were the period prescribed by the schedule.

Thus, in order to exclude application of Section 4 to 24, mere prescription of special period of limitation, is not enough. Exclusion has to be expressly

contained in the special or local law.

10. An issue as to whether Section 12 of the Limitation Act of 1908 was excluded from application, in view of the special provision of limitation for filing an appeal under Section 116-A of the Representation of Peoples Act, 1951, arose for consideration before the Constitution Bench of the Supreme Court in the case of Vidyacharan Shukla vs. Khubchand Baghel and others AIR 1964 SC 1099. The scheme of Section 29(2) of the Limitation Act of 1908 was examined and per majority, it was held that in the absence of any express exclusion, provision of Section 12 of the Limitation Act shall apply so as to exclude time required for obtaining copy of order appealed against.

11. In a later decision in the case of D. P. Mishra vs. Kamal Narayan Sharma and another AIR 1970 SC 1477, the Supreme Court again examined as to whether in view of the provisions contained in Section-116-A of the Representation of Peoples Act, providing special period of limitation, different from one provided under the Limitation Act, applicability of Section 4 of the Limitation Act would be excluded. Relying upon the ratio laid down in the case of Vidyacharan Shukla (supra) and holding that in the absence of express exclusion, Section 4 would be applicable, it was held:-

5. "Section 29 of the Limitation Act, 1963, by sub-section (2) provides:

"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."

Computing the time taken for supplying the certified copies, the period of limitation expired during the summer recess, and the memorandum of appeal was lodged in Court on July 1, 1967. There is no provision in the Representation of the People Act, 1951. Which excludes the application of S. 4 of the Limitation Act.

6. In Vidyacharan Shukla v. Khubchand Baghel 1964-6 SCR 129 = (AIR 1964 SC 1099) this Court held that the exclusion of time provided by S. 12 of the Limitation Act, 1908, is permissible in computing the period of limitation for filing an appeal in the High Court under the Representation of the People Act, 1951. The Court in that case was interpreting S. 29 (2) of the Limitation Act, 1908. The Court held that in the absence of any express provision to the contrary in the special statute, the provisions of the Indian Limitation Act, 1908, contained in section 4 and Ss. 9 to 18 and 22 shall apply to the extent to which they were not expressly excluded by any special or local law."

It is worth noticing that while earlier decision of the Supreme Court in the case of Vidyacharan Shukla (supra) was based on interpretation of Section 29(2) of the Limitation Act of 1908, to answer whether Section 12 of Limitation Act would apply, the subsequent decision in the case of D. P. Mishra (supra) was in relation to statutory scheme of Section 29(2) of the Limitation Act of 1963 to find out whether Section 4 of the Limitation Act would be applicable.

12. In the case of Hukumdev Narain Yadav (supra), issue arising for consideration was whether provision contained in Section 4 to 24 of the Act of 1963, would be applicable to Election Petition by virtue of Section 29(2) and whether Section 5 would be applicable to Election Petitions. Having noted the change in law, in view of the repeal of Limitation Act of 1908 by the new Limitation Act of 1963 and distinguishing features noted on comparative study of old and new Section 29(2), already referred to hereinabove, it was held that while the decision in the case of Vidyacharan Shukla (supra) related to applicability of Section 29(2) of the Limitation Act in the matter of filing of appeal under Section 116-A of the Representation of Peoples Act, 1951, the case of Hukumdev Narain Yadav (supra) was one relating to filing of Election Petition. Prayer for re-consideration of the majority view taken in the case of Vidyacharan Shukla (supra) was rejected on following considerations:-

12. "It was contended before us that the majority decision requires reconsideration by a larger Bench, because a period of limitation which is different from that prescribed in any special or local law would mean that the Limitation Act should provide for a definite period which is different from that prescribed in the special or local law, a view which was taken by Mudholkar, J., in that decision. We do not think this would be a proper course, because in our view the matter was fully argued and considered by this Court, and while a different view can be taken, the need for certainty particularly in a matter concerning limitation where litigants have to be guided, the legal position should not be in doubt, when it is consistent with the view taken by this Court in other cases."

The majority view taken by the Constitution Bench of the Supreme Court in the case of Vidyacharan Shukla (supra) was explained, as below:-

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"The decision of the Supreme Court in Vidyacharan Shukla v. Khubchand Baghel, AIR 1964 SC 1099, has by a majority held that both parts of Section 29(2) of the old Act should be read as one whole and the conjunction "and" would have to be read as importing into what follows it, the conditions set out earlier and that the words following the conjunction "and" attract the conditions laid down by the opening words of the sub-section. This case was considering the applicability of Section 12(2) to appeals under Section 116-A of the Act which had provided a time limit for filing an appeal, but the first Schedule to the Limitation Act had not provided any. Even the absence of a provision prescribing a time limit in the First Schedule was considered by the majority as prescribing a different period,

