

Ganesan Rep By Its Power Agent G. Rukmani ... vs The Commissioner The Tamil Nadu Hindu ... on 3 May, 2019

Author: Ashok Bhushan

Bench: K.M. Joseph, Ashok Bhushan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4582 OF 2019
(ARISING OUT OF SLP(CIVIL) NO. 30365 OF 2018)

GANESAN REP BY ITS POWER
AGENT G. RUKMANI GANESAN

... APPELLANT(S)

VERSUS

THE COMMISSIONER, THE TAMIL NADU
HINDU RELIGIOUS AND CHARITABLE
ENDOWMENTS BOARD & ORS.

... RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN,J.

This appeal has been filed against the judgment dated 04.12.2017 of Madurai Bench of Madras High Court dismissing the writ appeal filed by the Appellant. The appellant had filed the writ appeal against the judgment of learned single Judge dated 22.08.2014 by which judgment writ petition filed by the appellant challenging the judgment and order dated 31.07.2013 of the Commissioner Tamil Nadu Hindu Religious Endowment Board Date: 2019.05.03 17:59:19 IST Reason:

has been dismissed.

2. Brief facts of the case necessary to be noticed for deciding the appeal are: □2.1 The appellant filed an application under Section 63 of Hindu Religious endowment charitable Act, 1959 (hereinafter referred to as Act 1959) claiming his Ambalam right. The Joint Commissioner of Hindu Religious & charitable endowment Board after

holding an inquiry passed an order dated 21.12.2010 holding that appellant to be entitled for Ambalam Right and to receive first respect as an Ambalam in the village, Tirupathartalu, Shiv Gangi District, Tamil Nadu.

2.2 Two writ petitions were filed in the High Court challenging the order dated 31.12.2010 being W.P.M.D. No. 14382 of 2011 filed by Radha Krishnan and W.P. No.185 of 2012 filed by Madhavan. Both the writ petitions were dismissed by the High Court vide its judgment dated 10.01.2012. A W.P.M.D. No. 379 of 2012 was filed by one Laxmanan in which initially an interim order dated 12.01.2012 was passed. The third respondent P.R. Ramanathan filed an appeal No.2007 OF 2012 against the order dated 31.12.2010 passed by Joint Commissioner. The appeal filed by third respondent was under

Section 69 of Act, 1959. W.P.M.D. No.3379 of 2013 was filed by P.R. Ramanathan, third respondent, seeking a direction to decide his statutory appeal filed under Section 69 of Act 1959. The High Court vide its judgment and order dated 07.03.2013 directed the commissioner to dispose of the appeal expeditiously and in any case within a period of four months to the date of the copy of the order.

2.3 A delay condonation application dated 30.04.2013 was filed by third respondent in his appeal no.

2007 of 2012 praying for condonation of delay of 266 days. The cause for delay shown was that appellant was ill for 7½ months and was unable to travel to Chennai to instruct his counsel. A counter affidavit was filed by the appellant objecting the application filed by the appellant for condonation of delay. In his counter affidavit appellant took a plea that Section 5 of the Limitation Act is not applicable. 2.4 Learned commissioner passed an order dated 31.07.2013 condoning the delay of 266 days in filing the appeal. Against the order dated 31.07.2013, writ petition was filed by the appellant being W.P.M.D. No. 13804 of 2013. Learned single Judge referring to certain provision of the Act 1959 as well as few decisions of this Court and Madras High Court held that in appeal proceedings before the Commissioner Section 5 of the Limitation Act is fully applicable and there is sufficient cause and the delay has rightly been condoned by the Commissioner. Aggrieved against the judgment of learned single Judge, writ appeal has been filed by the appellant which has been dismissed by the impugned judgment.

2.5 The Division Bench of the Madras High Court placed reliance on several judgments of this Court and after referring to various provisions of the Act, 1959, held that Act 1959 does not exclude the applicability of the Limitation Act, 1963. The appellant aggrieved by the Division Bench judgment dated 04.12.2017 has come up in this appeal.

3. We have heard Shri M. Ajmal Khan, senior Advocate for the appellant and Shri S.Nagvathu, senior Advocate appearing for the third respondent, as well as learned counsel appearing for the State.

4. Learned counsel for the appellant submits that the commissioner has no jurisdiction to consider application filed under Section 5 of Limitation Act. It is submitted that the commissioner who is empowered to decide the appeal under Section 69 of Act 1959 is not a court. He submits that Section 6(6) defines the commissioner whereas Section 6(7) defines the Court, which clearly indicate that commissioner is not the court. It is submitted that Section 5 of the Limitation Act is applicable only in application filed before a Court. The commissioner being not a Court, there was no applicability of Section 5 of the Limitation Act.

5. He further submits that by virtue of Section 115 of Act 1959, the only provision of the Limitation Act which has been made applicable is that the time requisite for obtaining certified copy of order or decree shall be excluded. He submits that specifically applying provisions of Section 12(2) of Limitation Act, indicates that other provisions have not been made applicable to the Act 1959. He submits that in event the limitation Act was to be applicable to the proceeding of appeal under 1959 Act, there was no occasion of Section 115 of Act 1959. Limitation Act has been applied only to the extent as mentioned in Section 115, other provisions are not applicable.

6. Learned counsel for the respondent refuting the submissions of learned counsel for the appellant submits that although Commissioner is not a Court as defined in Act 1959, but it is a court for the purposes of Section 5 of the Limitation Act. Relying on Section 110, he submits that procedure provided for hearing of appeal is as nearly as may be in accordance with the procedure under the Code of Civil Procedure, 1908 to the trial of suits or the hearing of the appeals as the case may be. The Commissioner has thus all powers of the Court for hearing the appeal. The authorities under Act 1959 had trappings of the court. Commissioner decide the appeal in a judicial manner. The scheme of Act 1959 does not indicate that it never intended to exclude Section 5 of the Limitation Act. Reliance has been placed on Section 29(2) of the Limitation Act and it is submitted that there being no express exclusion of Section 5 of the Limitation Act, Section 5 of the Limitation Act is fully attracted in hearing of an appeal by the commissioner.

7. Learned counsel for both the parties have placed reliance on various judgments of this court which shall be referred to while considering their submissions in detail.

8. After hearing learned counsel for both the parties and perusal of the record, following are the questions which arises for consideration in this appeal:□

1) Whether the Commissioner while hearing the appeal under Section 69 of Act, 1959, is a Court?

2) Whether applicability of Section 29(2) of Limitation Act is with regard to different limitation prescribed for any suit, appeal or application to be filed only in a Court or Section 29(2) can be pressed in service with regard to filing of a suit, appeal or application before statutory authorities and tribunals provided in Special or Local Laws?

3) Whether the Commissioner while hearing the appeal under Section 69 of Act 1959 is entitled to condone a delay in filing an appeal applying the provisions of Section 5 of the Limitation Act, 1963?

4) Whether the statutory scheme of Act 1959 indicate that Section 5 of Limitation Act is applicable to proceedings before its authorities?

