

(2011) 10 BOM CK 0118

In the Bombay High Court

Case No : Writ Petition No. 1321 of 2010

The State of Maharashtra and The Conservator of Forest,
Thane Forest Division, District - Thane

APPELLANT

Vs

Shri. Ramniklal Amrutlal Parekh and Ramanlal Dalsukhbhai
Shroff, through Constituted attorney, Ketan Shamji Gogri

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Contract Act, 1872 — Section 25, 3
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Maharashtra Land Revenue Code, 1966 — Section 309, 315(3), 315(5), 315(6)
Maharashtra Private Forests (Acquisition) Act, 1975 — Section 11, 12, 13, 15, 18

Citation : (2011) 10 BOM CK 0118

Hon'ble Judges : Ranjit More, J

Bench : Single Bench

Advocate : Sandeep K. Shinde, Addl. G.P, for the Appellant; Aspi Chinai a/w Mr. Chetan Kapadia and Mr. Sanjay Jain instructed by Mr. Kalpesh Nansi, for the Respondent

Final Decision : Dismissed

Judgement

Ranjit More, J.—Heard learned Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Counsel for the respondents waive service.

3. As short question is involved, Petition is taken up for final disposal forthwith, by consent.

4. By the aforesaid writ petition filed under Article 227 of the Constitution of India, the petitioners-State seeks to challenge the order dated 23/1/2009 passed by the President of Maharashtra Revenue Tribunal, Mumbai [for short "the MRT"] on the Delay Condonation Application in Forest Appeal No. 28/B/2000. By the said order, the petitioner's application for condonation of delay of 605 days

occurred in filing appeal came to be rejected. The proceeding arises out of an enquiry by the Deputy Collector u/s 6 of the Maharashtra Private Forests (Acquisition) Act, 1975 [for short "the said Act"] to determine whether the land of the respondents is forest land or not. The Deputy Collector, Private Forest (Acquisition), Thane by his order dated 20/11/1998 held that the said land is not "private forest land" and therefore it does not stand to be vested in and acquired by the Government. The Dy. Collector also directed the Forest Department to hand over possession of the said land to the owner of the said land, if at all already taken over by the Forest Department. This order was challenged by the Petitioners-State by filing an appeal before the MRT and since there was delay of 605 days in preferring appeal, the above said application for condonation of delay was preferred, which came to be rejected by the order impugned in the present writ petition on the ground that the petitioners have not satisfactorily explained the delay.

5. Mr. Chinoi, learned senior counsel appearing on behalf of the respondents at the outset challenged authority of MRT to entertain the application filed by the petitioner for condonation of delay occurred in preferring the appeal u/s 15 of the said Act on the ground that provisions of the Limitation Act, 1963 cannot be resorted to for the purpose of condonation of delay. Apart from this objection, Mr. Chinoi also opposed the petition on the ground that the petitioners have not given satisfactory explanation for condonation of delay. He accordingly supported the order impugned in the petition.

6. In these circumstances, I called upon Mr. Shinde, learned Additional Government Pleader to make submissions regarding the applicability of the Limitation Act, 1963 to the appeal filed before MRT challenging the order passed u/s 6 of the said Act. Mr. Shinde took me through the relevant provisions of the said Act and submitted that section 6 of the said Act is regulated by Sections 13 to 18 of the said Act. He submitted that section 6, therefore, merely provides finality to the order in the absence of an appeal. He further submitted that section 15 of the said Act specifically provides that provisions of Sections 4, 5, 12 and 14 of the Limitation Act, 1963 shall apply to the filing of such appeals. He submitted that section 6 of the said Act cannot be said to be a self contained Code. Section 15 would regulate the filing of appeal and applicability of the Limitation Act, 1963. He relied upon the provisions of section 29(2) of the Limitation Act, 1963 to submit that since the provisions of the Limitation Act are not expressly excluded, same are applicable to the appeals filed challenging the order passed u/s 6 of the said Act.

