

Fairgrowth Investments Ltd vs The Custodian on 14 October, 2004

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Bench: Ruma Pal, Arun Kumar

CASE NO.:
Appeal (civil) 4065 of 2004

PETITIONER:
Fairgrowth Investments Ltd.

RESPONDENT:
The Custodian

DATE OF JUDGMENT: 14/10/2004

BENCH:
RUMA PAL & ARUN KUMAR

JUDGMENT:

J U D G M E N T RUMA PAL, J.

The question raised in this appeal is whether the Special Court constituted under The Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as 'the Act') has power to condone the delay in filing a petition under Section 4(2) of the Act.

The object of the Act as stated in the Statement of Objects and Reasons is to deal with the situation created by large scale irregularities and malpractices in transactions in securities indulged in by some brokers in collusion with the employees of various banks and financial institutions. In particular, the Act seeks to ensure speedy recovery of the funds which have been diverted from banks and financial institutions to the individual accounts of brokers. The other objectives of the Act are to punish the guilty and to restore confidence in and maintain the basic integrity and credibility of the banks and financial institutions.

With these objectives in view the Act provides for the appointment of one or more Custodians to take action against any person involved in any offence relating to transactions in securities for the period after 1st April, 1991 upto and including 6th June, 1992. In terms of sub-section (3) of Section 3 of the Act, the Custodian may notify the name of the such person in the Official Gazette. From the date of such notification, any property moveable or immoveable or both, belonging to any person so notified stands attached under Sub-section (3) of Section 3. Such attached properties may be dealt with by the Custodian in such manner as the Special Court may direct. The Special Court was established under Section 5 of the Act. It has the same jurisdiction as a Civil Court inter alia in relation to any matter relating to any property attached under Sub-section (3) of Section 3 of the Act as well as in relation to transactions in securities entered into during the aforesaid period in which the person notified is involved as a party, broker, intermediary or in any other manner (Section 9-A(1)). Sub-Section (2) of Section 4, (in so far as it is relevant) permits any person aggrieved by a notification issued under Sub-section (2) of Section 3 to file a petition objecting to the notification within 30 days of the issuance of the notification. The Special Court after hearing the parties may make such order as it deems fit on such petition. While dealing with such a case, the Special Court is not bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of the Act and of any Rules, the Special Court has the power and under Sub-section(4) of Section 9 to regulate its own procedure. Section 10(3) of the Act, provides for an appeal to this Court from any judgment, sentence or order of the Special Court within a period of 30 days from the date of such judgment etc. Under the proviso to Section 10(3) this Court has been empowered to entertain the appeal even after the expiry of a period of 30 days if the court is satisfied that the appellant had sufficient cause for not preferring appeal within the period of limitation. Section 13 provides that the provisions of the Act would have overriding effect over other laws. These, in short, are the provisions of the Act which are material for the purposes of this appeal.

The Act came into force on 6th June, 1992. The appellant was notified along with others under Section 3(2) on 20th November, 2001. On 23rd November, 2001, the Custodian informed the appellant that it had been notified under Section 3(2) of the Act and its properties stood attached with effect from the date of the notification. The appellant was requested to furnish the Custodian the details of its properties as on the date of the notification. In answer to the Custodian's letter, the appellant asked for the reasons and circumstances which formed the basis of the Custodian's decision to notify the appellant. The appellant also stated that it was in the process of submitting details of its properties. On 8th October, 2002, the appellant filed a petition of objection to the notification under Section 4(2) of the Act. The Special Court rejected the application solely on the ground that it was filed beyond the period of limitation prescribed by Sub-section (2) of Section 4. The appellant has contended that the Custodian had issued the notification under Section 3(2) of the Act almost 10 years after coming into force of the Act. It is submitted that the notification was also otherwise invalid. According to the appellant the right of notified persons to object to a notification under Section 4(2) was a valuable right, since the consequences of being notified were drastic viz. the attachment of all properties both immoveable and moveable. It is submitted that the notified persons could not be deprived of the right merely on the ground of limitation. It is submitted that the rule of limitation was a procedural requirement and like all matters of procedure should serve to further the ends of justice and not defeat it. Learned counsel for the appellant has