Question No.1

9. The above question has to be answered in reference to the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Both the "Commissioner" and "Court" has been defined under the Act, 1959. The Commissioner is defined under Section 6(6) which is to the following effect:

"Section 6(6) "Commissioner" means the Commissioner appointed under section 9;"

10. The Court is defined in Section 6(7) in the following manner:

"Section 6(7) "Court" means (i) in relation to a math or temple situated in the Presidency town, the Chennai City Civil Court;

(ii) in relation to a math or temple situated elsewhere, the Subordinate Judge's Court having jurisdiction over the area in which the math or temple is situated, or if there is no such Court, the District Court having such jurisdiction;

(iii) in relation to a specific endowment attached to a math or temple, the Court which would have jurisdiction as aforesaid in relation to the math or temple;

(iv) in relation to a specific endowment attached to two or more maths or temples, any Court which would have jurisdiction as aforesaid in relation to either or any of such maths or temples;"

11. Section 8 of the Act, 1959 enumerates the authorities under the Act. Section 8 is as follows: "Section 8. Authorities under the Act. There shall be the following classes of authorities under this Act, namely:

(a) The Commissioner;

(aa) Additional Commissioner;

(b) Joint Commissioner;

(c) Deputy Commissioners; and

(d) Assistant Commissioners."

12. Section 9(1) provides that the Government shall appoint the Commissioner as it may think fit. Section 9(2) provides various modes of appointment to the post of Commissioner.

13. The definition of the Court refers to the Civil Court constituted by Legislature in the State for administration of justice. The conventional definition of the Court as mentioned in Advanced Law Lexicon by P. Ramanatha Aiyer, Third Edition is:

“A Court is defined in Coke on Littleton as a place wherein justice is judicially administered. “In every Court, there must be at least three constituent parts—the actor, reus and judex: the actor, or plaintiff, who complains of an injury done; the reus, or defendant, who is called upon to make satisfaction for it; and the judex, or judicial power, which is to examine the truth of the fact, and to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain, and b its officers to apply, the remedy,” (3 Steph. Comm. 6th Ed., pp.383, 385). See also 30 M. 326: 2 MLT 267, Court is a body in the government to which the public administration of justice is delegated; an organised body, with defined powers, meeting at certain times, and places, for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and counsels, to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands and secure order in its proceedings.”

14. The constitution of Court in this country has been by legislative enactments. For constituting Civil Courts, the Bengal, Agra and Assam Civil Courts Act, 1887 was enacted which provided classes of civil courts and provided for constitution of courts of District Judges, Subordinate Judges and Munsifs. Similarly for civil courts in the town of Bombay, Calcutta and Madras, the Presidency Small Causes Act, 1882 was enacted.

15. The definition of Court as contained in Section 6(7) as noted above, thus, clearly indicates that what Act, 1959 refers to a Court is a civil court created in the State. The scheme of the Act clearly indicates that Commissioner is an authority under the Act who is to be appointed by the Government. The Commissioner is entrusted with various functions under the Act and one of the functions entrusted to the Commissioner is hearing of the appeal under Section 69 of the Act, 1959. In the present case we are concerned with Section 69 which is to the following effect:

“Section 69. Appeal to the Commissioner. (1) Any person aggrieved by any order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be], under any of the foregoing sections of this chapter, may within sixty days from the date of the publication of the order or of the receipt thereof by him as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit.

(2) Any order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be], in respect of which no appeal has been preferred within the period specified in sub-section (1) may be revised by the Commissioner suo motu and the Commissioner may call for and examine the records of the proceedings as to satisfy himself as to the regularity of such proceedings or the correctness, legality or

propriety of any decision or order passed by 1[the Joint Commissioner or the Deputy Commissioner, as the case may be]. Any such order passed by the Commissioner in respect of an order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be], shall be deemed to have been passed by the Commissioner on an appeal preferred to him under sub-Section (1).

(3) Any order passed by the Commissioner on such appeal against which no suit lies to the Court under the next succeeding section or in which no suit has been instituted in the Court within the time specified in sub-Section (1) of section 70 may be modified or cancelled by the Commissioner if the order has settled or modified a scheme for the administration of a religious institution or relates to any of the matters specified in section 66.”

16. Section 70 of the Act further provides that any party aggrieved by an order of the Commissioner under sub-Section (1) or sub-Section (2) of Section 69 can file a suit in the Court against such order. Section 70 is as follows:

“Section 70. Suits and appeals. (1) Any party aggrieved by an order passed by the Commissioner”

(i) under sub-Section (1) or sub-Section (2) of section 69 and relating to any of the matters specified in section 63, section 64 or section 67; or

(ii) under section 63, section 64 or section 67 read with sub-Section (1)(a), 2 or (4)(a) of section 22 or under section 65 may, within ninety days from the date of the receipt of such order by him, institute a suit in the Court against such order, and the Court may modify or cancel such order, but it shall have no power to stay of order of the Commissioner pending the disposal of the suit.

(2) Any party aggrieved by a decree of the Court under sub-Section (1), may, within ninety days from the date of the decree, appeal to the High Court.”

17. When an appeal is provided against the order of the Commissioner under Section 69 to the Court which is defined under Section 6(7), there is no question of treating the Commissioner as a Court under the statutory scheme of Act, 1959. We, thus, conclude that Commissioner is not a Court within the meaning of Act, 1959.

18. We may, however, notice a judgment of this Court in *S. Parthy vs. State of Bank of India*, (2000) 5 SCC 355. In the above case Deputy Commissioner of Labour(Appeals) was an authority constituted under Section 41(2) of Tamil Nadu Shops and Establishments Act, 1947 to hear and decide appeal. The appellant, an official of the State Bank of India was removed by an order dated 11.01.1983 after holding regular departmental proceedings. The appellant had filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 which appeal was dismissed holding that provisions of Tamil Nadu Shops and Establishments Act, 1947 are not applicable to nationalized

Banks. After the dismissal of the said appeal the orders of Deputy Commissioner of Labour (Appeals) dated 01.09.1987 was challenged in this Court which too are rejected. It was thereafter appellant instituted a regular suit in the City Civil Court where the question came for consideration regarding applicability of Section 14 of Limitation Act. In the above case in paragraph 3 the issue was noted to the following effect:

“3. In order to bring a suit within the period of limitation, the appellant claimed benefit of Section 14 of the Limitation Act on the ground that he had represented to the Local Board and, thereafter, filed an appeal under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 and was, therefore, prosecuting “civil proceedings” in a court with due diligence. It is claimed that the entire period during which those proceedings were pending has to be excluded and if this is done, the suit will be well within limitation.”

19. In the above context, this Court in paragraphs 12 to 15 laid down following:

“12. It will be noticed that Section 14 of the Limitation Act does not speak of a “civil court” but speaks only of a “court”. It is not necessary that the court spoken of in Section 14 should be a “civil court”. Any authority or tribunal having the trappings of a court would be a “court” within the meaning of this section.

