Supreme Court of India
Mukri Gopalan vs Cheppilat Puthanpurayil ... on 12 July, 1995
Equivalent citations: AIR 1995 SC 2272, JT 1995 (5) SC 296, 1995 (4) SCALE 438, (1995) 5 SCC 5, 1995 Supp 2 SCR 1
Author: S Majmudar
Bench: Faizanuddin, S Majmudar
ORDER S.B. Majmudar, J.

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 Kunni Umma 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.

2. A few relevant facts leadings to these proceedings may now be looked at. The appellant is a tenant occupying the suit premises belonging to respondent-landlord. The respondent filed Rent Control Petition No. 117/92 before the Rent Control Court, Kannur, Kerala State, seeking eviction of the appellant-tenant under Section 11(2)(a)(b) and Section 11(3) of the Rent Act on the grounds of default in payment of rent and bonafide need for the purpose of conducting grocery shop for his son, plaintiff No. 2. The Rent Control Court exercising its power under Section 11 of the Rent Act, passed an order for possession against the appellant on 28th October, 1993. The appellant applied for certified copy of the said order on 29.10.93. He obtained certified copy of the order on 23.11.93. It is the case of the appellant that he entrusted on 4.12.93 all the relevant papers to his counsel for filing appeal. His counsel called him in the next following week for signing vakalatnama and for completing other formalities relating to filing of appeal. It is the further case of the appellant that he suffered paralytic attack on 5.12.93 and was bed ridden until 27.12.93. On 28.12.93 he came to know for the first time from his counsel that the time for filing appeal had elapsed. It may be noted at this stage that as per Section 18(1)(b) of the Rent Act an appeal has to be filed within thirty days from the date of order of Rent Control Court. In computing thirty days, the time taken to obtain a certified copy of the order appealed against has to be excluded. Ultimately the appeal was filed by the appellant on 31.12.93 before the appellate authority, namely, District Judge, Thalassery under Section 18 of the Act. The said appeal was also accompanied by I.A. No. 56/94 for condonation of delay supported by the affidavit of the appellant. The appellate authority by its order dated 11th January, 1994 dismissed the appeal as barred by time. The appellate authority took the view that being not a court but a persona designata it has no power to condone the delay in filing appeal by invoking the provisions contained in Section 5 of the Limitation Act, 1963. As noted earlier the said order of the appellate authority was confirmed by the High Court in Civil Revision Petition moved by the appellant and that is how the appellant is before us.

3. The learned Counsel for appellant-tenant vehemently contended that the majority view of Kerala High Court in Jokkim Fernandez v. Amina Kunhi Umma (supra) to the effect that Section 29(2) of the Limitation Act cannot apply to the proceeding before the appellate authority under Section 18 of the Rent Act was not correct and that the appellate authority had full powers under Section 29(2) of the Limitation Act to consider on merits the question of condonation of delay in filing appeal as per Section 5 of the Limitation Act. The learned Counsel for respondent-landlord on the other hand supported the decision rendered by the High Court.

4. Before we deal with the majority decision of the Kerala High Court in Jokkim Fernandez v. Amina Kunhi Umma (supra) it is necessary to note the relevant statutory provisions in the light of which the present controversy has to be resolved. The Rent Act is enacted to regulate the leasing of buildings and to control the rent of buildings in the State of Kerala. Section 2(5) defines 'Rent Control Court' to mean the court constituted under Section 3. Section 3 of the Rent Act provides that the Government may by notification appoint a person who is or is qualified to be appointed a Munsiff, to be the Rent Control Court for such local areas. Section 5 of the Act deals with the determination of fair rent on application of the tenant or landlord to the Rent Control Court. Section 11 deals with the grounds on which an application can be made to the Rent Control Court by landlord for evicting his or her tenant. Proviso of Section 11 lays down that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Rent Control Court shall decide whether the denial or claim is bona fide and if it records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and such court may pass a decree for eviction on any of the grounds mentioned in this Section, notwithstanding that the court finds such denial does not involve forfeiture of the lease or that the claim is unfounded. Section 14 deals with execution of orders passed by Rent Control Court. It provides that such orders after the expiry of the time allowed therein be executed by the Munsiff or if there are more than one Munsiff, by the Principal Munsiff having original jurisdiction over the area in which the building is situated as if it were a decree passed by him provided that an order passed in execution under this section shall not be subject to an appeal but shall be subject to revision by the court to which appeals ordinarily lie against the decisions of the said Munsiff. Section 16 lays down that the orders of Rent Control Court shall be pronounced in the open court on the day on which the case is finally heard, or on some future day of which due notice shall be given to the parties. Next relevant provision is found in Section 18 dealing with appeals. As the controversy centers round the powers of the appellate authority under Section 18 it will be useful to extract the said Section in extension at this stage.

