BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH AT PUNE

ORIGINAL APPLICATION NO. 58 OF 2019 (WZ)

In the matter of:

Mangesh M. Parab …Original Applicant
Versus
M/s. New Monarch Builders and Contractors & Ors. …Respondents

COMPILATION OF JUDGMENTS ON THE ISSUE OF LIMITATION

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(2016) 1 Supreme Court Cases 332

(BEFORE DR A.K. SIKRI AND ROHINTON FALI NARIMAN, JJ.)

L.C. HANUMANTHAPPA (SINCE DEAD)
REPRESENTED BY HIS LEGAL
REPRESENTATIVES .. Appellant;

Versus

H.B. SHIVAKUMAR .. Respondent.

Civil Appeal No. 6595 of 2015†, decided on August 26, 2015

A. **Civil Procedure Code, 1908 — Or. 6 R. 17 — Amendment in plaint — Further relief added by way of amendment — If barred by limitation on date of grant of amendment — Determination of — Doctrine of relation back i.e. relating back the amendment to the date when the suit was originally filed — Applicability of — Governing principles as to, summarised**

— Appellant filing a suit on 9-3-1990 for permanent injunction against respondent-defendant — In appeal against dismissal of said suit, High Court vide judgment dated 28-3-2002 remanding the matter to trial court after allowing amendment in plaint regarding addition of further relief as to declaration of title to suit property — Said amendment was granted subject to plea of limitation that could be raised by defendant in its additional written statement

— In original written statement filed on 16-5-1990 defendant had clearly denied plaintiff's title to suit property — Thus, in view thereof, held, right to sue for declaration of title first arose on 16-5-1990 — In this way, period of limitation of 3 yrs for filing suit for declaration of title, as provided under Art. 58, Limitation Act, 1963, continued from 16-5-1990 till 15-5-1993 — Hence, relief as to declaration of title added by amendment in 2002, was barred by limitation — Suit rightly dismissed by High Court on ground of limitation

— As regards applicability of doctrine of relation back to present amendment, held, said doctrine is not applicable to present case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there were no special or extraordinary circumstances in instant case warranting application of doctrine of relation back whereby a legal right that had accrued (on ground of limitation) in favour of defendant should be taken away

— Doctrines and Maxims — Relation back — Applicability of, in case of amendment in pleadings — Limitation Act, 1963 — Ss. 3, 5 and Art. 58 — Property Law — Ownership and Title — Right to sue for declaration of title — When arose — Denial of title in written statement by defendant — Specific Relief Act, 1963, Ss. 34 and 35

† Arising out of SLP (C) No. 15513 of 2015. From the Judgment and Order dated 5-3-2015 of the High Court of Karnataka at Bangalore in RFA No. 796 of 2009

B. **Limitation Act, 1963 — Art. 58 — Suit for declaration or amendment of pleadings to incorporate relief of declaration — Commencement of limitation period — Change in statutory language as contained in Art. 120 of 1908 Act which provided that limitation would commence when "right to sue accrues" while Art. 58 vide 1963 Act providing therefor when "right to sue *first* accrues" — Incorporation of word "first" — Impact of, reiterated**

— Held, while enacting Art. 58 of the 1963 Act, the legislature has designedly made a departure from the language of Art. 120 of the 1908 Act — The word "first" has been used between the words "sue" and "accrued" — This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues — To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued

— Limitation Act, 1908 — Art. 120 — Property Law — Ownership and Title — Right to sue for declaration of title — When arose — Denial of title in written statement by defendant — Contract and Specific Relief — Specific Relief Act, 1963, Ss. 34 and 35

Dismissing the appeal, the Supreme Court

Held :

All amendments ought to be allowed which satisfy the two conditions: (*a*) of not working injustice to the other side, and (*b*) of being necessary for the purpose of determining the real questions in controversy between the parties. Thus, amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same: can the amendment be allowed without injustice to the other side, or can it not? Thus courts will, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice. There may be an exceptional class of cases where despite the fact that a legal right had accrued to the defendant by lapse of time, yet this consideration is outweighed by the special circumstances of the case, for example, that no new material fact needed to be added at all, and only an alternative prayer in law had necessarily to be made in view of the original plea in law being discarded. That however, is not true in the present case. (Paras 15, 19 and 20)

While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will

begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued. (Para 13)

In the present case, first, in the original written statement itself, which is dated 16-5-1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28-3-2002 had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. (Para 29)

Article 58 of the Limitation Act, 1963 would apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already existing relief for grant of permanent injunction. There can be no doubt that the right to sue for declaration of title first arose on the facts of the present case on 16-5-1990 when the original written statement clearly denied the plaintiff's title. By 16-5-1993 therefore a suit based on declaration of title would have become time-barred. Thus, the present amendment of the plaint is indeed time-barred. As regards the applicability of doctrine of relation back to the present amendment, the said doctrine would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, there is no infirmity in the impugned judgment of the High Court. (Paras 29 and 14)

Khatri Hotels (P) Ltd. v. *Union of India*, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484; *Pirgonda Hongonda Patil* v. *Kalgonda Shidgonda Patil*, 1957 SCR 595 : AIR 1957 SC 363; *Charan Das* v. *Amir Khan*, (1919-20) 47 IA 255 : (1921) 13 LW 49; *L.J. Leach & Co. Ltd.* v. *Jardine Skinner & Co.*, 1957 SCR 438 : AIR 1957 SC 357; *K. Raheja Constructions Ltd.* v. *Alliance Ministries*, 1995 Supp (3) SCC 17; *Vishwambhar* v. *Laxminarayan*, (2001) 6 SCC 163; *Siddalingamma* v. *Mamtha Shenoy*, (2001) 8 SCC 561; *Sampath Kumar* v. *Ayyakannu*, (2002) 7 SCC 559; *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit* v. *Ramesh Chander*, (2010) 14 SCC 596 : (2012) 1 SCC (Civ) 777; *Prithi Pal Singh* v. *Amrik Singh*, (2013) 9 SCC 576 : (2013) 4 SCC (Civ) 473, *explained* and *applied*

H.B. Shivakumar v. *L.C. Hanumanthappa*, 2015 SCC OnLine Kar 3860, *affirmed*

Kisandas Rupchand v. *Rachappa Vithoba Shilwant*, ILR (1909) 33 Bom 644, *held, approved*

L.C. Hanumanthappa v. *H.B. Shivakumar*, RFA No. 415 of 1999, decided on 28-3-2002 (KAR), *approved*

Bolo v. *Koklan*, (1929-30) 57 IA 325 : AIR 1930 PC 270 : (1930) 32 LW 338; *Annamalai Chettiar* v. *A.M.K.C.T. Muthukaruppan Chettiar*, ILR (1930) 8 Rang 645 : (1930-31) 58 IA 1 : (1931) 33 LW 30; *Gobinda Narayan Singh* v. *Sham Lal Singh*, (1930-31) 58 IA 125 : (1931) 33 LW 707; *Rukhmabai* v. *Lala Laxminarayan*, AIR 1960 SC 335 : (1960) 2 SCR 253; *Bakshish Singh* v. *Prithipal Singh*, 1995 Supp (3) SCC 577, *cited*

Prithi Pal Singh v. *Amrik Singh*, 2008 SCC OnLine P&H 267 : (2008) 3 RCR (Civ) 504, *held, affirmed*

Advocates who appeared in this case :

P. Vishwanatha Shetty, Senior Advocate (S.K. Kulkarni, M. Gireesh Kumar, Mahesh Thakur and Ankur S. Kulkarni, Advocates) for the Appellants;

Dr Aditya Sondhi, Senior Advocate (Chandan S. Rao, Vikas Mehta and Ms Anushree Menon, Advocates) for the Respondent.

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4. (2010) 14 SCC 596 : (2012) 1 SCC (Civ) 777, *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit* v. *Ramesh Chander* 346*b-c*
5. 2008 SCC OnLine P&H 267 : (2008) 3 RCR (Civ) 504, *Prithi Pal Singh* v. *Amrik Singh* 347*c*
6. (2002) 7 SCC 559, *Sampath Kumar* v. *Ayyakannu* 344*e-f*
7. RFA No. 415 of 1999, decided on 28-3-2002 (KAR), *L.C. Hanumanthappa* v. *H.B. Shivakumar* 336*g*, 338*e*, 338*f-g*, 347*d-e*
8. (2001) 8 SCC 561, *Siddalingamma* v. *Mamtha Shenoy* 344*c-d*, 345*e-f*
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10. 1995 Supp (3) SCC 577, *Bakshish Singh* v. *Prithipal Singh* 347*b*
11. 1995 Supp (3) SCC 17, *K. Raheja Constructions Ltd.* v. *Alliance Ministries* 342*c*
12. AIR 1960 SC 335 : (1960) 2 SCR 253, *Rukhmabai* v. *Lala Laxminarayan* 340*a-b*
13. 1957 SCR 595 : AIR 1957 SC 363, *Pirgonda Hongonda Patil* v. *Kalgonda Shidgonda Patil* 341*b-c*, 342*b-c*, 344*e*
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15. (1930-31) 58 IA 125 : (1931) 33 LW 707, *Gobinda Narayan Singh* v. *Sham Lal Singh* 340*a*
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18. (1919-20) 47 IA 255 : (1921) 13 LW 49, *Charan Das* v. *Amir Khan* 341*c*
19. ILR (1909) 33 Bom 644, *Kisandas Rupchand* v. *Rachappa Vithoba Shilwant* 340*f*

The Judgment of the Court was delivered by

ROHINTON FALI NARIMAN, J.— Leave granted.

2. The present case arises out of cross-suits filed by the parties. On 9-3-1990, one L.C. Hanumanthappa filed a suit against one H.B. Shivakumar for permanent injunction restraining the defendants, his servants and agents from disturbing the peaceful possession and enjoyment of the suit schedule property. In this suit, namely, OS No. 1386 of 1990 filed before the City Civil Court, Bangalore, the plaintiff averred that he is the absolute owner, and in lawful possession and enjoyment of the suit property. He also averred in the said suit that the schedule property is clearly distinguishable and could be identified without difficulty. According to the plaintiff, the cause of action arose when the defendant tried to trespass on the schedule property two days before the suit was filed.

3. Within a few days from the filing of this suit, the defendant in the first suit filed a suit being suit number OS No. 1650 of 1990 in the City Civil Court at Bangalore against one L.C. Ramaiah and the said Shri Hanumanthappa stating that the defendants had attempted to trespass into the suit schedule property about 15 days prior to the suit being filed, and asked

for a permanent injunction against the said defendants restraining them from interfering with the peaceful possession and enjoyment of the suit schedule property. The plaintiff also claimed to be the owner in possession of the suit schedule property.

4. In the written statement to OS No. 1386 of 1990 dated 16-5-1990, the defendant not only referred to his own suit which had by then already been filed, but specifically stated as follows:

> "4. The boundaries furnished by the plaintiff to old Survey Site No. 13, in the plaint schedule is totally false and that has nothing to do with the boundaries mentioned in his document.
>
> 5. The plaintiff has failed to establish any relationship between old Site No. 13 and Corporation No. 12/2, as claimed by him in the plaint.
>
> 6. The allegations that at the time of the purchase of the schedule property by the plaintiff, western boundary was a building site bearing No. 14 and however subsequently the said portion left for building site has been converted as road and is being used as such since several years are false and further it is false to state that the east of the schedule property bearing Building Site No. 12 is situate and the same was belonging to one H. Venkataramanappa and however, the said site has been sold by him and now the said property is owned by one Sri Ahmadullah Khan and he has constructed a building thereon, as alleged in Para 2 of the plaint.
>
> 7. The plaintiff has purposefully distorted the boundary of his old Site No. 13 to bring substantially the boundaries of Site No. 15, old 3, CTS No. 1157 (city survey) which exclusively belongs to the defendant.
>
> * * *
>
> 13. The suit for injunction is not maintainable in that, he has failed to establish title with possession over old Site No. 13, and that is not establishing any connection between old Site No. 13, and new Site No. 12/2, alleged to be assigned by Bangalore City Corporation on about 6-6-1989."

5. It can thus be seen that on 16-5-1990 itself the plaintiff in OS No. 1386 of 1990 was put on notice that his suit for injunction was not maintainable as he had failed to establish title over the suit schedule property.

6. Both the suits were tried together, and by a judgment dated 10-3-1999, the Court of Additional City Civil Judge at Bangalore decreed OS No. 1650 of 1990 and dismissed OS No. 1386 of 1990. In the first appeals filed against the said judgment, the High Court of Karnataka by its judgment dated 28-3-2002[1] allowed RFA No. 415 of 1999, and dismissed RFA No. 456 of 1999, and remanded the matter back to the trial court for fresh consideration. The High Court while remanding the matter observed as follows:

> "*10*. The trial court had also appointed the Commissioner. The Commissioner after inspecting the properties has given his report. The Commissioner has also been examined as PW 2. From looking into the pleadings and the evidence adduced by the parties, it is crystal clear that

1 *L.C. Hanumanthappa* v. *H.B. Shivakumar*, RFA No. 415 of 1999, decided on 28-3-2002 (KAR)

the dispute is in respect of the identity of two properties and to declare right and title over the properties. The respondent in this case has not disputed the sale deed which stands in the name of the appellant. Since the defendant is disputing existence of the suit schedule property, the present application is filed for declaration of his title. The respondent has resisted the application, contending that the relief sought for by the appellant is barred by limitation and that relief sought by way of limitation. However, such a plea can be raised by the respondents by filing additional written statement. Considering the fact that the dispute in respect of an immovable property and question of identification of two properties have been involved, as the defendant is also not disputing the sale deed of the appellant, this Court to allow the application filed by the appellant for amendment of plaint seeking additional evidence.

11. Accordingly, RFA No. 415 of 1999 is allowed. The judgment and decree passed in OS No. 1386 of 1990, is set aside. The matter is remanded to the trial court to hold fresh enquiry after giving reasonable opportunities to both the parties. The defendant is entitled to file an additional written statement and also entitled to raise the question of limitation. The trial court shall dispose of the suit within six (6) months from today in accordance with law. The judgment and decree passed in OS No. 1650 of 1990, which is the subject-matter of RFA No. 415 of 1999 is concerned, there is no need for this Court to disturb the decree of injunction and that the decree that may be passed in OS No. 1386 of 1990 by the trial court will have a bearing on the judgment and decree in OS No. 1650 of 1990. In the event of the appellant succeeding in OS No. 1386 of 1990, the judgment and decree passed in OS No. 1650 of 1990 in favour of Shivakumar for bare injunction will be unenforceable against the appellant Hanumanthappa. However, it is made clear till the disposal of OS No. 1386 of 1990, the respondent-plaintiff Shivakumar in OS No. 1650 of 1990 is hereby directed to maintain status quo. If such an order is not passed, the respondent-plaintiff Shivakumar may proceed with the construction and if he is allowed to construct and in the event the appellant succeeds in OS No. 1386 of 1990, then it will lead to multiplicity of proceedings. Therefore, it is necessary to direct the respondents to maintain status quo."

7. On 1-4-2002, the plaintiff in OS No. 1386 of 1990 then sought to amend the plaint in terms of the said judgment by adding Para 5-A to the plaint in which the plaintiff stated:

"5-A. The plaintiff submits that the defendant has no manner of right, title and interest in the plaint schedule property. The defendant has denied the title of the plaintiff in respect of the suit schedule property. Hence, it is just and essential to declare that the plaintiff is absolute owner in possession of the schedule property. If the declaration as sought is not granted, the plaintiff who is the absolute owner from 5-5-1956 and enjoying the property as absolute owner thereof, will be put in great loss and prejudice. On the other hand no hardship or prejudice will be caused to the defendant if the declaration as sought is granted."

8. A decree for declaration of title to the suit schedule property was then added as a prayer to the amended plaint. On 1-8-2002, the defendant filed an additional written statement in which the defendant stated that the said plea based on a new cause of action, namely, declaration of title, was time-barred.

9. After remand, by its judgment and decree dated 16-4-2009, the City Civil Court at Bangalore decreed the suit OS No. 1386 of 1990. It turned down the plea of limitation by stating that since in the original written statement the defendant had admitted the title of plaintiff Hanumanthappa, and only in the written statement dated 1-8-2002 was title denied for the first time after the amendment of the plaint was moved, the relief of declaration claimed by the plaintiff would be within the period of limitation.

10. In RFA No. 796 of 2009, by the impugned judgment dated 5-3-2015[2], the High Court reversed the said judgment on limitation stating that the original written statement filed on 16-5-1990 had clearly stated that the plaintiff did not have the necessary title to the suit schedule property, and as the amendment of the plaint was moved long after three years from 16-5-1990, it was clear that it was time-barred. OS No. 1386 of 1990 was thus dismissed on limitation alone. The High Court also turned down the plea with reference to Section 22 of the Limitation Act, 1963 stating that on the facts of the present case limitation could not be extended because the wrong in the present case was not a continuing wrong.

11. The learned counsel for the appellant has argued that once an amendment to the plaint is allowed, it necessarily relates back to the date on which the plaint was originally filed, and since the amendment was allowed in the present case by the judgment dated 28-3-2002[1], the said amendment related back to 9-3-1990 when the suit was originally filed. He further argued that the suit was based on title, and the title of the plaintiff was admitted in Para 2 of the original written statement, as was held by the trial court in its judgment dated 16-4-2009. He, therefore, submitted that the impugned judgment ought to be set aside. However, he did not press the plea of continuing wrong on the facts of the present case.

12. The learned counsel for the respondent, on the other hand, argued that the plaintiff's title was clearly denied in the original written statement and three years having elapsed from the said date, the amendment was obviously time-barred. Further, the judgment dated 28-3-2002[1] itself made it clear that the amendment was allowed subject to the plea of limitation being raised. He further argued that the amendment made introduced a completely new cause of action based on fresh facts and therefore any amendment made could not possibly relate back as such amendment would be clearly time-barred.

13. We have heard the learned counsel for the parties. It is not disputed that Article 58 of the Limitation Act would apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already

2 *H.B. Shivakumar* v. *L.C. Hanumanthappa*, 2015 SCC OnLine Kar 3860

1 *L.C. Hanumanthappa* v. *H.B. Shivakumar*, RFA No. 415 of 1999, decided on 28-3-2002 (KAR)

existing relief for grant of permanent injunction. In *Khatri Hotels (P) Ltd.* v. *Union of India*[3], this Court while construing Article 58 of the Limitation Act held as follows: (SCC pp. 138-39, paras 25-30)

"*25*. Article 58 of the Schedule to the 1963 Act, which has a bearing on the decision of this appeal, reads as under:

'**THE SCHEDULE**

PERIOD OF LIMITATION

[*See* Sections 2(*j*) and 3]

First Division—Suits

'*Description of suit*	*Period of limitation*	*Time from which period begins to run*
*	*	*
PART III — Suits Relating to Declarations		
*	*	*
58. To obtain any other declaration.	Three years	When the right to sue first accrues.'

26. Article 120 of the Schedule to the Limitation Act, 1908 (for short 'the 1908 Act') which was interpreted in the judgment relied upon by Shri Rohatgi reads as under:

'*Description of suit*	*Period of limitation*	*Time from which period begins to run*
*	*	*
120. Suit for which no period of limitation is provided elsewhere in this Schedule.	Six years	When the right to sue accrues.'

27. The differences which are discernible from the language of the above reproduced two articles are:

(*i*) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years, and

(*ii*) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

28. Article 120 of the 1908 Act was interpreted by the Judicial Committee in *Bolo* v. *Koklan*[4] and it was held: (IA p. 331)

'There can be no "right to sue" until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and

3 (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484

4 (1929-30) 57 IA 325 : AIR 1930 PC 270 : (1930) 32 LW 338

unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.'

The same view was reiterated in *Annamalai Chettiar* v. *A.M.K.C.T. Muthukaruppan Chettiar*[5] and *Gobinda Narayan Singh* v. *Sham Lal Singh*[6].

29. In *Rukhmabai* v. *Lala Laxminarayan*[7], the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (AIR p. 349, para 33)

'*33*. … The right to sue under Article 120 of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.'

30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word 'first' has been used between the words 'sue' and 'accrued'. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued."

14. Given this statement of the law, it is clear that the present amendment of the plaint is indeed time-barred in that the right to sue for declaration of title first arose on 16-5-1990 when in the very first written statement the defendant had pleaded, in Para 13 in particular, that the suit for injunction simpliciter is not maintainable in that the plaintiff had failed to establish title with possession over the suit property. The only question that remains to be answered is in relation to the doctrine of relation back insofar as it applies to amendments made under Order 6 Rule 17 of the Code of Civil Procedure.

15. As early as in the year 1909, the Bombay High Court in *Kisandas Rupchand* v. *Rachappa Vithoba Shilwant*[8], held as follows: (ILR p. 655)

"… All amendments ought to be allowed which satisfy the two conditions: (*a*) of not working injustice to the other side, and (*b*) of being necessary for the purpose of determining the real questions in controversy between the parties … but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would

5 ILR (1930) 8 Rang 645 : (1930-31) 58 IA 1 : (1931) 33 LW 30
6 (1930-31) 58 IA 125 : (1931) 33 LW 707
7 AIR 1960 SC 335 : (1960) 2 SCR 253
8 ILR (1909) 33 Bom 644

cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same: can the amendment be allowed without injustice to the other side, or can it not?"

16. This statement of the law was expressly approved by a three-Judge Bench of this Court in *Pirgonda Hongonda Patil* v. *Kalgonda Shidgonda Patil*[9] SCR pp. 603-04.

17. Twenty years later, the Privy Council in *Charan Das* v. *Amir Khan*[10], stated the law as follows: (IA p. 262)

> "… That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases … where such considerations are outweighed by the special circumstances of the case…."

18. This statement of the law was cited with approval in *L.J. Leach & Co. Ltd.* v. *Jardine Skinner & Co.*[11] SCR pp. 450-51.

19. The facts in the aforesaid case were that the plaintiffs had, on the basis of the material facts stated in the plaint, claimed damages on the basis of the tort of conversion. It had been held by the courts below that on the pleading and on the evidence such claim must fail. At the stage of arguments in the Supreme Court, the plaintiff applied to the Supreme Court for amendment of the plaint by raising an alternative plea on the same set of facts, namely, a claim for damages for breach of contract for non-delivery of the goods. The respondents in that case resisted the said plea for amendment, stating that a suit based on this new cause of action would be barred by limitation. This Court, while allowing the said amendment, stated that no change needs to be made in the material facts pleaded before the court all of which were there in support of the amended prayer. In any case, the prayer in the plaint as it originally stood was itself general and merely claimed damages. Thus, all the allegations which were necessary for sustaining a claim of damages for breach of contract were already there in the plaint. The only thing that was lacking was the allegation that the plaintiffs were in the alternative entitled to claim damages for breach of contract. In the facts of the said case, this Court held: (*L.J. Leach case*[11], SCR p. 450 : AIR p. 362, para 16)

> "*16*. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken

9 1957 SCR 595 : AIR 1957 SC 363
10 (1919-20) 47 IA 255 : (1921) 13 LW 49
11 1957 SCR 438 : AIR 1957 SC 357

into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice."

20. It is clear that this case belonged to an exceptional class of cases where despite the fact that a legal right had accrued to the defendant by lapse of time, yet this consideration was outweighed by the special circumstances of the case, namely, that no new material fact needed to be added at all, and only an alternative prayer in law had necessarily to be made in view of the original plea in law being discarded.

21. Similar is the case with *Pirgonda Hongonda Patil*[9]. Here again it was held that the amendment did not really introduce a new fact at all, nor did the defendant have to meet a new claim set up for the first time after the expiry of the period of limitation.

22. In *K. Raheja Constructions Ltd.* v. *Alliance Ministries*[12], this Court was seized with a belated application to amend a plaint filed for permanent injunction. Seven years after it was filed, an amendment application was moved seeking to amend the plaint to one for specific performance of contract. In turning down such amendment on the ground that it was time-barred, this Court held: (SCC pp. 18-19, para 4)

> "*4*. It is seen that the permission for alienation is not a condition precedent to file the suit for specific performance. The decree of specific performance will always be subject to the condition to the grant of the permission by the competent authority. The petitioners having expressly admitted that the respondents have refused to abide by the terms of the contract, they should have asked for the relief for specific performance in the original suit itself. Having allowed the period of seven years to elapse from the date of filing of the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963, any amendment on the grounds set out, would defeat the valuable right of limitation accruing to the respondent."

23. Similarly, in *Vishwambhar* v. *Laxminarayan*[13], in a suit originally filed for recovery of possession, an amendment was sought to be made after the limitation period had expired, for a prayer of declaration that certain sale deeds be set aside. This was repelled by this Court as follows: (SCC pp. 168-69, paras 9-10)

> "*9*. On a fair reading of the plaint, it is clear that the main fulcrum on which the case of the plaintiffs was balanced was that the alienations made by their mother-guardian Laxmibai were void and therefore, liable to be ignored since they were not supported by legal necessity and without permission of the competent court. On that basis, the claim was made that the alienations did not affect the interest of the plaintiffs in the suit property. The prayers in the plaint were inter alia to set aside the sale deeds dated 14-11-1967 and 24-10-1974, recover possession of the

9 *Pirgonda Hongonda Patil* v. *Kalgonda Shidgonda Patil*, 1957 SCR 595 : AIR 1957 SC 363
12 1995 Supp (3) SCC 17
13 (2001) 6 SCC 163

properties sold from the respective purchasers, partition of the properties carving out separate possession of the share from the suit properties of the plaintiffs and deliver the same to them. As noted earlier, the trial court as well as the first appellate court accepted the case of the plaintiffs that the alienations in dispute were not supported by legal necessity. They also held that no prior permission of the court was taken for the said alienations. The question is, in such circumstances, are the alienations void or voidable? In Section 8(2) of the Hindu Minority and Guardianship Act, 1956, it is laid down, inter alia, that the natural guardian shall not, without previous permission of the court, transfer by sale any part of the immovable property of the minor. In sub-section (3) of the said section, it is specifically provided that any disposal of immovable property by a natural guardian, in contravention of sub-section (2) is voidable at the instance of the minor or any person claiming under him. There is, therefore, little scope for doubt that the alienations made by Laxmibai which are under challenge in the suit were voidable at the instance of the plaintiffs and the plaintiffs were required to get the alienations set aside if they wanted to avoid the transfers and regain the properties from the purchasers. As noted earlier in the plaint as it stood before the amendment the prayer for setting aside the sale deeds was not there, such a prayer appears to have been introduced by amendment during hearing of the suit and the trial court considered the amended prayer and decided the suit on that basis. If in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold, then a suit without such a prayer was of no avail to the plaintiffs. In all probability, realising this difficulty the plaintiffs filed the application for amendment of the plaint seeking to introduce the prayer for setting aside the sale deeds. Unfortunately, the realisation came too late. Concededly, Plaintiff 2 Digamber attained majority on 5-8-1975 and Vishwambhar, Plaintiff 1 attained majority on 20-7-1978. Though the suit was filed on 30-11-1980 the prayer seeking setting aside of the sale deeds was made in December 1985. Article 60 of the Limitation Act prescribes a period of three years for setting aside a transfer of property made by the guardian of a ward, by the ward who has attained majority and the period is to be computed from the date when the ward attains majority. Since the limitation started running from the dates when the plaintiffs attained majority the prescribed period had elapsed by the date of presentation of the plaint so far as Digamber is concerned. Therefore, the trial court rightly dismissed the suit filed by Digamber. The judgment of the trial court dismissing the suit was not challenged by him. Even assuming that as the suit filed by one of the plaintiffs was within time the entire suit could not be dismissed on the ground of limitation, in the absence of challenge against the dismissal of the suit filed by Digamber the first appellate court could not have interfered with that part of the decision of the trial court. Regarding the suit filed by Vishwambhar, it was filed within the prescribed period of limitation but without the prayer for setting aside the sale deeds. Since the claim for recovery of possession of the properties alienated could not

have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December 1985) by introducing such a prayer by amendment of the plaint the prescribed period of limitation for seeking such a relief had elapsed. In the circumstances, the amendment of the plaint could not come to the rescue of the plaintiff.