15. Applying the above principles in the instant case, we are of the opinion that the Deputy Commissioner of Labour (Appeals), which was an authority constituted under Section 41(2) of the Tamil Nadu Shops and Establishments Act, 1947 to hear and decide appeals, was a “court” within the meaning of Section 14 of the Limitation Act and the proceedings pending before him were civil proceedings. It is not disputed that the appellant could file an appeal before the Local Board of the Bank, which was purely a departmental appeal. In this view of the matter, the entire period of time from the date of institution of the departmental appeal as also the period from the date of institution of the appeal under Section 41(2) before the Deputy Commissioner of Labour (Appeals) till it was dismissed will, therefore, have to be excluded for computing the period of limitation for filing the suit in question. If the entire period is excluded, the suit, it is not disputed, would be within time.”

20. There are two reasons due to which the above case is not applicable in the present case. Firstly, in the above case this Court was considering applicability of Section 14 of Limitation Act for excluding time (civil proceeding). The present is a case where applicability of Section 5 of the Limitation Act has to be examined. Thus, the above judgment is distinguished. The second reason for not relying the above judgment is three Judge Bench judgment of this Court in *The Commissioner of Sales Tax, U.P. Lucknow vs. M/s. Parson Tools and Plants, Kanpur*, (1975) 4 SCC 22. In the above case under the U.P. Sales Tax Act, 1948 the appellate authority has been constituted. The question arose as to whether the period taken in pursuing the appellate proceedings can be excluded by applying Section 14 of the Limitation Act for

purposes of filing revision before the Revisional Authority under Section 10(3B) of the U.P. Sales Tax Act, 1948. In the above context, this Court held that appellate authority and the Judge(Revisions) are not courts, hence, Section 14 of the Limitation Act shall not be applicable. In paragraph 9 following has been laid down:

“9. The above observations were quoted with approval by this Court in Jagannath Prasad case¹ 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 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.”

21. There being three-judge Bench judgment having held that appellate authority under U.P. Sales Tax Act is not a Court, we are not persuaded to follow the judgment of two-judge Bench in P Sarthy (supra).

22. Both the above questions being inter-connected are taken together. The main question to be answered in this appeal is as to; whether the Commissioner while hearing appeal under Section 69 of the Act, 1959 is entitled to condone the delay in filing an appeal by applying the provision of Section 5 of the Limitation Act, 1963?

Whether on the strength of Section 29(2) of the Limitation Act, 1963 provisions of Sections 4 to 24 (inclusive of the Limitation Act) shall apply in the proceedings of appeal before Commissioner under Section 69 of the Act, 1959? When by special or local law a different period of limitation is prescribed for any suit, appeal or application, the suit, appeal or application contemplated under Section 29(2) are suit, appeal or application in a Court or Section 29(2) shall also cover suit, appeal or application which are to be filed before the statutory authorities or quasi-judicial authorities and tribunals also?

23. The Limitation Act, 1963 is an Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith. The law of Limitation before enactment of Act, 1963 was governing by the law of limitation under Indian Limitation Act, 1908. The different provisions of Limitation Act, 1963 refers to ‘Court’. Section 4 provides where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens. Similarly, Section 5 provides that any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he has sufficient cause for not preferring the appeal or making the application within such period. Section 6 refers to institution of a suit or making of application for the execution of a decree by a minor or insane, or an

idiot who may institute the suit or make the application within the same period after the disability has ceased.

24. Sections 9,10 and 11 refer to suit. Section 12 deals with computation of period of limitation. The section refers to computation of period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, obviously was meant for judgment of a court. Section 13 again refers to Court. Section 14 specifically refers to the Court. Section 14 of the Act is as follows:

“Section 14. Exclusion of time of proceeding bona fide in court without jurisdiction.

–(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of the appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and 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.

(2) 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 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.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court of other cause of a like nature.

Explanation □For the purpose of this section, □

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

21. Subsequent Sections 16 and 17 refer to suits. Sections 18 to 21 again contain different provisions pertaining to computation of limitation. Thereafter comes Section 29, which is a saving provision.

Section 29 is as follows:

“Section 29. Savings. – (1) Nothing in this Act, shall affect section 25 of the Indian Contract Act,1872.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any sit, appeal or application by any special or local law, the provisions contained in section 5 to 24 (inclusive shall apply only in so far, as and to the extent to which, they are not expressly excluded by such special or local law.

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

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

22. The Schedule of the Act provides for “Periods of Limitation”. First Division deals with different kinds of suits. Second Division deals with appeals and Third Division deals with applications. The suits, appeals and applications which have been referred to in the Schedule obviously mean suits, appeals and applications to be filed in Court as per the provisions referred to in the Act noted above.

23. Section 29(2) provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation and the provisions contained in Sections 4 to 21 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. Whether prescription of appeal of limitation of any suit or application in any special or local law relates to suit, application or appeal to be filed in Court or it may refer to statutory authorities and tribunals also, is the question to be answered. Different special or local laws have been enacted by Legislature covering different subjects, different rights and liabilities, methodology of establishing, determining rights and liabilities and remedies provided therein. Special or local law may also provide remedy by institution of suits, appeals and applications in the Courts, i.e., civil court and to its normal hierarchy and also create special forum for determining rights and liabilities and provide remedies. Most common example of creating statutory authorities for determining rights, liabilities and remedies are taxing statutes where assessing authorities have been provided for with hierarchy of authorities. The remedy of appeal and revision is also provided in the taxing statutes which authorities are different from normal civil courts. Section 29(2) in reference to different special or local laws came for consideration before this Court in large number of cases. This Court had occasion to consider the provisions of the Limitation Act, 1963, in reference to different statutes which contain provisions of suits, appeals or applications to the courts/authorities/tribunals. There are series of judgments of this Court holding that provisions of

the Limitation Act are directed only when suit, appeal or application are to be filed in a Court unless there are express provisions in a special or local law.

24. Section 29(2) also came for consideration before this Court in several cases. There is another set of cases where it was held that the provisions of the Limitation Act, 1963 is to be applied even for suit, appeal or application under special/local law is to be filed before statutory authorities and the tribunal. We shall notice both sets of cases to find out the ratio which need to be applied in the present case.

25. The first case to be noticed is Town Municipal Council, Athani vs. The Presiding Officer, Labour Courts, Hubli, (1969) 1 SCC 873. In the above case applications under Section 33(c)(2) of the Industrial Disputes Act, 1947 were filed by various workmen of the appellant. The question which was considered by this Court in the above was as to whether Article 137 of the Schedule of the Limitation Act, 1963 governs applications under Section 33(c)(2) of the Industrial Disputes Act, 1947. Referring to various articles of Limitation Act, 1963, this Court laid down following:

“12.....The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than courts, such as a quasi judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a Labour Court.....”