Mr. Shinde next submitted that MRT is constituted under the Maharashtra Land Revenue Code, 1966 [for short "MLRC"] and as such once the appeal reaches the MRT, it has to be determined according to the rules of practice and procedure of MRT in accordance with the provisions of MLRC and Rules framed under the MLRC. In this regard, he relied upon section 315 of MLRC, under which the Tribunal has jurisdiction to hear the appeal and the provisions of sections 4, 5,

12 and 14 of the Limitation Act, 1963 are made applicable to such appeals. He submitted that MRT exercises the appellate jurisdiction under the MLRC, under which it is constituted, and all appeals before it are regulated by the provisions of MLRC and rules framed thereunder. Mr. Shinde also submitted that the petitioners-State has shown sufficient cause for condonation of delay in filing appeal and therefore delay should be condoned. Lastly, he submitted that since the procedure of appeal is subject to the Code of Civil Procedure, 1908, the application of provisions of the Limitation Act, 1963 is automatic. On the basis of above submissions, he submitted that the petition deserve to be allowed and MRT be directed to hear the petitioners' appeal on merits.

7. Mr. Chinoi, learned Senior Advocate appearing on behalf of the respondents, on the contrary, supported the impugned order and submitted that delay of 605 days is not at all explained by the petitioners and therefore no interference in the impugned order is called for. In addition to this, he submitted that section 6 of the said Act is a complete Code in itself. It provides for the entire adjudicatory process in respect of a dispute whether the land in question is forest or not, and therefore order of the Dy. Collector has to be challenged by way of an appeal to be filed u/s 6 itself. He submitted that section 15 of the said Act deals with the appeals other than appeals from decisions u/s 6 and the provisions of said section, i.e., section 15 cannot be made applicable to the appeal against the order passed u/s 6. He submitted that the appeal u/s 6 must be filed within the period of 60 days from the date of decision and for this appeal, the provisions of Limitation Act, 1963 and especially sub-section (2) of Section 29 thereof cannot be made applicable as applicability of the said section is impliedly excluded. In this regard, he relied upon the Apex Court decisions in (i) Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and Others, and (ii) Union of India Vs. M/s Popular Construction Co., .

8. In the light of rival submissions made by the learned counsel appearing on behalf of the respective parties, following issues fall for my consideration.

(i) Whether in view of the provisions of sections 6 and 15 of the Maharashtra Private Forests (Acquisition) Act, 1975, the statutory powers of MRT to condone the delay in preferring an appeal beyond the period of 60 days is curtailed ?

(ii) Whether section 6 of the Maharashtra Private Forests (Acquisition) Act, 1975 is a self-contained Code which bars the applicability of section 5 of the Limitation Act, 1963 ?

(iii) Whether the petitioners have given sufficient reasons to condone the delay of 605 days that has occurred in filing appeal before MRT, challenging the order of Dy. Collector passed u/s 6 of the Maharashtra Private Forests (Acquisition) Act, 1975 ?

9. Section 6 of the said Act deals with the settlement of dispute. u/s 6 the Collector is the competent authority to decide the question whether or not any forest is a private forest, or whether or not any private forest or portion thereof

has vested in the State Government or whether or not any dwelling house constructed in a forest stands acquired under this Act. The decision of the Collector, subject to appeal to the Tribunal, is final. Section 13 deals with appeals and under the said section, appeal shall lie to the Tribunal against an award of the Collector u/s 9 or against any order of the Collector passed u/s 11 or 12. Section 15 provides the limitation. Under the said section, appeal other than the appeal filed u/s 6, is required to be filed within 60 days from the date of award, or as the case may be order of the Collector and the provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 are made applicable to such appeals. Section 18 makes provision of revision to the State Government and such revision is required to be filed within the period of one year from the date of decision.

10. In order to decide the controversy involved in the present petition, the provisions of sections 6 and 15 are required to be interpreted, which read thus :

6. Where any question arises as to whether or not any forest is a private forest, or whether or not any private forest or portion thereof has vested in the State Government or whether or not any dwelling house constructed in a forest stands acquired under this Act, the Collector shall decide the question, and the decision of the Collector shall, subject to the decision of the Tribunal in appeal which may be preferred to the Tribunal within sixty days from the date of the decision of the Collector, or the order of the State Government u/s 18, be final.