10. From the averments of the plaint, it cannot be said that all the necessary averments for setting aside the sale deeds executed by Laxmibai were contained in the plaint and adding specific prayer for setting aside the sale deeds was a mere formality. As noted earlier, the basis of the suit as it stood before the amendment of the plaint was that the sale transactions made by Laxmibai as guardian of the minors were ab initio void and, therefore, liable to be ignored. By introducing the prayer for setting aside the sale deeds the basis of the suit was changed to one seeking setting aside the alienations of the property by the guardian. In such circumstance, the suit for setting aside the transfers could be taken to have been filed on the date the amendment of the plaint was allowed and not earlier than that."

24. In *Siddalingamma* v. *Mamtha Shenoy*[14], this Court held while allowing an amendment of the plaint in a case of bona fide requirement of the landlord that the doctrine of relation back would apply to all amendments made under Order 6 Rule 17 of the Code of Civil Procedure, which generally governs amendment of pleadings, unless the court gives reasons to exclude the applicability of such doctrine in a given case. No question of limitation was argued on the facts in that case which would therefore be in the category of cases which would follow the line of judgments which state that costs can usually compensate for an amendment that is made belatedly but within the period of limitation, it not being an exceptional case such as those contained in the two judgments *L.J. Leach & Co. Ltd.*[11] and *Pirgonda Hongonda Patil*[9] cited above.

25. In *Sampath Kumar* v. *Ayyakannu*[15], this Court was faced with an application for amendment made 11 years after the date of the institution of the suit to convert through amendment a suit for permanent prohibitory injunction into a suit for declaration of title and recovery of possession. This Court held: (SCC pp. 562-64, paras 7 & 9-11)

"*7*. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the trial court, it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new

14 (2001) 8 SCC 561
11 *L.J. Leach & Co. Ltd.* v. *Jardine Skinner & Co.*, 1957 SCR 438 : AIR 1957 SC 357
9 *Pirgonda Hongonda Patil* v. *Kalgonda Shidgonda Patil*, 1957 SCR 595 : AIR 1957 SC 363
15 (2002) 7 SCC 559

suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

* * *

9. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the court on the date on which the application seeking the amendment was filed. (See observations in *Siddalingamma* v. *Mamtha Shenoy*[14].)

11. In the present case the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new

14 (2001) 8 SCC 561

relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed."

26. It is clear that on the facts in the above case the amendment was allowed subject to the plea of limitation which could be taken up by the defendant when the trial in the case proceeds.

27. In *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit* v. *Ramesh Chander*[16], this Court considered a suit which was originally filed for declaration of ownership of land and for permanent injunction. The suit had been filed on 11-2-1991. An amendment application was moved under Order 6 Rule 17 of the Code of Civil Procedure on 16-12-2002 for inclusion of the relief of specific performance of contract. This Court in no uncertain terms refused the midstream change made in the suit, and held: (SCC pp. 602-03, paras 24-25 & 32)

"*24*. In the present case, the factual situation is totally different and the appellants have not filed any suit for specific performance against the first respondent within the period of limitation. In this context, the provision of Article 54 of the Limitation Act is very relevant. The period of limitation prescribed in Article 54 for filing a suit for specific performance is three years from the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.

25. Here admittedly, no date has been fixed for performance in the agreement for sale entered between the parties in 1976. But definitely by its notice dated 3-2-1991, the first respondent has clearly made its intentions clear about refusing the performance of the agreement and cancelled the agreement.

* * *

32. Even though the prayer for amendment to include the relief of specific performance was made about 11 years after the filing of the suit, and the same was allowed after 12 years of the filing of the suit, such an amendment in the facts of the case cannot relate back to the date of filing of the original plaint, in view of the clear bar under Article 54 of the Limitation Act. Here in this case, the inclusion of the plea of specific performance by way of amendment virtually alters the character of the suit, and its pecuniary jurisdiction had gone up and the plaint had to be transferred to a different court. This Court held in *Vishwambhar* v. *Laxminarayan*[13], if as a result of allowing the amendment, the basis of the suit is changed, such amendment even though allowed, cannot relate

16 (2010) 14 SCC 596 : (2012) 1 SCC (Civ) 777
13 (2001) 6 SCC 163

back to the date of filing the suit to cure the defect of limitation (SCC at pp. 168-69, para 9). Those principles are applicable to the present case."

28. In *Prithi Pal Singh* v. *Amrik Singh*[17], this Court was concerned with a suit claiming pre-emption under the Punjab Pre-emption Act, 1913. An amendment was sought to the plaint claiming that the plaintiff was entitled to relief as a co-sharer of the suit property. This Court after considering some of its earlier judgments held: (SCC p. 583, para 11)

> "*11.* In our opinion, there is no merit in the submissions of the learned counsel. A reading of the order[18] passed by this Court shows that the application for amendment filed by Respondent 2 was allowed without any rider/condition. Therefore, it is reasonable to presume that this Court was of the view that the amendment in the plaint would relate back to the date of filing the suit. That apart, the learned Single Judge[19] has independently considered the issue of limitation and rightly concluded that the amended suit was not barred by time."

29. Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original written statement itself dated 16-5-1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. A reading of an isolated paragraph in the written statement, namely, Para 2 by the trial court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28-3-2002[1] had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. There can be no doubt that on an application of *Khatri Hotels (P) Ltd.*[3], the right to sue for declaration of title first arose on the facts of the present case on 16-5-1990 when the original written statement clearly denied the plaintiff's title. By 16-5-1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the impugned judgment[2] of the High Court. The present appeal is accordingly dismissed.

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17 (2013) 9 SCC 576 : (2013) 4 SCC (Civ) 473

18 *Bakshish Singh* v. *Prithipal Singh*, 1995 Supp (3) SCC 577

19 *Prithi Pal Singh* v. *Amrik Singh*, 2008 SCC OnLine P&H 267 : (2008) 3 RCR (Civ) 504

1 *L.C. Hanumanthappa* v. *H.B. Shivakumar*, RFA No. 415 of 1999, decided on 28-3-2002 (KAR)

3 *Khatri Hotels (P) Ltd.* v. *Union of India*, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484

2 *H.B. Shivakumar* v. *L.C. Hanumanthappa*, 2015 SCC OnLine Kar 3860

(2011) 9 Supreme Court Cases 126

(BEFORE G.S. SINGHVI AND H.L. DATTU, JJ.)

KHATRI HOTELS PRIVATE LIMITED AND ANOTHER .. Appellants;

Versus

UNION OF INDIA AND ANOTHER .. Respondents.

Civil Appeal No. 7773 of 2011†, decided on September 9, 2011

A. **Limitation Act, 1963 — Art. 58 and S. 5 — Suit for declaration and permanent injunction for restraining interference with possession of immovable property — Cause of action — When right to sue first accrues — Art. 58 of 1963 Act vis-à-vis Art. 120 of 1908 Act — Relative scope — Suit filed in year 2000 for permanent injunction restraining Delhi Municipal Corporation and Delhi Development Authority (DDA) from interfering with plaintiffs' possession of suit land — In written statement filed in 1990 defendants averred that suit land belonged to Gaon Sabha and with urbanisation of the village, by notification issued under S. 507 of DMC Act, same automatically vested in Central Government and by another notification issued in 1974 under S. 22(1) of DDA Act, Central Government transferred the entire land including the suit land to DDA — Held, plaintiffs' right, if any, over the suit land stood violated with issue of notification under S. 507 of DMC Act and in any case, notification under S. 22(1) of DDA Act or at least on receipt of written statement filed by DDA in 1990 — Cause of action thus deemed to have accrued in December 1990 and therefore, suit filed in 2000 was barred by time — Municipalities — Delhi Municipal Corporation Act, 1957 (66 of 1957) — S. 507(a) — Delhi Development Act, 1957 (61 of 1957) — S. 22(1) — Delhi Land Reforms Act, 1954 (8 of 1954) — S. 150(3) — Specific Relief Act, 1963 — Ss. 38, 41, 34, 5 and 6 — Limitation — Limitation Act, 1908, Art. 120 (Paras 30 and 31)**

B. **Limitation Act, 1963 — Art. 58 and S. 5 — Suit for declaration and permanent injunction for restraining interference with possession of immovable property — Art. 58 of 1963 Act vis-à-vis Art. 120 of 1908 Act — Relative scope — Cause of action — "When right to sue first accrues" — "First accrues" — Meaning — Successive violation of right will not give rise to fresh cause of action — Limitation Act, 1908, Art. 120**

Held :

While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued. (Para 30)

† Arising out of SLP (C) No. 22126 of 2009. From the Judgment and Order dated 21-8-2009 of the High Court of Delhi at New Delhi in RFA No. 123 of 2009

Rukhmabai v. *Lala Laxminarayan*, AIR 1960 SC 335 : (1960) 2 SCR 253; *Bolo* v. *Koklan*, (1929-30) 57 IA 325 : AIR 1930 PC 270; *Annamalai Chettiar* v. *Muthukaruppan Chettiar*, ILR (1930) 8 Rang 645, *approved*

Gobinda Narayan Singh v. *Sham Lal Singh*, (1930-31) 58 IA 125, *relied on*

C. **Specific Relief Act, 1963 — Ss. 34, 38(3) and 41(i) — Suit for declaration and permanent injunction — Conduct of plaintiff — Abuse of process of court — Plaintiff not approaching court with clean hands — Suit filed to secure judicial approval of illegal occupation of public land — Suit filed by appellant-plaintiffs for permanent injunction restraining Delhi Municipal Corporation and Delhi Development Authority from interfering with plaintiffs' possession of suit land — Defendants' plea that plaintiffs had no right, title and interest in suit land as it belonged to Gram Sabha and on urbanisation of the village, it automatically stood vested in Central Government under S. 150(3) of Delhi Land Reforms Act and later Central Government by notification transferred it to DDA under S. 22(1) of Delhi Development Act — Plaintiffs' claim that suit land not part of Gram Sabha but formed part of land purchased by them not substantiated by documents adduced by them i.e. site plan, demarcation report and aks shijra — Trial court found that under garb of suit plaintiffs purported to challenge government notification without specifically challenging the same as entries made in revenue records were made pursuant to the notification — Plaintiffs unauthorisedly occupied suit land and raised construction thereon despite interim injunction issued by High Court and without obtaining permission from competent authority — Plaintiffs had not approached court with clean hands — Held, trial court rightly declined to grant permanent injunction and High Court rightly refused to interfere therewith — Government Grants, Largesse, Public Premises and Property — Illegal/Unauthorised occupation of public premises (Paras 32 to 39)**

Rajinder Kakkar v. *DDA*, (1994) 54 DLT 484; *Lal Chand* v. *MCD*, RFA No. 651 of 2003 order dated 24-11-2008 (Del); *Union of India* v. *Sher Singh*, (1997) 3 SCC 555, *referred to*

Khatri Hotels (P) Ltd. v. *Union of India*, (2009) 163 DLT 226, *affirmed*

D. **Constitution of India — Art. 136 — Costs — Abuse of process of court — Exemplary/Punitive costs — Appellant-plaintiffs' suit for permanent injunction restraining Delhi Municipal Corporation and Delhi Development Authority from interfering with possession of suit land — Appellants found to have encroached on public land and also abused process of court in order to retain possession — Held, appellants must be saddled with cost, quantified at Rs 5 lakhs — Out of this Rs 2.5 lakhs to be deposited with Supreme Court Legal Services Committee within two months and balance amount of Rs 2.5 lakhs to be deposited with Delhi State Legal Services Committee within two months — In case of failure to deposit the same, Secretaries of the two Committees shall be entitled to recover the same as arrears of land revenue — Civil Procedure Code, 1908 — Ss. 35-B and 35 — Government Grants, Largesse, Public Premises and Property — Illegal/Unauthorised occupation of public premises (Para 41)**

E. **Civil Suit — Witnesses — Plaintiff though cited as witness not stepping into witness box — Adverse inference from, drawn — Evidence Act, 1872, S. 114 Ill. (g) and S. 106 (Para 35)**

Appeal dismissed with costs R-D/48586/CV

Advocates who appeared in this case :

Harin P. Raval, Additional Solicitor General, Mukul Rohatgi, Amarendera Sharan, Senior Advocates (Sushil Kr. Jain, Ashish Aggarwal, Ms Anuradha Jain, M.C. Dhingra, Ashwani Kumar, Ms Iti Sharma, Ms Indra Sawhney, Naresh Kaushik, Ms Sushma Suri, Harsh N. Parekh and Anando Mukherjee, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2009) 163 DLT 226, *Khatri Hotels (P) Ltd.* v. *Union of India* 128*d-e*
2. RFA No. 651 of 2003 order dated 24-11-2008 (Del), *Lal Chand* v. *MCD* 134*a*, 142*b*, 145*a*
3. (1997) 3 SCC 555, *Union of India* v. *Sher Singh* 135*a-b*
4. (1994) 54 DLT 484, *Rajinder Kakkar* v. *DDA* 132*g-h*, 137*a*, 145*c-d*
5. AIR 1960 SC 335 : (1960) 2 SCR 253, *Rukhmabai* v. *Lala Laxminarayan* 137*e*, 139*c-d*, 139*d*
6. (1930-31) 58 IA 125, *Gobinda Narayan Singh* v. *Sham Lal Singh* 139*c-d*
7. ILR (1930) 8 Rang 645, *Annamalai Chettiar* v. *Muthukaruppan Chettiar* 139*c-d*
8. (1929-30) 57 IA 325 : AIR 1930 PC 270, *Bolo* v. *Koklan* 139*b-c*

The Judgment of the Court was delivered by

G.S. SINGHVI, J.— Leave granted. This is an appeal for setting aside the judgment dated 21-8-2009[1] of the learned Single Judge of the Delhi High Court whereby he dismissed the appeal preferred by the appellants against the judgment and decree passed by the Additional District Judge No. 13 (Central), Delhi (hereinafter described as "the trial court") in a suit for declaration of title, mandatory and permanent injunction filed by them.

2. The suit land belonged to the Gaon Sabha of Village Kishangarh and formed part of the revenue estate of that village. By Notification dated 28-5-1966 issued under Section 507(*a*) of the Delhi Municipal Corporation Act, 1957 (for short "the DMC Act"), Municipal Corporation of Delhi (for short "the Corporation"), with the previous approval of the Central Government, declared that the localities mentioned in the schedule forming part of the rural areas shall cease to be the rural areas. The area of Village Kishangarh (Mehrauli) was shown at Serial No. 37 under the heading "South Zone, Delhi". As a consequence of this and by virtue of Section 150(3) of the Delhi Land Reforms Act, 1954 (for short "the Land Reforms Act"), the suit land stood automatically vested in the Central Government. After eight years, the same was transferred by the Central Government to the Delhi Development Authority (for short "DDA") vide Notification dated 20-8-1974 issued under Section 22(1) of the Delhi Development Act, 1957 (for short "the DD Act") for the purpose of development and maintenance as green.

1 *Khatri Hotels (P) Ltd.* v. *Union of India*, (2009) 163 DLT 226

3. The relevant portions of that notification are extracted below:

"MINISTRY OF WORKS & HOUSING

New Delhi, 20-8-1974

S.O. 2190 — Whereas the terms and conditions upon which nazul lands specified in the schedule annexed below will be taken over by the Delhi Development Authority have been agreed upon between the Central Government and the Authority.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 22 of the Delhi Development Act, 1957 (61 of 1957), the Central Government hereby places with immediate effect, the lands which had vested in the Central Government on the urbanisation of the villages specified in the said schedule at the disposal of the Delhi Development Authority for the purpose of development and maintenance of the said lands as green and for taking such steps as may be required to serve the said purpose, subject to the condition that the Delhi Development Authority shall not make, or cause, or permit to be made any constructions on the said lands and shall when required by the Central Government so to do, replace the said lands or any portion thereof as may be so required, at the disposal of the Central Government.

SCHEDULE

Sl. No.	*Name of the village*
17.	Mehrauli (Kishangarh)

(F. No. 13021/370-II)
S. Chaudhary
Joint Secretary"

4. Appellant 2, Lal Chand and his three brothers, namely, S/Shri Ran Singh, Dhannu and Surat Singh, who claim to have purchased land comprised in Khasra Nos. 2728/1674/2 and 2728/1674/3 total measuring 4 bighas 4 biswas from Om Prakash and Mahinder Pal (sons of Parma Nand), Tej Nath, Tej Prakash, Gokal Chand and Ram Dhan by registered sale deed dated 15-10-1963 encroached upon the suit land, raised construction and started a restaurant under the name and style "Sahara Restaurant". With a view to secure judicial approval of the illegal occupation of the suit land, Appellant 2 Lal Chand filed Suit No. 2576 of 1990 in the Delhi High Court for grant of permanent injunction against the Corporation and DDA by asserting that he is the co-owner of House No. 80, Ward No. 9, Kishangarh, Mehrauli, which forms part of Khasra No. 1674 and was purchased vide registered sale deed dated 10-10-1963; that the suit premises comprise of 3 rooms and one hall surrounded by a boundary wall; that the entire superstructure is in existence for last over 15 years; that he has been residing in the suit premises and is paying property tax since 1968-1969; that the suit land has not been acquired; that the officials of the Corporation and DDA came to the suit premises along with the Tahsildar on 10-8-1990 without serving any notice and threatened to demolish the superstructure on the ground that the same is unauthorised. According to Appellant 2, when he questioned the jurisdiction of the Corporation and DDA to take action for

demolition of the structures, the officials went away with the threat that they will come again with the police force and demolish the same.

5. Para 10 of the plaint and Prayer (*a*), which have a bearing on the decision of this appeal are reproduced below:

"*10.* That the cause of action accrued in favour of the plaintiff against the defendants on 10-8-1990 when the officials of the defendants came to the suit premises and threatened to demolish the same. The cause of action is continuing till the threat of the defendants to demolish the suit property persists."

"*Prayer*

(*a*) That a decree of permanent injunction be granted in favour of the plaintiff and against the defendants restraining the defendants, their officers, servants, representatives and agents from dispossessing and interfering in the possession of the plaintiff, and from demolishing or sealing, any part of existing structure at House No. 80, Ward No. 9, Kishangarh, Mehrauli, New Delhi more particularly shown red in the plan annexed to the plaint."

6. In the written statement filed on behalf of DDA, it was averred that the suit land belonged to the Gaon Sabha and with the urbanisation of rural areas of Kishangarh, the same automatically vested in the Central Government. It was further averred that vide Notification dated 20-8-1974, the Central Government had transferred the suit land to DDA and the plaintiff has no right, title or interest in the same. The relevant portions of the written statement are extracted below:

"*Preliminary objections*

1. That the suit as filed is false, frivolous and not maintainable. The plaintiff has no legal right to file the present suit. The land forms a part of Khasra No. 1674 of Village Mehrauli. This land belongs to the Gram Sabha and on the urbanisation of Village Mehrauli, all the Gram Sabha land vested in the Central Government and the Central Government later transferred this land at the disposal of the defendant DDA vide Notification No. S.O. 2190 dated 20-8-1974. Therefore, it is clear that the plaintiff has no right, title or interest in the property. In this view of the matter, this suit may be dismissed.

Parawise reply on merits

1. That the contents of Para 1 are wrong and denied. It is denied that the plaintiff is a co-owner of the premises commonly known as House No. 80, Ward No. 9, Kishangarh, Mehrauli, New Delhi forming part of Khasra No. 1674. It is further denied that the plaintiff purchased the suit property vide sale deed dated 10-10-1963. It is submitted that as per the sale deed dated 10-10-1965 supplied by the plaintiff, the suit land forms a part of Khasra No. 1674 of Village Mehrauli. The sale deed is in respect of Khasra Nos. 2728/1674/2(3-3) and 2728/1674/3(1-1) of Village Mehrauli. Both these khasras are a part of the Gram Sabha land. On the urbanisation of Village Mehrauli (Kishangarh), all the Gram Sabha land vested in the Central Government and later on the Central

Government transferred this Gram Sabha land at the disposal of DDA for maintenance as green development vide Notification No. S.O. 2190 dated 20-8-1974. In this view of the matter, the plaintiff has no right or title in the land. It is further submitted that, recently the plaintiff has unauthorisedly occupied this land and constructed a boundary wall on it with 3 temporary rooms. It is submitted that the plaintiff has not annexed any site plan to the plaint, as alleged by him.

2. That the contents of Para 2 are wrong and hence denied. It is submitted that the construction of the suit land is recent and unauthorised. It is denied that the superstructure over the suit land has been in existence for the last 15 years. It is further denied that the tin shed and 2 rooms over the land were constructed sometime in the year 1959-1960.

* * *

4. That the contents of Para 4 are again wrong and therefore denied. It is submitted that the suit land belongs to DDA. It is further submitted that previously, the land formed a part of Khasra Nos. 2728/1674/2 and 2728/1674/3, which was a part of the Gram Sabha land. At the time of urbanisation of Village Mehrauli, the Gram Sabha land vested in the Central Government and later, the Central Government transferred this Gram Sabha land at the disposal of DDA vide Notification No. S.O. 2190 dated 20-8-1974. It is submitted that there is no requirement of any acquisition proceedings in respect of this land, the land being at the disposal of defendant DDA. In this view of the matter it is submitted that, no notification for acquisition need be issued. It is further submitted that as the land does not belong to the plaintiff, he is not entitled to be given any compensation whatsoever."

7. On 20-8-1990, the High Court granted interim injunction, which was confirmed vide order dated 14-7-1998. Thereafter, the suit was transferred to the District Judge, Delhi, who assigned the same to the Civil Judge, Delhi for disposal. After considering the pleadings of the parties, the Civil Judge framed the following issues:

"*1*. Whether the plaintiff is co-owner of House No. 80, Kishangarh, Mehrauli (part of Khasra No. 1674) as alleged in Para 1 of the plaint? OPP.

2. Whether the plaintiff is in occupation of the suit premises for the last 15 years as alleged? OPP.

3. Whether the plaintiff has any legal right to file the present suit? OPP.

4. Whether the suit is barred under Sections 477/478 of the DMC Act? OPD.

5. Whether the suit is bad for misjoinder of parties? OPD.

6. Whether this Court has jurisdiction to entertain and try the present suit? OPD.

7. Whether the plaintiff is entitled for the relief claimed? OPP.

8. Relief."

8. Appellant 2 did not appear in the witness box. Instead, one of his sons, namely, Vinod Kumar Khatri gave evidence as PW 2 in the capacity of the power of attorney. Two other witnesses examined in favour of the suit were Prem Prakash (PW 1) from the office of Kanungo and Shri Kulwant Singh (PW 3), Assistant Zonal Inspector. On behalf of DDA, Prem Chand (Tahsildar) was examined as DW 1, Constable Prabhu Singh of Police Station Vasant Kunj was examined as DW 2 and Khem Chand (Patwari) as DW 3.

9. After considering the pleadings of the parties and evidence produced by them, the learned Civil Judge dismissed the suit vide judgment dated 3-3-2003 by observing that the plaintiff has failed to prove that he and his brothers were owners of the suit land. The learned Civil Judge also held that the plaintiff was not entitled to relief of injunction because the suit filed for determination of title of the disputed land was pending adjudication. The findings recorded by the learned Civil Judge on Issues 3, 6 and 7 read as under:

"*Issues 3, 6 and 7*

12. All these issues being connected together are discussed together. PW 1 has proved the khasra girdawari but it may be mentioned that khasra girdawari is not the document of title. Even these khasra girdawaris are for the years 1957-1959, which are prior to the urbanisation of Village Kishangarh and the same also shows that the land is shamlat land. DW 1 deposed that Village Kishangarh was urbanised vide notification, Ext. DW-1/2 and land was placed at the disposal of DDA vide notification, Ext. DW-1/1. Nothing material has come out of the cross-examination of DW 1. DW 3 is another Patwari from Halka Mehrauli who also deposed that as per khasra paimaish it is the document of title that the land belongs to the Gaon Sabha and the same has been transferred to DDA. He proved the certified copy of record as Ext. DW-3/1 which also shows that the land belongs to the Gaon Sabha and has been placed at the disposal of DDA. PW 2, who is the attorney of the plaintiff himself has admitted that in the correction of revenue record they have also filed suit in the Hon'ble High Court of Delhi. Thus, there is admission on the part of the plaintiff himself that at present in the revenue record the plaintiff or his predecessor-in-interest have no right or title and the land belongs to the Gaon Sabha which has been transferred to DDA. Nothing material has come out of the cross-examination of DW 3 and merely because the user of the land has been shown as gair mumkin pahar and gair mumkin abadi does not make much difference as the main controversy is regarding the ownership that the land belongs to the Gaon Sabha and as such the plaintiff has failed to prove his right or title over the same. There is also a judgment of the Hon'ble High Court in *Rajinder Kakkar* v. *DDA*[2]. It is also for Village Kishangarh in the revenue estate of Mehrauli. In that judgment also the Hon'ble High Court has held that whole of Village Kishangarh was urbanised and after

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urbanisation as per Section 150 of the DLR Act the land of whole of the Gaon Sabha ceases to be the rural area and the land belongings to the Gaon Sabha in Village Kishangarh vested with the Central Government and the Central Government vide Notification dated 20-8-1974 placed the same at the disposal of DDA. In this authoritative pronouncement also the Hon'ble High Court held that the petitioners have no right or title over the land and it was further held that:

> 'Time has now come where the society and the law abiding citizens are being held to ransom by persons who have no respect for the law. The wheels of justice grind slowly and the violators of law are seeking to the advantage of the laws delays. That is why they insist on the letter of the law being complied with by the respondents while at the same time showing their complete contempt for the laws themselves. Should there not be a change in the judicial approach or thinking when dealing with such problems which have increased in recent years viz. large-scale encroachment on public land and unauthorised construction thereon, most of which could not have taken place without such encroachers getting blessing or tacit approval from the powers that be including the municipal or the local employees. Should the courts give protection to violators of the law? The answer in our opinion must be in the negative. Time has come when the courts have to be satisfied, before they interfere with the action taken or proposed to be taken by the governmental authorities qua removal of encroachment or sealing or demolishing unauthorised construction specially when such construction like the present, is commercial in nature.'

13. In the present case also the plaintiffs have failed to show their right, title or interest over the land in dispute. In such circumstances as the plaintiff has failed to show his legal right over the land in dispute, therefore, the plaintiff is mere encroacher upon the government land. It seems that under the garb of the present suit the plaintiffs are indirectly challenging the notification by which Village Kishangarh was urbanised or land was placed at the disposal of DDA. But it may be mentioned that this Court has no jurisdiction to try cases challenging government notification to place the land at the disposal of DDA.

14. Furthermore, the plaintiff has already filed suit in the Hon'ble High Court challenging the entries in the revenue records and therefore there is an admission on the part of the plaintiffs themselves that at present the land is not shown in their ownership. Question of suffering an irreparable loss or injury does not arise as the plaintiffs are already pursuing legal remedy available to them by challenging the revenue record. It is well-settled principle of law that no injunction can be granted against a true owner. In the present case as the plaintiffs are mere encroachers upon DDA land as on today's date, therefore, they are not entitled for any relief as prayed by them. As such, all these issues are decided against the plaintiff and in favour of the defendant."

10. RFA No. 651 of 2003 filed by Appellant 2 was disposed of by the Division Bench of the High Court vide order dated 24-11-2008[3], the operative portion of which reads as under:

> "In that view of the matter, we are of the opinion that no interference is called for as far as the impugned judgment and decree is concerned, save and except to record that nothing stated in the impugned judgment and decree dated 3-3-2003 pertaining to the issues of title would be construed as binding between the parties; needless to state that the title dispute would be adjudicated in the suit filed by the appellant by the learned Judge who is seized of the suit as per evidence before the learned Judge and law applicable."