referred to the decisions of this Court in *Chairman, Thiruvalluvar Transport Corporation Vs. Consumer Protection Council* 1995 (2) SCR (1), *Syndicate Bank Vs. Prabha D. Naik & Anr.* 2001 (4) SCC 713 and *C. Beepathumma & Ors. Vs. Kudambalithaya & Ors.* 1964 (5) SCR 836 in support of this submission. According to the appellant the provision prescribing a period of limitation in Section 4(2) was directory and therefore the Special Court could not reject the application only because of non compliance with such a directory provision. The absence of any penal consequence, according to the appellant's counsel, showed that the non fulfillment of the requirement to file an objection within a specified time would not vitiate the substantive right of the notified person to question the notification. The decision of this Court in *Topline Shoes Ltd. Vs. Corporation Bank* 2002 (6) SCC 33, has been relied on as an authority for this proposition. The next submission of the appellants' counsel was based on the applicability of Section 29(2) of the Limitation Act, 1963 whereby, according to him, the provisions of inter alia Section 5 of the Limitation Act would be applicable to petitions under Section 4(2) of the Act. The contention is that Section 29 (2) of the Limitation Act, 1963 would be automatically applicable to all Special Acts such as the Act in question, since the Act provides for a period of limitation different from the period prescribed under the Limitation Act, 1963 and since the provisions of Limitation Act had not been excluded either expressly or by necessary implication. It is also argued on the basis of the decision of this Court in *Mangu Ram v. Municipal Corporation of Delhi* 1976 (1) SCC 392 and *Vidyacharan Shukla v. Khub Chand Baghel* 1964 (6) SCR 129 that merely because a power to condone the delay had been granted under Section 10(3), it could not be construed as a necessary exclusion of the same power under Section 5 of the Limitation Act in respect of Section 4(2). It is, however conceded by learned counsel appearing on behalf of the appellant that this Court has in *L.S. Synthetics Ltd vs. Fairgrowth Financial Services Ltd. & Anr.* 2004(7) SCALE 427 held that the provisions of Limitation Act, 1963 did not apply to the Act. However, it is submitted that irrespective of the wide language in which the conclusion of the Court had been stated in that case, the reasoning showed that it was limited to the question whether the periods prescribed under the Limitation Act applied to Section 11 of the Act. It is submitted that the decision in *L.S. Synthetics* must be narrowly construed, as otherwise the conclusion would be based on a factual error. Our attention was drawn to paragraphs 38 and 39 of the decision as reported where this Court has held that the provisions of the Limitation Act were excluded because the Act did not provide for any period of Limitation. It is pointed out that the Act was not a complete code since Sections 4(2) and 10(3) did provide for a period of Limitation.

Learned counsel appearing on behalf of the Custodian has stated that the period of limitation prescribed under Section 4(2) could not be said to be merely directory. The decision in *Topline* (supra) was said to be distinguishable and in any event not good law in view of the subsequent decision of a larger Bench in *Dr. J.J. Merchant V. Shrinath Chaturvedi*: 2002(6) SCC 635. It is submitted that Section 29 (2) of the Limitation Act would have no application to the Act because it is clear from the object and scheme of the Act that the period prescribed under Section 4(2) of the Act was not extendable by Court. The conferment of such power expressly in connection with appeals under Section 10 according to the learned counsel for the Custodian necessarily implied the exclusion of such power in the Court under Section 4(2). This fact coupled with Section 13 which gives overriding effect to the provisions of the Act, it was submitted, a clear indication that the provisions of the Limitation Act would not apply. Reliance has been placed on the decision of this Court in *Gopal Sardar Vs. Karuna Sardar* 2004(4) SCC 252, in this connection. Finally, it is

contended that the question raised in this appeal must be taken to have been concluded by the decision of three Judges in L.S. Synthetics case (supra).

We are of the view that the provision prescribing a time limit for filing a petition for objection under Section 4(2) of the Act is mandatory in the sense that the period prescribed cannot be extended by the Court under any inherent jurisdiction of the Special Court. Prescribed periods for initiating or taking steps in legal proceedings are intended to be abided by, subject to any power expressly conferred on the court to condone any delay. Thus the Limitation Act 1963 provides for different periods of limitation within which suits, appeals and applications may be instituted or filed or made as the case may be. It also provides for exclusion of time from the prescribed periods in certain cases, lays down bases for computing the period of limitation prescribed and expressly provides for extension of time under Section 5 in respect of certain proceedings. If the periods prescribed were not mandatory, it was not necessary to provide for exclusion or extension of time in certain circumstances nor would the method of computation of time have any meaning. Section 4 (2) of the Act plainly read similarly requires a person objecting to a notification issued under sub-section (2) of Section 3 to file a petition raising such objections within 30 days of the issuance of such notification. The words are unequivocal and unqualified and there is no scope for reading in a power of Court to dispense with the time limit on the basis of any principle of interpretation of statutory provisions. In *R. Rudraiah v. State of Karnataka* 1998(3) SCC 23 it was contended on behalf of the appellants that Section 48-A of the Karnataka Land Reforms Act, 1961 which provided for the making of an application within a particular period should be construed liberally in favour of tenants so that the period was to be read as extendable. The submission was rejected on the ground that the language of Section 48-A was unambiguous and could not be interpreted differently only on the ground of hardship to the tenants.