because when the First Schedule prescribes no time limit for a particular appeal but the special law prescribes a time limit for it, it prescribes a period different from that prescribed in the former. Where once the special or local law has provided a period different from that prescribed in the Schedule to the Limitation Act, sub-section (2) of Section 29 stands directly attracted and Section 3 and other Sections shall apply insofar as, and to the extent to which, they are not expressly excluded by such special or local law. Though Sinha, C. J., and Ayyangar, J., agreed with Subba Rao, J., as he then was, that even where the First Schedule did not prescribe a period of limitation for an appeal which is different from that prescribed in the special or local law the sub-section applied, and even if it is assumed that for the application of Section 29(2) a period that is different has to be prescribed for an identical appeal, then Article 156 prescribes a different period, they did not agree with him, that the second limb of sub-section (2) is an independent provision providing for that category of proceedings to which the first limb does not apply. Sinha, C.J., Rajagopala Ayyangar and Raghubar Dayal, JJ., by majority held that the entire sub-section (2) of Section 29 of the Limitation Act has to be read as an integrated provision and the conjunction "and" connects the two parts and makes it necessary for attracting clause (a) that the conditions laid down by the opening words of sub-section (2) should be satisfied. Raghubar Dayal and Mudholkar, JJ., also did not agree with the majority that where a right of appeal is given by some other law, the appeal must be regarded as the one under the Code of Civil Procedure, inasmuch as the words under the Code of Civil Procedure cannot be read as meaning "governed in the matter of procedure by the Code of Civil Procedure". Subba Rao and Mudholkar, JJ., held that the second limb of sub-section (2) of Section 29 is wide enough to include a suit, appeal or an application under a special or local law which is of a type for which no period of limitation is prescribed in the First Schedule. In the result, Sinha, C.J., Subba Rao, Raghubar Dayal and Rajagopala Ayyangar, JJ., held that the exclusion of time provided for by Section 12 of the Limitation Act is permissible in computing the period of limitation for filing an appeal in the High Court under Section 116-A of the Act."

13. However, in the case of Hukumdev Narain Yadav (supra), distinguishing features warranting different view with regard to applicability of Section 5 of the Limitation Act in the matter of filing of Election Petition were examined, as below:-

13. "Secondly, Vidyacharan Shukla's case (supra) is one which dealt with an appeal under the Act while what we have to consider is whether the Limitation Act is at all applicable to election petitions under the Act. Thirdly, Section 29(2) of the new Limitation Act does not now give scope for this controversy whether the two limbs of the old Section are independent or integrated. No doubt Section 5 would now apply where Section 29(2) is applicable to even applications and petitions, unless they are expressly excluded. Even assuming that the Limitation Act applies to election petitions under the Act, what has to be seen is whether Section 5 is excluded from application to such petitions.

14. It has already been noticed that Vidyacharan Shukla's case (supra) has made Section 12(2) applicable to appeals under Section 116-A of the Act. The proviso to that Section confers power similar to that conferred by Section 5. Even in appeals to the High Court under Section 417 of the Code of Criminal Procedure it has been held in *Lala Ram v. Hari Ram*, (1970) 2 SCR 898, that Section 12 of the new Limitation Act will apply. On the ratio of Vidyacharan Shukla case even where the Limitation Act has not prescribed the period of limitation in the Schedule different from that prescribed under Section 81 of the Act, sub-section (2) of Section 29 will be attracted and that position is not any the less different under the new Limitation Act. Vidyacharan Shukla case is, however, decisive for attracting sub-section (2) of Section 12 to an appeal under Section 116-A of the Act as there was nothing in that Section to preclude its application. *D.P. Mishra v. Kamal Narayan Sharma* again is a case in which the question of application of Section 12(2) of the Limitation Act to the computation of the period of limitation prescribed in Section 116-A of the Act in respect of an order delivered by the Election Tribunal on December 28, 1966, was considered. After excluding the time taken for obtaining a certified copy of the order by the respondent just before the Court closed for the summer recess, the memorandum of appeal could only be lodged on the re-opening of the Court. Following the decision in Vidyacharan Shukla case this Court held that Sections 4 and 12 of the Limitation Act would apply, because "There is no provision in the Representation of the People Act, 1951, which excludes the application of Section 4 of the Limitation Act".

15. In *Lala Ram* case to which a reference has been made already, a Bench of this Court to which one of us was a party (P. Jaganmohan Reddy, J.) considered the applicability of Section 12 of the Limitation Act to an application under Section 417(3) of the Code of Criminal Procedure. In that case an application for leave to appeal to the High Court was filed under sub-section (3) of Section 417 of the Code of Criminal Procedure against an order of acquittal by a Magistrate. It was claimed that two days were necessary for obtaining the certified copy of the order of the Magistrate and the application would be in time if these two days were deducted. The High Court accepted the appeal and convicted the appellant. In appeal to this Court against his conviction the appellant contended that the period of 60 days mentioned in Section 417(4) was not a period of limitation within the meaning of Section 12 of the Limitation Act and that the sub-section barred the jurisdiction of the High Court to deal with the application if a period of 60 days had expired from the date of the order of acquittal. It was held that the application to the High Court was within time. It was, however, urged that Section 417(4) contains a prohibition that no application under subsection (3) shall be entertained by the High Court after the expiry of 60 days from the date of the order of acquittal and consequently the jurisdiction of the High Court to entertain such applications for leave to appeal is barred. The Court rejected the contention and relying on the case of *Kaushalya Rani v. Gopal Singh*, AIR 1964 SC 260 as well as on *Anjanabai v. Yeshwantrao Daulatrao Dudhe*, AIR 1961 Bom

154, observed at p. 901:

" It is quite clear that the full Bench of the Bombay High Court and this Court proceeded on the assumption that Section 417(4) of the Criminal Procedure Code prescribes a period of limitation. The learned Counsel, however, contends that there was no discussion of this aspect. Be that as it may, it seems to us that Section 417(4) itself prescribes a period of limitation for an application to be made under Section 417(3). It was not necessary for the Legislature to have amended the Limitation Act and to have inserted an Article dealing with applications under Section 417(3) CrPC; it was open to it to prescribe a period of limitation in the Code itself."