11. In the meanwhile, Surat Singh, one of the brothers of Appellant 2, filed another suit for injunction against the Corporation and DDA. He claimed that he is the co-owner of land measuring 1200 sq yd forming part of Khasra No. 1674, Village Kishangarh. He pleaded that the premises were surrounded by a boundary wall and till January 1991 the same were being used for tethering cattle by one Ved Prakash. He alleged that on 29-2-1992, the officials of the defendants came to the suit land with large police force and illegally demolished a number of premises including the boundary wall of his property and on the next date i.e. 1-3-1992, the officials of the defendants again came and threatened to take forcible possession of the property.

12. The suit of Shri Shri Surat Singh was dismissed by the Civil Judge vide judgment dated 1-5-2004 with the findings that the suit land belonged to the Gaon Sabha and with the urbanisation of the rural area of the village the same automatically vested in the Central Government and that the plaintiff encroached the same. The appeal filed by Surat Singh was dismissed by the Additional District Judge, Delhi vide judgment dated 5-8-2004. The lower appellate court held that as per khatoni paimaish, Ext. DW-1/2, the suit land was a wasteland being gair mumkin pahar and the same belonged to the Gaon Sabha and that after vesting of the land in it, the Central Government had transferred the same to DDA. Para 6 of that judgment is reproduced below:

> "*6.* The appellant claims himself the co-owner of the land, forming part of Khasra No. 1674, Village Kishangarh on the basis of the sale deed dated 10-10-1963. A photocopy of the sale deed was placed on the record by the appellant through which the appellant along with the others claims to have purchased 4 bighas and 4 biswas of land bearing Khasra Nos. 2728/167/4 and 2728/167/3. As per the scheme of the Delhi Land Reforms Act, 1954 (for short 'the DLR Act') on coming into force of the DLR Act the proprietor of the agricultural land seized to exist. If any land was the part of the holding of a proprietor, he became the bhumidar of it, if it was the part of the holding of some other person, such as a tenant or sub-tenant, etc. he became either a bhumidar or an asami

3 *Lal Chand* v. *MCD*, RFA No. 651 of 2003 order dated 24-11-2008 (Del)

whereupon the rights of the proprietor in that land ceased. The land which was not holding of either of the proprietor or any other person vested in the Gaon Sabha. A perusal of khatoni paimaish, Ext. DW-1/2 would show that the suit land was a wasteland, that is, gair mumkin pahar.

In *Union of India* v. *Sher Singh*[4], it was held by the Hon'ble Supreme Court of India that except the land which for the time being comprised the holding or a grove, whether cultivable or otherwise, vests in the Gaon Sabha from the date of commencement of the Act. The onus was on the appellant to show that the suit land was a part of the holding or a grove and the predecessors of the appellant had become a 'bhumidar' in respect of the suit land on coming into force of the DLR Act. A Notification dated 3-6-1977 was issued by the Government under Section 507 of the DMC Act whereby, the area of Kishangarh in the revenue estate of Mehrauli was urbanised, consequently in accordance with the provisions of Section 150(3) of the DLR Act, the land which had vested in the Gaon Sabha came to vest in the Central Government on urbanisation of the village. The Central Government, vide Notification under Section 22(1) of the DD Act dated 20-8-1974 (Ext. DW-1/1), had placed the entire land which had vested in the Central Government, on the urbanisation of the village specified in the schedule, at the disposal of DDA for the purpose of development and maintenance of the said land. Therefore, all land, including the suit land which had vested in the Gaon Sabha, came to vest in the Central Government and was ultimately placed at the disposal of DDA."

13. During the pendency of the aforementioned two suits, Appellant 1 which is said to have been incorporated under the Companies Act, 1956 in 1994-1995 with Harbir Singh Khatri, another son of Lal Chand as its Managing Director and Appellant 2 Lal Chand filed third suit being Suit No. 313 of 2000 (renumbered as Suit No. 473 of 2004) for grant of a declaration that the entries made in the revenue records in respect of land comprised in Khasra Nos. 2728/1674/2 and 2728/1674/3 situated in the revenue estate of Mehrauli, Village Mehrauli, Kishangarh, Tehsil Mehrauli are wrong and illegal. The appellants further prayed for grant of a decree of mandatory injunction directing the respondents to correct the revenue record and enter their names in the columns of ownership and possession. Another prayer made by the appellants was for restraining the respondents, their servants and agents from demolishing the superstructures and sealing or interfering with their possession of the suit property or running of the restaurant.

14. In the written statement filed on behalf of DDA, several objections were taken to the maintainability of the suit including the following:

(*i*) The plaintiffs have not challenged Notification dated 20-8-1974 vide which the Central Government transferred the suit land to DDA.

(*ii*) The suit was barred by limitation because the same has been filed after 16 years of the accrual of cause of action.

4 (1997) 3 SCC 555 : (1997) 2 CLT 58

(*iii*) The suit is barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure, 1908.

(*iv*) The plaintiffs not only made encroachment on the suit land, but also abused the process of the court by filing different suits.

15. On merits, it was pleaded that the suit land belonged to the Gaon Sabha and with the urbanisation of Village Kishangarh, the same automatically vested in the Central Government. It was further pleaded that the appellants do not have any right, title or interest in the suit land and they do not have the locus to question the revenue entries. Another plea raised on behalf of DDA was that the suit was barred by limitation.

16. On the pleadings of the parties, the trial court framed the following issues:

"*1*. Whether Plaintiff 2 along with his brother is the owner and in possession of suit land?

2. Whether the suit land is a government land as alleged in Para 1 of the preliminary objections? If so, whether the suit is liable to be dismissed on this ground?

3. Whether the suit is within limitation?

4. Whether the suit is barred under Order 2 Rule 2 CPC?

5. Whether the plaintiffs have not come to the court with clean hands and are not entitled to the equitable relief of injunction as stated in Para 6 of the preliminary objections?

6. Whether the suit land is a government land and was placed at the disposal of DDA under Section 22(1) of the DD Act vide Notification dated 20-8-1974?

7. Relief."

17. On a comprehensive analysis of the pleadings and evidence of the parties, the trial court held that the plaintiffs (the appellants herein) have succeeded in showing that Appellant 2 and his brothers had purchased land comprised in Khasra Nos. 2728/1674/2 and 2728/1674/3, but they could not prove that the land on which Appellant 1 was running "Sahara Restaurant" is a part of those khasra numbers or that they were otherwise in lawful possession of the suit land. The trial court then held that the suit was barred by time because cause of action had accrued 16 years ago when the suit land was transferred to DDA. The trial court also held that the appellants had not approached the court with clean hands inasmuch as they suppressed material facts relating to the vesting of the suit land in the Central Government and transfer thereof to DDA and the documents like aks shijra, site plan and demarcation report, as also the facts relating to the acquisition of an area of 1512 sq yd forming part of Khasra No. 2728/1674/3 and receipt of compensation at the rate of Rs 50 per square yard. The trial court returned affirmative finding on Issue 4 and held that the suit was barred by the provisions of Order 2 Rule 2 CPC.

18. The appeal preferred by the appellants was dismissed by the learned Single Judge of the High Court, who relied upon the judgment of the

Division Bench in *Rajinder Kakkar* v. *DDA*[2] and held that with the issuance of notification under Section 507, Gaon Sabha land of Kishangarh automatically vested in the Central Government and transfer thereof to DDA was valid. The learned Single Judge also agreed with the trial court that the suit was barred by limitation and that the appellants had not approached the Court with clean hands.

19. Shri Mukul Rohatgi, learned Senior Counsel appearing for the appellants extensively referred to the evidence produced by the parties to show that the land in question was shamlat thok and argued that such land does not vest in the Gaon Sabha. The learned Senior Counsel further argued that the notification issued under Section 507 of the DMC Act and the provision contained in Section 150(3) of the Land Reforms Act have no bearing on the appellants' case because the suit land did not belong to the Gaon Sabha and the trial court and the High Court committed serious error by recording a finding that the suit land automatically vested in the Central Government and that the same was validly transferred to DDA.

20. Shri Rohatgi pointed out that the suit land was owned by Smt Kasturi, widow of Jhuman Singh and Rattan Lal, son of Trikha Ram, who sold it to S/Shri Parma Nand, Tej Nath, Tej Prakash, Gokal Chand and Ram Dhan by registered sale deed dated 7-10-1959 and legal heirs of Parma Nand and other vendees sold the same to Appellant 2 and his brothers vide sale deed dated 10-10-1963. The learned Senior Counsel assailed the concurrent finding recorded by the trial court and the High Court on the issue of limitation and submitted that the suit filed in the year 2000 was within time because the cause of action accrued to the appellants for the first time in 1998 when they came to know about the entries made in the revenue records in favour of DDA. In support of this argument, Shri Rohatgi relied upon the judgment of this Court in *Rukhmabai* v. *Lala Laxminarayan*[5].

21. Shri Harin P. Raval, learned Additional Solicitor General and Shri Amarendera Sharan, learned Senior Counsel appearing for DDA argued that the concurrent finding recorded by the trial court and the High Court that land on which the appellants were running a restaurant does not form part of Khasra Nos. 2728/1674/2 and 2728/1674/3 is a pure finding of fact based on correct analysis of the pleadings of the parties and evidence produced by them and the same does not call for interference under Article 136 of the Constitution. Shri Sharan submitted that the suit filed by the appellants for declaration of title and injunction was rightly dismissed by the trial court because they had not produced any evidence to prove that the suit land forms part of land purchased by Appellant 2 and his brothers.

22. Shri Sharan then argued that the suit filed in the year 2000 was barred by limitation because the cause of action had accrued to the appellants on 10-8-1990 when the officials of the Corporation and DDA are said to have visited the suit premises and threatened to demolish the superstructure and, in any case, the cause of action accrued to them in December 1990 when the

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5 AIR 1960 SC 335 : (1960) 2 SCR 253

written statement was filed on behalf of DDA with a categorical assertion that with the urbanisation of the rural areas of Village Kishangarh, the suit land automatically vested in the Central Government, which transferred it to DDA vide Notification dated 20-8-1974. The learned Senior Counsel lastly submitted that the appellants are not entitled to any relief because they had not approached the Court with clean hands and suppressed material facts and documents.

23. We shall first consider the question whether the suit filed by the appellants on 14-2-2000 was within limitation and the contrary concurrent finding recorded by the trial court and the High Court is legally unsustainable.

24. The Limitation Act, 1963 (for short "the 1963 Act") prescribes time limit for all conceivable suits, appeals, etc. Section 2(*j*) of that Act defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 3 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Sections 4 to 24, be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the Schedule.

25. Article 58 of the Schedule to the 1963 Act, which has a bearing on the decision of this appeal, reads as under:

"*THE SCHEDULE*

PERIOD OF LIMITATION

[*See* Sections 2(*j*) and 3]

First Division—Suits

	Description of suit	*Period of limitation*	*Time from which period begins to run*
	*	*	*
	PART III—Suits Relating To Declarations		
	*	*	*
58.	To obtain any other declaration.	Three years	When the right to sue first accrues."

26. Article 120 of the Schedule to the Limitation Act, 1908 (for short "the 1908 Act") which was interpreted in the judgment relied upon by Shri Rohatgi reads as under:

"Description of suit	*Period of limitation*	*Time from which period begins to run*
*	*	*
120. Suit for which no period of limitation is provided elsewhere in this Schedule.	Six years	When the right to sue accrues."

27. The differences which are discernible from the language of the above reproduced two articles are:

(*i*) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,

(*ii*) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

28. Article 120 of the 1908 Act was interpreted by the Judicial Committee in *Bolo* v. *Koklan*[6] and it was held: (IA p. 331)

> "There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted."

The same view was reiterated in *Annamalai Chettiar* v. *Muthukaruppan Chettiar*[7] and *Gobinda Narayan Singh* v. *Sham Lal Singh*[8].

29. In *Rukhmabai* v. *Lala Laxminarayan*[5], the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (*Rukhmabai case*[5], AIR p. 349, para 33)

> "*33.* … The right to sue under Article 120 of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."

30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

31. In the light of the above, it is to be seen as to when the right to sue first accrued to the appellants. They have not controverted the fact that in the written statement filed on behalf of DDA in Suit No. 2576 of 1990, *Lal Chand* v. *MCD*, it was clearly averred that the suit land belonged to the Gaon Sabha and with the urbanisation of the rural areas of Village

6 (1929-30) 57 IA 325 : AIR 1930 PC 270
7 ILR (1930) 8 Rang 645
8 (1930-31) 58 IA 125
5 AIR 1960 SC 335 : (1960) 2 SCR 253

Kishangarh vide Notification dated 28-5-1966 issued under Section 507 of the DMC Act, the same automatically vested in the Central Government and that vide Notification dated 20-8-1974 issued under Section 22(1) of the DD Act, the Central Government transferred the suit land to DDA for development and maintaining as green. This shows that the right, if any, of the appellants over the suit land stood violated with the issue of notification under Section 507 of the DMC Act and, in any case, with the issue of notification under Section 22(1) of the DD Act. Even if the appellants were to plead ignorance about the two notifications, it is impossible to believe that they did not know about the violation of their so-called right over the suit land despite the receipt of copy of the written statement filed on behalf of DDA in December 1990. Therefore, the cause of action will be deemed to have accrued to the appellants in December 1990 and the suit filed on 14-2-2000 was clearly barred by time.

32. The issue deserves to be considered from another angle. Although, para 19 of Suit No. 303 of 2000 was cleverly drafted to convey an impression that the right to sue accrued to the appellants in November/December 1998 when they learnt about the wrong recording of entries in khasra girdawaris/ revenue records, but if the averments contained in that paragraph are read in conjunction with the pleadings of the earlier suits, falsity of the appellants' claim that the cause of action accrued to them in November/December 1998 is established beyond any doubt. In the first suit filed by him, Appellant 2 Lal Chand had pleaded that the cause of action accrued on 10-8-1990 when the officials of the respondents came to the suit premises and threatened to demolish the same. In the second suit filed by Surat Singh (brother of Appellant 2 Lal Chand), it was claimed that the cause of action accrued on 29-2-1992 when the officials of the respondents demolished the boundary wall of the property on the ground that the same was the Gaon Sabha land. The appellants have not explained stark contradictions in the averments contained in three suits on the issue of cause of action and in the absence of cogent explanation, it must be held that the statement contained in para 19 of Suit No. 313 of 2000 was per se false and, as a matter of fact, the cause of action had first accrued to the appellants on 10-8-1990 when their so-called right over the suit land was unequivocally threatened by the respondents. Therefore, the suit filed by the appellants on 14-2-2000 was clearly beyond the period of limitation of 3 years prescribed under Article 58 of the 1963 Act and was barred by time.

33. While considering the question whether the suit was barred by time, the trial court noticed the averments contained in paras 9 and 10 of the plaint that during the course of preparation of the trial of Suit No. 2576 of 1990, *Lal Chand* v. *MCD*, the appellants applied for a copy of khasra girdawaris of the suit land and they were shocked to learn that the revenue records have been incorrectly maintained and they were neither shown as owners/bhumidhar nor in possession of the suit land, referred to the pleadings of the suit filed by Appellant 2 Lal Chand in 1990 and observed:

> "Therefore, as per the pleadings the cause of action accrued when according to the plaintiff he applied for the copies of the khasra numbers

which was in November-December 1998 during the course of trial in the earlier suit. This claim of the plaintiff, however, does not appear to be factually correct. It is evident from the judgment dated 3-3-2003 that the detailed written statement had been filed by DDA before the learned Civil Judge when the suit filed by Lal Chand, Plaintiff 2 on 18-8-1990 wherein DDA had specifically pleaded that the land form part of Khasra Nos. 2728/1674/2 and 2728/1674/3 situated in the revenue estate of Village Kishangarh, Tehsil Mehrauli, New Delhi and the urbanisation of Village Mehrauli, all the Gaon Sabha land vested in the Central Government, but later on transferred this land at the disposal of the defendant DDA for development and maintenance as green, vide Notification dated 20-8-1974 and the plaintiff has no right, title or interest over the suit land. It was further pleaded that the plaintiff had wrongly and unauthorisedly occupied the land and constructed the boundary wall along with three temporary rooms which construction was unauthorised and it was denied that the suit property existed for the last 16 years. It is further evident from the said judgment that after the plaintiff filed the replication continuing the aforesaid, issues were framed by the learned Civil Judge on 11-3-1997. *This being so, it is unbelievable that the date of knowledge by the plaintiff was of November-December 1998. Rather the plaintiffs were fully aware of the land being at the disposal of DDA from the proceeding in Suit No. 211/02 of 1990 when DDA filed its written statement when the limitation started to run more so as Plaintiff 2 had also filed replication continuing the aforesaid and therefore as per the provisions of the Limitation Act, Article 58 of the Schedule, challenge to the same should have been made within the period of limitation which is within 3 years from the date of knowledge and limitation which has started running, it is not extended by the plaintiff by obtaining certified copy or by giving notice to the defendants*. This suit which has been filed only on 11-2-2000 is clearly not within the period of limitation of 3 years from the date when DDA filed its written statement in Suit No. 211/02 of 1990 and Plaintiff 2 is first assumed to have acquired knowledge and in attempt to cover up this delay the plaintiff is trying to falsely create the cause of action in November-December 1998 attributing the advantage as during the trial when he applied for the copies of the revenue record despite the fact that the period of limitation started to run when the written statement was filed by DDA to which Plaintiff 2 filed replication pursuant to which the issue framed was, whether the plaintiff has any legal rights to file the present suit. This being the case, I hereby hold that the present suit is clearly beyond the period of limitation and I decide Issue 3 against the plaintiff."

(emphasis supplied)

34. The High Court agreed with the trial court and held that the suit was barred by time. The reasons assigned by the High Court for coming to this conclusion are contained in paras 38 to 45, which are extracted below:

"*38*. First suit filed by Lal Chand (Appellant 2 in the present proceedings), being Suit No. 2576 of 1990, was suit for injunction

simpliciter. That suit was dismissed by judgment/order dated 3-3-2001. As per findings given in that suit, the plaintiff was never the owner; the land was government land; the land vested in the Central Government after issuance of notification under Section 507 of the DMC Act and thereafter, the land was transferred to DDA.

39. Against dismissal of that suit for injunction, an appeal bearing RFA No. 651 of 2003 was filed and this Court disposed of the appeal, vide order dated 24-11-2008[3].

40. In that suit, it was alleged in the plaint that:

> 'It was sometime in March 1990 that the Tahsildar along with officers of DDA came to the site of the plaintiff with dispossession and demolition.'

41. Now after 10 years, the appellant being a co-owner, cannot seek relief against alleged threat of demolition or dispossession and the present suit is clearly barred by limitation.

42. In that suit in written statement, a specific plea was taken by the answering respondent herein, that land in question by virtue of issuance of notification under Section 507 of the DMC Act, on urbanisation, came to be vested with the Union of India and thereafter, transferred to the answering respondent. Relevant preliminary objection taken therein to the written statement is as under:

> 'That the suit as filed is false, frivolous and not maintainable. The plaintiff has no legal right to file the present suit. The land forms a part of Khasra No. 1674 of Village Mehrauli. This land belongs to the Gram Sabha and on the urbanisation of Village Mehrauli, all the Gram Sabha land vested in the Central Government, which later transferred this land at the disposal of the defendant DDA vide Notification No. S.O. 2190 dated 20-8-1974. Therefore, it is clear that the plaintiff has no right, title or interest in the property. In this view of the matter, this suit may be dismissed.'

43. It is also contended that the second suit was filed by Surat Singh, one of the co-owners. That was again a suit for injunction, which was dismissed and against this, an appeal (RCA No. 29 of 2004) was preferred before the Additional District Judge on 5-8-2004 and the same was also dismissed.

44. The appellate court, while dismissing the suit of Surat Singh, referred to the pleadings made in the plaint,

> 'that on 29-2-1992, police officials along with the officials of DDA visited the site and proceeded to demolish inter alia the boundary wall of the disputed land. Clearly, therefore, the cause of action had matured and limitation, which necessarily commenced from the date of the demolition of the premises.'

45. That suit was filed in 1992 and surely, a subsequent suit by another co-owner, cannot be maintained after a lapse of 8 years."

3 *Lal Chand* v. *MCD*, RFA No. 651 of 2003 order dated 24-11-2008 (Del)

35. What is most surprising is that even though Appellant 2 Lal Chand was cited as the first witness in Suit No. 303 of 2000 (renumbered as 473 of 2004), he did not step into the witness box. This appears to be a part of calculated strategy. He knew that if he was to appear as a witness, it will not be possible for him to explain the apparent contradictions in the pleadings of the three suits on the issue of cause of action and falsity of the averments contained in para 19 in Suit No. 303 of 2000 will be exposed. This is an additional reason for holding that the trial court and the High Court did not commit any error by recording a conclusion that the suit was barred by limitation.

36. The next question which requires consideration is whether the finding recorded by the trial court on Issues 1 and 2 is legally correct and the High Court rightly declined to interfere with the same. The trial court adverted to the pleadings of the parties and evidence produced by them and observed:

> "… The plaintiff has not placed on record any document nor has examined any witness to prove the location and boundaries of the said land. It is unbelievable that sale of the immovable properties could have taken place without identification of the property with regard to its location. As per existing practice all such transactions of immovable properties either bear the complete details of the boundaries to assist location of the property sold along with the site plan or is accompanied by aks shijra. However, in the present case this has not been done and the plaintiff has not adduced in evidence to prove boundary of the suit land. *Therefore, on the basis of the aforesaid, I hold that Plaintiff 2 had purchased the land falling in Khasra Nos. 2728/1674/2 and 2728/1674/3 but he has not been able to prove the location of the said land comprising of Khasra Nos. 2728/1674/2 and 2728/1674/3. The plaintiff has further not been able to connect the land over which Plaintiff 1 is running Sahara Restaurant to the land comprised in Khasra Nos. 2728/1674/2 and 2728/1674/3 of which Plaintiff 2 and his brothers are stated to be the owners.*
>
> *That DDA has placed on record the complete area location plan, Ext. D2W1/4 to which there is no rebuttal. Only simply suggestion has been given to the witness of the defendant that the aforesaid plan is incorrect but the plaintiff has not placed on record any other alternative plan which according to him, is according to plan, therefore, in these circumstances I find no reason to discard the aforesaid documents which show that Sahara Restaurant has been constructed in front of Community Centre No. 1, Nursery School No. 2 and Group Housing Janta Flats 952 on the road and is shown to be away from abadi of Village Kishangarh, Mehrauli, New Delhi.*
>
> *Annexure A of the award, Ext. PW-4/1 shows that Khasra No. 2728/1674 falls in old abadi of Village Kishangarh and in these circumstances it is not possible to believe that the aforesaid Khasra No. 2728/1674 would be located away from the main village abadi. There it appears that the plaintiff has deliberately tried to create confusion with*

regard to Khasra No. 2728/1674 and as admitted, to show that the land on which Sahara Restaurant is constructed is bearing Khasra Nos. 2728/1674/2 and 2728/1674/3 which is not the case and apparently it was for this reason that he has deliberately not placed on record any site plan, aks shijra, demarcation report made in the plan document to prove the khasra numbers.

In view of the above I hereby hold that the plaintiff has proved that he has purchased the land falling in Khasra Nos. 2728/1674/2 and 2728/1674/3 but has not been able to prove that the land on which Plaintiff 1 is running Sahara Restaurant is comprised of Khasra Nos. 2728/1674/2 and 2728/1674/3 or that he is in legal possession of the suit land over which Sahara Restaurant is constructed." (emphasis supplied)

37. The trial court then proceeded to observe:

"Vide my above findings with regard to Issue 1, I have already held that the plaintiff has not been able to prove that the land on which a large restaurant is made falls in Khasra Nos. 2728/1674/2 and 2728/1674/3 and that in fact Khasra Nos. 2728/1674/2 and 2728/1674/3 is a part of old abadi which is situated at a distance and away from the place where Sahara Restaurant is constructed. The Notification under Section 22(1) of the DD Act dated 20-8-1974 which is Ext. DWW1/2 is not disputed by both the parties. Firstly, the plaintiff has not produced any document in the form of demarcation report or aks shijra which show that the land on which Sahara Restaurant is situated falls in Khasra Nos. 2728/1674/2 and 2728/1674/3 and is the same land which has been purchased by Plaintiff 2. The sale deed so relied upon by the plaintiff is Ext. PW-3/4 does not show the boundaries and identification of the land initially sold by Rattan Singh and Kasturi Devi so purchased by Plaintiff 2 later vide Ext. PW-3/3. Secondly, no explanation is forthcoming with regard to the acquisition award/proceedings placed before this Court which are Ext. PW-4/1, showing that Khasra No. 1673 min(0-12) and Khasra No. 2728/1674/3 min plus 2(14-14) then the area of 1512 sq yd has been acquired with the rate of claim as Rs 50 per square yard and the compensation is awarded at Rs 1,55,600 in all which is in respect of acquisition of land of Ran Singh, Dhan Singh, Lal Chand, Suraj Singh, all sons of Mam Raj as shown in Sl. No. 66. … *Annexure A to the award Ext. PW-4/1 shows Khasra No. 2728/1674 to be falling in old village abadi and no explanation is forthcoming as to how the land on which Sahara Restaurant has been constructed is situated away from the abadi which according to Ext. D2W1/4 is constructed on the road in front of Group Housing Janta Flats 952, Nursery School No. 2 and Community Center No. 1. It is unbelievable that Khasra No. 2728/1674 which falls in old village abadi can be situated away from the said award.* Fourthly, in the earlier suit filed by Plaintiff 2 in the year 1990 before the learned Civil Judge Plaintiff 2 had claimed that he is in possession of two rooms and tin shed which he is using for residential purpose and no explanation is forthcoming as to how this huge construction of a big restaurant was made which is being used by Plaintiff 1 for commercial purposes. *It is*

evident from the order dated 24-11-2008 in Lal Chand v. *MCD*[3] *that the High Court was apprised of the earlier report of the Local Commissioner in Suit No. 211/02 of 1990 and the large-scale construction raised by the plaintiff over the said land despite the status quo order without the sanction of the municipal authority*. Even otherwise no permission can be granted by DDA for any been (*sic*) uncontroverted by the plaintiff, has constructed restaurant by encroaching upon the government land meant for road. Under the garb of the present suit the plaintiffs are indirectly challenging notification by which Village Kishangarh was urbanised and the land was placed at the disposal of DDA without specifically challenging the same as the entries made in the revenue record are only pursuant to the said notification. Therefore, in view of the aforesaid, I hereby decide this Issue 2 against the plaintiff and in favour of the defendants." (emphasis supplied)

38. Though, the High Court did not examine the issue in detail as was done by the trial court, the learned Single Judge did make a note of the two notifications, the judgment in *Rajinder Kakkar case*[2] and held that by virtue of Section 150(3) of the Land Reforms Act, the suit land automatically vested in the Central Government and the same was transferred to DDA under Section 22(1) of the DD Act. In our view, the conclusion recorded by the trial court that the appellants have failed to prove that the suit land formed part of Khasra Nos. 2728/1674/2 and 2728/1674/3 does not suffer from any error because they did not adduce any evidence to establish that the land on which restaurant was being run formed part of those khasra numbers.

39. We also approve the findings and conclusions recorded by the trial court that the appellants had not approached the Court with clean hands inasmuch as they withheld aks shijra, site plan and the demarcation report and award, Ext. PW-4/1. Not only this, they raised illegal construction despite the injunction order passed by the High Court and that too without obtaining permission from the competent authority.

40. In view of the above discussion, we do not consider it necessary to deal with the question whether the suit filed by the appellants was barred by Order 2 Rule 2 CPC.

41. In the result, the appeal is dismissed. The appellants, who have not only made encroachment on the public land, but also abused the process of the court are saddled with cost, which is quantified at Rs 5 lakhs. Of this, Rs 2.5 lakhs be deposited with the Supreme Court Legal Services Committee within two months from today. The balance amount of Rs 2.5 lakhs be deposited with the Delhi State Legal Services Committee within the same period. If the appellants fail to deposit the cost, the Secretaries of the two Legal Services Committees shall be entitled to recover the same as arrears of land revenue.