The mere fact that the Special Court may have been imbued with the same status of a High Court would not alter the situation. We are of the view that it was not necessary for Section 4(2) of the Act to use additional peremptory language such as "but not thereafter" or "shall" to mandate that an objection had to be made within 30 days. The mere use of the word "may" in Sections 4 (2) of the Act does not indicate that the period prescribed under the Section is merely directory. The word 'may' merely enables or empowers the objector to file an objection. The language in Section 4(2) of the Act may be compared with Sections 4 and 6 of the Limitation Act, 1963. Section 4 of the Limitation Act provides:

"4.Expiry of prescribed period when court is closed:- 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."

Certain sub-sections of Section 6 of the Limitation Act also provide for the period within which a minor or insane or an idiot may institute suits. It cannot be contended that the word "may" in these Sections indicate that the prescribed periods were merely directory. This Court in *Mangu Ram v. Municipal Corporation of Delhi* 1976 (1) SCC 392 described statutory provisions of periods of limitation as "mandatory and compulsive" and also said:-

"It is because a bar against entertainment of an application beyond the period of limitation is created by a Special or local law that it becomes necessary to invoke the aid of Section 5 (of the Limitation Act) in order that the application may be entertained despite such bar".

If the power to condone delay were implicit in every statutory provision providing for a period of limitation in respect of proceedings before Courts, Section 29(2) of the Limitation Act 1963 would be rendered redundant. We will discuss the scope and applicability of Section 29(2) in greater detail subsequently.

It is not for the Courts to determine whether the period of 30 days is too short to take account the various misfortunes that may be faced by notified persons who wish to file objections under Section 4(2) of the Act nor can the Section be held to be directory because of such alleged inadequacy of time. As was held by the Privy Council in *Nagendra Nath v. Suresh* AIR 1932 P.C. 165:-

"The fixation of periods of limitation must always be to some extent arbitrary and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think, the only safe guide."

[See also: *Antonyysami v. Arulanandam Pillai* (dead) By Lrs. & Anr. 2001(9) SCC 658, 666].

In any event the statutory attachment of the property of the notified party under Section 3, sub-section 3, of the Act, is subject to a final decision on the matter by the Special Court under Section 9(A) and Section 11 of the Act. It is, in that sense just an interim measure.

The three decisions relied upon by the appellant, namely, *Sangram Singh V. Election Tribunal*, *Kotah Bhurey Lal Baya*, 1955 (2) SCR 1, *Syndicate Bank V. Prabha* (supra) and *C. Beepathumma* (supra) do not deal with statutes which could be said to be in *pari materia* with the Act. In *Sangram Singh*, this Court had to consider whether the Election Tribunal was justified in refusing to recall an order directing that an election petition should be disposed of *ex-parte*. It was noted that Section 19(2) of the Representation of Peoples Act, 1951 directed the Tribunal to follow the procedure prescribed for trials under the Civil Procedure Code. It was found on a construction of the provisions of the Code of Civil Procedure as they then stood, that the Court had the power to allow a defendant to participate in the proceedings even after the passing of an order that the trial should be proceeded with *ex- parte*. Both the cases i.e. *Syndicate Bank* and *C. Beepathuma* have been cited as authorities for the proposition that the law of limitation is a procedural law and the provisions existing on the date of the suit would apply. We have no quarrel with this proposition but we fail to see the relevance of the decisions to the question to be decided in this appeal. None of these decisions touch the question whether a statutory provision such as Section 4(2) of the Act should be treated as mandatory or directory.