26. A three Judge Bench of this Court in Nityananda, M. Joshi and others. vs. Life Insurance Corporation of India and others, (1965) 2 SCC 199, had occasion to consider the applicability of Article 137 of the Limitation Act to an application filed under Section 33(c)(1) and (2) of the Industrial Disputes Act, 1947 before the Labour Court. Three Judge bench categorically held that the scheme of the Limitation Act is that it only deals with application to Courts, and the Labour Court is not a Court within Limitation Act, 1963. Following was laid down in paragraph 3:

“3. In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963 all the other applications mentioned in the various articles are applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is “when the court is closed.” Again under Section 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963.”

27. Another three-Judge Bench of this Court had occasion to consider the provisions of U.P. Sales Tax Act, 1948 and the Limitation Act, 1963, in *The Commissioner of Sales Tax Act, 1948, U.P. Lucknow vs. M/s. Parson Tools and Plants, Kanpur*, (1975) 4 SCC 22. The question which came for consideration in the above case has been noted in paragraph 1 which is to the following effect:

“1. 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?”

28. The assessee’s appeals against assessment order were dismissed in default on 10.05.1963. The assessee made applications for setting aside the dismissal order. Revision Petitions under Section 10 of the Sales Tax Act were filed more than 18 months after the dismissal of the appeal. Assessee prayed for exclusion of time spent by him in prosecuting proceedings for setting aside the dismissal of appeals in default. The revisional authority excluded the time spent by applying Section 14 of the Limitation Act. The Commissioner made a reference to the High Court as to “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”. The High Court answered the reference in affirmative which judgment was questioned before this Court. Three-Judge Bench held that the appellate authority and the Judge (Revisions) Sales Tax exercising jurisdiction under the Sales Tax Act are not courts and hence, Section 14 of the Limitation Act does not apply. Following was laid down by this Court in paragraphs 9 and 24:

“9.....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.....”

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.”

29. In *The Kerala State Electricity Board, Trivandrum vs. T.P. Kunhaliumma*, (1976) 4 SCC 634, this Court had occasion to consider applicability of Article 137 of Limitation Act, application filed under Section 16 of the Telegraphs Act, 1885. This Court in the above case differing with the view taken by the two-Judge Bench in *Athani’s case* held that application under Article 137 of Limitation Act is not confined to application contemplated by or under the C.P.C. However, the application contemplated

under Telegraphs Act has to be an application to a Court. In paragraphs 18 and 22 following has been laid held:

“18. The alteration of the division as well as the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act there was no division between applications in specified cases and other applications as in the 1963 Limitation Act. The words “any other application” under Article 137 cannot be said on the principle of ejusdem generis to be applications under the Civil Procedure Code other than those mentioned in Part I of the third division. Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when court is closed and extension of prescribed period if applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application during such period.

22. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two Judge bench of this Court in Athani Municipal Council case and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act.”

30. In the above case since the application under the Telegraphs Act was filed before the Court, this Court held that Article 137 of the Limitation Act was applicable. It is to be noticed that in the above mentioned cases this Court held that applications contemplated under Limitation Act are applications to a Court but in the above cases the Court did not refer to Section 29(2) of the Limitation Act.

31. A two Judge Bench judgment of this Court in Sakuru vs. Tanaji, 1985(3) SCC 590, needs to be noticed. In the above case the question was as to whether delay in filing appeal before Court under Section 19 is condonable under Section 5 of Limitation Act, 1963. This Court held that the provisions of Limitation Act, 1963 apply only to proceedings in ‘courts’ and not to appeals or applications before bodies other than courts such as quasi-judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. In paragraph 3 following has been laid down:

“3. After hearing both sides we have unhesitatingly come to the conclusion that there is no substance in this appeal and that the view taken by the Division Bench in

Venkaiah case¹ is perfectly correct and sound. It is well settled by the decisions of this Court in *Town Municipal Council v. Presiding Officer, Labour Court*, *Nityananda M. Joshi v. Life Insurance Corporation of India* and *Sushila Devi v. Ramanandan Prasad* that the provisions of the Limitation Act, 1963 apply only to proceedings in “courts” and not to appeals or applications before bodies other than courts such as quasi-judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under Section 90 of the Act not being a court, the Limitation Act, as such, had no applicability to the proceedings before him.....”.

32. This Court, however, further held that relevant special statute may contain an express provision conferring on the appellate authority, such as the Collector, to extend the prescribed period of limitation which needs to be examined looking to the scheme of the special statute. Section 93 of the Act was a provision pertaining to the applicability of the Limitation Act. Referring to the said provision this Court held that 1958 Act does not indicate that Section 5 of the Limitation Act is applicable. Following was further laid down in paragraph 3:

“3.....But even in such a situation the relevant special statute may contain an express provision conferring on the Appellate Authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of Section 5 of the Limitation Act shall be applicable to such proceedings. Hence it becomes necessary to examine whether the Act contains any such provision entitling the Collector to invoke the provisions of Section 5 of the Limitation Act for condonation of the delay in the filing of the appeal. The only provision relied on by the appellant in this connection is Section 93 of the Act which, as it stood at the relevant time, was in the following terms:

93. Limitations.—Every appeal and every application for revision under this Act shall be filed within sixty days from the date of the order against which the appeal or application is filed and the provisions of the Indian Limitation Act, 1908 shall apply for the purpose of the computation of the said period.

On a plain reading of the section it is absolutely clear that its effect is only to render applicable to the proceedings before the Collector, the provisions of the Limitation Act relating to “computation of the period of limitation”. The provisions relating to computation of the period of limitation are contained in Sections 12 to 24 included in Part III of the Limitation Act, 1963. Section 5 is not a provision dealing with “computation of the period of limitation”. It is only after the process of computation is completed and it is found that an appeal or application has been filed after the expiry of the prescribed period that the question of extension of the period under Section 5 can arise. We are, therefore, in complete agreement with the view expressed by the Division Bench of the High Court in *Venkaiah case*¹ that Section 93 of the Act did not have the effect of rendering the provisions of Section 5 of the Limitation Act, 1963 applicable to the proceedings before the Collector.”

33. This Court in *Officer on Special Duty (Land Acquisition) and another vs. Shah Manilal Chandulal and others*, (1996) 9 SCC 414, the Land Acquisition Officer has rejected the application for reference under Section 18 on the ground that it was barred by limitation. A writ petition was filed contending that provision of Section 5 of the Limitation Act applies to the proceedings before the Collector. The High Court accepted the argument and condoned the delay against which judgment appeal was filed before this Court. This Court held that Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to sub-section (2) of Section 18. Following was held in paragraph 18:

“18. Though hard it may be, in view of the specific limitation provided under proviso to Section 18(2) of the Act, we are of the considered view that sub-section (2) of Section 29 cannot be applied to the proviso to sub-section (2) of Section 18. The Collector/LAO, therefore, is not a court when he acts as a statutory authority under Section 18(1).

Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to sub-section (2) of Section 18. The High Court, therefore, was not right in its finding that the Collector is a court under Section 5 of the Limitation Act.”