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3 RFA No. 651 of 2003 order dated 24-11-2008 (Del)

2 *Rajinder Kakkar* v. *DDA*, (1994) 54 DLT 484

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(BEFORE T.S. THAKUR AND GYAN SUDHA MISRA, JJ.)

BOARD OF TRUSTEES OF PORT OF KANDLA .. Appellant;

Versus

HARGOVIND JASRAJ AND ANOTHER .. Respondents.

Civil Appeal No. 153 of 2013†, decided on January 9, 2013

A. **Property Law — Transfer of Property Act, 1882 — Ss. 108(q), 111 and 116 — Lease whether stood validly terminated and if possession handed over to lessor consequent thereto — Determination and proof of — Admission of lessee**

— Failure of lessee to remit outstanding rent instalment amount culminated in termination of lease by lessor Port Trust (appellant) by preparing panchnama evidencing takeover of possession and forwarding copy thereof to lessee along with certificate showing possession having been taken by Assistant Estate Manager of Port Trust — Unequivocal and unconditional admission made by lessee in letter addressed to lessor that possession had been taken over by Port Trust — Lessee also asked for refund of amount paid toward instalments or otherwise, for return of leased land — Nothing to show that admission made by lessee was subsequently withdrawn — No cogent and convincing explanation given before court for making such admission — Held, with termination of lease, right to possession of suit land vested back in lessor by operation of law and possession of vacant land would follow — Unequivocal admission of lessee established dispossession of lessee pursuant to termination of lease deed in terms of panchnama — Fact that wild bushes were growing on the open land would be no reason to hold that panchnama was inconsequential or insufficient to establish that process of dispossession of lessee had been accomplished — Evidence Act, 1872 — Ss. 18 to 21 and 58 — Civil Procedure Code, 1908, Or. 12 R. 6 (Paras 17 and 19)

B. **Limitation Act, 1963 — Art. 58 — Suit to obtain a declaration that lease subsisted and purported termination thereof was invalid — Right to sue — Accrues upon first infringement or clear threat to infringement of right in respect of which declaration is being sought i.e. in present case, date of denial of subsistence of lease or date of claim or action on basis that lease stood terminated — Lease of land terminated w.e.f. 13-12-1978 and lessee dispossessed from leased land on 14-12-1978 — Suit for declaration that termination of lease was invalid and ineffective and therefore, lease still subsisting, filed in 1996 i.e. after lapse of 18 yrs — Reiterated, suit filed beyond period prescribed under Limitation Act, barred — Transfer of Property Act, 1882, Ss. 108(q), (b) and 111**

C. **Specific Relief Act, 1963 — S. 34 — Suit for declaration that termination of lease was invalid — Maintainability of — Held, for maintaining such suit, lessee need not be dispossessed from leased property as**

† Arising out of SLP (C) No. 9196 of 2008. From the Judgment and Order dated 26-12-2007 of the High Court of Gujarat at Ahmedabad in Second Appeal No. 17 of 2007 with Civil Application No. 1791 of 2007

dispossession is different from termination of lease — Transfer of Property Act, 1882 — Ss. 108(q), (b) and 111 — Property Law — Ownership and Title — Holding of proprietary interest distinguished from possession

Held :

The right to sue in the present case first accrued to the lessee on 13-12-1978 when in terms of order dated 8-8-1977 the lease in favour of the lessee was terminated. A suit for declaration that the termination of the lease was invalid hence ineffective for any reason including the reason that the person on whose orders the same was terminated had no authority to do so, could have been instituted by the lessee on 14-12-1978. For maintaining any such suit it was not necessary that the lessee was dispossessed from the leased property as dispossession is different from termination of the lease. But even assuming that the right to sue did not fully accrue till the date the lessee was dispossessed of the plot in question, such a dispossession having taken place on 14-12-1978, the lessee ought to have filed the suit within three years of 15-12-1978 so as to be within the time stipulated under Article 58 of the Limitation Act. The suit in the instant case was, however, instituted in the year 1996 i.e. after nearly eighteen years later and was, therefore, clearly barred by limitation. (Para 25)

State of Punjab v. *Gurdev Singh*, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287; *Daya Singh* v. *Gurdev Singh*, (2010) 2 SCC 194 : (2010) 1 SCC (Civ) 379; *Khatri Hotels (P) Ltd.* v. *Union of India*, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484, *relied on*

Bolo v. *Koklan*, (1929-30) 57 IA 325 : AIR 1930 PC 270; *C. Mohammad Yunus* v. *Syed Unnissa*, AIR 1961 SC 808, *cited*

D. **Specific Relief Act, 1963 — Ss. 34 and 38 — Declaratory suit — Necessity of declaration of even allegedly invalid action of opposite party — Extent of discretion available to court to grant declaration that was being sought — Expiry of limitation period and other factors — Relevance**

— Even if action of opposite party is (allegedly) invalid (in this case action terminating lease), person affected thereby cannot ignore it unless and until he files suit and court declares such action to be invalid — Filing of suit for declaration that termination of lease was invalid, hence was essential for lessee in order to get rid of order of termination of lease as lessee's right to remain in possession of leased property would depend upon whether lease was subsisting or stood terminated — However, grant of declaratory relief is discretionary for court — When plaintiff's suit seeking such declaration was barred by limitation, plaintiff's claim that termination of lease, being illegal and non est, could be ignored and decree for permanent injunction restraining defendant lessor from interfering with his possession could be passed by court, cannot be sustained, more so when it was found that possession had already been taken over by lessor pursuant to termination of lease — Administrative Law — Administrative Action — Administrative or Executive Function — Administrative Orders/Decisions/ Executive Instructions/Orders/Circulars — Validity of — Claim of invalidity — Need for judicial adjudication — Transfer of Property Act, 1882, Ss. 108(q), (b) and 111

It was argued that the termination of the lease being illegal and non est in law, the respondent-plaintiffs (lessees) could ignore the same, and so long as they or any one of them remained in possession, a decree for injunction restraining the appellant-lessor (Port Trust) from interfering with their possession could be passed by the court competent to do so.

Held :

The termination of the lease deed was by an order which the plaintiffs needed to have got rid of by having the same set aside, or declared invalid for whatever reasons it might have been permissible to do so. No order bears a label of it being valid or invalid on its forehead. Anyone affected by any such order ought to seek redress against the same within the period permissible for doing so. Filing of a suit for declaration was in the circumstances essential for the plaintiffs. That is precisely why the plaintiffs brought a suit no matter beyond the period of limitation prescribed for the purpose. Such a suit was neither unnecessary nor a futility for the plaintiff's right to remain in possession depended upon whether the lease was subsisting or stood terminated. (Paras 27 and 31)

Smith v. *East Elloe Rural District Council*, 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL); *Krishnadevi Malchand Kamathia* v. *Bombay Environmental Action Group*, (2011) 3 SCC 363; *Pune Municipal Corpn.* v. *State of Maharashtra*, (2007) 5 SCC 211; *R. Thiruvirkolam* v. *Presiding Officer*, (1997) 1 SCC 9 : 1997 SCC (L&S) 65; *State of Kerala* v. *M.K. Kunhikannan Nambiar Manjeri Manikoth*, (1996) 1 SCC 435; *Tayabbhai M. Bagasarwalla* v. *Hind Rubber Industries (P) Ltd.*, (1997) 3 SCC 443, *relied on*

Wade and Forsyth: *Administrative Law*, 7th Edn., 1994; H.W.R. Wade, *Administrative Law* (6th Edn., Clarendon Press, Oxford 1988) 352, *cited*

However, grant of declaratory relief under the Specific Relief Act is discretionary in nature. A civil court can and may in appropriate cases refuse a declaratory decree for good and valid reasons which dissuade the court from exercising its discretionary jurisdiction. Merely because the suit is within time is no reason for the court to grant a declaration. (Para 31)

It is not, therefore, possible to fall back upon the possessory rights claimed by the plaintiffs over the leased area to bring the suit within time especially when while dealing with the question of possession it has been held that possession also was taken over pursuant to the order of termination of the lease in question. (Para 31)

Port of Kandla v. *Hargovind Jasraj*, Civil Second Appeal No. 17 of 2007, order dated 26-12-2007 (Guj), *reversed*

Appeal allowed R-D/51310/CV

Advocates who appeared in this case :

Pravin H. Parekh, Senior Advocate [Nitin Thakral, Rajat Nair, Ms Ritika Sethi and Vishal Prasad (for M/s Parekh & Co.), Advocates] for the Appellant;

Huzefa Ahmadi, Ejaz Maqbool, Mrigank Prabhakar, Anas Tanwir, Ms Aishwarya Bhati, Dr Prikhshayat Singh, Ms Sanjoli Mittal and Karmendra Singh, Advocates, for the Respondents.

Chronological list of cases cited ***on page(s)***

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4. (2007) 5 SCC 211, *Pune Municipal Corpn.* v. *State of Maharashtra* 194*a-b*
5. Civil Second Appeal No. 17 of 2007, order dated 26-12-2007 (Guj), *Port of Kandla* v. *Hargovind Jasraj* **(reversed)** 185*b-c*, 187*c-d*
6. (1997) 3 SCC 443, *Tayabbhai M. Bagasarwalla* v. *Hind Rubber Industries (P) Ltd.* 194*g*

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8. (1996) 1 SCC 435, *State of Kerala* v. *M.K. Kunhikannan Nambiar Manjeri Manikoth* 194*g*
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10. AIR 1961 SC 808, *C. Mohammad Yunus* v. *Syed Unnissa* 192*b*, 192*c*
11. 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL), *Smith* v. *East Elloe Rural District Council* 193*d*, 193*e*
12. (1929-30) 57 IA 325 : AIR 1930 PC 270. *Bolo* v. *Koklan* 192*a*

The Judgment of the Court was delivered by

T.S. THAKUR, J.— Leave granted. This appeal arises out of a judgment and order dated 26-12-2007[1] passed by the High Court of Gujarat at Ahmedabad whereby Civil Second Appeal No. 17 of 2007 filed by the appellant has been dismissed and the judgment and decree passed by the courts below affirmed.

2. The facts giving rise to the filing of this appeal may be summarised as under: a parcel of land admeasuring 1891.64 sq m situated in Sector 30, Gandhidham in the State of Gujarat was granted in favour of Smt Pushpa Pramod Shah, Respondent 2 in this appeal on a long-term lease basis. A formal lease deed was also executed and registered in favour of the lessee stipulating the terms and conditions on which the lessee was to hold the land demised in her favour. The respondent lessee it appears committed default in the payment of the lease rent stipulated in the lease deed with the result that the appellant lessor issued notices dated 12-12-1975 and 17-7-1976 calling upon the lessee to pay the outstanding amount with interest and stating that the lease of the plot in question shall stand determined under Clause 4 thereof and possession of the demised premises taken over by the appellant Port Trust in case the needful is not done.

3. In response to the notices aforementioned the lessee by communication dated 18-11-1976 requested the appellant Port Trust to permit her to resell the plots for a symbolic consideration and to obtain the refund of the instalment amount already paid to the Port Trust. The letter sought to justify the default in the payment of arrears on the ground of an untimely demise of her husband, resulting in cancellation of expansion programme including any further acquisition of land by the lessee.

4. Failure of the lessee to remit the outstanding instalment amount culminated in the termination of the lease by the appellant Port Trust in terms of an order dated 8-8-1977 w.e.f. 13-12-1978. A panchnama prepared on 14-12-1978 evidenced the takeover of possession of the plot in question by the appellant Port Trust, copy whereof was forwarded even to the lessee along with a certificate that the possession had been taken over by the Assistant Estate Manager of the appellant Port Trust under his letter dated 20-12-1978.

5. On receipt of the letter aforementioned, the lessee by her letter dated 22-2-1979 requested the appellant Port Trust to refund the amount and in case a refund could not be made, to return the possession of the plot to her.

1 *Port of Kandla* v. *Hargovind Jasraj*, Civil Second Appeal No. 17 of 2007, order dated 26-12-2007 (Guj)

One year and four months after the issue of the said letter the lessee Respondent 2 herein filed Civil Suit No. 152 of 1980 in the Court of Civil Judge, Gandhidham, in which she prayed for a decree for permanent injunction restraining the defendants, its officers and servants from interfering with her peaceful possession over the plot in question. The immediate provocation for the filing of the said suit was provided by the appellant Port Trust proposing to re-auction the plot in question. The plaintiff's case in the suit was that she was in actual physical possession of the plot which rendered the proposed auction thereof unreasonable. An interim application was also filed in the said suit in which the court granted an ex parte order of injunction that was subsequently vacated by a detailed order passed on 5-9-1980 holding that the plaintiff was not entitled to the relief of injunction. It is common ground that Suit No. 152 of 1980 was eventually dismissed on 18-1-1985 for non-prosecution.

6. Almost six years after the dismissal of the first suit, another Suit No. 126 of 1991 was filed, this time by Respondent 1, Hargovind Jasraj against Respondent 2 Smt Pushpa Pramod Shah for a permanent prohibitory injunction restraining Defendant 2 lessee of the plot, her agents, servants and representatives from interfering with the plaintiff's possession over the plot in dispute. According to the averments made in the said suit the lessee had not been carrying on any business activities in Gandhidham nor was she using the plot in question and that she was finding it difficult to look after and administer the plot after the death of her husband. She had, therefore, sold the plot to the plaintiff-Respondent 1 in this appeal in terms of a registered document. It was further alleged that the cause of action to file the suit accrued a few days before the filing of the suit when the defendant-lessee had through her representative asked the plaintiff to vacate the suit plot which demand was in breach of the sale agreement between the parties. Apprehending dispossession from the plot in question Respondent 1-plaintiff sought a decree for injunction against Respondent 2. The appellant Port Trust, it is noteworthy, was not impleaded as a party to the suit which too was dismissed for non-prosecution on 15-3-2002.

7. Five years later and pending disposal of the second suit mentioned above, a third suit being Suit No. 77 of 1996 was filed by Respondent 1 this time asking for a declaration and permanent injunction in which the plaintiff for the first time questioned the termination of the lease by the appellant Port Trust. A declaration that the said lease was still subsisting with an injunction restraining the defendant-appellant in this appeal and its employees from acting in any manner injurious to the title and the possession of the plaintiff over the disputed land was prayed for. The plaintiff's case in this suit was that he had purchased the plot in question from Smt Pushpa Pramod Shah in the year 1991 in terms of a transfer deed registered with the Sub-Registrar concerned at Gandhidham and that he had based on the said transfer asked for transfer of the lease rights which request had been declined by the appellant Port Trust in the year 1994. It was further alleged that he had come to know about the purported cancellation of the lease in favour of Smt

Pushpa Pramod Shah and the purported takeover of the possession of the plot from her which was according to him both fraudulent and invalid in the eye of the law.

8. The suit was contested by the appellant Port Trust on several grounds giving rise to as many as seven issues framed by the trial court for determination. The suit was eventually decreed by the said court, aggrieved whereof the appellant Port Trust filed an appeal before the first appellate court which partly allowed the said appeal by its judgment and order dated 16-11-2006. The appellate court affirmed the decree passed by the courts below insofar as the trial court had declared that the lease deed in question had not been validly terminated by the lessor and the same continued to be subsisting but allowed the appeal setting aside that part of the judgment passed by the trial court whereby the trial court had directed the appellant Port Trust to transfer the lease rights in favour of the plaintiff-Respondent 1 in this appeal.

9. The appellant Port Trust appealed to the High Court against the above judgment and decree which has been dismissed[1] by the High Court in terms of the order impugned before us holding that no substantial question of law arose in the light of the concurrent findings of fact recorded by the courts below. The High Court found that since the earlier suits had not been decided on merits, no final adjudication had taken place in the same so as to attract the doctrine of res judicata to the issues raised in the third suit out of which the present proceedings arise.

10. Appearing for the appellant Mr Pravin H. Parekh, learned Senior Counsel, strenuously argued that the courts below had fallen in serious error in holding that the termination of the lease by the appellant Port Trust was invalid or that the lease continued to be valid and subsisting. The question whether the Senior Estate Manager was competent to terminate the lease and enter upon the suit property was not, argued Mr Parekh, joined as an issue by the courts below and could not be made a basis for holding the termination to be unauthorised or invalid.

11. Alternatively, Mr Parekh submitted that the termination order had been passed as early as in the year 1977 whereas the suit in question was filed in the year 1996 after a lapse of nearly 18 years. The possession of the plot was also taken over on 14-12-1978 which fact was acknowledged unequivocally by the lessee in her letter dated 22-2-1979. That being so, any suit aimed at challenging the validity of the termination or assailing validity of the process by which the possession was taken over from the lessee should have been filed within a period of six months from the date the cause of action accrued to the lessee in terms of Section 120 of the Major Port Trust Act. At any rate, such a suit could be filed, at best within three years from the date the cause of action accrued to the lessee. Neither the lessee nor her

1 *Port of Kandla* v. *Hargovind Jasraj*, Civil Second Appeal No. 17 of 2007, order dated 26-12-2007 (Guj)

transferee who came on the scene long after the termination order had been passed and the possession taken over could question the validity of the termination of the lease or demand protection of their possession in the light of a clear and unequivocal admission made by the lessee in her letter dated 22-2-1979 that the possession of the plot in question stood taken over from her. The courts below have, in that view, committed a mistake in holding that the suit was within time.

12. Mr Ahmadi, counsel appearing for the respondent, on the other hand, submitted that the courts below had recorded a concurrent finding of fact that the lessee continued to be in possession of the suit property even after the termination of the lease which finding of fact could not be assailed nor was there any legal impediment for the plaintiff transferee or the original lessee, who too was joined as a plaintiff in the year 1999, to seek protection of their possession. It was further argued by Mr Ahmadi that the admission made by the lessee in her letter dated 22-2-1979 was not unequivocal and stood explained by the attendant circumstances including the demise of her husband and resultant inability of the lessee to go ahead with the expansion programme or to pay remainder of the lease amount.

13. The trial court has, while dealing with the question of dispossession of the lessee from the disputed plot, recorded a rather ambivalent finding. This is evident from the following observations made by it in its judgment:

> "... Further panchnama submitted along with Ext. 49 cannot be said to be panchnama of taking physical possession of the plot because the plot is open. Even at present it is open and there are bushes of Babool trees *and as such it is difficult to hold anything about possession that of Pushpaben or K.P.T. It cannot be believed that by mere preparing panchnama the possession has been taken from the person who is in possession of the plot*. The K.P.T. has not taken the possession vide Ext. 49 in the presence of Pushpaben. Under the said circumstances the plot is open and it is as it is.... " (emphasis supplied)

14. It is manifest that there is no clear finding of fact regarding possession of the suit property having continued with the lessee, no matter the lease stood terminated and a panchnama evidencing takeover of the possession drawn and even communicated to her. The first appellate court in appeal filed against the above judgment and decree also did not record a specific finding that the possession of the plot had not been taken over by the Port Trust no matter the documents relied upon by it evidenced such takeover. The first appellate court instead held that the termination of the lease was not valid inasmuch as no notice regarding termination in terms of Sections 106 and 111(*g*) of the Transfer of Property Act, 1882 had been proved and served upon the lessee nor was it proved that the person who signed notice Ext. 47 and who took over possession in terms of panchnama enclosed with Ext. 49 had been authorised by the Kandla Port Trust, the lessor, to do so.

15. The conclusions drawn by the first appellate court are summarised in para 59 of its judgment in the following words:

"*59.* In view of what is stated in foregoing paragraphs of this judgment this Court comes to the following conclusions:

(*1*) The appellant-original defendant has failed to prove the service of notice terminating the lease as required under Sections 111(*g*) and 106 of the Transfer of Property Act upon the lessee i.e. Respondent 2-original Plaintiff 2.

(*2*) The defendant/the present appellant failed to prove that the person who signed the notice Ext. 47 and the person who is alleged to have made re-entry on the suit plot and signed Ext. 49 and panchnama produced along with Ext. 49 were specifically authorised by Kandla Port Trust i.e. the lessor and the Chairman of Kandla Port Trust.

(*3*) The lease dated 14-12-1966 is not legally and validly determined by the lessor hence, it is subsisting till date and alive, and the lessee Smt Pushpaben Shah i.e. Respondent 2 is entitled to hold and enjoy Suit Plot No. 30, Sector No. 8."

16. In the second appeal filed by the appellant, the High Court was of the view that the matter was concluded by concurrent findings of fact regarding the validity of the termination of the lease and the authority of those who purported to have brought about such a termination. The question whether the possession of the suit plot was taken over did not engage the attention of the first appellate court or the High Court although the latter proceeded on the basis that the findings of fact recorded by the courts below were concurrent, without pointing out as to what those findings were and how the same put the issue regarding takeover of the possession from the lessee beyond the pale of any challenge. Suffice it to say that the respondents are not correct in urging that the dispossession of the lessee pursuant to the termination of the lease was not proved as a fact. None of the courts below has recorded a clear finding on this aspect even though the trial court has in its judgment briefly touched that issue but declined to record an affirmative finding in the matter.

17. That apart, a careful reading of the passage extracted above from the order passed by the trial court shows that the trial court was labouring under the impression as though possession of the vacant piece of land cannot be taken over by the lessor unless some overt act of actual occupation of the plot is established. The fact that wild bushes were growing on the plot was, in our opinion, no reason to hold that the panchnama prepared by the Port Trust Authorities evidencing the takeover of the plot was inconsequential or insufficient to establish that the process of dispossession of the lessee had been accomplished. We need to remember that with the termination of the lease, the title to the suit property vested in the lessor, ipso jure. That being so, possession of a vacant property would follow title and also vest in the lessor. Even so, the panchnama drawn up at site recorded the factum of actual takeover of the possession from the lessee, whereafter the possession too legally vested in the lessor, growth of wild bushes and grass notwithstanding. We need not delve any further on this aspect for we are of the view that there

could be no better evidence to prove that the lessee had been dispossessed from the plot in question than her own admission contained in her communication dated 22-2-1979 addressed to the Senior Estate Manager of the appellant Trust.

18. The letter dated 22-2-1979 of Respondent 2 lessee may at this stage be extracted in extenso:

"Dear Sir,

I am in receipt of your Letter No. ES/LL/723/63/9180 dated 20-12-1978 informing that the Assistant Estate Manager has taken over Plot No. 30, Sector 8. Please note, you have not informed me to be present at 4 p.m. on 14-12-1978 at the site of the aforesaid plot and your Letter No. ES/LL/723/63/6248 dated 8-8-1977 said to have been sent to me has not yet been received and hence you do not have the authority to re-enter the plot.

As you have taken the possession of the plot, you are now requested to kindly refund all the amounts forthwith otherwise you may return back the possession of plot to me. If I do not hear anything from you within seven days from the date of receipt of this letter, appropriate legal proceedings will be adopted against you, holding you entirely responsible for the cost of consequences thereof.

Yours faithfully,
sd/-
P.P. Shah
(Smt Pushpa P. Shah)"
(emphasis supplied)

The genuineness of the above document was not disputed by the learned counsel for the respondents. All that was argued was that the admission regarding the dispossession of the lessee had been made in circumstances that (*a*) cannot constitute an admission, and (*b*) absolve the lessee, the maker, of its binding effect. The husband of the lessee having passed away, the letter in question was written in a state of shock and distress and any admission made therein could not, argued Mr Ahmadi and Ms Bhati, be treated as an admission in the true sense. We regret our inability to accept that submission.

19. The question is: whether possession had indeed been taken over from the lessee pursuant to the termination of the lease? The answer to that question is squarely provided by the letter in which the lessee makes an unequivocal and unconditional admission that possession had indeed been taken over by the appellant Port Trust. What is significant is that the lessee had asked for refund of the amount paid by her towards instalments and in case such a refund was not possible to return the plot to her. We do not think that such an unequivocal admission as is contained in the letter can be wished away or ignored in a suit where the question is: whether the lessee had indeed been dispossessed pursuant to the termination of the lease? There is no worthwhile explanation or any other reason that can possibly spell a withdrawal of the admission or constitute an explanation cogent enough to carry conviction with the court. We have in that view no hesitation in holding

that dispossession of the lessee had taken place pursuant to the termination of the lease deed in terms of panchnama dated 14-12-1978.

20. The next question then is: whether the suit for declaration to the effect that the termination of the lease was invalid and that the lease continued to subsist could be filed more than 17 years after the termination had taken place?

21. A suit for declaration not covered by Article 58 of the Schedule to the Limitation Act, 1963 must be filed within 3 years from the date when the right to sue first arises. Article 58 applicable to such suits reads as under:

	"Description of suit	*Period of limitation*	*Time from which period begins to run*
58.	To obtain any other declaration.	Three years	When the right to sue first accrues."

22. The expression "right to sue" has not been defined. But the same has on numerous occasions fallen for interpretation before the courts. In *State of Punjab* v. *Gurdev Singh*[2], the expression was explained as under: (SCC p. 5, para 6)

> "*6.* ... The words 'right to sue' ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted...."

23. Similarly in *Daya Singh* v. *Gurdev Singh*[3] the position was restated as follows: (SCC pp. 198-99, paras 13-16)

> "*13.* Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the Schedule which has prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues.
>
> *14.* In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the appellant-plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned Senior Counsel strongly relied on a decision

2 (1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287 : (1992) 1 LLJ 283
3 (2010) 2 SCC 194 : (2010) 1 SCC (Civ) 379

of the Privy Council in *Bolo* v. *Koklan*[4]. In this decision Their Lordships of the Privy Council observed as follows: (IA p. 331)

> '... There can be no "right to sue" until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.'

15. A similar view was reiterated in *C. Mohammad Yunus* v. *Syed Unnissa*[5] in which this Court observed: (AIR p. 810, para 7)

> '*7*. ... The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.'

In *C. Mohammad Yunus*[5], this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action.

16. ... Accordingly, we are of the view that the right to sue accrued when a clear and unequivocal threat to infringe that right by the defendants...."

24. References may be made to the decisions of this Court in *Khatri Hotels (P) Ltd.* v. *Union of India*[6] wherein this Court observed: (SCC p. 139, para 30)

> "*30*. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word 'first' has been used between the words 'sue' and 'accrued'. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. *To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.*" (emphasis supplied)

25. The right to sue in the present case first accrued to the lessee on 13-12-1978 when in terms of order dated 8-8-1977 the lease in favour of the lessee was terminated. A suit for declaration that the termination of the lease was invalid hence ineffective for any reason including the reason that the person on whose orders the same was terminated had no authority to do so, could have been instituted by the lessee on 14-12-1978. For any such suit it was not necessary that the lessee was dispossessed from the leased property as dispossession was different from termination of the lease. But even assuming that the right to sue did not fully accrue till the date the lessee was

4 (1929-30) 57 IA 325 : AIR 1930 PC 270

5 AIR 1961 SC 808

6 (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484

dispossessed of the plot in question, such a dispossession having taken place on 14-12-1978, the lessee ought to have filed the suit within three years of 15-12-1978 so as to be within the time stipulated under Article 58 extracted above. The suit in the instant case was, however, instituted in the year 1996 i.e. after nearly eighteen years later and was, therefore, clearly barred by limitation. The courts below fell in error in holding that the suit was within time and decreeing the same in whole or in part.

26. Mr Ahmadi next argued that the termination of the lease being illegal and non est in law, the respondent-plaintiffs could ignore the same, and so long as they or any one of them remained in possession, a decree for injunction restraining the Port Trust from interfering with their possession could be passed by the court competent to do so. We are not impressed by that submission.

27. The termination of the lease deed was by an order which the plaintiffs ought to get rid of by having the same set aside, or declared invalid for whatever reasons, it may be permissible to do so. No order bears a label of its being valid or invalid on its forehead. Anyone affected by any such order ought to seek redress against the same within the period permissible for doing so. We may in this regard refer to the following oft-quoted passage in *Smith* v. *East Elloe Rural District Council*[7]. The following are the observations regarding the necessity of recourse to the Court for getting the invalidity of an order established:

> "... An order, even if not made in good faith, is still an act capable of legal consequences. *It bears no brand of invalidity on its forehead.* Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.' (*Smith case*[7], AC pp. 769-70) (emphasis supplied)
>
> This must be equally true even where the brand of invalidity is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed put repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects."*

28. The above case was approved by this Court in *Krishnadevi Malchand Kamathia* v. *Bombay Environmental Action Group*[8], wherein this Court observed: (SCC pp. 369-70, para 19)

> "*19.* Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground

7 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL)

* **Ed.**: Wade and Forsyth in *Administrative Law*, 7th Edn., 1994.