18. Appeal. - (1)(a). The Government may, by general or special order notified in the Gazette, confer on such officers and authorities not below the rank of a Subordinate Judge the powers of appellate authorities for the purpose of this Act in such areas or in such classes of cases as may be specified in the order.

(b) Any person aggrieved by an order passed by the Rent Control Court, may, within thirty days from the date of such order, prefer an appeal in writing to the appellate authority having jurisdiction. In computing the thirty days aforesaid, the time taken to obtain a certified copy of the order appealed against shall be excluded.

(2) On such appeal being preferred, the appellate authority may order stay of further proceedings in the matter pending decision on the appeal.

(3) The appellate authority shall send for the records of the case from the Rent Control Court and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either directly or through the Rent Control Court, shall decide the appeal.

Explanation :- The appellate authority may, while confirming the order of eviction passed by the Rent Control Court, grant an extension of time to the tenant for putting the landlord in possession of the building.

(4) The appellate authority shall have all the powers of the Rent Control Court including the fixing of arrears of rent.

(5) The decision of the appellate authority, and subject to such decision, an order of the Rent Control Court shall be final and shall not be liable to the called in question in any court of law, except as provided in Section 20.

5. Section 19 deals with power to award costs. It lays down that subject to such conditions and limitations, if any, as may be prescribed, the cost of and incident to all proceedings before the Rent Control Court or the appellate authority shall be in the discretion of the Rent Control Court or the appellate authority. Section 20 deals with revision. It lays down that in cases where the appellate authority empowered under Section 18 is a Subordinate Judge, the District Judge and in other cases the High Court may at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regulatory or propriety of such order proceedings, and may pass such order in reference thereto as it thinks fit. Section 20(A) gives power to remand the proceedings and provides that in disposing of an appeal or application for revision under this Act, the appellate authority or the revising authority, as the case may be, may remand the case for fresh disposal according to such directions as it may give. Section 22 deals with proceedings by or against legal representatives. As per the said section provisions of Section 146 and order XXII of the CPC, 1908 shall as far as possible be applicable to the proceedings under this Act. Then follows Section 23 which deals with procedure and powers of the Rent Act and appellate authority and also of the Accommodation Controller. It provides that the Rent Control Court and the appellate authority shall have the powers which are vested in a court under the CPC, 1908 in respect of listed matters which include discovery and inspection; enforcing the attendance of witnesses, and requiring the deposits of their expenses; compelling the production of documents; examining witnesses on oath, granting adjournments; reception of evidence taken on affidavit; issuing commission for the examination of witnesses and for local inspection; setting aside ex parte orders; enlargement of time originally fixed or granted; power to amend any defect or error in orders or proceedings and power to review its own order. As per Sub-section (2) of Section 23 the Accommodation Controller, the Rent Control Court or the appellate authority may summon and examine suo moto any person whose evidence appears to it to be material and it shall be deemed to be a Civil Court within the meaning of Sections 480 and 482 of the CPC, 1908. At this stage it will be useful to note that the Govt. 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-NOTN. UNDER Section 18(1) CONFERRING ON DISTRICT JUDGES POWERS OF APPELLATE AUTHORITIES.

(Published in Kerala Gazette No. 38 dated 26th September, 1989: SRO: 1631/89) NOTIFICATION S.R.O. No. 1631/89 - 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 confer 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.

6. In the background of the aforesaid relevant statutory provisions and the notification issued thereunder we have to proceed to tackle the question posed for our consideration.