34. Another judgment which needs to be noticed is *Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and others*, (2008) 7 SCC

169. The question which was posed, in the above case, for consideration before this Court has been mentioned in paragraph 18 which is to the following effect:

“18. The question posed for consideration before the Court is whether the provision of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside the award made by the arbitrator.....”

35. The provision of sub-section (3) of Section 34 has been noticed in paragraph 19 which is to the following effect:

“19. A bare reading of sub-section (3) of Section 34 read with the proviso makes it abundantly clear that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 will have to be made within three months. The period can further be extended, on sufficient cause being shown, by another period of 30 days but not thereafter. It means that as far as application for setting aside the award is concerned, the period of limitation prescribed is three months which can be extended by another period of 30 days, on sufficient cause being shown to the satisfaction of the court.”

36. Section 29(2) of the Limitation Act as well as Section 34 of the Arbitration Act was referred to. This Court after noticing the provisions of Section 34 opined that

Section 5 of the Limitation Act is excluded. In paragraph 20 following has been laid down:

“20. Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension up to specified time—limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub—section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act. However, merely because it is held that Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable to an application submitted under Section 34 of the Act of 1996.”

37. The three—Judge Bench noticed earlier judgment of this Court in *CST v. Parson Tools and Plants*. The three—Judge Bench held that proceedings initiated for setting aside the arbitral award are not “courts” and three—Judge Bench held that in *CST v. Parson Tools and Plants* the appellate authority and the revisional court were not the courts hence this case was distinguished. Following was laid down in paragraph 26:

“26. From the judgment of the Supreme Court in *CST*, (1975) 2 SCC 22, it is evident that essentially what weighed with the Court in holding that Section 14 of the Limitation Act was not applicable, was that the appellate authority and the revisional authority were not “courts”. The stark features of the revisional powers pointed out by the Court, showed that the legislature had deliberately excluded the application of the principles underlying Sections 5 and 14 of the Limitation Act. Here in this case, the Court is not called upon to examine scope of revisional powers. The Court in this case is dealing with Section 34 of the Act which confers powers on the court of the first instance to set aside an award rendered by an arbitrator on specified grounds. It is not the case of the contractor that the forums before which the Government of India undertaking had initiated proceedings for setting aside the arbitral award are not “courts”. In view of these glaring distinguishing features, this Court is of the

opinion that the decision rendered in CST did not decide the issue which falls for consideration of this Court and, therefore, the said decision cannot be construed to mean that the provisions of Section 14 of the Limitation Act are not applicable to an application submitted under Section 34 of the Act of 1996.”

38. Three Judge Bench held that Section 14 of the Limitation Act was applicable to application filed under Section 34 of the Arbitration Act, 1996. R.V. Raveendran, J. in his concurring opinion has held that Sections 3 and 29(2) of the Limitation Act will not apply to proceedings before the tribunal, to appeals or applications before the tribunals, unless expressly provided. In paragraph 44 following was laid down:

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

39. The most elaborate judgment holding that the Limitation Act applies only to courts and not to the tribunals is the judgment of this Court in M.P. Steel Corporation vs. Commissioner of Central Excise, 2015(7) SCC 58, Rohinton Fali Nariman, J. speaking for the Court reviewed all earlier judgments of two Judge and three Judge Benches of this Court. In paragraphs 11 to 35 all earlier judgments have been considered. In the above case Commissioner of Customs(Appeals) dismissed the appeal filed by the appellant on the ground that appeal is barred by time and the Commissioner(Appeals) had no power to condone delay beyond the period specified in Section 128 of the Customs Act. In the above case, benefit of Section 14 of the Limitation Act was sought. It was contended before this Court that while Section 2 of the Limitation Act, Section 14 of the Limitation Act was also applied to criminal, special or local law. This Court noticed the ingredients of applicability of Section 14.

Two Judge Bench has held that relying on earlier judgments of this Court that provisions of the Limitation Act are applicable only to suits, appeals and applications filed in Courts. Section 29(2) was also considered by this Court and following was laid down in paragraph 33:

“33.....Section 29(2) states:

“29. Savings.—(1) * * *
(2) Where any special or local law
prescribes for any suit, appeal or

application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law,

the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.” A bare reading of this section would show that the special or local law described therein should prescribe for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule. This would necessarily mean that such special or local law would have to lay down that the suit, appeal or application to be instituted under it should be a suit, appeal or application of the nature described in the Schedule. We have already held that such suits, appeals or applications as are referred to in the Schedule are only to courts and not to quasi-judicial bodies or tribunals. It is clear, therefore, that only when a suit, appeal or application of the description in the Schedule is to be filed in a court under a special or local law that the provision gets attracted. This is made even clearer by a reading of Section 29(3). Section 29(3) states:

“29. Savings.—(1) * * * (3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.” When it comes to the law of marriage and divorce, the section speaks not only of suits but other proceedings as well. Such proceedings may be proceedings which are neither appeals nor applications thus making it clear that the laws relating to marriage and divorce, unlike the law of limitation, may contain proceedings other than suits, appeals or applications filed in courts. This again is an important pointer to the fact that the entirety of the Limitation Act including Section 29(2) would apply only to the three kinds of proceedings mentioned all of which are to be filed in courts.”

40. Two-Judge Bench, however, held that provisions of Section 14 would certainly apply. We in the present case are concerned only with applicability of Section 5 of the Limitation Act.

41. Now, we come to the second set of cases which cases have applied provisions of Limitation Act on special and local law. A three-Judge Bench judgment in *The Commissioner of Sales Tax, U.P. vs. M/s. Madan Lal Das & Sons, Bareilly*, (1976) 4 SCC 464, has been relied by the counsel for the respondents. In the above case an appeal relating to assessment year 1960-61 was decided by the appellate authority. The copy of the appellate order was served on the dealer on 02.08.1965. The dealer lost the copy of the appellate order and on 15.06.1966 made an application for obtaining another copy of the order which was ready on 17.08.1967. Revision under Section 10 of the U.P. Sales Tax Act, 1948 was filed by the dealer before the Judge(Revision) Sales Tax on 09.09.1967. The dealer claimed that the time taken in obtaining certified copy needs to be excluded under Section 12(2) of the Limitation Act, 1963. The Judge(Revision) accepted the contention and decided revision on merits. At the instance of the Commissioner of Sales Tax a question was referred to the High Court as to whether the time taken by the dealer in obtaining another copy of the appellate order could be excluded for the purpose of limitation for filing

revision under Section 10(1) of the Act, 1948. The High Court answered the question in favour of the dealer and against the Revenue.