8 (2011) 3 SCC 363

of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

29. To the same effect is the decision of this Court in *Pune Municipal Corpn.* v. *State of Maharashtra*[9] wherein this Court discussed the need for determination of invalidity of an order for public purposes: (SCC pp. 225-26, paras 36 & 38-39)

"*36.* It is well settled that no order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law. As Prof. Wade states:

> 'The principle must be equally true even where the "brand of invalidity" is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court'†.

He further states:

> 'The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the "void" order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another.'††

* * *

38. A similar question came up for consideration before this Court in *State of Punjab* v. *Gurdev Singh*[2]. ...

39. Setting aside the decree passed by all the courts and referring to several cases, this Court held that if the party aggrieved by invalidity of the order intends to approach the court for declaration that the order against him was inoperative, he must come before the court within the period prescribed by limitation. '*If the statutory time of limitation expires, the court cannot give the declaration sought for.*' "

(emphasis supplied)

30. Reference may also be made to the decisions of this Court in *R. Thiruvirkolam* v. *Presiding Officer*[10], *State of Kerala* v. *M.K. Kunhikannan Nambiar Manjeri Manikoth*[11] and *Tayabbhai M. Bagasarwalla* v. *Hind Rubber Industries (P) Ltd.*[12], where this Court has held that an order will

9 (2007) 5 SCC 211

† H.W.R. Wade, *Administrative Law* (6th Edn., Clarendon Press, Oxford 1988) 352

†† H.W.R. Wade, *Administrative Law* (6th Edn., Clarendon Press, Oxford 1988) 352-53

2 (1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287

10 (1997) 1 SCC 9 : 1997 SCC (L&S) 65

11 (1996) 1 SCC 435

12 (1997) 3 SCC 443

remain effective and lead to legal consequences unless the same is declared to be invalid by a competent court.

31. It is true that in some of the above cases, this Court was dealing with proceedings arising under Article 226 of the Constitution, exercise of powers whereunder is discretionary but then grant of declaratory relief under the Specific Relief Act is also discretionary in nature. A civil court can and may in appropriate cases refuse a declaratory decree for good and valid reasons which dissuade the court from exercising its discretionary jurisdiction. Merely because the suit is within time is no reason for the court to grant a declaration. Suffice it to say that filing of a suit for declaration was in the circumstances essential for the plaintiffs. That is precisely why the plaintiffs brought a suit no matter beyond the period of limitation prescribed for the purpose. Such a suit was neither unnecessary nor a futility for the plaintiff's right to remain in possession depended upon whether the lease was subsisting or stood terminated. It is not, therefore, possible to fall back upon the possessory rights claimed by the plaintiffs over the leased area to bring the suit within time especially when we have, while dealing with the question of possession, held that possession also was taken over pursuant to the order of termination of the lease in question.

32. In the light of what we have said above, we consider it unnecessary to examine the question whether the suit in question was barred by Section 120 of the Major Port Trusts Act which stipulates a much shorter period of limitation of six months. We also consider it unnecessary to examine whether the suit filed by the original plaintiff transferee of the lessee was barred by the principle of constructive res judicata or Order 2 Rule 2 of the Code of Civil Procedure, 1908 in view of the fact that the first suit filed by the lessee in the year 1980 for permanent prohibitory injunction could and ought to have raised the question of validity of the termination of the lease as the termination of the lease had by that time taken place. So also the question whether the transferee, who had not been recognised by the Port Trust, could institute a suit against the Port Trust so as to challenge the termination of the lease in favour of his vendor also need not be examined. All that we need to mention is that the addition of the lessee as a co-plaintiff in the suit also came as late as in the year 1999 when the original plaintiff transferee of the lease appears to have realised that it is difficult to assert his rights against the Port Trust on the basis of a transfer which was effected without the permission of the lessor Port Trust.

33. In the result, we allow this appeal, set aside the impugned judgment and decree passed by the courts below and dismiss the suit filed by the respondents but in the circumstances without any order as to costs.

———

29. In this instant case, the charge of conspiracy has not been proved to bring home the charge of conspiracy within the ambit of Section 120-B IPC. It is also settled law that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or misrepresentation. From his making failure to keep up promise subsequently, such a culpable intention right at the beginning, that is, at the time when the promise was made cannot be presumed. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 IPC does not arise.

30. The High Court without adverting to the above important questions of law involved in this case and examining them in the proper perspective disposed of the revisions in a summary manner and hence the impugned orders passed by the High Court and the learned Magistrate warrant interference.

31. It is a well-established principle that the matter which has been adjudicated and settled by the Tribunal need not be dragged into the criminal courts unless and until the act of the appellants could have been described as culpable.

32. For the aforesaid discussions and reasons adduced, the questions of law formulated above are answered accordingly and the appeals stand allowed.

(2004) 2 Supreme Court Cases 747

(BEFORE V.N. KHARE, C.J. AND S.B. SINHA AND S.H. KAPADIA, JJ.)

UNION OF INDIA AND OTHERS . . Appellants;

Versus

WEST COAST PAPER MILLS LTD. AND ANOTHER . . Respondents.

Civil Appeals Nos. 1061-62 of 1998†, decided on February 5, 2004

A. **Limitation Act, 1963 — S. 3 — Starting point of limitation — Railway Rates Tribunal holding the revised rate of freight to be unreasonable — Special leave granted but ultimately appeal dismissed — In such circumstances, notwithstanding the finality of the Tribunal's decision in terms of S. 46-A, Railways Act, 1890, the starting point of limitation for filing a suit to recover the excess amount of freight paid, held, was the date of the Supreme Court's order and not the date of the Tribunal's judgment — Doctrine of merger and the principle that an appeal is in continuation of suit, taken into consideration — Stay of judgment appealed against inconsequential once Supreme Court grants special leave — *P.K. Kutty Anuja Raja case*, (1996) 2 SCC 496, held, not good law — Constitution of India — Art. 136 — Grant/Dismissal of SLP — Grant of SLP — Effect — Civil Procedure Code, 1908, Ss. 96 and 100 — Railways Act, 1890, S. 46-A — Administrative Law — Administrative bodies — Administrative Tribunal — Merger of decision of, in appellate order**

† From the Judgment and Order dated 26-2-1996 of the Karnataka High Court in RFAs Nos. 1450-51 of 1986

B. **Constitution of India — Art. 136 — Generally — Nature and scope of jurisdiction under Art. 136 — Once special leave is granted and the appeal is admitted, held, the correctness or otherwise of the impugned judgment is in jeopardy — In such an appeal the Supreme Court, held, is entitled to go into both questions of fact as well as law**

C. **Constitution of India — Art. 136 — Questions of fact — Supreme Court's power to go into**

D. **Limitation Act, 1963 — S. 3 — Manner of interpretation of — Notwithstanding the rigours of S. 3, held, it should be construed in a broad-based and liberal manner — Interpretation of Statutes — Basic rules — Liberal interpretation — Applicability**

E. **Limitation Act, 1963 — Ss. 14 and 15 — Applicability — Railway Rates Tribunal declaring the enhanced rate of freight to be illegal — Freight-payer company filing a writ petition seeking refund of the excess freight charged from it — High Court relegating the Company to the remedy of suit — Company filing a suit accordingly — In such circumstances the courts below rightly held the plaintiff Company to be entitled to benefits of Ss. 14 & 15**

F. **Limitation Act, 1963 — Art. 113 or Art. 58 — Suit for recovery of excess amount of freight on the basis of Railway Rates Tribunal's judgment declaring that the amount of freight charged from the plaintiff was illegal — Such suit whether governed by Art. 113 or Art. 58**

The respondent herein used to transport its goods by rail. The rate of freight was revised w.e.f. 1-12-1964. At the instance of the respondent, the Railway Rates Tribunal, by a judgment dated 18-4-1966, declared the revised rates as unreasonable. The Supreme Court while granting special leave to the Railways to appeal, refused to grant stay and passed a limited interim order. Ultimately, it dismissed the special leave petition. On 5-1-1972, the respondent filed a writ petition which was dismissed on the ground of availability of the remedy of suit. The respondent then filed two suits on 12-12-1973 and 18-4-1974 for refund of the excess amount collected by the defendant Railways for the period 24-6-1963 to 1-2-1964 and 1-2-1964 to 18-4-1966 with interest accrued thereupon. Under the provisions of the Railways Act as then existing, the Tribunal was entitled only to make a declaration to the effect that the freight charged was unreasonable or excessive. It did not have any jurisdiction to execute its own order. Before the trial court, the defendant Railways contended that since despite the pendency of SLP no stay had been granted by the Supreme Court, the suits filed beyond the three years' limitation period under Article 58, Limitation Act, 1963 from the date of the Tribunal's judgment, i.e., 18-4-1966, were time-barred. However, taking the view that the plaintiff-respondent was entitled to benefit of Sections 14 and 15 of the Limitation Act, the trial court held that the suits were within limitation. The High Court affirmed that view. The Union of India then filed the instant appeal, which came up before a Division Bench. Doubting the correctness of the decision in *P.K. Kutty Anuja Raja case*, (1996) 2 SCC 496, the Division Bench referred the matter to the present three-Judge Bench. Before the present Bench the appellant reiterated the plea of limitation. It added that since in terms of Section 46-A of the Railways Act, the judgment of the Tribunal was final, the starting period of limitation for filing the suit would be three years from the date of the Tribunal's judgment. On the other hand, the respondent-plaintiff submitted

that having regard to the fact situation of the present case, Article 113 and not Article 58 of the Limitation Act was applicable. That in view of grant of special leave and passing of the interim order by the Supreme Court, the judgment of the Tribunal was in jeopardy and had not attained finality. The respondent-plaintiff added that applying the doctrine of merger, the period of limitation would begin to run from the date of passing the appellate decree and not from the date of passing of the original decree.

Overruling *P.K. Kutty case*, and directing the matter to be placed before an appropriate Bench for disposal of the appeals on merits, the three-Judge Bench

Held :

Although by reason of Section 46-A of the Railways Act the judgment of the Tribunal might be final but by reason thereof the jurisdiction of the Supreme Court to exercise its power under Article 136 was not and could not have been excluded. (Para 13)

Once special leave is granted under Article 136 and the appeal is admitted, the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal, the court is entitled to go into both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy. (Para 14)

Even in relation to a civil dispute, an appeal is considered to be a continuation of the suit and a decree becomes executable only when the same is finally disposed of by the court of appeal. (Para 15)

The starting point of limitation for filing a suit for the purpose of recovery of the excess amount of freight illegally realised would, thus, begin from the date of the order passed by the Supreme Court. The respondent herein filed a writ petition which was not entertained on the ground of availability of the remedy of suit. The respondents were, thus, also entitled to get the period during which the writ petition was pending, excluded for computing the period of limitation. Therefore, the civil suit was filed within the limitation period. (Para 16)

The trial Judge as also the High Court have recorded a concurrent opinion that the respondents were entitled to the benefit of Sections 14 and 15 of the Limitation Act, 1963. There is no reason to take a different view. (Para 18)

As regards the applicability of Article 58 or 113, the present case was not one where the respondent sought a declaration of its rights. The declaration sought for by it as regards unreasonableness in the levy of freight was granted by the Tribunal. (Para 20)

Moreover, the distinction between Article 58 and Article 113 is apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose. The fact that the suit was not filed by the plaintiff-respondent claiming existence of any legal right in itself is not disputed. The suit for recovery of money was based on the declaration made by the Tribunal to the effect that the amount of freight charged by the appellant was unreasonable. Therefore, a cause of action arose only when its right was finally determined by the Supreme Court and not prior thereto. The Supreme

Court not only granted special leave but also considered the decision of the Tribunal on merit. (Paras 21 and 22)

Despite the rigours of Section 3 of the Limitation Act, 1963, the provisions thereof are required to be construed in a broad-based and liberal manner. (Para 26)

In *P.K. Kutty case*, (1996) 2 SCC 496 and *Mohinder Singh Jagdev case*, (1996) 6 SCC 229 no argument was advanced as regards the applicability of doctrine of merger. The ratio laid down by the Constitution Benches of the Supreme Court had also not been brought to the Court's notice. In the said cases, the Supreme Court failed to take into consideration that once an appeal is filed before the Supreme Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The subject-matter of the lis unless determined by the last court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of much relevance once the Supreme Court grants special leave and decides to hear the matter on merit. (Paras 40 and 41)

Even under the ordinary civil law the judgment of the appellate court alone can be put to execution. Having regard to the doctrine of merger as also the principle that an appeal is in continuation of suit, it is held that the decision of the Constitution Bench in *S.S. Rathore*, (1989) 4 SCC 582 was to be followed in the instant case. (Para 42)

Therefore, it is held that *P.K. Kutty* does not lay down the law correctly and is overruled accordingly. (Para 44)

P.K. Kutty Anuja Raja v. *State of Kerala*, (1996) 2 SCC 496, *overruled*

S.S. Rathore v. *State of M.P.*, (1989) 4 SCC 582 : 1990 SCC (L&S) 50 : (1989) 11 ATC 913; *Kunhayammed* v. *State of Kerala*, (2000) 6 SCC 359, *followed*

Secy., Ministry of Works & Housing v. *Mohinder Singh Jagdev*, (1996) 6 SCC 229, *overruled on this point* and *also distinguished on facts*

Juscurn Boid v. *Pirthichand Lal*, (1918-19) 46 IA 52 : AIR 1918 PC 151, *limited*

Maqbul Ahmad v. *Onkar Pratap Narain Singh*, AIR 1935 PC 85 : 62 IA 16, *distinguished*

Madan Gopal Rungta v. *Secy. to the Govt. of Orissa*, AIR 1962 SC 1513 : 1962 Supp (3) SCR 906; *Collector of Customs* v. *East India Commercial Co. Ltd.*, AIR 1963 SC 1124 : (1963) 2 SCR 563; *Somnath Sahu* v. *State of Orissa*, (1969) 3 SCC 384; *Mohd. Quaramuddin* v. *State of A.P.*, (1994) 5 SCC 118 : 1994 SCC (L&S) 1039 : (1994) 27 ATC 814; *Raja Mechanical Co. (P) Ltd.* v. *CCE*, (2002) 4 AD (Del) 621; *STO* v. *Kanhaiya Lal Makund Lal Saraf*, AIR 1959 SC 135, *referred to*

Sita Ram Goel v. *Municipal Board, Kanpur*, AIR 1958 SC 1036 : 1959 SCR 1148; *State of U.P.* v. *Mohd. Nooh*, AIR 1958 SC 86 : 1958 SCR 595, *held, not good law*

Corpus Juris Secundum, Vol. 57, pp. 1067-68, *referred to*

Suggested Case Finder Search Text (*inter alia*) :

limitation near (start* or commence*)

H-M/AETZ/29613/C

Advocates who appeared in this case :

P.P. Malhotra, Senior Advocate (S.A. Matoo, S. Wasim A. Qadri, S.N. Terdal and Arvind Kr. Sharma, Advocates, with him) for the Appellants;

Harish N. Salve and Kailash Vasdev, Senior Advocates (Prateek Kumar, Ms Gayatri Goswami and Ms V.D. Khanna, Advocates, with them) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2002) 4 AD (Del) 621, *Raja Mechanical Co. (P) Ltd.* v. *CCE* 756*a*
2. (2000) 6 SCC 359, *Kunhayammed* v. *State of Kerala* 753*d-e*, 755*a-b*, 757*b*
3. (1996) 6 SCC 229, *Secy., Ministry of Works & Housing* v. *Mohinder Singh Jagdev* 753*b*, 758*e-f*, 759*a*, 759*c-d*
4. (1996) 2 SCC 496, *P.K. Kutty Anuja Raja* v. *State of Kerala* 751*d-e*, 753*b*, 757*g-h*, 758*a-b*, 759*a*, 759*d*
5. (1994) 5 SCC 118 : 1994 SCC (L&S) 1039 : (1994) 27 ATC 814, *Mohd. Quaramuddin* v. *State of A.P.* 757*b*
6. (1989) 4 SCC 582 : 1990 SCC (L&S) 50 : (1989) 11 ATC 913, *S.S. Rathore* v. *State of M.P.* 756*e-f*, 757*b*, 759*c-d*
7. (1969) 3 SCC 384, *Somnath Sahu* v. *State of Orissa* 756*f*
8. AIR 1963 SC 1124 : (1963) 2 SCR 563, *Collector of Customs* v. *East India Commercial Co. Ltd.* 756*f*
9. AIR 1962 SC 1513 : 1962 Supp (3) SCR 906, *Madan Gopal Rungta* v. *Secy. to the Govt. of Orissa* 756*e-f*
10. AIR 1959 SC 135, *STO* v. *Kanhaiya Lal Makund Lal Saraf* 757*h*, 758*c-d*
11. AIR 1958 SC 1036 : 1959 SCR 1148, *Sita Ram Goel* v. *Municipal Board, Kanpur* 756*a-b*
12. AIR 1958 SC 86 : 1958 SCR 595, *State of U.P.* v. *Mohd. Nooh* 756*d*, 756*e-f*, 756*f-g*
13. AIR 1935 PC 85 : 62 IA 16, *Maqbul Ahmad* v. *Onkar Pratap Narain Singh* 753*b*, 757*d-e*
14. (1918-19) 46 IA 52 : AIR 1918 PC 151, *Juscurn Boid* v. *Pirthichand Lal* 753*b*, 757*b-c*

The Judgment of the Court was delivered by

S.B. SINHA, J.— Doubting the correctness of a two-Judge Bench decision of this Court in *P.K. Kutty Anuja Raja* v. *State of Kerala*[1] a Division Bench of this Court has referred the matter to a three-Judge Bench.

2. The factual matrix required to be taken note of is as under:

The respondents herein were transporting their goods through the branch line to the appellants from Alnavar to Dandeli wherefor the common rate fixed in respect of all commodities on the basis of weight was being levied as freight. However, a revision was made in the rate of freight w.e.f. 1-2-1964.

3. Aggrieved thereby and dissatisfied therewith, the respondents herein filed a complaint petition before the Railway Rates Tribunal (hereinafter referred to as "the Tribunal") challenging the same as unjust, unreasonable and discriminatory as the standard telescopic class rates on three times of inflated distance were adopted for levy of freight on goods traffic. The Tribunal by a judgment dated 18-4-1966 declared the said levy as unreasonable whereagainst the appellants herein filed an application for grant of special leave before this Court.

4. While granting special leave, this Court also passed a limited interim order which is in the following terms:

> "The Railways may charge the usual rates without inflation of the distance, and the respondent will give a bank guarantee to the satisfaction of the Registrar of this Court for rupees two lakhs to be renewed each

1 (1996) 2 SCC 496 : JT (1996) 2 SC 167

year until the disposal of the appeal. One month's time allowed for furnishing the bank guarantee. The stay petition is dismissed subject to the above."

5. Eventually, however, the said special leave petition was dismissed by this Court on 14-10-1970†.

6. A writ petition was filed by the respondent herein on 5-1-1972 which was marked as WP No. 210 of 1972, and the same was disposed of by the High Court on 29-10-1973 observing:

> "All these matters, in my opinion, cannot be properly adjudicated upon in a writ petition filed under Article 226 of the Constitution. If so advised the petitioner could avail of the ordinary remedy of filing a suit for appropriate relief. If such a suit is filed, it will be open to the respondents to raise all available contentions in defence just as it is open to the petitioner to raise all available contentions in support of its claim. Having considered all relevant aspects, I am of the opinion, that this is a case where I should decline to exercise my discretion under Article 226 of the Constitution.
>
> Subject to the aforesaid observations, this writ petition is dismissed."

7. Two suits thereafter were filed by the respondents on 12-12-1973 and 18-4-1974 which were renumbered later on as OSs Nos. 38 and 39 of 1982.

8. A contention that the said suits were barred by limitation was raised by the appellants herein stating that the cause of action for filing the same arose immediately after the judgment was passed by "the Tribunal" on 18-4-1966 and, thus, in terms of Article 58 of the Limitation Act, 1963, they were required to be filed within a period of three years from the said date, as despite the fact that the special leave petition was preferred thereagainst, no stay had been granted by this Court and, thus, the period, during which the matter was pending before this Court, would not be excluded in computing the period of limitation. Having regard to the plea raised by the plaintiff-respondent in the aforementioned suits as regards the applicability of Sections 14 and 15 of the Limitation Act, 1963, the trial court held that the suits had been filed within the stipulated period. The High Court in appeal also affirmed the said view.

9. Mr P.P. Malhotra, learned Senior Counsel appearing on behalf of the appellant, at the outset drew our attention to the fact that the Union of India has already complied with the direction of "the Tribunal" by refunding the excess freight charged from the respondent for the period 18-4-1966 to 25-9-1966. The learned counsel, however, would contend that the suit for refund of excess amount of the freight for the disputed periods (*a*) 24-6-1963 to 1-2-1964, and (*b*) 1-2-1964 to 18-4-1966 was barred by limitation in terms of Article 58 of the Limitation Act, 1963, as the cause of action for filing the suit had arisen on the date on which such declaration was made by "the Tribunal".

† *Union of India* v. *West Coast Paper Mills Ltd.*, (1970) 3 SCC 606

10. Mr Malhotra would further contend that in absence of an order staying the operation of the judgment, it became enforceable and, thus, the plaintiff-respondent was required to file the suit within the period of limitation specified therefor. Furthermore, the learned counsel would urge that in terms of Section 46-A of the Indian Railways Act, the judgment of the Tribunal being final, the starting period of limitation for filing the suit would be three years from the said date. Strong reliance in this behalf has been placed on *Juscurn Boid* v. *Pirthichand Lal*[2], *P.K. Kutty*[1], *Maqbul Ahmad* v. *Onkar Pratap Narain Singh*[3] and *Secy., Ministry of Works & Housing* v. *Mohinder Singh Jagdev*[4].

11. Mr Harish N. Salve, learned Senior Counsel appearing on behalf of the respondents, on the other hand, would submit that having regard to the fact situation obtaining in this case Article 113 of the Limitation Act shall apply and not Article 58 thereof. The learned counsel would urge that as admittedly this Court granted special leave to appeal in favour of the appellants and passed a limited interim order, the judgment of the Tribunal was in jeopardy and, thus, cannot be said to have attained finality. Furthermore, the learned counsel would submit that when the doctrine of merger applies, the period of limitation would begin to run from the date of passing the appellate decree and not from the date of passing of the original decree. In support of the said contention, reliance has been placed on a decision of this Court in *Kunhayammed* v. *State of Kerala*[5].

12. The plaintiff in this case has filed a suit for refund of the excess amount collected by the defendant Railways for the period 24-6-1963 to 1-2-1964 and 1-2-1964 to 18-4-1966 with interest accrued thereupon. It is not in dispute that in terms of the provisions of the Indian Railways Act, as thence existing "the Tribunal" was only entitled to make a declaration to the effect that the freight charged was unreasonable or excessive. It did not have any jurisdiction to execute its own order.

13. It may be true that by reason of Section 46-A of the Indian Railways Act the judgment of the Tribunal was final but by reason thereof the jurisdiction of this Court to exercise its power under Article 136 of the Constitution of India was not and could not have been excluded.

14. Article 136 of the Constitution of India confers a special power upon this Court in terms whereof an appeal shall lie against any order passed by a court or tribunal. Once a special leave is granted and the appeal is admitted, the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal, the court is entitled to go into both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy.

2 (1918-19) 46 IA 52 : AIR 1918 PC 151
3 AIR 1935 PC 85 : 62 IA 16
4 (1996) 6 SCC 229
5 (2000) 6 SCC 359

15. Even in relation to a civil dispute, an appeal is considered to be a continuation of the suit and a decree becomes executable only when the same is finally disposed of by the court of appeal.

16. The starting point of limitation for filing a suit for the purpose of recovery of the excess amount of freight illegally realised would, thus, begin from the date of the order passed by this Court. It is also not in dispute that the respondent herein filed a writ petition which was not entertained on the ground stated hereinbefore. The respondents were, thus, also entitled to get the period during which the writ petition was pending, excluded for computing the period of limitation. In that view of the matter, the civil suit was filed within the prescribed period of limitation.

17. The trial Judge as also the High Court have recorded a concurrent opinion that the respondents were entitled to the benefits of Sections 14 and 15 of the Limitation Act, 1963. We have no reason to take a different view.

18. It is beyond any cavil that in the event the respondent was held to have been prosecuting its remedy bona fide before an appropriate forum, it would be entitled to get the period in question excluded from computation of the period of limitation.

19. Articles 58 and 113 of the Limitation Act read thus:

	Description of suit	*Period of limitation*	*Time from which period begins to run*
58.	To obtain any other declaration.	Three years	When the right to sue first accrues.
	*	*	*
113.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.

20. It was not a case where the respondents prayed for a declaration of their rights. The declaration sought for by them as regards unreasonableness in the levy of freight was granted by the Tribunal.

21. A distinction furthermore, which is required to be noticed is that whereas in terms of Article 58 the period of three years is to be counted from the date when "the right to sue first accrues", in terms of Article 113 thereof, the period of limitation would be counted from the date "when the right to sue accrues". The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose.

22. The fact that the suit was not filed by the plaintiff-respondent claiming existence of any legal right in itself is not disputed. The suit for recovery of money was based on the declaration made by "the Tribunal" to the effect that the amount of freight charged by the appellant was

unreasonable. It will bear repetition to state that a plaintiff filed a suit for refund and a cause of action therefor arose only when its right was finally determined by this Court and not prior thereto. This Court not only granted special leave but also considered the decision of the Tribunal on merit.

23. In *Kunhayammed*[5] this Court held: (SCC p. 370, para 12)

> "*12*. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."

It was further observed: (SCC p. 383, paras 41-42)

> "*41*. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.
>
> *42*. 'To merge' means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve

a loss of identity and individuality. (See *Corpus Juris Secundum*, Vol. 57, pp. 1067-68.)"

[See also *Raja Mechanical Co. (P) Ltd.* v. *CCE*[6].]

24. The question as regards applicability of merger with reference to the provisions for departmental appeal and revision had first been considered by this Court in *Sita Ram Goel* v. *Municipal Board, Kanpur*[7] stating: (AIR p. 1040, para 19)

"*19*. The initial difficulty in the way of the appellant, however, is that departmental enquiries even though they culminate in decisions on appeals or revision cannot be equated with proceedings before the regular courts of law."

25. However, the said view was later on not accepted to be correct.

26. Despite the rigours of Section 3 of the Limitation Act, 1963, the provisions thereof are required to be construed in a broad-based and liberal manner. We need not refer to the decisions of this Court in the matter of condoning delay in filing appeal or application in exercise of its power under Section 5 of the Limitation Act.

27. In *State of U.P.* v. *Mohd. Nooh*[8] Vivian Bose, J. held that justice should be done in a common-sense point of view stating: (AIR pp. 95-96, para 17)

"*17*. I see no reason why any narrow or ultra-technical restrictions should be placed on them. Justice should, in my opinion, be administered in our courts in a common-sense liberal way and be broad-based on human values rather than on narrow and restricted considerations hedged round with hair-splitting technicalities."