The basis of this decision is that sub-section (4) of Section 417 of the Code of Criminal Procedure is not in a negative form as contended for by the learned Advocate in that case, but that it has a positive content for performing an act and it prescribes a definite period within which an act has to be done."

In the aforesaid decision, importantly, the words "expressly excluded" as occurring in Section 29(2) of the Act of 1963 were interpreted, as below:-

17. ----- xxx -----

"Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under s. 81 of the Act, s. 29 (2) would be attracted, and what we have to determine is whether the provisions of this section are expressly excluded in the case of an election petition. It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature, intended it to be a complete code by itself which alone should govern the several matters provided by it. 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. In our view, even in a case where the special law does not exclude the provisions of ss. 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject- matter and scheme of the special law exclude their operation."

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The aforesaid interpretation of words "expressly excluded" was made a basis to examine the statutory scheme of the Representation of Peoples Act to find out whether Section 5 of the Limitation Act was applicable and would govern the filing of Election Petition. It was noticed that the provision of Section 3 of the

Limitation Act that a suit instituted, an appeal preferred or application made after prescribed period shall be dismissed, was provided in Section 86 of the Representation of People's Act, which gives peremptory command that the High Court shall dismiss an election petition, which does not comply with the provisions of Section 81, 82 or 117. It was further noticed that Section 81 was not the only section mentioned in Section 86, and if Limitation Act were to apply to an election petition under Section 81, it should equally apply under Section 82 & 117, because under Section 86, the High Court cannot say that by an application of Section 5 of the Limitation Act, Section 81 is complied with while no such benefit is available in dismissing an application for non-compliance with the provisions of Section 82 & 117 of the Representation of People's Act or alternatively, if the provisions of the Limitation Act do not apply to Section 82 & Section 117 of the Representation of People's Act, it cannot be said that they applied to Section 81. It was also noticed that Section 6 of the Limitation Act, which provides for the extension of the period of limitation till after the disability in the case of a person, who is either a minor or insane or an idiot is inapplicable to an election petition. Their Lordships further noticed that Section 7 to 24 are, in terms, inapplicable to the proceedings under the Act, particularly in respect of the filing of election petitions and their trial.

Importantly, it was also held that the applicability of the provisions of Limitation Act has to be judged not from the terms of the Limitation Act, but by the provisions of Representation of People's Act relating to the filing of election petitions and their trial, to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in Section 29(2) of that Act.

Taking into consideration the law laid down by the Supreme Court in the case of N. P. Ponnuswami vs. Returning Officer, Namakkal Constituency and others AIR 1952 SC 64, that the provisions of Representation of People's Act are a self-contained code, their Lordships also considered that there was nothing in Section 85 of the Representation of People's Act which permitted the Election Commission to condone the non-compliance with the provisions of Section 117 of the Act. Declaration of law that Section 82(b) of the Representation of People's Act was mandatory, the failure to comply with which was fatal to the maintainability of the petition, as held in the case of Krishan Chander vs. Ram Lal (1973) 2 SCC 759, was also noticed. Taking into consideration the entire scheme of the Representation of People's Act and that it was self-contained code and noticing various features referred to hereinabove, it was concluded that the provisions of Section 5 of the Limitation Act do not govern the filing of election petitions or their trial.

14. In the case of Mohd. Ashfaq vs. State Transport Appellate Tribunal, U.P. and others AIR 1976 SC 2161, question arose as to whether Section 5 of the Limitation Act would apply to condone delay in filing an application for renewal of permit under Motor Vehicle Act, 1939. Proviso to sub section(2) of Section 58 of

that Act provided that application for renewal of permit should be made not less than 120 days before the date of expiry of the permit. But sub section (3) thereof vested discretion in the Regional Transport Authority to entertain an application for renewal of a permit even if it is beyond time , but in that case, delay should not be of more than 15 days. Noticing that the words used in sub section 3 is "may" and not "shall" and the Regional Transport Authority is given a discretion to entertain application for renewal of permit even where it is beyond time, though, nor more than 15 days, it was held as below:-