The decision which does deal with this question is *Topline Shoes Ltd. V. Corporation Bank* 2002 (2) SCC 33. The subject matter of interpretation in that case was Section 13(1)(a) of the Consumer

Protection Act, 1986 which provides that a person opposing the complaint under the Act was required to file an answer to the complaint "within a period of 30 days or such extended period not exceeding fifteen days as may be granted by the District Forum". The Court took into account the provisions of the Consumer Protection Act, 1986 and came to the conclusion that the period for extension of time "not exceeding fifteen days" was directory in nature and was an expression of "desirability in strong terms". While expressing our reservation about the correctness of the view expressed in *Topline Shoes Ltd.*, it is not necessary for us to expatiate on such reservation in view of the subsequent decision of this Court in *Dr. J.J. Merchant's case* by a larger Bench in which the provisions of Section 13(1)(a) of the Consumer Protection Act were also construed. The Court categorically held that the outer period of 45 days to submit an answer of a complaint had to be adhered to strictly. Given the view expressed by a larger Bench, it would not be appropriate for us to proceed on the opinion expressed earlier by a smaller Bench in *Topline Shoes*. [See in this connection *Union of India & Ors. V. K.S. Subramanian* AIR 1976 SC 2433]. We are therefore of the view that the period for filing an objection in Section 4(2) in the Act is a mandatory provision given the language of the Section and having regard to the objects sought to be served by the Act.

This brings us to the question whether the power to condone the delay in filing a petition under Section 4(2) exists in the Special Court. We have held that the statute itself does not provide for it. A possible source of the power could be Section 5 of the Limitation Act, 1963, provided it applies to the Act. Section 29(2) of the Limitation Act, 1963 provides for the application of the provisions of Section 4 to Section 24 of the 1963 Act including Section 5, to any special or local law which prescribes a period of limitation in respect of any suit, appeal or application different from the period prescribed under the Limitation Act. In other words, the general rule as far as special and local Acts are concerned, is that the specified provisions including Section 5 of the Limitation Act will apply provided the Special or Local Act provides a period of limitation different from that prescribed under the Limitation Act. There is an additional requirement viz that the Special/Local Act does not expressly exclude the application of the Limitation Act. It has been held in *Union of India V. Popular Construction Co.* 2001 (8) SCC 470 that the word 'exclusion' also includes 'exclusion by necessary implication'. This proposition of law is not in dispute. The only question is does the Act expressly or necessarily exclude the provisions of Limitation Act? We think it does. The fact that it has provided for a power to condone delay under Section 10(3) of the Act, shows that Parliament had consciously excluded the power of the Court in relation to Section 4(2). This view also finds support in the decision of this Court in *Gopal Sardar V. Karuna Sardar* 2004 (4) SCC 252. The statutory provision under consideration in that case was Section 8 of the West Bengal Land Reforms Act, 1955. It was held:

"When in the same statute in respect of various other provisions relating to filing of appeals and revisions, specific provisions are made so as to give benefit of Section 5 of the Limitation Act and such provision is not made to an application to be made under Section 8 of the Act, it obviously and necessarily follows that the legislature consciously excluded the application of Section 5 of the Limitation Act.

The decision relied upon by learned counsel for the appellant, namely, *Mangu Ram* (supra) has been distinguished in *Gopal Sardar vs. Karuna Sardar*, in our opinion,

correctly. In Mangu Ram's case the Court had to deal with the question whether despite the mandatory period of limitation provided in sub-Section (4) of Section 417 of the Criminal Procedure Code, 1898, it excluded the application of Section 5 of the Limitation Act 1963. The provisions of Section 29(2)(b) of the Limitation Act, 1963, were construed and it was held:-

"Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5".

But in this case apart from the mandatory and compulsive provisions of sub-Section (2) of Section 4 of the Act, there are in addition two provisions of the Act which show that the provisions of Section 5 of the Limitation Act, 1963 cannot be invoked. These are: an express provision for condonation of delay under Section 10(3) and the non-obstante provision in Section 13 of the Act which states that the provisions of the Act :-

" .shall have effect notwithstanding anything inconsistent herewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any Court, tribunal or other authority."

The decision in Competent Authority Tarana v. Vijay Gupta; 1991 Supp. (2) SCC 631 no doubt held that the provisions of the Madhya Pradesh Ceiling of Agricultural Holdings Act, 1960 will not exclude the provisions of Section 5 of the Limitation Act. However, there is no reference to the provisions of the Madhya Pradesh Act which persuaded the Court to arrive at such conclusion.