28. However, in that case also a distinction was sought to be made between a judgment of a "court" and "tribunal".

29. In *S.S. Rathore* v. *State of M.P.*[9] noticing the earlier Constitution Benches' decisions of this Court in *Mohd. Nooh*[8], *Madan Gopal Rungta* v. *Secy. to the Govt. of Orissa*[10], *Collector of Customs* v. *East India Commercial Co. Ltd.*[11] as well as the three-Judge Bench of this Court in *Somnath Sahu* v. *State of Orissa*[12] this Court observed: (SCC p. 589, para 14)

"*14*. The distinction adopted in *Mohd. Nooh case*[8] between a court and a tribunal being the appellate or the revisional authority is one without any legal justification. Powers of adjudication ordinarily vested in courts are being exercised under the law by tribunals and other constituted authorities. In fact, in respect of many disputes the

6 (2002) 4 AD (Del) 621
7 AIR 1958 SC 1036 : 1959 SCR 1148
8 AIR 1958 SC 86 : 1958 SCR 595
9 (1989) 4 SCC 582 : 1990 SCC (L&S) 50 : (1989) 11 ATC 913
10 AIR 1962 SC 1513 : 1962 Supp (3) SCR 906
11 AIR 1963 SC 1124 : (1963) 2 SCR 563
12 (1969) 3 SCC 384

jurisdiction of the court is now barred and there is a vesting of jurisdiction in tribunals and authorities. That being the position, we see no justification for the distinction between courts and tribunals in regard to the principle of merger. On the authority of the precedents indicated, it must be held that the order of dismissal made by the Collector did merge into the order of the Divisional Commissioner when the appellant's appeal was dismissed on 31-8-1966."

30. *Rathore case*[9] was followed in *Mohd. Quaramuddin* v. *State of A.P.*[13] and noticed in *Kunhayammed*[5].

31. We may now, keeping in view the law laid down by this Court, as noticed hereinbefore, consider the decisions relied upon by Mr Malhotra.

32. In *Juscurn Boid*[2] the question which arose for consideration was as to in a suit for recovery of the purchase money paid for sale of a *patni taluk* under Bengal Regulation 8 of 1819, which had been set aside, what would be the date when cause of action therefor can be said to have arisen?

33. In that case several suits were filed. The sale was reversed in its entirety in the first suit. Stay was not granted in the other suits. In the peculiar fact situation obtaining therein it was held that under the Indian law and procedure when an original decree is not questioned by presentation of an appeal nor is its operation interrupted, where the decree on appeal is one of dismissal, the running of the period of limitation did not stop.

34. In *Maqbul Ahmad*[3] the question which arose for consideration was as to whether subsequent to the passing of a preliminary decree in the mortgage suit, an application to obtain execution under the preliminary decree can be dismissed. In that case a preliminary mortgage decree was obtained on 7-5-1917 which was amended in some respects on 22-5-1917. Some of the mortgagors who were interested in different villages comprised in the mortgage, appealed to the High Court against the preliminary decree. Two such appeals were filed. One appeal succeeded while the other failed. The decrees of the High Court disposing of those appeals were made on 7-6-1920 whereafter the decree-holder proceeded to seek execution under the preliminary decree. In the aforementioned situation, it was held: (AIR p. 87)

> "It is impossible to say, apart from any other objection, that the application to obtain execution under the preliminary decree was an application for the same relief as the application to the Court for a final mortgage decree for sale in the suit. That being so, it is not permissible, on the basis of Section 14 in computing the period of limitation prescribed, to exclude that particular period."

35. The question which falls for consideration in this case did not arise therein.

36. Before we advert to *P.K. Kutty*[1] we may notice another decision of this Court in *STO* v. *Kanhaiya Lal Makund Lal Saraf*[14]. In that case an order

13 (1994) 5 SCC 118 : 1994 SCC (L&S) 1039 : (1994) 27 ATC 814
14 AIR 1959 SC 135

of assessment was in question which came up before this Court. The question which arose for consideration therein was as to whether Section 72 of the Indian Contract Act had any application. This Court held that cause of action for filing the suit for recovery would arise from the date when such payment of tax made under a mistake of law became known to the party.

37. In *P.K. Kutty*[1] an order of assessment under the Agricultural Income Tax was set aside by the High Court by a judgment dated 1-1-1968. A civil suit was filed in the year 1974. The suit was held to be barred by limitation. A contention was raised therein that the appellant had discovered the mistake on 5-10-1971 when the Court dismissed the appeal filed by the State against the order passed by the High Court dated 1-1-1968. This Court negatived the said plea stating: (SCC p. 497, para 3)

> "*3*. ... We are unable to agree with the learned counsel. It is not in dispute that at his behest the assessment was quashed by the High Court in the aforesaid OP on 1-1-1968. Thereby the limitation started running from that date. Once the limitation starts running, it runs its full course until the running of the limitation is interdicted by an order of the Court."

38. Distinguishing *Kanhaiya Lal*[14], it was observed: (SCC pp. 497-98, para 5)

> "*5*. ... We do not have that fact situation in this case. The appellant is a party to the proceedings and at his instance the assessment of agricultural income tax was quashed as referred to hereinbefore and having had the assessment quashed the cause of action had arisen to him to lay the suit for refund unless it is refunded by the State. The knowledge of the mistake of law cannot be countenanced for extended time till the appeal was disposed of unless, as stated earlier, the operation of the judgment of the High Court in the previous proceedings were stayed by this Court."

39. In *Mohinder Singh Jagdev*[4] also this Court held: (SCC p. 232, para 7)

> "*7*. The crucial question is whether the suit is barred by limitation? Section 3 of the Limitation Act, 1963 (for short, 'the Act') postulates that the limitation can be pleaded. If any proceedings have been laid after the expiry of the period of limitation, the court is bound to take note thereof and grant appropriate relief and has to dismiss the suit, if it is barred by limitation. In this case, the relief in the plaint, as stated earlier, is one of declaration. The declaration is clearly governed by Article 58 of the Schedule to the Act which envisages that to obtain 'any other' declaration the limitation of three years begins to run from the period when the right to sue 'first accrues'. The right to sue had first accrued to the respondent on 10-9-1957 when the respondent's services came to be terminated. Once limitation starts running, until its running of limitation has been stopped by an order of the competent civil court or any other competent authority, it cannot stop. On expiry of three years from the date of dismissal of the respondent from service, the respondent had lost his right to sue for the above declaration."

40. Unfortunately in *P.K. Kutty*[1] and *Mohinder Singh Jagdev*[4] no argument was advanced as regards the applicability of doctrine of merger. The ratio laid down by the Constitution Benches of this Court had also not been brought to the Court's notice.

41. In the aforementioned cases, this Court failed to take into consideration that once an appeal is filed before this Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The subject-matter of the lis unless determined by the last court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of much relevance once this Court grants special leave and decides to hear the matter on merit.

42. It has not been and could not be contended that even under the ordinary civil law the judgment of the appellate court alone can be put to execution. Having regard to the doctrine of merger as also the principle that an appeal is in continuation of suit, we are of the opinion that the decision of the Constitution Bench in *S.S. Rathore*[9] was to be followed in the instant case.

43. The facts obtaining in *Mohinder Singh Jagdev*[4] being totally different, the same cannot be said to have any application in the facts obtaining in the present case.

44. We, therefore, are of the opinion that *P.K. Kutty*[1] does not lay down the law correctly and is overruled accordingly.

45. The matter may now be placed before an appropriate Bench for disposal of the appeals on merits.

(2004) 2 Supreme Court Cases 759

(BEFORE V.N. KHARE, C.J. AND S.B. SINHA AND G.P. MATHUR, JJ.)

RAM PHAL KUNDU . . Appellant;

Versus

KAMAL SHARMA . . Respondent.

Civil Appeal No. 4262 of 2003†, decided on January 23, 2004

A. **Election — Nomination — Two candidates claiming to have been set up by the same political party — Whether candidature of one of them was validly rescinded and the other candidate was substituted by the party and as such nomination of the other candidate was rightly accepted — Held, must be determined strictly in accordance with paras 13 and 13-A of Election Symbols (Reservation and Allotment) Order, 1968 — Any extrinsic evidence (oral or documentary) adduced subsequent to the last date of filing nomination papers, held, cannot be accepted, except where it is pleaded that signature of the authorised person in Form B showing rescission and substitution had been obtained under threat or by fraud — Election**

† From the Judgment and Order dated 8-5-2003 of the Punjab and Haryana High Court in EP No. 15 of 2000 : **(2003) 3 Recent Civil Rulings 478**

notices were issued in due compliance with the requirements of Rule 4 of Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964, we do not find it necessary to consider the provisions of this Act for the purpose of these appeals.

9. The appeals are accordingly allowed and the judgment and orders appealed from are set aside. The High Court will now proceed to dispose of the writ petitions in accordance with law on the other grounds raised therein. The appellants will be entitled to their costs in this Court — one hearing fee.

(1975) 4 Supreme Court Cases 22

(Before Y. V. Chandrachud, R. S. Sarkaria and A. C. Gupta, JJ.)

THE COMMISSIONER OF SALES TAX,
U. P., LUCKNOW .. .. .. Appellant;

Versus

M/s. PARSON TOOLS AND PLANTS, KANPUR .. Respondent.

Civil Appeals Nos. 1458-1459 of 1970†, decided on February 27, 1975

Sales Tax — Revision — Limitation — Whether on terms or in principle Section 14(2) of the Limitation Act, 1963, can be invoked for excluding the time bona fide spent in prosecuting an application under Rule 68(6) of the U. P. Sales Tax Rules for setting aside the order of dismissal of appeal in default, from computation of the period of limitation for filing a revision under the Act — U. P. Sales Tax Act, 1948 — Section 10(3-B) — Limitation Act, 1963, Section 14(2) — Scope of — Nature of proceedings under Sales Tax Act — Authorities under Sales Tax Act if 'Courts'

The respondents were absent when the appeals against the assessment orders came for hearing. They were therefore dismissed under Rule 68(5). Against that the respondent on the same day filed applications under Rule 68(6) for setting aside the dismissal. During the pendency of these applications, Rule 68(5) was declared ultra vires by the High Court. So the applications under Rule 68(6) were dismissed outright. The respondent's revision petitions before the revisional authority were time-barred, but applying Sections 5 and 14 of the Limitation Act, the time spent in pursuing the application under Rule 68(6) was excluded. The High Court upheld the applicability of Section 14(2). Hence the appeal by the department.

Held:

Section 14(2) of the Limitation Act will apply only if:

(1) both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) the prior proceedings had been prosecuted with due diligence and in good faith;

(3) the failure of the prior proceedings was due to a defect of jurisdiction or other cause of a like nature;

(4) both the proceedings are proceedings in a Court. (Para 6)

Now proceedings under the Sales Tax Act could be deemed as civil proceedings. But the authorities, irrespective of whether they exercise original, appellate or revisional jurisdiction under the Sales Tax Act are not 'Courts' within

†Appeal by Special Leave from the Judgment and Order, dated January 1, 1970 of Allahabad High Court in S. T. R. No. 344 and S. T. R. No. 347 of 1967 [(1971) 27 STC 73].

the contemplation of Section 14(2) of the Limitation Act. They are merely administrative tribunals and "not courts". Section 14, Limitation Act, therefore, does not, in terms apply to proceedings before such tribunals. (Paras 7 & 9)

Jagannath Prasad v. *State of U. P.*, (1963) 2 SCR 850 : AIR 1963 SC 416 : 14 STC 536 and *Smt. Ujjam Bai* v. *State of U. P.*, (1963) 1 SCR 778 : AIR 1962 SC 1621, *followed.*

Even on grounds of justice, equity and good conscience Section 14(2) is not applicable because definite indications are available in the scheme and language of the Sales Tax Act excluding such application in principle or by analogy. (Paras 10 to 15)

As regards Section 10(3B) of the Act three features may be noted: The first is that no limitation has been prescribed for the suo motu exercise of its jurisdiction by the revising authority. The second is that the period of one year prescribed as limitation for filing an application for revision by the aggrieved party is unusually long. The third is that the revising authority has no discretion to extend this period beyond a further period of six months, even on sufficient cause shown. So the Legislature has deliberately excluded the application of the principles underlying Sections 5 and 14 of the Limitation Act, except to the extent and in the truncated form embodied in sub-section (3-B) of Section 10 of the Sales Tax Act. (Paras 12 & 13)

Hence the provisions of the Limitation Act which the Legislature did not, after due application of mind, incorporate in the Sales Tax Act, cannot be imported into it by analogy. An enactment being the will of the Legislature, the paramount rule of interpretation of legislative intent will apply. (Para 15)

If the Legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act. (Para 22)

Therefore the object, the scheme and language of Section 10 of the Sales Tax Act do not permit the invocation of Section 14(2) of the Limitation Act, either in terms, or in principle, for excluding the time spent in prosecuting proceedings for setting aside the dismissal of appeals in default, from computation of the period of limitation prescribed for filing a revision under the Sales Tax Act. (Para 24)

Ramdutt Ramkissen Dass v. *F. D. Sasson & Co.*, AIR 1929 PC 103 : 56 IA 128 : 115 IC 713, *distinguished.*

Purshottam Dass Hassaram v *Impex (I) Ltd.*, AIR 1954 Bom 309, *approved.*

C. S. T. v. *Parson Tools & Plants*, (1971) 27 STC 73, *reversed.*

Interpretation of Statutes — Legislative intent — Rule of literal interpretation — Taxing statutes — Applicability to

Held :

If the Legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so would be entrenching upon the preserves of Legislature, the primary function of a court of law being jus dicere and not jus dare. (Para 16)

The will of the Legislature is the supreme law of the land, and demands perfect obedience. Judicial power is never exercised for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the Legislature; or in other words, to the will of the law. (Para 15)

Therefore, where the Legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver; more so if the statute is a taxing statute. (Para 23)

Prem Nath L. Ganesh v. *Prem Nath L. Ram Nath*, AIR 1963 Punj 62, *approved.*

Pearl Berg v. *Varty*, (1972) 2 All ER 6, *relied on.*

Appeals allowed M/2421/ST

Advocates who appeared in this case:

M. D. Karkhanis, Senior Advocate (*O. P. Rana*, Advocate, with him), for the Appellant;

Nemo, for the Respondent.

The Judgment of the Court was delivered by

SARKARIA, J.—The common question of law for determination in these appeals by special leave is: Whether Section 14(2) of the Limitation Act, in terms, or, in principle, can be invoked for excluding the time spent in prosecuting an application under Rule 68(6) of the U. P. Sales Tax Rules for setting aside the order of dismissal of appeal in default, under the U. P. Sales Tax Act, 1948 (for short, the Sales-tax Act) from computation of the period of limitation for filing a revision under that Act?

2. It arises out of these circumstances:

2A. The respondent, M/s. Parson Tools and Plants (hereinafter referred to as the assessee) carries on business at Kanpur. The Sales-tax Officer assessed tax for the assessment years, 1958-1959 and 1959-60, on the assessee by two separate orders. The assessee filed appeals against those orders before the appellate authority. On May 10, 1963, when the appeals came up for hearing, the assessee was absent. The appeals were, therefore, dismissed in default by virtue of Rule 68(5) of the U. P. Sales-tax Rules. Sub-rule (6) of Rule 68 provided for setting aside such dismissal and re-admission of the appeal. On the same day (May 10, 1963), the assessee made two applications in accordance with sub-rule (6) for setting aside the dismissal. During the pendency of those applications, sub-rule (5) of Rule 68 was declared ultra vires the rule-making authority by Manchanda, J. of the High Court who further held that the appellate-authority could not dismiss an appeal in default but was bound to decide it on merits even though the appellant be absent. When these applications under Rule 68(6) came up for hearing, on October 20, 1964, the appellate authority dismissed them outright in view of the ruling of Manchanda, J. Against the order of dismissal of his appeals, the assessee on December 16, 1964 filed two revision petitions under Section 10 of the Sales-tax Act, before the revisional authority [Judge (Revisions) Sales-tax]. These revision petitions having been filed more than 18 months after the dismissal of the appeals, — which was the maximum period of limitation prescribed by sub-section (3) of Section 10 — were prima facie time-barred. They were however, accompanied by two applications in which the assessee prayed for exclusion of the time spent by him in prosecuting the abortive proceedings under Rule 68(6) for setting aside the dismissal of his appeals. The revisional authority found that the assessee had been pursuing his remedy under Rule 68(6) with

due diligence and in good faith. It therefore excluded the time spent in those proceedings from computation of limitation by applying Section 14, Limitation Act and in consequence, held that the revision petitions were within time. On the motion of the Commissioner of Sales-tax, the revisional authority made two references under Section 11(1) of the Sales-tax Act to the High Court for answering the following question of law :

> Whether under the circumstances of the case, Section 14 of the Limitation Act extended the period for filing of the revisions by the time during which the restoration applications remained pending as being prosecuted bona fide.

3. The references were heard by a Full Bench of three learned Judges, each of whom wrote a separate judgment. Dwivedi, J. with whom Singh, J. agreed after reframing the question held

> that the time spent in prosecuting the application for setting aside the order of dismissal of appeals in default can be excluded from computing the period of limitation for filing the revision by the application of the principle underlying Section 14(2), Limitation Act.

4. Hari Swarup, J. was of the opinion :

> The Judge (Revisions) Sales-tax while hearing the revisions under Section 10 of the U. P. Sales Tax Act does not act as a **Court** but only as a revenue tribunal and hence the provisions of the Indian Limitation Act cannot apply to proceedings before him. If the Limitation Act does not apply then neither Section 29(2) nor Section 14(2) of the Limitation Act will apply to proceedings before him. The learned Judge was further of the view that the principle of Section 14(2) also, could not be invoked to extend the time beyond the maximum fixed by the Legislature in sub-section (3B) of Section 10 of the Sales-tax Act.

5. Sub-section (2) of Section 14, Limitation Act, runs thus :

> In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another **civil proceeding,** whether in a **Court** of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a **Court** which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. (emphasis added)

6. It will be seen that this sub-section will apply only if :

(1) both the prior and subsequent proceedings are civil proceedings prosecuted by the same party ;

(2) the prior proceedings had been prosecuted with due diligence and in good faith ;

(3) the failure of the prior proceedings was due to a defect of jurisdiction or other cause of a like nature ;

(4) both the proceedings are proceedings in a Court.

7. Mr. Karkhanis, learned Counsel appearing for the appellant does not dispute the view taken by the High Court that the proceedings in question under the Sales-tax Act could be deemed as civil proceedings. Learned Counsel, however, contends that the authorities, irrespective of whether they exercise original, appellate or revisional jurisdiction under the Sales-tax Act are not 'Courts' within the contemplation of Section 14(2) of the Limitation Act. It is pointed out that this question stands concluded by this Court's decision in *Jagannath Prasad* v. *State of U. P.*[1]

1. (1963) 2 SCR 850 : AIR 1963 SC 416 : 14 STC 536.

8. Mr. Karkhanis is right that this matter is no longer *res integra.* In *Shrimati Ujjam Bai* v. *State of U. P.*[2] Hidayatullah, J. (as he then was) speaking for the Court, observed :

> The taxing authorities are instrumentalities of the State. They are not a part of the Legislature, nor are they a part of the Judiciary. Their functions are the assessment and collection of taxes and in the process of assessing taxes, they follow a pattern of action which is considered judicial. They are not thereby converted into courts of civil judicature. They still remain the instrumentalities of the State and are within the definition of "State" in Article 12.

9. The above observations were quoted with approval by this Court in *Jagannath Prasad's case* (supra), and it was held that a Sales-tax Officer under U. P. Sales-tax Act, 1948 was not a *Court* within the meaning of Section 195 of the Code of Criminal Procedure although he is required to perform certain quasi-judicial functions. The decision in *Jagannath Prasad's case,* it seems, was not brought to the notice of the High Court. In view of these pronouncements of this Court, there is no room for argument that the appellate authority and the Judge (Revisions) Sales-tax exercising jurisdiction under the Sales-tax Act, are "courts". They are merely administrative tribunals and "not courts". Section 14, Limitation Act, therefore, does not, in terms apply to proceedings before such tribunals.

10. Further question that remains is : Is the general *principle* underlying Section 14(2) applicable on grounds of justice, equity and good conscience for excluding the time spent in prosecuting the abortive applications under Rule 68(6) before the appellate authority, for computing limitation for the purpose of revision applications. Mr. Karkhanis maintains that the answer to this question, also, must be in the negative because definite indications are available in the scheme and language of the Sales-tax Act, which exclude the application of Section 14(2), Limitation Act, even in principle or by analogy. Learned Counsel further submits that the *ratio* of the Privy Council decision in *Ramdutt Ramkissen Dass* v. *F. D. Sasson & Co.*[3] relied upon by the majority judgment of the High Court is not applicable for computing limitation prescribed under the Sales-tax Act. Reference in this connection has been made to *Purshottam Dass Hassaram* v. *Impex (India) Ltd.*[4], wherein a Division Bench of the Bombay High Court explained the rule of decision in *Ramdutt's case* (supra) and found it to be inapplicable for the purpose of computing limitation for applications under the Arbitration Act, 1940.

11. The material part of Section 10 runs thus :

> (3)(i) The Revising Authority . . . may, for the purpose of satisfying itself as to the legality or propriety of any order made by any appellate or assessing authority under this Act, in its discretion call for and examine, either on its own motion or on the application of the Commissioner of Sales-tax or the person aggrieved, the record of such order and pass such order as it may think fit.
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> * * * *
>
> (3A) . . . .

2. (1963) 1 SCR 778 : AIR 1962 SC 1621. 713
3. AIR 1929 PC 103 : 56 IA 128 : 115 IC 4. AIR 1954 Bom 309.

(3B) The application under sub-section (3) shall be made within one year from the date of service of the order complained of, but the Revising Authority may on proof of sufficient cause entertain an application within a further period of six months.

12. Three features of the scheme of the above provision are noteworthy. The *first* is that no limitation has been prescribed for the suo motu exercise of its jurisdiction by the revising authority. The *second* is that the period of one year prescribed as limitation for filing an application for revision by the aggrieved party is unusually long. The *third* is that the revising authority has no discretion to extend this period *beyond* a further period of six months, even on sufficient cause shown. As rightly pointed out in the minority judgment of the High Court, pendency of proceedings of the nature contemplated by Section 14(2) of the Limitation Act, may amount to a sufficient cause for condoning the delay and extending the limitation for filing a revision application, but Section 10(3-B) of the Sales-tax Act gives no jurisdiction to the revising authority to extend the limitation, even in such a case, for a further period of more than six months.

13. The three stark features of the scheme and language of the above provision, unmistakably show that the Legislature has deliberately excluded the application of the principles underlying Sections 5 and 14 of the Limitation Act, except to the extent and in the truncated form embodied in sub-section (3-B) of Section 10 of the Sales-tax Act. Delay in disposal of revenue matters adversely affects the steady inflow of revenues and the financial stability of the State. Section 10 is therefore designed to ensure speedy and final determination of fiscal matters within a reasonably certain time-schedule.

14. It cannot be said that by excluding the unrestricted application of the principles of Sections 5 and 14 of the Limitation Act, the Legislature has made the provisions of Section 10 unduly oppressive. In most cases, the discretion to extend limitation, on sufficient cause being shown for a further period of six months only, given by sub-section (3-B) would be enough to afford relief. Cases are no doubt conceivable where an aggrieved party, despite sufficient cause, is unable to make an application for revision within this maximum period of 18 months. Such harsh cases would be rare. Even in such exceptional cases of extreme hardship, the revising authority may, on its own motion, entertain revision and grant relief.

15. Be that as it may, from the scheme and language of Section 10, the intention of the Legislature to exclude the unrestricted application of the principles of Sections 5 and 10 of the Limitation Act is manifestly clear. These provisions of the Limitation Act which the Legislature did not, after due application of mind, incorporate in the Sales-tax Act, cannot be imported into it by analogy. An enactment being the will of the Legislature, the paramount rule of interpretation, which overrides all others, is that a statute is to be expounded "according to the intent of them that made it". "The will of the Legislature is the supreme law of the land,

and demands perfect obedience"[5]. "Judicial power is never exercised", said Marshall, C.J. of the United States, "for the purpose of giving effect to the will of the Judges ; always for the purpose of giving effect to the will of the Legislature ; or in other words, to the will of the law".

16. If the Legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so "would be entrenching upon the preserves of Legislature"[6], the primary function of a court of law being *jus dicere* and not *jus dare*.

17. In the light of what has been said above, we are of the opinion that the High Court was in error in importing whole hog the principle of Section 14(2) of the Limitation Act into Section 10(3-B) of the Sales-tax Act.

18. The *ratio* of the Privy Council decision in *Ramdutt Ramkissen Dass* v. *F. D. Sasson & Co.* (supra) relied upon by the High Court is not on speaking terms with the clear language of Section 10(3-B) of the Sales-tax Act. That decision was rendered long before the passage of the Indian Arbitration Act, 1940. It lost its efficacy after the enactment of the Arbitration Act which contained a specific provision in regard to exclusion of time from computation of limitation.

19. The case in point is *Purshottam Dass Hussaram* v. *Impex (India) Ltd.* (supra). In this Bombay case, the question was, whether the suit was barred by limitation. It was not disputed that Article 115 of the Limitation Act governed the limitation and if no other factor was to be taken into consideration, the suit was filed beyond time. But what was relied upon by the plaintiff for the purpose of saving limitation was the fact that there were certain infructuous arbitration proceedings and if the time taken in prosecuting those proceedings was excluded under Section 14, the suit would be within limitation. It was held that if Section 14 were to be construed strictly, the plaintiff would not be entitled to exclude the period in question.

20. On the authority of *Ramdutt Ramkissen's case* (supra), it was then contended that the time taken in arbitration proceedings should be excluded *on the analogy* of Section 14. This contention was also negatived on the ground that since the decision of the Privy Council, the Legislature had in Section 37(5) of the Arbitration Act, 1940, provided as to what extent the provisions of the Limitation Act would be applicable to the proceedings before the arbitrator. Section 37(5) was as follows :

> Where the court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to

5. See *Maxwell on Interpretation of Statutes*, 11th Edn , pp. 1, 2 and 251.

6. At p. 65 in *Prem Nath L. Ganesh* v. *Prem Nath L. Ram Nath*, AIR 1963 Punj 62, *Per* **Tek Chand, J.**

have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Indian Limitation Act, 1908, for the commencement of the proceedings (including arbitration) with respect to the difference referred.

The reasons advanced, the observations made and the rule enunciated by Chagla, C.J., who spoke for the Bench in that case, are apposite and may be extracted with advantage :

> . . we have now a statutory provision for exclusion of time taken up in arbitration proceedings when a suit is filed, and the question arises of computing the period of limitation with regard to that suit, and the time that has got to be excluded is only that time which is taken up as provided in Section 37(5). There must be an order of the Court setting aside an award or there must be an order of the Court declaring that the arbitration agreement shall cease to have effect, and the period between the commencement of the arbitration and the date of this order is the period that has got to be excluded.
>
> It is therefore no longer open to the Court to rely on Section 14, Limitation Act as applying by analogy to arbitration proceedings. If the Legislature intended that Section 14 should apply and that all the time taken up in arbitration proceedings should be excluded, then there was no reason to enact Section 37(5). The very fact that Section 37(5) has been enacted clearly shows that the whole period referred to in Section 14, Limitation Act is not to be excluded but the limited period indicated in Section 37(5).
>
> * * * *
>
> It may seem rather curious — and it may also in certain cases result in hardship — as to why the Legislature should not have excluded all time taken up in good faith before an arbitrator just as the time taken up in prosecuting a suit or an appeal in good faith is excluded. But obviously the Legislature did not intend that parties should waste time in infructuous proceedings before arbitrators. The Legislature has clearly indicated that limitation having once begun to run, no time could be excluded merely because parties chose to go before an arbitrator without getting an award or without coming to Court to get the necessary order indicated in Section 37(5).

21. What the learned Chief Justice said about the inapplicability of Section 14, Limitation Act, in the context of Section 37(5) of the Arbitration Act, holds good with added force with reference to Section 10(3-B) of the Sales-tax Act.

22. Thus the principle that emerges is that if the Legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act.

23. We have said enough and we may say it again that where the Legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver ; more so if the statute is a taxing statute. We will

close the discussion by recalling what Lord Hailsham[7] has said recently, in regard to importation of the principles of natural justice into a statute which is a clear and complete Code, by itself :

> It is true of course that the courts will lean heavily against any construction of a statute which would be manifestly fair. But they have no power to amend or supplement the language of a statute merely because in one view of the matter a subject feels himself entitled to a larger degree of say in the making of a decision than a statute accords him. Still less is it the functioning of the courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment.