8. ---- xx ---

It is, therefore, dear that sub-section (3) of section 58 confers a discretion on the Regional Transport Authority to entertain an application for renewal when it is made beyond the time limit specified in the proviso to sub-section (2), but not more than 15 days late and the discretion is to be exercised in favour of entertaining the application for renewal when it is shown that there was sufficient cause for not making it in time. Now the question which arises is: does section 5 of the Limitation Act, 1963 apply so as to empower the Regional Transport Authority, for sufficient cause, to entertain an application for renewal even where it is delayed by more than 15 days? Section 29, sub-section (2) of the Limitation Act, 1963 makes section 5 applicable in the case of an application for renewal unless its applicability can be said to be expressly excluded by any provision of the Act. The only provision of the Act sought to be pressed into service for this purpose was sub-section (3). Does sub-section (3) expressly exclude further extension of time under section 5 ? If it does, then section 5 cannot be availed of by the appellant for condonation of the delay. Sub-section (3) in so many terms says that the Regional Transport Authority may condone the delay in making of an application for renewal and entertain it on merits provided the delay is of not more than 15 days. This clearly means that if the application for renewal is beyond time by more than 15 days, the Regional Transport Authority shall not be entitled to entertain it or in other words, it shall have no power to condone the delay. There is thus an express provision in sub- section (3) that delay in making an application for renewal shall be condonable only if it is of not more than 15 days and that expressly excludes the applicability of section 5 in cases where an application for renewal is delayed by more than 15 days."

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It would thus be noticed that the statutory scheme of limitation, discretion to condone delay only up to a particular period, was considered to be a case of express exclusion of application of Section 5 of the Limitation Act.

15. In yet another decision in the case of Mangu Ram vs. Municipal Corporation of Delhi AIR 1976 SC 105, noticing that though Section 417(4) of Cr.P.C.,1898, provides for special period of limitation of 60 days for filing application for Special Leave to Appeal, there is nothing in the special law expressly excluding the applicability of Section 5 of the Limitation Act and also noticing the distinguishing

features of Section 29(2) of the old Limitation Act with that of the new Limitation Act, it was held, as below:-

7. "There is an important departure made by the Limitation Act 1963 in so far as the provision contained in Section 29, sub-section (2) is concerned. Whereas under the Indian Limitation Act, 1908 Section 29 sub-section (2), cl. (b) provide that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law the provisions of the Indian Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22, shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded. Section 29, sub-section (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit appeal or application by any special for local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply in so far as and to the extent to which they are not expressly excluded by such special or local law. S. 29, sub-s. (2), cl. (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, sub-section (2) of the Limitation Act, 1963 in clear and unambiguous terms provides for the applicability of Section 5 and the ratio of the decision in Kaushalya Rani's case can, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section 5 was excluded by reason of Section 29 (2)(b) of the Indian Limitation Act, 1908. Since under the Limitation Act, 1963 Section 5 is specifically made applicable by Section 29, sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced. Here, as pointed out by this Court in Kaushalya Rani's case AIR 1964 SC 260 = (1964 (1) Cri LJ 152) the time limit of sixty days laid down in sub-section (4) of Section 417 is a special law of Limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5. It is true that the language of sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can

show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it.

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16. In the case of Union of India vs. Popular Construction Co. (2001) 8 SCC 470, applicability of Section 5 of the Limitation Act, by virtue of provision contained under Section 29(2) of the Limitation Act in the matter of filing an application under Section 34 of the Arbitration and Conciliation Act, 1996, arose for consideration.

Analyzing the provisions of Section 29(2) of the Limitation Act, it was observed, as under:-

6. "On an analysis of the section, it is clear that the provisions of Sections 4 to 24 will apply when:

(i) there is a special or local law which prescribes a different period of limitation for any suit, appeal or application; and

(ii) the special or local law does not expressly exclude those sections."

Having held that Arbitration and Conciliation Act, 1996, is a special law and that Section 34 provides for a period of limitation different from that prescribed under the Limitation Act, it was observed, as below:-

8."Had the proviso to Section 34 merely provided for a period within which the court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5."

17. The decisions in the case of Vidyacharan Shukla (supra) and Hukumdev Narain Yadav (supra) were also considered and it was observed:-

11. "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."

18. Having so considered, crucial words "but not thereafter" used in the proviso to sub section(3) of Section 34 were held decisive to conclude that this amounted to express exclusion within the meaning of Section 29(2) of the Limitation Act, as below:-

12. "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."

19. The expression, "but not thereafter", used in the proviso to sub section(3) of Section 34 being the principal basis to exclude applicability of Section 5 of the Limitation Act, the scheme of Arbitration and Conciliation Act, 1996, and that of Section 34 itself was also examined by applying the principle that apart from the language, express exclusion may follow from the scheme and object of the special or local law, as laid down in the earlier decision in the case of Hukumdev Narain Yadav (supra). The statutory scheme of the Arbitration and Conciliation Act, 1996, was thus read along with the express language in Section 34(1), as below:-

14. "It has already been noticed that Vidyacharan Shukla case has made Section 12(2) applicable to appeals under Section 116-A of the Act. The proviso to that Section confers power similar to that conferred by Section

5. Even in appeals to the High Court under Section 417 of the Code of Criminal Procedure it has been held in Lala Ram v. Hari Ram, that Section 12 of the new Limitation Act will apply. On the ratio of Vidyacharan Shukla case even where the Limitation Act has not prescribed the period of limitation in the Schedule different from that prescribed under Section 81 of the Act, sub-section (2) of Section 29 will be attracted and that position is not any the less different under the new Limitation Act. Vidyacharan Shukla case is, however, decisive for attracting sub-section (2) of Section 12 to an appeal under Section 116-A of the Act as there was nothing in that Section to preclude its application. D.P. Mishra v. Kamal Narayan Sharma again is a case in which the question of application of Section 12(2) of the Limitation Act to the computation of the period of limitation prescribed in Section 116-A of the Act in respect of an order delivered by the Election Tribunal on December 28, 1966, was considered. After excluding the time taken for obtaining a certified copy of the order by the respondent just before the Court closed for the summer recess, the memorandum of appeal could only be lodged on the re-opening of the Court. Following the decision in Vidyacharan Shukla case this Court held that Sections 4 and 12 of the Limitation Act would apply, because "There is no provision in the Representation of the People Act, 1951, which excludes the application of Section 4 of the Limitation Act".