42. The Commissioner of Sales Tax filed an appeal in this Court questioning the judgment of the High Court. It was contended before this Court that U.P. Sales Tax Act constitutes a complete court in itself and the High Court committed an error in relying on Section 12(2) of the Limitation Act, 1963. In paragraph 4 of the judgment following was laid down:

“4. There can be no manner of doubt that the U.P. Sales Tax Act answers to the description of a special or local law. According to sub-section (2) of Section 29 of the Limitation Act, reproduced above, for the purpose of determining any period of limitation prescribed for any application by any special or local law, the provisions contained in Section 12(2), inter alia, shall apply insofar as and to the extent to which they are not expressly excluded by such special or local law. There is nothing in the U.P. Sales Tax Act expressly excluding the application of Section 12(2) of the Limitation Act for determining the period of limitation prescribed for revision application. The conclusion would, therefore, follow that the provisions of Section 12(2) of the Limitation Act of 1963 can be relied upon in computing the period of limitation prescribed for filing a revision petition under Section 10 of the U.P. Sales Tax Act.”

43. This Court held that Section 12(2) of the Limitation Act can be relied upon in computing the period of limitation prescribed for filing the revision. The Judge(Revision) before whom revision is filed is not a Court, it is clear from the scheme of the U.P. Sales Tax Act, 1948. Section 10 under which revision is filed provides for Revising Authority. Section 10(1) provides for appointment of Revising Authority which is as follows:

“Section 10. Power of revision. (1) The State Government shall appoint as Revising Authority a person qualified under clause (2) of Article 217 of the Constitution for appointment as Judge of a High Court.”

44. The above provision makes it clear that revision is to be filed before a Revising Authority created under Act, 1948 and is not a Court. We have already noticed above that a three-Judge Bench of this Court in *The Commissioner of Sales Tax, U.P. Lucknow vs. M/s. Parson Tools and Plants, Kanpur* (supra) had considered the question of applicability of Limitation Act, 1963 before Revision Authority under U.P. Sales Tax Act, 1948. This Court in paragraph 9 of the judgment has categorically held that Judge(Revisions) Sales Tax exercising jurisdiction under Section 10 are not courts but mere administrative tribunals. In *CST, U.P. vs. M/s. Parson Tools and Plants*, the question was with regard to applicability of Section 14 of the Limitation Act. The three-Judge Bench categorically held that the Judge(Revision) being not a Court, Section 14 of the Limitation Act does not apply to the proceedings before such

tribunal. Before three Judge Bench which heard CST, U.P. vs. M/s. Madan Lal Das & Sons(supra) unfortunately the earlier judgment of equal strength i.e. three Judge Bench in CST, U.P. vs. M/s. Parson Tools and Plants was not cited. CST, U.P. vs. M/s. Parson Tools and Plants was judgment was on the same issue i.e. applicability of the Limitation Act in reference to Judge(Revision) exercising the jurisdiction under the U.P. Sales Tax Act, CST, U.P. vs. M/s. Parson Tools and Plants(supra) has held that Limitation Act is not applicable to such authority. Thus, three Judge judgment was neither noticed and a contrary view was expressed in CST, U.P. vs. M/s.

Madan Lal Das & Sons. We have also noticed that there has also been earlier three Judge Bench judgment in Nityananda, M. Joshi and others. vs. Life Insurance Corporation of India and others(supra) where it was held that Limitation Act applies only to suits, applications and appeals filed in Courts. The judgment of this Court in CST, U.P. vs. M/s. Madan Lal Das & Sons having not referred to earlier judgments of equal strength, we are persuaded to follow the earlier three Judge Bench judgment of this Court in CST, U.P. vs. M/s. Parson Tools and Plants.

45. The judgment on which reliance has been placed by the learned counsel for the respondent is Mukri Gopalan vs. Cheppilat Puthanpurayil Aboobacker, (1995) 5 SCC 5. In the above case, question for consideration was as to whether the appellate authority under Section 18 of Kerala Buildings (Lease and Rent Control) Act, 1965 has power to condone the delay in filing appeal. The issue which has been noticed in paragraph 1 is to the following effect:

“1. In this appeal by special leave a short but an interesting question falls for determination. It is to the effect “whether the appellate authority constituted under Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the ‘Rent Act’) has power to condone the delay in the filing of appeal before it under the said section”. Majority of the Kerala High Court in the case of Jokkim Fernandez v. Amina Kunhi Umma, AIR 1974 Ker 162, has taken the view that the appellate authority has no such power. Following the said decision a Division Bench of the Kerala High Court by its judgment and order under appeal has dismissed the revision application moved by the appellant herein whose appeal before the appellate authority was dismissed as time barred and the application for condonation of delay was treated to be not maintainable before the appellate authority.”

46. One fact which is to be noticed is that appellate authority under the above Act was District Judge. The notification issued by the State Government conferring on the District Judge power of the appellate authority has been noticed and extracted in paragraph 5 of the judgment. Relevant part of paragraph No.5 is as follows:

“5.At this stage it will be useful to note that the Government of Kerala in exercise of its power under Section 18(1) has issued a notification conferring on District Judges the powers of appellate authority for the purpose of Kerala Rent Act. The said notification reads as under:

“Buildings (Lease & Rent Control) Act, 1965□Noti. under Section 18(1) conferring on District Judges powers of appellate authorities (Published in Kerala Gazette No. 38 dated 26th September, 1989 : SRO :1631 of 1989) NOTIFICATION S.R.O. No. 1631 of 1989 In exercise of the powers conferred by clause (a) of sub□Section (1) of Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965) and in supersession of all previous notifications on the subject, the Government of Kerala hereby confers on the District Judges having jurisdiction over the areas within which the provisions of the said Act have been extended, the powers of the appellate authorities for the purposes of the said Act, in the said areas.”

47. This Court in the above case held that appellate authority was not “persona designata”. This Court in paragraph 8 held that the appellate authority who was District Judge would be court and not persona designata. Following was observed in paragraph 8:

“8.....When the aforesaid well settled tests for deciding whether an authority is a court or not are applied to the powers and functions of the appellate authority constituted under Section 18 of the Rent Act, it becomes obvious that all the aforesaid essential trappings to constitute such an authority as a court are found to be present. In fact, Mr Nariman, learned counsel for respondent also fairly stated that these appellate authorities would be courts and would not be persona designata.....”

48. Section 29(2) was also considered. This Court further held that Section 29(2) will get attracted to appeals filed before appellate authority under Section 18 of the Rent Act. In paragraphs 11 and 15 following has been laid down:

“11. It is also obvious that once the aforesaid two conditions are satisfied Section 29(2) on its own force will get attracted to appeals filed before appellate authority under Section 18 of the Rent Act. When Section 29(2) applies to appeals under Section 18 of the Rent Act, for computing the period of limitation prescribed for appeals under that Section, all the provisions of Sections 4 to 24 of the Limitation Act would apply. Section 5 being one of them would therefore get attracted. It is also obvious that there is no express exclusion anywhere in the Rent Act taking out the applicability of Section 5 of the Limitation Act to appeals filed before appellate authority under Section 18 of the Act. Consequently, all the legal requirements for applicability of Section 5 of the Limitation Act to such appeals in the light of Section 29(2) of Limitation Act can be said to have been satisfied. That was the view taken by the minority decision of the learned Single Judge of Kerala High Court in *Jokkim Fernandez v. Amina Kunhi Umma*. The majority did not agree on account of its wrong supposition that appellate authority functioning under Section 18 of the Rent Act is a persona designata. Once that presumption is found to be erroneous as discussed by us earlier, it becomes at once clear that minority view in the said decision was the correct view and the majority view was an erroneous view.”