Reliance on the decision in Vidya Charan Shukla V. Khub Chand 1964 (6) SCR 129 by the appellant is equally misplaced. One of the issues raised in that case related to the question whether Section 116-A of the Representation of People Act, 1951 could be construed as expressly or impliedly excluding the provisions of the Limitation Act, 1908 as would otherwise be applicable under Section 29(2)(a) of that Act. The argument was that sub-section 3 of Section 116-A of the 1951 Act not only provided for a period of 30 days to prefer an appeal from the date of an order of the Tribunal to the High Court, but also provided that the High Court could entertain an appeal after the expiry of the period only if it was satisfied that the appellant had sufficient cause for not preferring an appeal within such period. The sub-section under consideration in Vidya Charan Sukhla was, therefore, substantially similar to Section 10(3) of the Act which is required to be construed by us. But that is where the similarity ends. The Court in that case held that the proviso did not amount to an express or implied exclusion because of the wording of Section 29(2)(a) of the Limitation Act, 1908. Section 29(2) (a) of the 1908 Act is dissimilar from the provisions of section 29(2)(b) of the Limitation Act, 1963. The earlier version of Section 29 made the provisions of Section 4, 9 to 18 and Section 22 applicable to a Special or Local Act unless the Special or Local law expressly excluded such applicability. In other words, even in the absence of any exclusionary clause in the Special or Local Act, the other provisions of the Limitation Act including Section 5 would not apply. It was, therefore, held that the proviso in sub- section 3 of Section 116-A of the Limitation Act, 1951 had become necessary, because, if the proviso was not enacted, then by virtue of Section 29 (3)(a) of the

Limitation Act, 1908 it would have excluded the operation of Section 5 of the Limitation Act with the result that even if sufficient cause for the delay existed the High Court would have been helpless to exclude the delay. It was held that proviso to sub-Section (3) of Section 116-A of the 1951 Act only restored the power under Section 5 denied to the Court under Section 29(2)(b) of the Limitation Act, 1908. The same reasoning would not apply with regard to Section 29(2)(b) of the Limitation Act, 1963. Under the 1963 Act, Section 29(2)(b), inter-alia, provides that Section 5 of the Limitation Act would apply under that section to a Special/Local Act unless specifically excluded. The decision in Vidya Charan Shukla was noted in *Hukumdev Narayan Yadav V. L.N. Mishra* 1974(2) SCC 133 and it was held that this particular controversy was no longer relevant for determining whether such a special or local Act excluded the provisions of the Limitation Act within the meaning of the word "exclude" in Section 29(2)(b) of the Act. The decision of *Hukumdev Narayan* has in turn been considered and followed by this Court in *Gopal Sardar V. Karuna Sardar* 2004 (4) SCC

252. The argument of the appellant then is that the provisions for exclusion of time contained in Section 4 to 24 of the Limitation Act if not included would lead to an incongruous result. For example an appeal would be barred by time even though a copy of the order of the Special Court was not made available to the appellant, because Section 12(2) of the Limitation Act would not be available. The argument is unacceptable. The time taken by the appellant for obtaining a copy of the order appealed against may be a factor relevant to the exercise of discretion by this Court under Section 10(3) of the Act. The exclusion of Sections 4 to 24 of the Limitation Act would only mean that the appellant could not claim the exclusion of time as provided under those Sections as a matter of right but could raise pleas on grounds available under those Sections to establish 'sufficient cause' under Section 10(3). The decision by a larger Bench in *L.S. Synthetics Ltd.* (supra) holding that the provisions of the Limitation Act, 1963 do not apply to the Act may not have, by itself, concluded the question formulated by us at the outset. That case was, as has been rightly contended by learned counsel appearing on behalf of the appellant, limited to a consideration of Section 11 of the Act and the proceedings by the Special Court thereunder. It was in that context that the Court had said that the Act had not provided for any period of limitation. But for the reasons already stated by us we concur in the final conclusion reached by the Court in *L.S. Synthetics* to the extent that the provisions of the Limitation Act 1963 have no application in relation to a petition under Section 4(2) of the Act. Finally, Section 29(2) of the Limitation Act speaks of application of the provisions contained in Sections 4 to 24 "only in so far as, and to the extent to which they are not expressly excluded by such special or local laws". This language, together with our earlier reasoning, particularly with regard to *L.S. Synthetics*, would answer the further question raised by the appellant, namely, whether the question of exclusion of the provisions of the Limitation Act must be separately considered with reference to different provisions of a Special/Local Act or in connection with the provisions of the Special/Local Act, as a whole, by affirmation of the first alternative. We are therefore not called upon to decide whether claims either preferred for the first time before the Special Court or transferred to the Special Court under Section 9-A(2) would attract the provisions of Sections 4 to 24 of the Limitation Act. It is enough for the purpose of this appeal to hold that Section 29(2) of the Limitation Act, 1963 does not apply to proceedings under Section 4(2) of the Special Courts (Trial of Offences Relating to Transactions in Securities), Act 1992. Since the appellant's petition of objection had been filed much beyond the period prescribed under that Section, the Special Court was right in rejecting the petition in limine. The appeal is accordingly

dismissed but without any order as to costs.