15. In Lala Ram case to which a reference has been made already, a Bench of this Court to which one of us was a party (P. Jaganmohan Reddy, J.) considered the applicability of Section 12 of the Limitation Act to an application under Section 417(3) of the Code of Criminal Procedure. In that case an application for leave to appeal to the High Court was filed under sub-section (3) of Section 417

of the Code of Criminal Procedure against an order of acquittal by a Magistrate. It was claimed that two days were necessary for obtaining the certified copy of the order of the Magistrate and the application would be in time if these two days were deducted. The High Court accepted the appeal and convicted the appellant. In appeal to this Court against his conviction the appellant contended that the period of 60 days mentioned in Section 417(4) was not a period of limitation within the meaning of Section 12 of the Limitation Act and that the sub-section barred the jurisdiction of the High Court to deal with the application if a period of 60 days had expired from the date of the order of acquittal. It was held that the application to the High Court was within time. It was, however, urged that Section 417(4) contains a prohibition that no application under subsection (3) shall be entertained by the High Court after the expiry of 60 days from the date of the order of acquittal and consequently the jurisdiction of the High Court to entertain such applications for leave to appeal is barred. The Court rejected the contention and relying on the case of *Kaushalya Rani v. Gopal Singh* as well as on *Anjanabai v. Yeshwantrao Daulatrao Dudhe* observed at p. 901:

" It is quite clear that the full Bench of the Bombay High Court and this Court proceeded on the assumption that Section 417(4) of the Criminal Procedure Code prescribes a period of limitation. The learned Counsel, however, contends that there was no discussion of this aspect. Be that as it may, it seems to us that Section 417(4) itself prescribes a period of limitation for an application to be made under Section 417(3). It was not necessary for the Legislature to have amended the Limitation Act and to have inserted an Article dealing with applications under Section 417(3) CrPC; it was open to it to prescribe a period of limitation in the Code itself."

The basis of this decision is that sub-section (4) of Section 417 of the Code of Criminal Procedure is not in a negative form as contended for by the learned Advocate in that case, but that it has a positive content for performing an act and it prescribes a definite period within which an act has to be done."

16. In *K. Venkateswara Rao and Anr. v. Bekkam Narasimha Reddi & Ors.*, AIR 1969 SC 872, to which we shall refer more fully later, *Vidyacharan Shukla's* case (*supra*) was attempted to be pressed into service, but this. Court repelled it and observed at pp. 688-689:

"In our View, the situation now obtaining in an appeal to this Court from an order of the High Court is entirely different. There is no section in the Act as it now stands which equates an order made by the High Court under s. 98 or s. 99 to a decree passed by a Civil court subordinate to the High Court. An appeal being a creature of a statute, the rights conferred on the appellant must be found within the four corners of the Act. Sub-s. (2) of the present Section 116-A expressly gives this Court the discretion and authority to entertain an appeal after the expiry of the period of thirty days. No right is however given to the High Court to entertain an election petition which does not comply with the provisions of Section 81 of Section 117."

In para 14 of the judgment, it was observed that the history and scheme of the Act of 1996 supports the conclusion that the time limit prescribed under Section 34 to challenge an award is absolute and unextendable by the Court under Section 5 of the Limitation Act. What was stated in the Arbitration and Conciliation Bill, 1995, which preceded the Act of 1996, stated as one of its main objective, was also noted that the Act was enacted to cater to the need to minimize the role of Courts in the arbitral process. Section 5 of the Act was noticed as reflecting various objective which reads as below:-

5. Extent of judicial intervention.-"Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

In para 15 of the judgment, it was also noticed that "part" referred to in Section 5 is Part -I of the Act of 1996, which deals with domestic arbitration and that Section 34 is contained in that part and therefore, subject to the sweep of the prohibition contained in the aforesaid section.

Further more, in para 16 of the judgment, it was noticed that Section 34(1) itself provides that recourse to a Court against the arbitral award may be only by the application for setting aside such award, "in accordance with", sub section(1) and sub section(3). Noticing further in the application filed beyond the period mentioned in sub section(3) of Section 34 would not be an application "in accordance with" sub section, it was held that recourse to the Court against an arbitral award cannot be made beyond the period prescribed.

20. Another feature of the said Act, reflected from Section 36 thereof was taken into consideration, which provided as below:-

36. Enforcement.-"Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court."

21. The aforesaid decision, therefore, was primarily based on the express exclusion found in the expression "but not thereafter" as contained in proviso to sub section(3) of Section 34 of the Act of 1996. Even while examining the Act of 1996, in para 14, 15 & 16 of the judgment, the scheme was examined keeping in forefront the language of the Section 34, the objective of the Act of 1996 minimize the supervisory role of the Courts in the arbitral process and that extent of judicial intervention was limited as provided under Section 5, except otherwise provided and further that in view of the express language of Section 34(3), condonation of delay beyond the period prescribed would not be in accordance with the provisions thus, made basis to conclude that in the matter of filing of application under Section 34, under the Act of 1996, Section 5 of the Limitation Act, would not apply.