15. After repealing of Indian Limitation Act, 1908 and its replacement by the present Limitation Act of 1963 a fundamental change was made in Section 29(2). The present Section 29(2) as already extracted earlier clearly indicates that once the requisite conditions for its applicability to given proceedings under special or local law are attracted, the provisions contained in Sections 4 to 24 both inclusive would get attracted which obviously would bring in Section 5 which also shall apply to such proceedings unless applicability of any of the aforesaid sections of the Limitation Act is expressly excluded by such special or local law. By this change it is not necessary to expressly state in a special law that the provisions contained in Section 5 of the Limitation Act shall apply to the determination of the periods under it. By the general provision contained in Section 29(2) this provision is made applicable to the periods prescribed under the special laws. An express mention in the special law is necessary only for any exclusion. It is on this basis that when the new Rent Act was passed in 1965 the provision contained in old Section 31 was omitted. It becomes therefore apparent that on a conjoint reading of Section 29(2) of Limitation Act of 1963 and Section 18 of the Rent Act of 1965, provisions of Section 5 would automatically get attracted to those proceedings, as there is nothing in the Rent Act of 1965 expressly excluding the applicability of Section 5 of the Limitation Act to appeals under Section 18 of the Rent Act.”

49. This Court in the above case held that Section 5 was attracted in appeal which was to be heard by the appellate authority. It is, further, relevant to notice that in M.P. Steel Corporation (supra), Mukri Gopalan has been referred to and has been held to be no longer good law in view of the earlier three-Judge judgments of this Court. Dealing with Mukri Gopalan’s case two-Judge Bench in M.P. Steel Corporation had held following in paragraph 29 :

“29. Quite apart from Mukri Gopalan case being out of step with at least five earlier binding judgments of this Court, it does not square also with the subsequent judgment in Consolidated Engg. Enterprises v. Irrigation Deptt. A three-Judge Bench of this Court was asked to decide whether Section 14 of the Limitation Act would apply to Section 34(3) of the Arbitration and Conciliation Act, 1996. After discussing the various provisions of the Arbitration Act and the Limitation Act, this Court held:.....”

32. Obviously, the ratio of Mukri Gopalan does not square with the observations of the three-Judge Bench in Consolidated Engg.

Enterprises. In the latter case, this Court has unequivocally held that Parson Tools is an authority for the proposition that the Limitation Act will not apply to quasi-judicial bodies or tribunals. To the extent that Mukri Gopalan is in conflict with the judgment in Consolidated Engg. Enterprises case, it is no longer good law.”

50. Learned counsel for the respondent relied on three-Judge Bench judgment of this Court in State of Madhya Pradesh and another vs. Anshuman Shukla, (2014) 10 SCC

814. In the above case this Court was examining as to whether delay in filing revision before the High Court under M.P. Madhyastham Adhikaran Adhiniyam, 1983 was condonable applying Section 5 of the Limitation Act, Section 29(2) as well as Mukri Gopalan case was referred to by three Judge Bench. In paragraph 20 following was laid down:

“20. Section 19 of the Act confers the power of revision on the High Court. It provides that the aggrieved party may make an application for revision before the High Court within three months of the date of the award. This section was amended in 2005, to confer the power on the High Court to condone the delay. Since this dispute pertains prior to 2005, thus, the provision of the unamended Act shall apply in the present case.”

51. After considering the legislative scheme of Act, 1983 following was laid down in paragraph 32 and 33:

“32. Section 19 of the 1983 Act does not contain any express rider on the power of the High Court to entertain an application for revision after the expiry of the prescribed period of three months. On the contrary, the High Court is conferred with suo motu power, to call for the record of an award at any time. It cannot, therefore, be said that the legislative intent was to exclude the applicability of Section 5 of the Limitation Act to Section 19 of the 1983 Act.

33. In our opinion, it is unnecessary to delve into the question whether the Arbitral Tribunal constituted under the Act is a court or not for answering the issue in the present case as the delay in filing the revision has occurred before the High Court, and not the Arbitral Tribunal.”

52. It is relevant to notice that this Court from the scheme of Act, 1983, itself found that legislative intent was not to exclude the applicability of Section 5 of the Limitation Act. There cannot be any dispute to the proposition that if the legislative scheme of special or local law indicate that enactment intended applicability of Section 5. Section 5 shall be applicable independent with operation of Section 29(2). However, in paragraph 33, the Court did not delve into the question as to whether Arbitral Tribunal is a court or not. Due to a reason that revision was filed before the High Court and there cannot be any issue as to the High Court is not a Court, thus, when revision application was filed before a Court Section 29(2) was clearly attracted applying Section 5 of the Limitation Act. The said judgment cannot be said to be authority for the proposition that in appeals filed before statutory authorities which are not Court, Section 5 of the Limitation act shall be attracted. Another judgement relied by the respondent is Syed Zalil Akhtar vs. Zila Sahkari Krishi Avam Gramm Vikas Bank, Mydt., (2016) 12 SCC 365. This Court in the above case was considering the power of condonation of delay in filing appeal under Section 55(2) of M.P. Cooperative Societies Act, 1960. The High Court has upheld the decision of the M.P. State Cooperative Tribunal, appellant's application filed under Section 55(2) was

belated and since there being no provision for condoning the delay in filing of the appeal and Section 5 of the Limitation Act was also not applicable. Two Judge Bench has referred to Mukri Gopalan (supra). Relying on Mukri Gopalan and Anshuman Shukla, two Judge Bench held that Section 5 of the Limitation Act would be applicable.

In paragraphs 11 and 12 following has been held:

“11. Having noted the said view expressed in para 34, as compared to a detailed analysis made in the earlier decision of this Court made in Mukri Gopalan case we are of the considered view that in the light of the subsequent larger Bench decision of this Court in Anshuman Shukla case which has given its seal of approval to the decision in Mukri Gopalan case, the latter decision can be followed in all respects and the one held in Noharlal Verma case cannot be said to be good law.

12. Therefore, applying the law thus laid down by this Court in Mukri Gopalan case and Anshuman Shukla case we are convinced that Section 5 of the Limitation Act would apply in all force to the case on hand and consequently when we consider the extent of delay involved, we find that the last date for filing the application was 8⁹ 1995, application was presented on 11⁹ 1995, in between two days, namely, 9⁹ 1995 and 10⁹ 1995 were second Saturday and Sunday. Therefore, it must be held that there was every justification and sufficient cause for the appellant in his claim for condoning the said two days in filing the application before the original authority.

Consequently, we ourselves hereby condone the said delay of two days and since the Tribunal by its order dated 18³ 2009 merely dismissed the appeals of the appellant as well as that of the respondent on the sole ground of delay caused by the appellant in preferring the original application, the said order cannot be sustained.”