[emphasis supplied]

15. Save as otherwise provided in section 6, every appeal made under this Act to the Tribunal shall be filed within a period of sixty days from the date of the award, or as the case may be, order, of the Collector. The provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 shall apply to the filing of such appeal.

[emphasis supplied]

11. Perusal of the above provisions shows that section 6 is a complete Code in itself. Section 6 provides for adjudication of question : Whether or not any forest is a private forest, or Whether or not any private forest or portion thereof has vested in the State Government or Whether or not any dwelling house constructed in a forest stands acquired under this Act. It empowers the Collector to decide such questions. Section 6 itself provides that the order of the Collector can be challenged by way of an appeal before the Tribunal and such appeal is required to be filed within the period of 60 days from the date of order of the Collector. Section 6 further declares that the decision of the Collector, subject to an appeal to the Tribunal or revision u/s 18 to the State Government, to be final. Thus, section 6 provides for the entire adjudicatory process in respect of dispute whether or not any forest is a private forest, or whether or not any private forest or portion thereof has vested in the State Government. The decision of the Collector u/s 6 has been given finality subject to appeal or revision. The Sixty days period is provided in that section itself for filing an appeal. Thus, order

passed u/s 6 has to be challenged by way of an appeal to be filed u/s 6 itself within 60 days.

12. u/s 13 of the said Act, appeal shall lie to the Tribunal challenging the award or order passed u/s 9 or 11 or 12. Section 15 makes the provision of limitation for appeal other than the appeal from the decision u/s 6. The opening words of section 15 namely "save as otherwise provided in section 6" and the words "such appeals" at the end of section 15, make the position unequivocally clear that the provisions of sections 4, 5, 12, and 14 of the Limitation Act, 1963 are intended to be applied to the appeals arising out of an order passed u/s 9 or 11 or 12. In other words, Legislature in its wisdom has not made applicable the provisions of sections 4, 5, 12, and 14 of the Limitation Act, 1963 to the appeals arising out of an order u/s 6. Had it been the intention of the Legislature to make applicable the provisions of section 15 to the appeal arising out of an order passed u/s 6 also, the use of the opening words of section 15 namely "save as otherwise provided in section 6" and the words "such appeals" at the end of section 15, was not necessary. Any other interpretation of section 15 will render use of these words useless, redundant and otiose. The Legislature in its wisdom has prescribed the specific limitation for the purpose of an appeal u/s 6 of the said Act. The intention of the Legislature to restrict the period to 60 days is further evident from the provisions of section 15. In respect of appeals other than the appeals u/s 6, in view of section 15 of the said Act, the Legislature has expressly made the provisions of sections 4, 5, 12 & 14 of the Limitation Act applicable. Thus, even otherwise it is clear that in so far as appeals u/s 6 are concerned, the provisions of the Limitation Act are not made applicable by the Legislature consciously and deliberately. The intention to exclude the applicability of Limitation Act, 1963 is clearly evident and hence, has to be necessarily implied. Thus, the applicability of provisions of the Limitation Act is necessarily excluded to an appeal u/s 6 of the said Act. The above discussion makes it clear that no power is given to MRT to permit the presentation of appeal beyond the period of 60 days. The language employed in sections 6 and 15 of the said Act makes it clear that the Legislature intended that appeal against an order u/s 6 has to be filed within 60 days and not beyond that. No power to condone the delay beyond 60 days is given to the Tribunal in so far as appeal u/s 6 is concerned.

13. There is no dispute that the Maharashtra Private Forests (Acquisition) Act, 1975 is a special enactment. In view of the submissions of Mr. Shinde, a reference at this stage is required to be made to the provisions of section 29(2) of the Limitation Act, which reads thus :

"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) ... (4) ...

14. The provisions of section 29(2) of the Limitation Act mandate that in order to attract the applicability of sections 4 to 24 of that Act, two requirements have to be satisfied, namely, (i) there must be a provision for a period of limitation under special or local law in connection with any suit, appeal or application; and (ii) the prescription of a period of limitation under special or local law should be different from the period prescribed by the Schedule to the Limitation Act. If these two requirements are fulfilled, section 29(2) has enunciated the consequences that would follow. These consequences are : (I) Section 3 of the Limitation Act would apply as if the period prescribed by special or local law was the period prescribed by the Schedule; and (ii) For determining a period of limitation prescribed by such special or local law for any suit, appeal or application, all the provisions of sections 4 to 24 would apply in so far as and to the extent to which they are not expressly excluded by such special or local law.