22. In the case of Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and Others (2008) 7 SCC 169, issue with regard to applicability of Section 14 of the Limitation Act to an application under Section 34 of the Act of 1996 arose for consideration. Decision in the case of Union of India vs. Popular Construction Co. (supra) was distinguished on the premise that decision holding Section 5 of the Limitation Act not applicable to proceedings under Section 34 of the Act of 1996 is not any authority for the proposition that Section 14 of the Limitation Act would also have no application. While deciding the question of law whether the Limitation Act of 1963 is inapplicable to proceedings of Court, under the Arbitration and Conciliation Act, 1996, the statutory scheme of the Act of 1996, was generally considered in para 38 of the aforesaid judgment and noticing that Section 37, providing for appeal, does not prescribe any period of limitation for filing appeals and further taking into consideration that if the Limitation Act is inapplicable to the Court proceedings under the Act of 1996, there will be no limitation in filing appeal under Section 37, it was observed thus:-

38. xxx --

"If the Limitation Act is applicable, the period of limitation for appeals filed under Section 37 of the AC Act will be governed by Article 116 of the Schedule to the Limitation Act."

23. After examining the provisions contained in Section 43 of the Act of 1996, Section 3 and Section 29(2) of the Limitation Act as also Article 116 of the Schedule of the Limitation Act, it was held thus-

42. The AC Act is no doubt, a special law, consolidating and amending the law relating to arbitration and matters connected therewith or incidental thereto. The AC Act does not prescribe the period of limitation, for various proceedings under that Act, except where it intends to prescribe a period different from what is prescribed in the Limitation Act. On the other hand, Section 43 makes the provisions of the Limitation Act, 1963 applicable to proceedings-both in court and in arbitration-under the AC Act. There is also no express exclusion of application of any provision of the Limitation Act to proceedings under the AC Act, but there are some specific departures from the general provisions of the Limitation Act, as for example, the proviso to Section 34(3) and sub-sections (2) to (4) of Section 43 of the AC Act."

24. Applying settled legal position laid down by the Supreme Court in the earlier decisions referred to above, following observations were made:-

43. "Where the Schedule to the Limitation Act prescribes a period of limitation for appeals or applications to any court, and the special or local law provides for filing of appeals and applications to the court, but does not prescribe any period of limitation in regard to such appeals or applications, the period of limitation prescribed in the Schedule to the Limitation Act will apply to such appeals or applications and consequently, the provisions of Sections 4 to 24 will also apply.

Where the special or local law prescribes for any appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, then the provisions of Section 29(2) will be attracted. In that event, the provisions of Section 3 of the Limitation Act will apply, as if the period of limitation prescribed under the special law was the period prescribed by the Schedule to the Limitation Act, and for the purpose of determining any period of limitation prescribed for the appeal or application by the special law, the provisions contained in Sections 4 to 24 will apply to the extent to which they are not expressly excluded by such special law. The object of Section 29(2) is to ensure that the principles contained in Sections 4 to 24 of the Limitation Act apply to suits, appeals and applications filed in a court under special or local laws also, even if it prescribes a period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application of any or all of those provisions."

25. Further more, a distinction was drawn in the matter of prescription of period of limitation provided in the schedule to the Limitation Act, in the matter of proceedings before the Court and the Tribunals, as below:-

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

26. The contention that Section 43 of the Act of 1996 makes provision applicable only to arbitrations, thereby expressing an intent to exclude the application to any proceedings relating to arbitration in a Court, was repelled and it was held as below:-

45. "Learned counsel for the appellant contended that Section 43 of the AC Act makes applicable the provisions of the Limitation Act only to arbitrations, thereby expressing an intent to exclude the application to any proceedings relating to arbitration in a court. The contention of the appellant ignores and overlooks Section 29(2) of the Limitation Act and Section 43(1) of the AC Act. Sub-section (1) of Section 43 of the Act provides that the Limitation Act shall apply to arbitrations as it applies to proceedings in court. The purpose of Section 43 of the AC Act is not to make the Limitation Act inapplicable to proceedings before court, but on the other hand, make the Limitation Act applicable to arbitrations. As already noticed, the Limitation Act applies only to proceedings in court, and but for the express provision in Section 43, the Limitation Act would not have applied to arbitration, as arbitrators are private tribunals and not courts. Section 43 of the AC Act, apart from making the provisions of the Limitation Act, 1963 applicable to arbitrations, reiterates that the Limitation Act applies to proceedings in court. Therefore, the provisions of the Limitation Act, 1963 apply to all proceedings under the AC Act, both in court and in arbitration, except to

the extent expressly excluded by the provisions of the AC Act."