53. We have already noticed that Mukri Gopalan was held to be not a good law by this Court in M.P. Steel on the ground that it has not noticed earlier three Judge Bench judgments and also in view of the subsequent three Judge Bench judgment, the said case is not a good law. As far as Anshuman Shukla's case is concerned we have already noticed the issue, in the said case, of applicability of Section 5 of Limitation Act in the revision filed in the High Court, High Court being a Court, Limitation Act was fully applicable and the said judgment does not support the proposition that in application before not a Court, Section 5 shall automatically be applicable.

54. The ratio which can be culled from above noted judgments, especially judgment of three Judge Benches, as noted above, is as follows:

(1) The suits, appeals and applications referred to in the Limitation Act, 1963 are suits, appeals and applications which are to be filed in a Court.

(2) The suits, appeals and applications referred to in the Limitation Act are not the suits, appeals and applications which are to be filed before a statutory authority like Commissioner under Act, 1959.

(3) Operation of Section 29(2) of the Limitation Act is confined to the suits, appeals and applications referred to in a special or local law to be filed in Court and not before statutory authorities like Commissioner under Act, 1959.

(4) However, special or local law vide statutory scheme can make applicable any provision of the Limitation Act or exclude applicability of any provision of Limitation Act which can be decided only after looking into the scheme of particular, special or local law.

55. We, thus, answer question Nos.2 and 3 in the following manner:

(i) The applicability of Section 29(2) of the Limitation Act is with regard to different limitations prescribed for any suit, appeal or application when to be filed in a Court.

(ii) Section 29(2) cannot be pressed in service with regard to filing of suits, appeals and applications before the statutory authorities and tribunals provided in a special or local law. The Commissioner while hearing of the appeal under Section 69 of the Act, 1959 is not entitled to condone the delay in filing appeal, since, provision of Section 5 shall not be attracted by strength of Section 29(2) of the Act.

Question No.4

56. A special or local law can very well provide for applicability of any provision of Limitation Act or exclude applicability of any provision of Limitation Act. The provisions of Limitation Act including Section 5 can very well be applied in deciding an appeal by statutory authority which is not a Court by the statutory scheme of special or local law. We, thus, need to notice the provisions of Act, 1959 as to whether the scheme under Act, 1959 shows that enactment intended to apply Section 5 of the Limitation Act.

57. Section 110 provides for procedure and powers at inquiries under Chapters V and VI. The Commissioner hears appeals under Section 69 which is under Chapter V of the Act. Section 110 of the Act is as follows:

“Section 110. Procedure and powers at inquiries under Chapters V and VI.□(1) Where a Commissioner or a Joint Commissioner or a Deputy Commissioner makes an inquiry or hears an appeal under Chapter V or Chapter VI, the inquiry shall be made and the appeal shall be heard, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Central Act V of 1908) to the trial of suits or the hearing of appeals, as the case may be.

(2) The provisions of the Indian Evidence Act, 1872 (Central Act I of 1872) and the Indian Oaths Act, 1873 (Central Act X of 1873), shall apply to such inquiries and appeals.

(3) The Commissioner [or a Joint Commissioner or a Deputy Commissioner] holding such inquiry or hearing such an appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (Central Act XVIII of 1850).”

58. The mere fact that a statutory authority is empowered to follow the procedure as nearly may be in accordance with procedure under C.P.C. to the trial of suits or hearing of appeals, the statutory authority shall not become a Court. There is nothing under Section 110 which indicates that Limitation Act is also made applicable in hearing of the appeal.

59. Section 115 deals with limitation. It only provides that in computing the period of limitation prescribed under Act, 1959 for any proceeding, suit, appeal or application for revision against any order or decree passed under this Act, the time requisite for obtaining a certified copy of such order or decree shall be excluded.

60. The provision of Section 69 of Act, 1959 also indicates that Legislature never contemplated applicability of Section 5 of the Limitation Act in proceedings before Commissioner. Section 69(2) noted above provides that any order passed by the Joint Commissioner or the Deputy Commissioner, as the case may, in respect of which no appeal has been preferred within the period specified in sub-section (1) may be revised by the Commissioner suo motu and the Commissioner may call for and examine the records of the proceedings to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be.

61. Thus, Section 69(2) gives suo motu power to the Commissioner to call for and examine the records of the proceedings of Joint Commissioner or the Deputy Commissioner in respect of which no appeal has been preferred within the period specified in sub-section (1). Thus, in a case appeal is not filed within 60 days against the order of Joint Commissioner or the Deputy Commissioner, the Commissioner is vested with suo motu power to call for and examine the records. The suo motu power has been given to the Commissioner to correct the orders of Joint Commissioner or the Deputy Commissioner even if no appeal has been filed within 60 days. Giving of suo motu power to the Commissioner is with object to ensure that an order passed by the Joint Commissioner or the Deputy Commissioner may be corrected when appeal is not filed within time under Section 69(1). The scheme of Section 69 especially sub-section (2) also reinforces our conclusion that Legislature never contemplated applicability of Section 5 in Section 69(1) for condoning the delay in filing an appeal by applying Section 5 of the Limitation Act.

62. Learned counsel for the respondent has referred to two Rules framed under Section 116 of 1959, Act, namely, the Application and Appeal Rules dated 30.08.1961 and the Holding of Inquiries Rules dated 30.08.1961. The Application and Appeal Rules provide for procedures and details of filing

application, affidavits, memorandum of appeal, application for revision, etc. The said Rules, in no manner, support the contention of the learned counsel for the respondent that Section 5 of the Limitation Act is applicable. Similarly, Holding of Inquiries Rules provide for procedure of holding of inquiries, issue of notice, etc. The above Rules also do not throw any light on the applicability of Section 5 of the Limitation Act.

63. The above provision clearly indicates that provision for only computation of limitation has been made applicable to the proceedings under Act, 1959. Section 115 cannot be read in a manner as to providing applicability of Section 5. There is no other provision in the scheme from which it can be inferred that Act, 1959 intended applicability of Section 5 of the Limitation Act to proceedings of appeal before the Commission. We, thus, conclude that Section 5 of the Limitation Act is not applicable as per the scheme of Act, 1959.

64. In view of the foregoing discussions, we allow the appeal, set aside the impugned judgment of the High Court. The order of the Commissioner dated 31.07.2013 is set aside and the appeal filed by respondent No.3 stands dismissed.

65. We may, however, observe that dismissal of the appeal filed by respondent No.3 as above shall not preclude the Commissioner in exercising his suo motu power under Section 69(2) of the Act, 1959. We, however, are not expressing any opinion with regard to exercise of suo motu by the Commissioner under Section 69(2) in the present case and it is for the Commissioner to invoke his power under Section 69(2) if he is so satisfied. Further, this will be without prejudice to any other remedy open to the respondent No.3 in law.

66. The parties shall bear their own costs.

.....J. (ASHOK BHUSHAN)J. (K.M. JOSEPH) New Delhi, May 03, 2019