15. The provisions of section 29(2) are considered and explained by the Apex Court in *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, and held that even if a special or local law does not exclude sections 4 to 24 by an express reference, the Court can still examine whether and to what extent the nature of those provisions or the nature of the subject matter or scheme of the special law exclude their operation. The Supreme Court held thus :

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 whether 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.

The Apex Court emphasised that whether sections 4 to 24 of the Limitation Act, 1963 are applicable is not determined by the terms of those sections but by their applicability or inapplicability to the proceedings under the special or local law.

16. The Apex Court in another decision in 2008 SCC 470 [Union of India vs. Popular Construction Co.,] made following observations :

10. This decision [Vidyacharan Shukla Vs. Khubchand Baghel and Others,] recognises that it is not essential for the special or local law to, in terms, exclude the provisions of the Limitation Act. It is sufficient if on a consideration of the language of its provisions relating to limitation, the intention to exclude can be necessarily implied. As has been said in Hukumdev Narain Yadav Vs. Lalit Narain Mishra, .

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.

13. Apart from the language, "express exclusion" may follow from the scheme and object of the special or local law:

[E]ven 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.

17. The Apex Court in a latest decision in Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and Others, held that the High Court under Article 227 of Constitution of India cannot condone the delay if the Statute does not permit the same, as such course of action would render specific provision providing for limitation rather otiose. The relevant observations of the Apex Court, as contained in paragraph nos. 8 and 10 of the said judgment are reproduced below :

8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of section 5 of the Limitation Act, 1963 can be availed for condonation of delay. The first proviso to section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso, further 30 days" time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only

up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days" period.

9.....

10. Sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the instant case, the explanation offered for the abnormal delay of nearly 20 months is that the appellant concern was practically closed after 1998 and it was only opened for some short period. From the application for condonation of delay, it appears that the appellant has categorically accepted that on receipt of order the same was immediately handed over to the consultant for filing an appeal. If that is so, the plea that because of lack of experience in business there was delay does not stand to reason. ITC case was rendered taking note of the peculiar background facts of the case. In that case there was no law declared by this Court that even though the statute prescribed a particular period of limitation, this Court can direct condonation. That would render a specific provision providing for limitation rather otiose. In any event, the causes shown for condonation have no acceptable value. In that view of the matter, the appeal deserves to be dismissed which we direct. There will be no order as to costs.

18. A perusal of the ratios of above decisions of the Apex Court makes it clear that the exclusion of provisions of sections 4 to 24 of the Limitation Act to the appeals under Special Statutes need not be express and same can be impliedly inferred from the scheme of the Special Statutes. In other words, the implied exclusion can also be inferred. Since section 6 of the said Act is a Code in itself inasmuch as the entire adjudicatory process is provided for in that section and section 15 of the said Act excluded the applicability of the provisions of sections 4, 14 and 12 of the Limitation Act to the appeals u/s 6 in view of the opening words of section 15, namely, "save as otherwise provided in Section 6" and concluding words "such appeals", the applicability of the Limitation Act to the appeals u/s 6 stands impliedly excluded. These provisions make it clear that no power is given to the Tribunal to allow the appeal arising out of an order u/s 6 to be presented beyond the period of 60 days. The appeal has to be filed within 60 days and not beyond that. The Tribunal has no power to condone the delay after the period of 60 days so far as appeal arising out of an order u/s 6 is concerned.

19. This takes me to consider the submissions of Mr. Shinde, Additional Govt. Pleader that MRT is constituted under the provisions of section 309 of the MLRC and in view of section 315(6) of MLRC, the provisions of sections 4 to 12 and 14 of the Limitation Act are applicable to the appeals filed before MRT. The petitioner placed heavy reliance on sub-sections (3) & (5) of Section 315, which reads thus :

315. Jurisdiction of Tribunal:-

(1)....

(2)....