27. In another decision in the case of Commissioner of Customs and Central Excise vs. Hongo India Private Limited and another (2009) 5 SCC 791, the principles laid down in the case of Hukumdev Narain Yadav (supra) and Union of India vs. Popular Construction Co.(supra) that even in the absence of express exclusion, the Court can examine extent of exclusion of Limitation Act by a special law based on the provisions or the nature of subject matter and scheme of special law to find out whether the provisions of the Limitation Act would be applicable. In that case, the provisions contained in the Central Excise Act, 1944, providing for an appeal and reference to High Court fell for consideration. Deciding an issue whether Section 5 of the Limitation Act was applicable in respect of the reference application filed in the High Court under Section 35(H) of the unamended Excise Act, taking into consideration the statutory scheme of the Act and the language used in various provisions particularly taking into consideration that limitation of 180 days was provided and further that the legislature intended the appellate authority to entertain appeal by condoning the delay only up to 30 days, after expiry of 60 days of period of limitation, it is held that the such scheme intends complete exclusion of Section 5 of the Limitation Act.

28. The principle laid down in the case of Hukumdev Narain Yadav (supra) and Union of India vs. Popular Construction Co.(supra) was reiterated as below:-

35. "It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. 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. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court."

29. Recent judicial pronouncement in the case of M/s Simplex Infrastructure Limited vs. Union of India (supra), followed settled legal position as laid in the case of Union of India vs. Popular Construction Co. (supra).

30. Moreover, an issue with regard to applicability of Section 14 of the Limitation Act to an application submitted under Section 34 of the Act of 1996 as answered in the case of Consolidated Engineering Enterprises (supra) was also noticed. Relying upon these decisions, it was held that there was no justification for condoning delay of 540 days in filing an application under Section 34 of the Act of 1996.

31. Survey of aforesaid decisions of the Supreme Court, since 1964, in the case of Vidyacharan Shukla (supra) and the principles laid down in various decisions concretise a settled legal position that merely because different period of limitation has been prescribed under special or local law for filing suit, appeal or application in the Court, the provision of Section 4 to 24 of the Limitation Act would not stand excluded. In such a case, provisions of Section 3 of the Limitation Act shall apply as if such period were the period prescribed by the schedule. Further, Section 29(2) has been interpreted that in such a case also, for the purpose of determining any period of limitation prescribed for filing suit, appeal or application by any special or local law, provisions contained in Section 4 to 24 inclusive shall apply, unless they are expressly excluded by any special or local law. Even if, there is no specific provision of express exclusion in the special or local law, if on examination of the relevant provisions, legislative intention, it is found 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 said Act. In other words, even in a case, where the special law does not exclude the provisions of Section 4 to 24 of the Limitation Act by special reference, it would, nonetheless, be open to the Court to examine whether and to what extent, the nature of those provisions or the nature of the subject matter and scheme of the special law exclude their operation.

32. Chapter-VII Part (I) of the Act of 1996 contains provisions with regard to remedy against the arbitral award. Section 34 provides for recourse against an arbitral award. Section 35 attaches finality to award subject to the provisions of Part(I). Provisions relating to appeals against various orders passed under Section 9 and Section 34 are contained in Section 37, which reads, as under:-

37. Appealable orders.-(1)"An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-

(a) granting or refusing to grant any measure under section 9;

(b) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.-

(a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

33. This provision nowhere prescribed any period of limitation for filing an appeal, it does not even separately prescribe any special Court where an appeal shall lie against an order passed under Section 9, 16, 17 & 34 of the Act. While Section 34 provides remedy against the arbitral award, Section 37 provides for appeal against the orders of the Court deciding application under Section 9, 16, 17 & 34 of the Act of 1996. Further more, while Section 34(3) provides a period of limitation different from what has been provided under the Schedule of the Limitation Act, as also restricting the period up to which, delay can be condoned, by use of word expression "but not thereafter", no such provision finds place in Section 37 of the Act of 1996. The Legislature, in its wisdom, while providing special period of limitation with restrictions of discretion to condone the delay in filing an application under Section 34, did not prescribe any special period of limitation for filing an appeal much less restricting discretion to condone delay in filing an appeal within any specific period.

34. In the case of Consolidated Engineering Enterprises (supra), the observations made in para 38, 43, 44 & 45, as already noted hereinabove, also lead to the conclusion that no period of limitation for appeal is prescribed under Section 37 of the Act of 1996 and further that the purpose of Section 43 of the Act of 1996 is not to make the Limitation Act inapplicable to the proceedings before the Court, but, on the other hand, make the Limitation Act applicable to arbitrators.

35. With enactment of the Commercial Courts Act, 2015, in the matter of appeal from decrees of Commercial Courts and Commercial Divisions, to which, the provisions of the Act are applicable, Section 13 provides remedy of appeal, as below:-

13. Appeals from decrees of Commercial Courts and Commercial Divisions.(1) [Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

(2) Notwithstanding anything contained in any other law for the time being in

force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act."

The provisions contained in sub section(1) & (1-A) referred to above, prescribe special period of limitation of sixty days from the judgment or order.

Moreover, proviso also make it clear that an appeal shall lie from such orders passed by the Commercial Division or a Commercial Court that are specifically enumerated under Order 43 of the Code of Civil Procedure, 1908, as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996.