24. For all the reasons aforesaid, we are of the opinion that the object, the scheme and language of Section 10 of the Sales-tax Act do not permit the invocation of Section 14(2) of the Limitation Act, either in terms, or in principle, for excluding the time spent in prosecuting proceedings for setting aside the dismissal of appeals in default, from computation of the period of limitation prescribed for filing a revision under the Sales-tax Act. Accordingly, we answer the question referred, in the negative.

25. In the result, we set aside the judgment of the High Court and accept these appeals. Since the appeals have been heard ex-parte, there will be no order as to costs.

(1975) 4 Supreme Court Cases 30

(Before A. N. Ray, C.J. and K. K. Mathew and V. R. Krishna Iyer, JJ.)

THE STATE OF TAMIL NADU .. .. Appellant ;

Versus

THE CEMENT DISTRIBUTORS (P) LTD. AND OTHERS .. .. .. Respondents.

Civil Appeal No. 231 of 1970†, decided on March 14, 1975

Sales Tax — Central Sales Tax Act, 1956 — Section 3 — Whether on facts the movement of goods from one State to another was pursuant to any contract of sale

The respondent is a company in Calcutta distributing cement as agent of S. T. C. and acting under the instructions of the Regional Cement Officer, S. T. C., Calcutta. In the disputed transaction an authorisation note was issued with the respondent as supplier by the Regional Cement Officer in Calcutta in favour of Executive Engineer, Howrah Division Construction Board, Calcutta. The name of the factory to supply cement was Dalmiapuram Factory in Tamil Nadu. Delivery was ex-Calcutta jetty docks. So the question was whether the contract of sale itself with the Executive Engineer occasioned movement of goods.

Held :

It is settled that if the movement of goods from one State to another is the result of a covenant or an incident of the contract of sale then the sale is an inter-State sale. (Para 7)

7. At p. 11, *Pearl Berg* v. *Varty*, (1972) 2 All ER 6.

†From the Judgment and Order, dated August 16, 1968 of the Madras High Court in Writ Petition No. 1394 of 1967.

by the detenu to one authority must be placed before all the authorities and all such authorities also should consider and pass orders on those representations, though really not made to any one of them.

27. The impugned judgment and order, therefore, cannot be sustained, which is set aside accordingly.

28. However, ordinarily, we would have remitted the matter back to the High Court for consideration on other questions raised in the writ petition by the respondent herein but as the period of detention has long expired, we do not intend to do so. We, therefore, do not wish to express any opinion on the validity or otherwise of the order of detention.

29. This appeal is disposed of with the aforementioned observations. No costs.

(2004) 2 Supreme Court Cases 579

(BEFORE S. RAJENDRA BABU, P. VENKATARAMA REDDI AND H.K. SEMA, JJ.)

N.C. DHOUNDIAL . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

Writ Petition (C) No. 42 of 2001† with TPs (C) Nos. 180, 261, 283, 293, 850 & 877 of 2001 and SLPs (C) Nos. 8220, 11182, 11186 & 14392 of 2001, decided on December 11, 2003

A. **Limitation — Generally — Periods of limitation, though basically procedural in nature, can also operate as fetters on jurisdiction in certain situations**

B. **Protection of Human Rights Act, 1993 — S. 36(2) — Period of limitation of one year prescribed under, for taking up enquiry — Enquiry taken up by National Human Rights Commission (NHRC) after long lapse of such period (nearly 4½ years after the alleged act) — Held, not justified — Bar contained in S. 36(2), held, is a jurisdictional bar — There is no provision in the Act to extend the said period of limitation — Even considering Regn. 8(1)(a) of the procedural Regulations framed by NHRC which implies that if extraordinary circumstances exist, the complaint can be enquired into even after the expiry of one year, held, there were no extraordinary circumstances in the instant case justifying interference by the Commission after the expiry of one year — National Human Rights Commission (Procedure) Regulations, 1994, Regn. 8(1)(a)**

Held :

Periods of limitation, though basically procedural in nature, can also operate as fetters on jurisdiction in certain situations. (Para 15)

S.S. Gadgil v. *Lal & Co.*, AIR 1965 SC 171, *relied on*

† Under Article 32 of the Constitution of India

Section 36(2) of the Act places an embargo against the Commission enquiring into any matter after expiry of one year from the date of the alleged act violative of human rights. The caption or the marginal heading to the section indicates that it is a jurisdictional bar. (Para 15)

There is no provision in the Act to extend the period of limitation of one year. However, in the procedural Regulations framed by the Commission certain amount of discretion is reserved to the Commission. Regulation 8(1)(*a*) implies that if extraordinary circumstances exist, the complaint can be enquired into even after the expiry of one year. The petition filed by the complainant was received by the Commission a day after the charge-sheet was filed though it bears an earlier date. For nearly 4½ years the complainant kept quiet. The explanation given in the complaint for this long silence was that he was under the impression that by reporting the matter to NHRC he might be antagonizing the CBI officials, but, after realizing that they were not acting fairly and objectively and they continued to harass him, he thought of filing the petition before NHRC. The Commission, on its part, did not advert to this explanation which is really no explanation at all, nor did it advert to any extraordinary circumstances justifying interference after a long lapse of time prescribed by Section 36(2).

(Paras 17 and 18)

C. **Protection of Human Rights Act, 1993 — S. 36(2) — Period of limitation of one year prescribed under, for taking up the enquiry — National Human Rights Commission (NHRC) enquiring into the matter after 4½ years of the alleged act of illegal detention by invoking "continuing wrong" theory — Propriety of — Held, Commission erred in holding that every violation of human right is a continuing wrong until and unless due reparation is made — Where the complainant was alleged to have been illegally detained by CBI officials from 25-3-1994 to 3-4-1994 but he was produced before the Special Judge on 3-4-1994 and remanded to police custody in accordance with law, held, the alleged act of illegal detention ceased on 3-4-1994 — Theory of continuing wrong and recurring cause of action could not be invoked in such a case — One-year period for taking up the enquiry came to an end by 3-4-1995 — Hence, complaint filed before NHRC on 19-8-1998 was barred by limitation — Commission exceeded its jurisdiction in entertaining the same (Para 17)**

D. **Protection of Human Rights Act, 1993 — Ss. 12, 13, 14 and 36 — Jurisdiction and powers of National Human Rights Commission — Scope of — Held, Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations — Though it has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it, but it should act within the parameters prescribed by the Act and the confines of jurisdiction vested in it — Thus, view expressed by the Commission that mere lapse of period of limitation prescribed under S. 36(2) would not be sufficient to render the violation of human rights immune from the remedy of redressal of the grievance, held, could not be endorsed — Even if the Commission is unable to take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies (Para 14)**

E. **Protection of Human Rights Act, 1993 — S. 36(2) — Bar of limitation period under — Applicability — Held, bar not applicable where National**

Human Rights Commission proceeds to investigate and inquire into the violation of human rights pursuant to the directions of the Supreme Court under Art. 32 of the Constitution — Constitution of India, Art. 32 — Generally — Overriding power under

Held :

In a case where the National Human Rights Commission (NHRC) proceeds to investigate and inquire into the violation of human rights pursuant to the directions of the Supreme Court under Article 32 of the Constitution, the bar contained in Section 36(2) will not apply because in such an event, NHRC does not function under the provisions of the Act but as an "expert body" aiding the Supreme Court in the discharge of its constitutional power under Article 32. (Para 19)

Paramjit Kaur v. *State of Punjab*, (1999) 2 SCC 131 : 1999 SCC (Cri) 109, *followed*

F. **Protection of Human Rights Act, 1993 — Ss. 13 & 17 — Review — Power of National Human Rights Commission (NHRC) in respect of — Where the order of NHRC was liable to be set aside on the ground that NHRC entertained the complaint after a long lapse of time prescribed under S. 36(2) of the Act, held, there was no need to go into the issues relating to the exercise of power of review by NHRC (Para 20)**

G. **Interpretation of Statutes — Internal aids — Marginal note/heading — Held, can be relied upon to clear doubt or ambiguity in the interpretation of the provision and to discern the legislative intent (Para 15)**

Uttam Das Chela Sunder Das v. *Shiromani Gurdwara Parbandhak Committee*, (1996) 5 SCC 71; *Bhinka* v. *Charan Singh*, AIR 1959 SC 960 : 1959 Cri LJ 1223, *relied on*

H. **Protection of Human Rights Act, 1993 — Ss. 18(1) and 36(2) — Constitution of India — Art. 14 — Direction by National Human Rights Commission for initiation of disciplinary action against the writ petitioner herein (CBI official) in respect of the alleged act, despite the complaint being barred by limitation — On facts, said direction which had an undoubted effect on the service career of the writ petitioner, held, violative of Art. 14 (Para 18)**

W-M/AZ/29436/CR

Advocates who appeared in this case :

R.N. Trivedi, Additional Solicitor General, Rajeev Dhavan and N.N. Goswami, Senior Advocates (Rishi Malhotra, Prem Malhotra, Ms Sunita Sharma, Shree Prakash Sinha, Nikhil Nayyar, Anil Shrivastav, Rajeev Sharma, A.D.N. Rao, P. Parameswaran, Ms Indu Goswami, Sanjay R. Hegde, Ms Sushma Suri, Ramesh Babu, M.R. and G. Prakash, Advocates, with them) for the appearing parties;

Petitioner in person in WP (C) No. 42 of 2001;

Respondent in person in WP (C) No. 42 of 2003.

Chronological list of cases cited ***on page(s)***

The Judgment of the Court was delivered by

P. VENKATARAMA REDDI, J.— A search was conducted by the officials of CBI on 25-3-1994 at the residential house of Shri Ashok Kumar Sinha, an officer of the Telecom Department (hereinafter referred to as "the complainant") at Ranchi. This was followed by searches of the houses of his close relations and contractors at Patna and Ranchi. In between he was admitted to hospital on two occasions. On discharge from CCI Hospital at Ranchi on 3-4-1994, the petitioner was arrested "with a view to interrogate him in custody" and produced before the Court of Special Judge, CBI, Ranchi with a prayer to remand him to police custody for ten days. The Special Judge remanded him to judicial custody for a fortnight with a direction to the Jail Superintendent to get him medically examined and to submit the report. On receipt of the report of the Jail Superintendent, he was remanded to police custody for seven days and there was a further order to release him on provisional bail for one month from 13-4-1994. The court also directed that he should be admitted in CCI Hospital and interrogated there. The provisional bail was confirmed later on subject to certain conditions. The CBI, after obtaining sanction, filed a charge-sheet on 18-8-1998 under Section 13(2) read with Section 13(1)(*e*) of the Prevention of Corruption Act for the possession of assets disproportionate to the known sources of income.

2. A day thereafter i.e. on 19-8-1998, the National Human Rights Commission (for short "NHRC") received a complaint from Mr A.K. Sinha alleging illegal detention from 25-3-1994 to 3-4-1994. He also alleged harassment and torture by the CBI officials including Mr N.C. Dhoundial, SP, CBI [petitioner in WP (C) No. 42 of 2001]. He alleged that a false case was registered against him for extraneous reasons on account of the antagonistic attitude of the SP, Mr Dhoundial, towards him. The complainant alleged that the action of CBI in causing his unlawful detention during the period 25-3-1994 to 3-4-1994 and the harsh treatment meted out to him aggravated his disease of cancer (which was detected later) and a major surgery had to be performed at Tata Memorial Cancer Hospital, Bombay to save his life. Seven officers of CBI were named in the complaint who, according to the complainant, were directly or indirectly responsible for his illegal detention. NHRC took cognizance of the complaint and called for a report from the Director, CBI. On consideration of the report, the learned member of NHRC found that there was no substance in the complaint and that no action was called for. The learned member observed that there was no truth in the allegation of harassment and denial of proper medical attention. It was also observed that the complainant never complained to the court that he was being ill-treated by the CBI officers. The learned member further observed that "there was considerable force in the stand taken by CBI that this complaint has been filed only to demoralize the CBI officers who are zealously investigating". Proceedings to this effect were drawn up on 6-11-1998. The complainant then filed a petition on 21-9-1999 pointing out certain facts which according to him missed the attention of NHRC while taking the decision recorded on 6-11-1998. The petitioner prayed for

reopening the case and to take a fresh decision after giving him adequate opportunity to present his case.

3. The learned Chairman of NHRC, by his proceeding dated 10-3-2000 treated the petition filed by Shri A.K. Sinha as review petition and having found a prima facie case of illegal detention of the complainant by the CBI officials during the period 25-3-1994 to 3-4-1994, thought it fit to recall the findings recorded in the proceeding dated 6-11-1998 and to further proceed with the enquiry in the matter. Accordingly, show-cause notices were issued to four CBI officials, namely, Shri N.C. Dhoundial, Shri Narayan Jha, Shri P.K. Panigrahi and Shri B.N. Singh as to why appropriate recommendation should not be made to the competent authority for initiating disciplinary action and such other action as may be found expedient. On receipt of replies from the officials concerned of CBI, the learned Chairman, by his proceeding dated 12-6-2000, rejected the version of the CBI officials, overruled the objections raised by them on points of law and held that the complainant was in de facto custody of the said officials without authority of law during the period 25-3-1994 to 3-4-1994 resulting in the violation of his human rights. The Commission directed the Director, CBI to initiate appropriate disciplinary action for the misconduct of the four officials arising out of the illegal detention of the complainant Shri A.K. Sinha. It was made clear that the direction would not in any manner affect the prosecution of Shri Sinha for the offences under the Prevention of Corruption Act. It may be noted that before recording its findings and giving directions as above, the Commission did not afford personal hearing or the opportunity to adduce evidence to the writ petitioner and other officials.

4. Questioning the said order of NHRC, Shri P.K. Panigrahi, the then Inspector, CBI filed a writ petition, CWJC No. 2454 of 2000 under Article 226 in the Patna High Court (Ranchi Bench). The learned Judge dismissed the writ petition by an order dated 14-8-2000. The learned Judge observed that all the contentions raised by the writ petitioner were considered by NHRC and he found no reason to interfere with the impugned order. However, the learned Judge made it clear that the order in question was in the nature of recommendation and disciplinary proceedings as and when initiated have to be disposed of independently on the basis of the evidence brought on record. Against this order in the writ petition Shri Panigrahi filed an appeal, LPA No. 309 of 2000 (R). By a speaking order dated 22-1-2001, the Division Bench admitted the appeal as the appeal raised important and debatable questions. Legal questions arising in the appeal were broadly indicated by the Division Bench. While ordering notice to NHRC, status quo with respect to the appellant was directed to be maintained. Questioning this interim order passed pending the LPA, the complainant Shri A.K. Sinha filed SLP (C) No. 14392 of 2001. NHRC filed SLP (C) No. 8220 of 2001 against the same interim order.

5. Subsequent to the admission of LPA, two other CBI officials Shri Bishwanath Singh, the then SI, CBI and Shri N. Jha, the then Deputy SP, CBI also filed writ petitions under Article 226 of the Constitution. The learned

Single Judge, following the interim order passed in LPA, granted an order of status quo in regard to those writ petitioners also. It was further ordered that the writ applications shall be heard after the disposal of LPA. Assailing this order, the complainant A.K. Sinha filed SLPs (C) Nos. 11182 and 11186 of 2001. While so, Shri N.C. Dhoundial, the then SP, CBI, Ranchi had directly filed Writ Petition (C) No. 42 of 2001 under Article 32 in this Court questioning NHRC's order dated 12-6-2000. This Court directed issuance of notice on 15-1-2001. Thereafter, a bunch of transfer petitions, three by A.K. Sinha and three by NHRC came to be filed in this Court with a prayer to transfer the LPA and writ petitions to the file of this Court and to hear the same along with WP (C) No. 42 of 2001 filed by N.C. Dhoundial. The ground of transfer is that similar issues are involved for adjudication in the LPA/writ petitions pending in the High Court and the writ petition pending in this Court.

6. The SLPs, TPs and the writ petition have been grouped together and posted for final disposal. That is how these eleven matters are before us.

7. Before proceeding further, it is necessary to make a brief reference to the stand taken by the officials of CBI on the factual aspects relating to the alleged detention between 25-3-1994 to 3-4-1994 and the findings recorded by NHRC on this disputed issue.

8. The factual account given by the CBI officials is as follows:

After the search on 25-3-1994 the complainant was asked to accompany the DSP, CBI to the SP's Office at Ranchi. During interrogation, the complainant disclosed that he kept certain papers, passbooks and keys of lockers in a briefcase handed over to one Ranjan Pandey, a contractor of his department at Patna. He volunteered to accompany the CBI officials to Patna with a view to assist them in the investigation. Accordingly, Shri N. Jha, Shri Panigrahi and Shri B.N. Singh together with the complainant started on the journey to Patna in the evening. After reaching the outskirts of Ranchi, Shri Sinha complained of chest pain and wanted to be examined at a private nursing home named by him. Accordingly, he was taken to that hospital but the doctor concerned was not available. Hence, on the request of the complainant, he was taken to Central Coalfield Hospital at Ranchi and was admitted in the hospital. The CBI officials left the hospital after his family members came to the hospital to attend on him. On the morning of 26-3-1994, he was discharged from the hospital after certain tests including ECG were conducted. The complainant then expressed his preparedness to go to Patna by air. He bought his own ticket and accompanied the CBI officers to Patna. On search of the house of Shri Ranjan Pandey at Patna, the briefcase could not be found. However, certain papers were seized from his residence. Then the houses of the two close relatives of the complainant were searched till late night that day on the basis of the information furnished by him. On completion of the searches, the CBI officers stayed in the Coal India Guest House at Patna. The petitioner volunteered to stay with them that night on the ostensible ground that he felt embarrassed to stay with his relatives in

the aftermath of the raids. On 27-3-1994, the flight to Ranchi was cancelled and there was some uncertainty in the time schedule of the trains bound for Ranchi on account of Holi festival the next day. Hence, the officials along with the complainant took a bus from Patna on the night of March 27th and reached Ranchi in the early morning hours of March 28th. The complainant was requested to attend the CBI office at Ranchi at 8.30 a.m. Accordingly, he came to the CBI office and in the course of questioning he disclosed that one more briefcase with important documents was kept with another contractor. On a search of the said contractor's house, nothing incriminating was found. While returning to the CBI office, the petitioner again reported that he was not feeling well and requested that his father-in-law be informed. Accordingly, his father-in-law came to the CBI office and both of them left for CCI Hospital. His father-in-law got him admitted in the hospital and also deposited money for treatment. On 1-4-1994, even while the complainant was in the hospital, he came to the CBI office with two briefcases said to have been kept with the two contractors. Those briefcases were seized in the presence of witnesses in the CBI office. The briefcases did not contain any incriminating material. The complainant without participating in further interrogation went back to CCI Hospital. He was discharged from CCI Hospital on 3-4-1994 at 12 noon and on the request of the IO went to the CBI office. As he did not cooperate with the investigating agency and did not even come forward to produce the documents relating to investments etc. admitted by him, it was decided to arrest and interrogate him in custody. That is why he was arrested on 3-4-1994 and produced before the Special Judge, CBI, Ranchi with a prayer to remand him to police custody.

9. The CBI officials denied having kept the police personnel in the hospital either on 25-3-1994 or on the second occasion. They relied on the entries in the case diary in support of their contention that he was not arrested till 3-4-1994. Regarding the steps taken by them for providing medical attendance to the complainant on the first day i.e. 25-3-1994, the stand of CBI officials has been that it was done on humanitarian considerations, but not because he was in their custody.

10. The Commission was not prepared to accept the version of the CBI officials. The relevant comment made by the learned Chairman of NHRC to discredit their version is extracted hereunder:

> "The Commission has given its anxious consideration but it is not inclined to accept the above explanation because it is unreal to expect that a wrongdoer will make a record of his wrong actions. Absence of such record in the case diaries prepared by a noticee cannot be relied on to disprove the otherwise established fact of the illegal detention of Shri A.K. Sinha during the aforesaid period. Had Shri Sinha not been in actual custody of the CBI officers, there was no occasion for them to have provided him the medical aid and attention and to keep him under constant surveillance. More so, as per the officers' own showing, they were accompanying the petitioner from Ranchi to Patna and back for the purpose of making recoveries of certain incriminatory articles. The

Commission, therefore, finds no substance in this objection of the noticee officers and rejects the same."

11. Thus the initiative taken by the CBI officers in joining him in the hospital when he complained of chest pain and the factum of the complainant accompanying the CBI officials to Patna and coming back with them were relied upon by the Commission to come to the conclusion that the complainant was in the actual custody of CBI officers. The Commission also observed that the complainant was under constant surveillance. Though it is not elaborated, the Commission probably meant that he was being watched while he was in hospital.

12. It is to be noted that the Commission did not afford personal hearing to the officials who were put on notice nor was any opportunity of adducing evidence afforded. The complaint was decided on the basis of averments in the review petition and the replies submitted by the officials concerned. The plea of the officials was tested broadly on the basis of probabilities and a conclusion was reached that the officials concerned were guilty of human rights' violation.

13. The three legal objections raised by the CBI officials were overruled by the Commission. Firstly, it was held that by virtue of Section 13 of the Protection of Human Rights Act, 1993, the power of review conferred on the civil court was available to the Commission. As the earlier order was not a decision on merits but merely an order abstaining from further enquiry, the Commission felt that there was no bar to reconsider the entire issue in the interest of justice. The second objection based on Regulation 8(1)(*b*) of the NHRC (Procedure) Regulations which bars complaints with regard to matters that are "sub judice" was rejected with the observation that the question of violation of human rights as a result of alleged unauthorized detention of the complainant was not sub judice. The other important objection that the Commission is debarred from enquiring into the matter after the expiry of one year from the date on which the alleged illegal detention took place as per the mandate of Section 36(2) was answered by the Commission in the following words:

> "The violation of human rights is a continuing wrong unless due reparation is made. It gives rise to recurring cause of action till redressal of the grievance. The Protection of Human Rights Act, 1993 has been enacted with the object of providing better protection of human rights and it cannot be assumed that the mere lapse of a certain period would be sufficient to render the violation immune from the remedy of redressal of the grievance."

14. We cannot endorse the view of the Commission. The Commission which is a "unique expert body" is, no doubt, entrusted with a very important function of protecting human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of statute, is bound by its provisions. Its duties and functions are

defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act. The Commission is one of the fora which can redress the grievances arising out of the violations of human rights. Even if it is not in a position to take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies. The assumption underlying the observation in the concluding passage extracted above proceeds on an incorrect premise that the person wronged by violation of human rights would be left without remedy if the Commission does not take up the matter.

15. Now let us look at Section 36 of the Protection of Human Rights Act, which reads thus:

> "36. *Matters not subject to jurisdiction of the Commission.*—(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other commission duly constituted under any law for the time being in force.
>
> (2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed."

Section 36(2) of the Act thus places an embargo against the Commission enquiring into any matter after expiry of one year from the date of the alleged act violative of human rights. The caption or the marginal heading to the section indicates that it is a jurisdictional bar. Periods of limitation, though basically procedural in nature, can also operate as fetters on jurisdiction in certain situations. If an authority is needed for this proposition the observations of this Court in *S.S. Gadgil* v. *Lal & Co.*[1] may be recalled. Construing Section 34 of the Income Tax Act, 1922 the Court observed thus: (AIR p. 176, para 10)

> "*10*. Again the period prescribed by Section 34 for assessment is not a period of limitation. The section in terms imposes a fetter upon the power of the Income Tax Officer to bring to tax escaped income."

The language employed in the marginal heading is another indicator that it is a jurisdictional limitation. It is a settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent (vide *Uttam Das Chela Sunder Das* v. *Shiromani Gurdwara Parbandhak Committee*[2] and *Bhinka* v. *Charan Singh*[3]).

16. In fact, Section 36(2) does not mince the words and the language used is clear and categorical. The marginal note to the section is being

1 AIR 1965 SC 171
2 (1996) 5 SCC 71
3 AIR 1959 SC 960 : 1959 Cri LJ 1223

referred to only to consider whether the bar created by Section 36(2) has a bearing on the power or jurisdiction of the Commission.

17. The bar under Section 36(2) is sought to be got over by the Commission by invoking the theory of continuing wrong and the recurring cause of action. According to the Commission, every violation of human right is a continuing wrong until and unless due reparation is made. We find it difficult to accept this proposition propounded by the Commission. The short answer to this viewpoint is that such a view, if accepted, makes Section 36(2) practically a dead letter. Moreover, going by the language employed in Section 36(2), we do not think that the concept of continuing wrong could at all be pressed into service in the instant case. The time-limit prescribed is referable to the alleged "act" constituting the violation of human rights. In a case like illegal detention, the offensive act must be deemed to have been committed when a person is placed under detention and it continues so long as the affected person remains under illegal detention. The commission of offensive act is complete at a particular point of time and it does not continue to be so even after the unauthorized detention ends. It is not in dispute that the complainant was produced before the Special Judge on 3-4-1994 and remand was obtained in accordance with the procedure prescribed by law. The alleged act of unauthorized detention which gives rise to violation of human rights ceased on 3-4-1994 and it does not perpetuate thereafter. It is not the effect of illegal detention which is contemplated by Section 36(2) but it is the illegal act itself. It would be a contradiction in terms to say that the arrest or detention beyond 3-4-1994 was in accordance with law and at the same time the arrest/detention continued to be wrongful. It cannot, therefore, be brought under the category of continuing wrong which is analogous to the expression "continuing offence" in the field of criminal law. It cannot be said that the alleged wrongful act of detention repeats itself everyday even after the complainant was produced before the Magistrate and remand was obtained in accordance with law. Beyond 3-4-1994, there was no breach of obligation imposed by law either by means of positive or passive conduct of the alleged wrongdoers. To characterize it as a continuing wrong is, therefore, inappropriate. One-year period for taking up the enquiry into the complaint, therefore, comes to an end by 3-4-1995. Just as in the case of Section 473 CrPC, there is no provision in the Act to extend the period of limitation of one year. However, in the procedural Regulations framed by the Commission certain amount of discretion is reserved to the Commission. Regulation 8(1)(*a*) *inter alia* lays down that "ordinarily" a complaint in regard to events which happened more than one year before the making of the complaint is not entertainable.

18. Irrespective of the validity of the prefacing expression "ordinarily", let us examine the issue from the point of view of the regulation itself. The regulation implies that if extraordinary circumstances exist, the complaint can be enquired into even after the expiry of one year. Are there any extraordinary circumstances made out in this case? We find none in the impugned order of the Commission. As already noticed, the petition filed by

the complainant was received by the Commission a day after the charge-sheet was filed though it bears an earlier date. For nearly 4½ years the complainant kept quiet. The explanation given in the complaint for this long silence was that he was under the impression that by reporting the matter to NHRC he might be antagonizing the CBI officials, but, after realizing that they were not acting fairly and objectively and they continued to harass him, he thought of filing the petition before NHRC. The Commission, on its part, did not advert to this explanation which is really no explanation at all, nor did it advert to any extraordinary circumstances justifying interference after a long lapse of time prescribed by Section 36(2). The Commission, thus, tried to clutch at the jurisdiction by invoking the theory of continuing wrong which, as we held earlier, cannot be invoked at all. In this view of the matter, the direction given by the Commission to the Director of CBI, which has an undoubted effect on the service career of the writ petitioner, is violative of Article 14 of the Constitution.

19. Before concluding our discussion on this aspect, we would like to clarify in reiteration of what was said by this Court in *Paramjit Kaur* v. *State of Punjab*[4] that in a case where NHRC proceeds to investigate and inquire into the violation of human rights pursuant to the directions of this Court under Article 32 of the Constitution, the bar contained in Section 36(2) will not apply because in such an event, NHRC does not function under the provisions of the Act but as an "expert body" aiding the Supreme Court in the discharge of its constitutional power under Article 32.