(3) Save as expressly provided in any enactment for the time being in force, the State Government may, by notification in the Official Gazette, direct that the Tribunal shall also have jurisdiction to entertain and decide appeals from and revise decisions and orders, of, such persons, officers and authority in such other cases as the State Government may determine, and for that purpose the State Government may, by notification in the Official Gazette, add to, amend or omit, any of the entries in Schedule J and thereupon, the Tribunal shall have jurisdiction in such matter; and the jurisdiction of any other person, officer or authority therein shall cease.

(4)....

(5) Notwithstanding anything contained in any other law for the time being in force, when the Tribunal has jurisdiction to entertain and decide appeals from, and revise decisions and orders, of any person, officer or authority in any matter aforesaid, no other person, officer or authority shall have jurisdiction to entertain and decide appeals from and revise decisions or orders of, such person, officer or authority in that matter.

20. Perusal of above provisions makes it abundantly clear that section 315 of the Code deals with only appeals from orders under the enactments mentioned in Schedule-J. Schedule-J does not include the Maharashtra Private Forests (Acquisition) Act, 1975. In fact the provisions of section 315(6) of the Code makes it clear that Limitation Act, 1963 is made applicable only to the appeals filed u/s 315 of MLRC and not to the appeals filed before the MRT under any other enactment. The present appeal u/s 6 of the said Act was not an appeal as contemplated u/s 315 of the MLRC. Section 315(6) of the MLRC is re-produced hereinbelow for ready reference.

(6) Every appeal or application for revision made under this section shall be filed within a period of 60 days from the day of the order or decision of the Collector. The provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963 shall apply to the filing of such appeal or application for revision.

Had it been the intention of the Legislature to make applicable the provisions of section 315(6) of the MLRC to every appeal before the MRT, then there was no need for the Legislature to incorporate section 15 in the said Act making certain provisions of the Limitation Act applicable. Section 315 refers to appeals in relation to the enactments presently mentioned in Schedule-J only or that may be added by the State Government to Schedule-J by notification in the Gazette from time to time. The petitioners submissions in this regard, therefore, is without any substance.

21. At this stage, the petitioner's arguments that the applicability of Limitation Act cannot be excluded in view of the provisions of section 14 of the said Act also deserves some consideration. Section 14 of the said Act reads as follows :

14.(1) The Tribunal shall, after giving notice to both the parties, decide the appeal and record its decision.

(2) In deciding an appeal under this Act, the Tribunal shall exercise all the powers which a Court has and shall follow the same procedure which a Court follows, in deciding appeals from a decree or order of an original Court under the Code of Civil Procedure, 1908.

22. In my view, sub-section (2) of section 14 of the said Act only prescribes the procedure that MRT is required to follow. In view of this provision, the Tribunal is authorised to exercise all powers of the civil Court and follow the same procedure, which Civil Court follows in deciding appeals arising out of an order or decree under the Code of Civil Procedure, 1908. So far the period of limitation for appeals arising out of a decree or order of Original Court under the Code of Civil Procedure, 1908 is concerned, the same is governed by the Limitation Act. I have already concluded that provisions of the Limitation Act are impliedly excluded so far as the appeals arising out of orders u/s 6 of the said Act are concerned. In that view of the matter, I find that the petitioner's submission in this regard is without any merit.

23. In view of my conclusion that provisions of the Limitation Act are not applicable to an appeal arising out of an order u/s 6 of the said Act, I am not required to enter into the merits of the sufficiency of reasons given by the petitioner for condonation of long delay of 605 days occurred in filing appeal before the MRT. However, since both the learned counsel advanced submissions in this regard also, I am dealing with the same.

24. I have perused the petitioners' application for condonation of delay, which is annexed at Exhibit-B as well as the reasoned order given by MRT for refusing to condone the delay, which is at Exhibit-D. The petitioners have put forth two grounds as sufficient cause to condone the delay, namely

(a) The order of the Dy. Collector was not communicated to the Range Forest Officer, but it was communicated to the Dy. Conservator of Forest, Thane; and

(b) Due to over burden of work in the office of the Dy. Conservator of Forest, the clerk concerned did not brought to the notice of the DCF the said order and in tern the DCF could not bring the said order to the notice of the Range Forest Officer.