36. There is no other provision contained in the aforesaid Act of 2015, which either expressly excludes or implies that in the matter of filing an appeal under Section 13, legislature intended to exclude application of Section 4 to 24 of the Limitation Act. The statement of objects and reasons of the Act of 2015 (as amended) show that the Law Commission of India had recommended establishment of the Commercial Courts and the Commercial Division and the Commercial Appellate Division in the High Courts for the disposal of commercial disputes of specified value. It is relevant to notice that while providing the period of limitation of appeal against judgment and order of the Commercial Court at the level of the District Judge, Commercial Division of the High Court, as provided under sub section(1-A) of Section 13 of the Act of 2015 (as amended), no specific provision limiting jurisdiction of the Court to condone the delay beyond any specific period has been provided.

37. Reliance placed on the decision in the case of Hukumdev Narain Yadav (supra) is misplaced in law, because that judgment related to filing of election petition under Representation of Peoples Act, 1951. In the aforesaid decision, earlier decision in the case of Vidyacharan Shukla (supra) was distinguished on the basis that judgment in the case of Vidyacharan Shukla (supra) involved an issue with regard to applicability of provision in the matter of filing an appeal under Section 116-A and that was not a case of filing election petition. The peculiar features and the special provisions as contained in the Representation of Peoples Act, in the matter of filing of election petition, we are kept in view to hold that the provisions under Section 4 to 24 of the Limitation Act with regard to condonation of delay would not apply. Thus, the provision of filing election petition as contrasted from the provision with regard to filing of appeal under the Representation of Peoples Act were held to be distinguishing feature in the two decisions. Further, the judgment in the case of Union of India vs. Popular Construction Co. (supra), is also not be made applicable in the present case, because in that case, expression "but not thereafter" used in Section 34(3) of the Act of 1996, in the matter of filing an application under that section was made primary basis to come to the conclusion that applicability of Section 5 of the Limitation Act would stood excluded. Importantly, not only a different period of limitation prescribed under the law, but also limitation on exercise of jurisdiction to condone delay beyond a particular period was taken as one of the main basis

to hold that it was a case of express exclusion. But, in the case of filing an appeal under Section 37 of the Act of 1996 or under Section 13 of the Act of 2015, no such provision has been made restricting the discretion of the Court to condone the delay beyond a particular period.

38. Judgment in the case of Commissioner of Customs and Central Excise vs. Hongo India Private Limited (supra), also proceeded upon examination of the peculiar scheme of appeal and revision under the Central Excise Act, 1944. In that case also, the Supreme Court had noticed that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days, after expiry of preliminary period of limitation and further that the period of 180 days of limitation was provided for filing reference to the High Court, which is more than the prescribed period of limitation for an appeal and revision.

39. The principles laid down in the case of Hukumdev Narain Yadav, Union of India vs. Popular Construction Co., M/s Simplex Infrastructure Limited, Commissioner of Customs and Central Excise vs. Hongo India Private Limited (supra) as to in what cases, express exclusion of application of provisions of limitation as contained in Section 4 to 24 of the Limitation Act could be inferred, are well settled, but then, in the instant case, the examination of the scheme of the Act of 1996 and the Act of 2015, with regard to filing of appeal, upon scrutiny made hereinabove, does not reveal any legislative intention to expressly exclude application of Section 5 of the Limitation Act in the matter of filing an appeal against an order passed by the Commercial Court under Section 34 of the Act of 1996. On the contrary, earlier decision in the cases of Consolidated Engineering Enterprises, Vidyacharan Shukla, D. P. Mishra, Mohd. Ashfaq and Mangu Ram (supra) are applicable in the present case to hold that in the matter of filing an appeal under Section 37 of the Act of 1996 and Section 13 of the Act of 2015 before this Court, Section 5 of the Limitation Act would be applicable.

40. In the case of Kalpesh R. Jain & Ors. vs. Mandev Tubes Private Limited, a Division Bench of the High Court of Bombay also held that in the matter of filing an appeal under Section 13 of the Act of 2015, provision of Section 5 of the Limitation Act would be applicable, on which, learned counsel for the appellant has placed heavy reliance.

41. This appeal is barred by 100 days as reported by the office. In support of prayer for condonation of delay in filing appeal, it has been stated in the application supported by an affidavit that the time was consumed by the State and its functionaries for obtaining sanction from the State to prefer an appeal. Relying upon the decision of the Supreme Court in the case of State of Nagaland vs. Lipok Ao and others (2005) 3 SCC 752, it is prayed that period of delay of 100 days may be condoned. Learned State counsel would submit that under the impugned award, the appellant/State has settled the liability for payment of Rs.1,84,76,640/- with interest upon principal sum @ 12% per annum from the date of submission of invoice till the date of payment.

42. On the other hand, learned counsel for the respondent, while opposing the prayer for condonation of delay, submits that the appellant was required to explain delay of every day, but general statement has been made to seek condonation of delay of about 100 days. It is further submitted that otherwise also, the provision under the law give the appellant 60 days time to file an appeal and delay over and above 60 days does not appear to be bonafide, much less explained.

43. Having considered the submission of learned counsel for the parties, taking into consideration that the appeal appears to be filed after delay of 100 days, cause shown by the appellant for condonation of delay and applying the standard principle for condonation of delay in filing appeal as also further taking into consideration that under the impugned award, huge financial liability is settled upon the State, I am inclined to allow the application for condonation of delay in filing the appeal.

44. Accordingly, the application for condonation of delay in filing the appeal is allowed. Delay is condoned. Case be listed for further orders after two weeks.