20. The question whether Section 13 of the Act empowers the Commission to exercise the power of review conferred on the civil court and if so, whether the conditions for the exercise of such power are satisfied, has been debated before us. In any case, whether the Commission has the power to reopen the closed complaint and enquire into the same in the absence of new material coming to light has also been debated. These questions need be gone into in view of our conclusion that the Commission exceeded its jurisdiction in taking up the enquiry in the face of the bar created by Section 36(2).

21. In the result, the order of NHRC dated 12-6-2000 is quashed and Writ Petition (Civil) No. 42 of 2001 stands allowed. SLPs Nos. 8220, 11182, 11186 and 14392 of 2001 filed against the interim orders granted by the High Court are dismissed. All the transfer petitions are also dismissed with an observation that the High Court of Jharkhand may dispose of the related writ petitions/LPA pending on its file with expedition in the light of this judgment. No costs.

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4 (1999) 2 SCC 131 : 1999 SCC (Cri) 109

2017 SCC OnLine NGT 1098

In the National Green Tribunal
Western Zone Bench, Pune
(BEFORE U.D. SALVI, J.M. AND RANJAN CHATTERJEE, E.M.)

In the matter of:

Graminee Environment Development Foundation, through its Chairman, Mrs. Geeta Bhadrasen Wadhai, (Geeta Xiver), age 45 years, Occupation - Farmer, R/at Post: Dighi, Nanvali, Taluka Shriwardhan, District: Raigad. (Pin 402402) ... Applicant;

Versus

1. Balaji Infrastructure Ltd. C/o Mr. Vijay Govardhandas Kalantri, New Excelsior Building, 6th Floor, A.K. Nayak Marg, Fort. Mumbai
2. Maharashtra Maritime Board, having its office at Indian Mercantile Chambers 3rd Floor, Ramjibhai Kamani Marg, Ballard Estate, Mumbai-400038
3. The Maharashtra Coastal Zone Management Authority, through its Secretary, Environment Department, 15th Floor, Room No. 217, New Administrative Building, Mantralaya, Mumbai 400032
4. Maharashtra State Bio-Diversity Board Jaiv-Vividha Bhavan, Civil Lines, Nagpur, Maharashtra-440001
5. The Collector, Raigad, (also holding charge as Chairperson) District Coastal Zone Management Committee (DCZMA), District Collectorate office, Alibag, (Raigad) (Pin-402201)
6. The Sub-Divisional Officer/Tahasildar of Shrivardhan, Tahasildar Office Shrivardhan, Taluka Shrivardhan, District - Raigad, (Pin-402201)
7. Maharashtra Pollution Control Board through Member Secretary, Kalpataru Point, 3 and 4th Floor, Sion Matunga Scheme Road No. 8, Opp. Cine Planet Cinema, Near Sion Circle, Sion (East), Mumbai-40022 ... Respondents.

Original Application No. 179 of 2016(WZ) M.A. No. 171/2017
Decided on May 18, 2017

Counsel for Appellant(s):

Mr. Asim Sarode Adv.

Counsel for Respondent(s):

Mr. Sake Mone, for Respondent No. 1.

Mr. Tushar Bhosale i/b Legasis Partners for Respondent No. 2.

Mr. Manasi Josh Adv. a/w Mr. Naresh P. Pawar SDO for Respondent Nos. 3, 7.

Mr. Shashank Vakil for Respondent No. 4.

JUDGMENT

1. Heard. Perused Record.

2. Graminee Environment Development Foundation, through its Chairman Mrs. Geeta Wadhai, has filed this Application principally for the relief of restitution of land Gut Nos. 85, 86, 87, 88 and 89 of village Nanavali, Taluka Shrivardhan, District Raigad

upon removal of illegally dumped rocks, soil bauxite.

3. According to the Applicant, she is the owner of land bearing Gut Nos. 75/B and 76 of village Nanavali, wherein she has her residence being house Nos. 166 and 88. Her property lies adjacent to the property of Respondent No. 1 Balaji Infrastructure Ltd. The Applicant accuses Respondent No. 1 of illegally dumping soil and rocks in the land adjacent to her property particularly, land Gut Nos. 85 to 89 in a bid to reclaim land and thereby causing damage to marine life and bio-diversity. The Applicant submits that, the damage caused to marine life and bio-diversity requires to be undone by restitution of the said land upon removal of dumped materials from the said land.

4. In response to the Notice before admission, Respondent No. 1 - Balalji Infrastructure Ltd. filed reply dated 10th February, 2017 as well as additional affidavit dated 2nd May, 2017.

5. Respondents appeared through their respective counsel.

6. Learned Counsel appearing on behalf of Respondent No. 1 opposes the Application on two (2) counts: (i) being hit by the principle of Res-judicata and (ii) limitation. He submits that the Applicant had raised a civil dispute before this Tribunal with an Application filed under Ss. 14, 15, 16 and 17 read with S. 18 of the National Green Tribunal Act, 2010 in Application No. 63 of 2014 (Pg. No. 109 of the compilation) and the same was disposed off with the Judgment and Order dated 13th November, 2014 (Pg. 148-172 of the compilation). He added that the Applicant filed Regular Civil Suit No. 4 of 2009 (pg. 3 of the compilation) in respect of the property in question in the Court of Civil Judge, Junior Division, Shirvardhan and was dismissed vide order dated 2nd December, 2010, passed below Exh. 1 in RCS No. 9 of 2009 upon taking into consideration the order passed by the Hon'ble High Court of Bombay in PIL No. 42 of 2009 vide Judgment dated 9th July, 2009. He submits that, the present Application is hit by limitation prescribed under Section 15(3) of the NGT Act, 2010, particularly, for the reason that cause of action for the Application firstly arose in the year 2008, when the alleged activity started and not upon receiving response to the RTI Application query in respect of the project as contended by the Applicant.

7. Learned Counsel appearing on behalf of Respondent No. 1 - Balaji Infrastructure Ltd. holding Company of Dighi Port Ltd. submitted that it has been incorporated for the purpose of developing Dighi Port in pursuance to Environment Clearance (EC) dated 30th September, 2005, granted to the project for construction of Dighi Port. He further submits that EC dated 30th September, 2005 permits the Project Proponent (PP) Dighi Port Ltd. to utilize its area for storage, warehouses and deployment of handling equipment, and land in question used for dumping rocks and bauxite within Dighi Port area on rear side of the house of Applicant.

8. In order to set factual contents of the Application in order, the Applicant was allowed to amend the Application, and accordingly amended memo of the Application has been placed on record for our consideration.

9. Learned Counsel appearing on behalf of the Applicant placed before us the Panchnama dated 9th January, 2017 of the site inspection conducted by the Tehsildar, Shrivardhan recording the fact of dumping of rocks at the land in question.

10. Adverting to the grievances regarding restitution of environment, the controversy before us begs a question as to when ‘first cause of action’ arose for claiming the relief of restitution.

11. Section 15(3) of the NGT Act, 2010 in clear terms requires the Application for restitution of the property damaged to be made within the period of five (5) years from the date on which cause for such relief first arose, and provides for discretion to the Tribunal to condone delay for ‘sufficient cause’ if the application is filed within further period of sixty (60) days and no further. In the present case, the Applicant

avers that the cause of action first arose on 24.2.2015, when the letter was addressed by the Member Secretary, Maharashtra Coastal Zone Management Authority (MCZMA) to the Collector, Raigad to take action in respect of the grievance made by the Applicant and yet no action was taken by the authorities. The Applicant has further revealed in her Application that she has been making several complaints to the Authorities about the said grievance, first such complaint being made on 15.9.2014 to the Divisional Commissioner, Konkan Division, Navi Mumbai. Reading of the letter dated 24.2.2015, Annexure 'I' to the Application (Pg. 81) reveals the nature of grievance made by the Applicant. In short, the Applicant was aggrieved by the alleged illegal blasting work, storage of minerals and reclamation by Dighi Port Ltd. Similarly, the grievance made with complaint dated 15.9.2014 is regarding alleged illegal work of reclamation of seashore and filling rocks at village Nanavali and intertidal land encroachment without EC by Dighi Port Ltd., and Balaji Infrastructure Ltd.

12. In our considered opinion, making of grievance of the kind in the present case by writing a letter cannot be constituted as 'cause of action' but the actual act or its consequence constitutes 'cause of action' in any case. In the present case, cause of action has arisen as a result of blasting work as well as dumping of rocks etc. by Dighi Port Ltd. and its holding Company Balaji Infrastructure Ltd. in the said land.

13. A perusal of the Application gives some clue as to when such acts of blasting of hills and dumping of material excavated started. The Applicant has pleaded in her Application that Respondent No. 1 encroached upon 3 km. of seashore of village Nanavali and without permission of any Govt. Authority dumped soil and rocks there. It is further pleaded that Respondent No. 1 has been doing illegal activities of levelling, blasting, excavation of land, filling of land space with soil, dumping huge rocks and artificial land spaces without any permission; and in spite of such illegalities going on, Respondent Nos. 2 to 7 - Govt. Authorities did nothing. The Applicant in her pleadings referred to EC granted in the name of Dighi Port Ltd. on 30th September, 2005 for construction of Port at village Dighi, Taluka Shrivardhan, District Raigad and states that she does not challenge or dispute anything about such EC or any work at Dighi Port and her only grievance is that Respondent No. 1 has encroached upon the property and extended various kinds of constructions beyond consented area. These facts as pleaded if read in conjunction with the plaint in Regular Civil Suit No. 4 of 2009 filed by the Applicant in the Court of Civil Judge, Junior Division, Shrivardhan, do make sense as to when alleged activity had started. At para-7 of the said plaint, the Applicant has categorically stated that on 26.12.2008 the defendant (therein) i.e. Dighi Port Ltd. came at the land adjacent to the house of the Applicant in order to make encroachment and reclaimed the land, and this highhanded activity of Dighi Port Ltd. was resisted by the Applicant with objection that they cannot reclaim land by blasting the hills and dumping rocks at the said land. A clear fact emerges that the act of blasting the hill sides, dumping materials illegally and reclamation of land, first started in or about December, 2008. Thus, cause of action for the present Application clearly arose in or about December, 2008.

14. It is also not specifically mentioned in the Application as to what exact damage was caused as a result of dumping of rocks etc., giving rise to adverse impact on environment at the said Gut Nos. 85 to 89 of village Nanavali, and thereby to actionable grievance, particularly, when the EC dated 30th September, 2005 and corrigendum dated 26th December, 2005 (Pg. 311) thereto permits Dighi Port Ltd. to carry out reclamation within the area, which includes the said Gut Numbers vide Notification dated 26th January, 2007 (Pg. 316 to 319) and the map (Pg. 320) filed by Respondent No. 1 showing these survey numbers falling within the area of Dighi Port Ltd. The present Application filed on 30.7.2016, therefore, in our opinion, has been filed much beyond the period of limitation of five (5) years from the date on which 'first cause of action' arose as foresaid.

15. The Application is, therefore, squarely barred by limitation as prescribed under Section 15(3) of the NGT Act, 2010. The Application therefore fails. Hence, dismissed.

Original Application No. 179 of 2016 stands disposed off accordingly.

M.A. No. 171/2017 moved therein for interim stay no longer survives with disposal of the Main Application. Hence stands disposed off.

MANU/GT/0006/2017

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

Application No. 33/2016 (M.A. Nos. 317/2016, 322/2016 and 355/2016)

Decided On: 13.01.2017

Appellants: **Jai Javan Jai Kisan and Ors.**
Vs.
Respondent: **Vidarbha Cricket Association and Ors.**

Hon'ble Judges/Coram:
U.D. Salvi, J. (Member (J)) and Ranjan Chatterjee, Member (E)

Counsels:
For Appellant/Petitioner/Plaintiff: Asim Sarode, Adv.

For Respondents/Defendant: N. Subramaniam, Sr. Adv. and Saket Mone, Adv.

JUDGMENT

1. Plea of non-maintainability of the present petition is made by Respondent No. 1 in M.A. No. 322/2016. Broadly, plea is made on three grounds; (1) Limitation as prescribed under National Green Tribunal Act, 2010, (2) Locus-standie and (3) Issue raised falling beyond jurisdiction of the Tribunal as conferred upon it by virtue of the provisions of National Green Tribunal Act, 2010.

2. At the outset, we may clarify that we are examining the present Application from the environmental point of view and the considerations under Town Planning Act have little role to play unless such considerations resonate the environmental aspects.

3. Applicant No. 1 Jai Jawan Jai Kisan claims to be an organization which works for the association of cricket players. Other two Applicants, residents of Nagpur, claim themselves to be RTI and social activists working on various issues, being especially engaged in battle against corruption and doing positive socio-agricultural work.

4. The Applicants are seeking the following reliefs:

> "A. The Respondent No. 1 VCA may kindly be hold responsible for violation of provision in EIA Notification 2006 as they have not taken EC and consent to operate from the MPCB and using the stadium for commercial gain. Other Respondents neglected the environment violation being committed by the Respondent No. 1 hence Respondents No. 2 to 11 may be hold responsible for contravening their legal obligations and exemplary fine may be imposed on them. For not following 'Precautionary Principal', 'Polluters Pay Principal' may kindly be used against the Respondent No. 1 VCA and others by imposing heavy fine.
>
> B. All Matches from the filing of this Petition should be stalled. Use of the VCA stadium, Jamtha, Nagpur should be stopped immediately by issuing closure orders.
>
> C. Environmental damages and revenue losses as deemed fit may kindly be

imposed on the Respondent No. 1 VCA and other Respondents.

D. The concerned authorities be directed to demolish the VCA's illegal cricket stadium and be prosecuted.

G. Considering the socio-environment purpose of filing the present Environment Interest Litigation (EIL) all the Respondents may kindly be directed to pay cost of Rs. 1 lakhs as litigation expenses to the Applicant."

5. Grievance in the present Application, according to the applicants, arises upon construction of Vidarbha Cricket Association's (VCA) Cricket stadium having total built up area 16,951.576 sq. mtr., at Jamtha, Nagpur, without obtaining Environmental Clearance (EC) or consent to operate and thereby injuring the environment. Perusal of the Application reveals that the injury to the environment is perceived from the facts: that there is insufficient effluent treatment plant, parking spaces, plantation of trees and failure to hand over open spaces and public utility lands to the concerned authority. In substance the Applicant are seeking demolition of VCA stadium raised without obtaining EC or consent to operate, which they believe to be the root cause of environmental ills and demolition of which would restore the environment. It is, therefore, an Application for restoration of environment under Section 15 of the National Green Tribunal Act, 2010.

6. Section 18(2) of the National Green Tribunal Act, 2010 gives the categories of persons who can initiate action for grant of relief or compensation or settlement of dispute in following terms:

"Section 18(2): Application or appeal to Tribunal:

(1) ----

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by -

(a) the person, who has sustained the injury, or

(b) the owner of the property to which the damage has been caused; or

(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased or

(d) any agent duly authorized by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organization, or

(f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29) of 1986) or any

other law for the time being in force.

(3) ----"

7 . Pertinently, any person aggrieved including any Representative-body or organizations can initiate Application under Section 14 and 15 of National Green Tribunal Act, 2010. Being residents of Nagpur and social activists working for society in general, the Applicants could be said to have been aggrieved by the injury to the environment caused due to raising of the said stadium. As individuals, they have every right to enjoy clean environment. Any infraction of such right entitles them to initiate proceedings under provisions of National Green Tribunal Act, 2010. Objection raised to maintainability of the present Application on the ground of locus, therefore, do not appeal to us much.

8. The Applicants have narrated the facts leading to the institution of the present Application. All these facts provide a view of what cause of action in the present case is. The Applicants plead that illegalities pertaining V.C.A. stadium at Jamtha commenced since the year 2004 and the stadium started functioning and organizing various big cricket tournaments from the year 2008. Thus, the material existence which possibly could have injured the environment was since the year 2008. Para 13 and 24 quoted herein below reveal what the Applicants have to state about the dimensions of the said stadium.:

> "13. The VCA in its letter Application for consent dated 23/10/2008 to the Regional Officer, MPCB have mentioned in their first para that they are operating the stadium from May 2008. In their third para they have mentioned that "We have constructed the state of art modern stadium with stadium built up area 11,552 sq. mtrs. and activity area of 19,400 sq. mt. we have also constructed club having built up area of 2773 sq. mtr.". According to this letter the total built up area is 33,725 sq. mt. The said letter dated 23/10/2008 written by CA to Regional Officer, MPCB, Nagpur is annexed as Annexure C.
>
> **24.** The VCA's total area is 1 lakh 28 thousand, 2 hundred sq. mt. of which stadium structure measures at 51,854 sq. mts and club house at 5057.34 sq.mt. According to EIA Notification, 2006 EC is mandatory for such huge constructions. The Competent authorities are also supposed to take over 15% of total area of 1,28,200 as open space and public utility land from VCA and keep in its possession for facilitating services to public. VCA is supposed to pay charges for layout and building plan sanction. NIT can earn revenue of over Rs. 50 crore from all these three processes. As nothing of these above mentioned things are happening it is great revenue loss for the State."

9. Respondent No. 2 MPCB has however, in its reply dated 29th September 2016 has revealed that the total built up area of the V.C.A. stadium is 19,951.576 sq. mtrs which includes built up area of the stadium, club-house Restaurant, swimming pool building and STP. According to Applicants the present structure has built up area exceeding 20,000 sq. mtrs. and as such requires Environment Clearance. From the facts disclosed before us by the Respondent No. 2 MPCB, this claim is debatable.

10. Keeping aside this debate, we further look for what the cause of action in the present case would be for seeking restoration of the injured or damaged environment. It is the case of the Applicants that the Applicants started making RTI inquiries regarding various illegalities relating to VCA stadium from the year 2013

and onwards and after having gathered information from the MPCB that the VCA Stadium has no environmental clearance from the State, the Applicants decided to approach National Green Tribunal and therefore, the present case is well within the limitation.

11. Conjoint reading of Section 14 and 15 of the National Green Tribunal Act reveals that essentially any application moved for claiming reliefs there-under must necessarily present a Civil case wherein substantial question relating to environment or environmental damage arising under the enactments specified in the Schedule-I of the Act (including accident occurring while handling any hazardous substance) is involved. We are, therefore, of the considered opinion that it is the substantial question relating to the environment or environmental damage as aforesaid which gives rise to the cause for an action under the provisions of National Green Tribunal Act, 2010. In the present case, the question raised is about restoration of the environmental damage on account of injury to it as a result of raising VCA Stadium without EC or consent to operate under the provisions of Schedule-I Acts viz Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. As stated herein above, the causes of injury are insufficiency of Effluent Treatment Plant (ETP), open species, parking spaces and tree cover. These facts were very much manifest when the VCA stadium became functional in the year 2008. In our opinion, therefore, the cause of action for the present Application arose first when the VCA stadium became functional. There is nothing in the Application to state that these injuries stood compounded further to actuate the Applicants to initiate the action in the present case as framed.

12. Section 15 of the National Green Tribunal Act which deals with the Application for restitution/restoration of the environment reads as under:

> "Section 15: Relief, compensation and restitution.. (1) The Tribunal may by an order provide.--
>
> > (a) Relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule 1 (including accident occurring while handling any hazardous substance),
> >
> > (b) For restitution of property damaged;
> >
> > (c) For restitution of the environment for such area or areas, as the Tribunal may think fit.
>
> (2) The relief and compensation and restitution of property and environment referred to in clauses (a) (b) and (c) of sub-section (1) shall be addition to the relief paid or payable under the Public Liability Insurance Act, 1991
>
> (3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose."

13. The present Application which ought to have been filed within a period 5 year from the date on which the cause of action for restoration first arose i.e. in the year 2008 has been filed on 11th April 2016. The Application is thus found to be beyond

the prescribed period under section 15 of the National Green Tribunal Act, 2010 and therefore, cannot be entertained, it being time barred.

14. The present Application therefore deserves to be rejected. The M.A. No. 322/2016 is allowed. Original Application No. 33/2016 is rejected and as such Misc. Applications therein M.A. No. 317/2016 and M.A. 355/2016 no longer survive and stand disposed of accordingly.

2017 SCC OnLine NGT 1581

In the National Green Tribunal[†]
(BEFORE U.D. SALVI, J.M. AND BIKRAM SINGH SAJWAN, E.M.)

Surendra Waman Dhavale and Others ... Appellants;

Versus

Secretary, Ministry of Environment and Forest and Others ... Respondents.

Application No. 95/2014(WZ)
Decided on September 22, 2017

Advocates who appeared in this case:

Counsel for Applicants

Ms. Dipti R. Khule, Advs. & Mr. Aditya Pratap, Adv.

Counsel for Respondent No. 1:

Mr. D.M. Gupte, Adv. Mrs. Supriya Dangare and Swayamprabha and Mr. Suraj Wagwai, Advs.

Counsel for Respondent No. 7:

Ms. Sarika Kuru Kurudwadikar, Adv. i/by S.J. Law Associates,

Counsel for Respondent No. 16:

Shirin Merchant, Adv.

Counsel for Respondent No. 18

Mr. R.B. Mahabal, Adv.

ORDER / JUDGMENT

1. The issue of limitation has been raised by the Respondent No. 18 PNP Maritime Services Private Ltd. for questioning the maintainability of the present Application.

2. The Applicants have filed this Application on 6th September 2014 for the following reliefs:

(A) That since the impugned construction is fundamentally illegal, hence the additional 4 jetties, godowns, office block, boundary walls etc. which have been made in violation of the Environment Clearance accorded on 6th October, 2003 be ordered to be demolished.

(B) That all construction which has been done beyond the scope of Environment Clearance of 6th October, 2003, be dismantled completely and the land be restored to its original state.

(C) That the railway line which has been constructed without Environment Clearance be dismantled completely and the reclamation done in this respect be undone.

(D) That after the construction is removed, the entire place be planted with mangroves.

(E) That pursuant to Polluter-Pays Principle, the Project Proponent be asked to compensate for the damage to environment and that a heavy cost be imposed on the PNP and Dharamtar Infrastructure Pvt. Ltd. for having indulged in such enormous damage.

(F) That interim orders be issued by this Hon'ble Tribunal to halt the operations of the port, which causes immeasurable pollution of coal dust every day and that almost the entire port is fundamentally illegal.

(G) Any other order which this Hon'ble Tribunal may deem fit to pass considering the facts and circumstances of this case.

3. Essentially, therefore, the present Application moved by the local residents of village Pimpal Bhat, Shahbaj and Ambepur (described as Ambe in the Application) respectively all of Tal. Alibaug, District Raigad is for restitution of the environment damaged by the construction of jetties in Dharamtar creek at village Shahbaj, Tal. Alibag, District Raigad. Section 15 of the National Green Tribunal Act, 2010 is quoted herein below for ready reference:

Section 15 of NGT Act: *Relief, compensation and restitution.*

(1) The Tribunal may by an order provide.

(a) Relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule 1 (including accident occurring while handling any hazardous substance),

(b) For restitution of property damaged;

(c) For restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) ———

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose.

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

(4) ———

(5) ———

4. According to the Applicants, the 'cause of action' for the present Application arose when the facts concerning the transgression of laws were noticed and thereupon the notice dated 25th September 2013 was issued to Respondent No. 17-Dharmtar Infrastructure Ltd. and Respondent No. 18-PNP Maritime Services Pvt. Ltd. Learned counsel appearing on behalf of the Applicants submits that the issue of limitation is mixed question of law and the facts and it will have to be determined on case to case basis and in the given facts and circumstances the cause of action for filing the present Application arose when the Applicant came to know about the illegal construction carried out by Respondent No. 18 and the violation of the environmental clearance conditions.

5. Learned counsel appearing on behalf of Applicants quoted 'Discovery Rule' as endorsed by Hon'ble Supreme Court in *Dr. V.N. Shrikhande's case* reported in (2011) 1 SCC 53 : A.I.R. 2011 SC 212 : *Dr. V.N. Shrikhande* v. *Mrs. Anita Sena Fernandes*. She submitted that the said Rule can be applied in cases of environmental damage.

6. Learned counsel appearing on behalf of Respondent No. 18 conceded that the limitation is mixed question of law and facts. However, he submitted that the facts can be gathered from the material on record produced both by the Applicants as well as Respondents, including Respondent No. 18 PNP Maritime Services Pvt. Ltd. He therefore, invited our attention to the Google imagery produced by the Applicants at Annexure A-1 to A-8 and A-10 to the Application in compilation-II as well as photographs annexed to the affidavit dated 16th December 2015 of the Respondent No. 18 at pages 646 to 657. He submitted that the environmental clearance was granted on 6th October 2003 and the construction of the jetties in question was commenced in February 2004 and almost completed in 2006, except the installation of

tower-crane on one of the jetties, openly at a place visible and accessible to the public at large. He submitted that the facts could be ascertained from the Google imagery of the construction site which was also accessible to the Applicants at all times. He further submitted that the Applicants referred to several violations of Law, giving rise to separate causes of action for each of the violations both in the notice dated 25th September 2013 and the application and, therefore, clubbing of the causes of action, in the present Application amounts to misjoinder of causes of action in violation of Rule 14 of National Green Tribunal (Practice & Procedure) Rules, 2011.

7. Countering these submissions, the learned counsel appearing on behalf of the Applicants submitted that the they are not seeking plural remedies but they are seeking a remedy of restitution of environment which can be achieved by demolition of the jetties in question though the cause of action for such relief arose as aforesaid she submits that the violations of law quoted in the Application cumulatively translated into environmental damage necessitating the relief of its restitution as prayed for and therefore, there is no violation of Rule 14 of National Green Tribunal (Practice & Procedure) Rule 2011.

8. Perusal of the notice dated 25th September 2013 reveals that the cause for present action before us is "massive construction", which in the words of the Applicant No. 1 Surendra Waman Dhavale is as follows:

> "4-A. *That a massive construction of a port at Dharamtar Creek, alongwith large port-related ancillary constructions, such as warehousing, open-storage of coal, setting up of cranes, conveyors, rail siding etc. took place. This construction was done by committing several infractions of laws*."

9. It is evident from the Google imagery photographs produced both by the Applicants and Respondent No. 18 that the activity of the construction of the jetties was complete in the year 2005 and the destruction of mangroves was perceptible to the public at large from such Google imagery or otherwise. It is also seen from the Inspection Report, dated 1st February 2006 of the MoEF at Annexure A-11 to the Application that the construction of jetty was complete and only construction of storage sheds was going on. Construction activity evidently was not concealed and it was known to the public at large, particularly to the local residents, one of them being the Applicant No. 2-Darshan Atmaram Juikar resident of Shahbaj.

10. In *Dr. V.N. Shrikhande's case* the Hon'ble Apex Court while dealing with the issue of Limitation in a case of medical negligence held:

> "*In case of Medical Negligence "Cause of action" does not accrue until the patient learns of injury/harm or in the exercise of reasonable care and diligence could have discovered the act constituting negligence*".

11. In this case, the Hon'ble Apex Court made distinction between patent effect of negligence and the latent effect of negligence and proceeded to apply the 'Discovery Rule' evolved by the Court in *United States* in case of "*Morgan* v. *Grace Hospital Inc.*, 149 W.Va. 783 : 144 S.E. 2d 156"

12. Here we are dealing with the case of patent event of massive construction perceptible to the public at large. Nothing was concealed as regards the construction in question. In such circumstance, the Ratio *Decidendi* arrived at in the case of *Dr. V.N. Shrikhande* is not applicable in the present case, more particularly for the reason that there was pre-existing jetty and nowhere the applicants have described or given the details of latent effects of harm/injury caused to the environment due to the construction in question which became patent in or about September 2013 the time when the notice dated 25th September 2013 was issued. It is the case of the Applicants that there has been massive cutting of mangroves in the year 2003 by Google imagery Communication 'A-8' for the purpose of construction of jetties. The first cause of action, therefore, in any case arose long back in the year 2003. Even by

liberal estimation, the work of construction could be said to have been evident on its completion in the year 2006 vide Inspection Report dated 1st February 2006. In such situation, the Application which is filed on 6th September, 2014, in our view is grossly time barred.

13. Hence the O.A. No. 95/2014 stands dismissed with no order as to costs.

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† Western Zone Bench, Pune