25. The Learned President of MRT considered the above two grounds in the light of observations of the Apex Court in (i) Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , (ii) N. Balakrishnan Vs. M. Krishnamurthy, , (iii) Laxman N. Devekar v. State of Maharashtra [1998 (I) MLJ 745] and (iv) P.K. Ramachandran Vs. State of Kerala and Another, .

The Apex Court in P.K. Ramchandra's case (supra) held that reasonable and satisfactory explanation is the pre-requisite to condone the delay. In the said case, the explanation offered was that office of the Advocate General was fed up with so many arbitration matters equally important to this case were pending for consideration. The Apex Court held that this cause pleaded for delay can hardly be said to be a reasonable, satisfactory or even a proper explanation seeking condonation of delay and consequently set aside the order of the High Court and rejected the application for condonation of delay. In Laxman Divekar's case (supra) the Division Bench of this Court held that the Court has no power to arbitrarily condone the delay in the name of substantial justice merely because the applicant happens to be the State. In paragraph 4 of that judgment, the Division Bench held that on general, vague and ambiguous averments that because of rush of the administrative work the appeal could not be filed within time, cannot be accepted as a sufficient cause. In the Collector, Anant Nag's case (supra) the Apex Court held that substantial justice needs to be preferred as against technical grounds. In N. Bal Krishna's case (supra) the Apex Court accepted the cause, namely, the delay was caused due to failure of advocate to inform appellant as well as his failure to take action, as a sufficient cause to condone the delay.

26. The petitioners' averments in the application for condonation of delay shows that due to overburden of work, the order could not be brought to the notice of the Dy. Conservator of Forests. The petitioners, however, have not filed any affidavit nor they have placed any material on record to substantiate the bare averments. The petitioners have not placed on record as to when the office of the Dy. Conservator of Forest received order passed u/s 6 of the said Act. There is nothing on record to show the movement of the order to various authorities from time to time. The averments in this regard are vague. It is not the case of the Petitioners that the delay occurred was due to acts of fraud or bad faith on the part of any officer of agent or that any officer acted contrary to the interest of the State. In the present case, the Range Forest Officer has admitted in the application for condonation of delay that the order was communicated to the Range Forest Officer on 1st December 1998. In the light of above, the finding given by MRT that the cause pleaded in the application itself shows negligence on the part of officers of the Forest Department, cannot be said to be arbitrary. Heavy work load as a cause of delay also cannot be accepted as sufficient cause to condone the delay.

27. Recently, Supreme Court in Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, has again re-iterated that all discretionary powers, especially the judicial powers, have to be exercised within reasonable bounds known to law. The discretion has to be exercised in a systematic manner informed by reason. Whims and fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers. It will be unreasonable to take away the vested rights of the other party when the delay is directly a result of negligence or default or inaction. The Apex Court held that the law of limitation is

substantial law and has definite consequences on the right and the obligations of the parties. The right which accrues in favour of one party should not be taken away for the mere asking. The Supreme Court further held that the concepts such as "liberal approach", "justice oriented approach" and "substantial justice" cannot be employed to jettison the substantial law of limitation.

28. Before parting with the judgment I must mention that the petitioners almost after concluding the arguments of both the sides filed an application which not even numbered. On 16/9/2011, the matter was extensively argued by the learned counsel for the respective parties, however, same was adjourned to 23/9/2011 at the request of learned counsel for the petitioner as he wanted to rely upon some judgments. On 23/9/2011, again at the request of learned AGP for the Petitioners matter was adjourned to 29/9/2011. On 29/9/2011, the petitioners filed an application which is not even numbered for amendment in petition. By the said application, the petitioners want to amend the petition in terms of Schedule annexed to that application. By the proposed amendment, the additional averments were made to condone the delay. In my view, the said amendment cannot be considered at the belated stage. In any case, the petitioners, at a very belated stage, cannot supply additional reasons for condemnation of delay. I am therefore not inclined to consider the same while deciding the issue involved in the petition.

29. In the light of aforesaid discussion. I find it difficult to interfere with the impugned order passed by the MRT. I find no merit in the petition and same is therefore dismissed. Rule is therefore discharged. There is no order as to costs.