7. As noted earlier the appellate authority, namely the District Judge, Tahllassery has taken the view that since he is a persona designata he cannot resort to Section 5 of the Limitation Act for condoning the delay in filing appeal before him. So far as this reasoning of the appellate authority is concerned Mr. Nariman, learned Counsel for respondent fairly stated that he does not support this reasoning and it is not his say that the appellate authority exercising powers under Section 18 of the Rent Act is a persona designata. In our view the said fair stand taken by learned Counsel for respondent is fully justified. It is now well settled that an authority can be styled to be persona designata if powers are conferred on a named person or authority and such powers cannot be exercised by anyone else. The scheme of the Act to which we have referred earlier contra indicates such appellate authority to be a persona designata. It is clear that the appellate authority constituted under Section 18(1) has to decide lis between parties in a judicial manner and subject to the revision of its order, the decision would remain final between the parties. Such an authority is constituted by designation as the District Judge of the district having jurisdiction over the area over which the said Act has been extended. It becomes obvious that even though the concerned District Judge might retire or get transferred or may otherwise cease to hold the office of the District Judge his successor in office can pick up the thread of the proceedings from the stage where it was left by his predecessor and can function as an appellate authority under Section 18. If the District Judge was constituted as an appellate authority being a persona designata or as a named person being the appellate authority as assumed in the present case, such a consequence, on the scheme of the Act would not follow. In this connection, it is useful to refer to a decision of this court in the case of Central Talkies Ltd., Kanpur v. Dwarka Prasad . In that case Hidayatullah, J speaking for the court had to consider whether Additional District Magistrate empowered under Section 10(2) of Criminal Procedure Code to exercise powers of district Magistrate was a persona designata. Repelling the contention that he was a persona designata the learned Judge made the following pertinent observations:

...A persona designata is a "a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character." (See Osborn's

Concise Law Dictionary, 4th Edn., p.253). In the words of Schwabe, C.J. in Parthasaradhi Naidu v. Koteswara Rao ILR 47 Mad 369 : AIR (1924) Mad 561 (FB), personae designate are "persons selected to act in their private capacity and not in their capacity as Judges." The same consideration allies also to a well known officer like the District Magistrate named by virtue of his office, and whose powers the Additional District Magistrate can also exercise and who can create other officers equal to himself for the purposes of the Eviction Act. The decision of Sapru, J. in the Allahabad case, with respect, was erroneous.

Applying the said test to the facts of the present case it becomes obvious that appellate authorities as constituted under Section 18 of the Rent Act being the District Judges they constituted a class and cannot be considered to be persona designata. It is true that in this connection, the majority decision of the High Court in Jokkim Fernandez v. Amina Kunhi Umma (supra) also took a contrary view. But the said view also does not stand scrutiny in the light of the statutory scheme regarding Constitution of appellate authority under the Act and the powers conferred on and the decisions rendered by it.

8. Once it is held that the appellate authority functioning under Section 18 of the Rent Act is not a persona designata, it becomes obvious that it functions as a court. In the present case all the District Judges having jurisdiction over the areas within which the provisions of the Rent Act have been extended are constituted as appellate authorities under Section 18 by the Govt. notification noted earlier. These District Judges have been conferred the powers of the appellate authorities. It becomes therefore, obvious that while adjudicating upon the dispute between the landlord and tenant and while deciding the question whether the Rent Control Court's order is justified or not such appellate authorities would be functioning as courts. The test for determining whether the authority is functioning as a court or not has been laid down by a series of decisions of this court. We may refer to one of them, in the case of Thakur Jugal Kishore Sinha v. Sitamarhi Central Coop. Bank Ltd. . In that case this court was concerned with the question whether the Assistant Registrar of Cooperative Societies functioning under Section 48 of the Bihar and Orissa Cooperative Societies Act, 1935 was a court subordinate to the High Court for the purpose of Contempt of Courts Act, 1952. While answering the question in the affirmative, a division bench of this court speaking through Mitter, J placed reliance amongst other on the observations found in the case of Brajnandan Sinha v. Jyoti Narain wherein it was observed as under:-

It is clear, therefore, that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

Reliance was also placed on another decision of this court in the case of Virindar Kumar Satyawadi v. The State of Punjab . Following observations found at page 1018 therein were pressed in service.

It may be stated broadly that what distinguishes a court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declares the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter

of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a court.

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. But in his submission as they are not civil courts constituted and functioning under the Civil Procedure Code as such, they are outside the sweep of Section 29(2) of the Limitation Act. It is therefore, necessary for us to turn to the aforesaid provision of the Limitation Act. It reads as under :

Section 29(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 mere look at the aforesaid provision shows for its applicability to the facts of a given case and for importing the machinery of the provisions containing Sections 4 to 24 of the Limitation Act the following two requirements have to be satisfied by the authority invoking the said provision.

(i) There must be provision for period of limitation under any special or local law in connection with any suit, appeal or application.

(ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the schedule to the Limitation Act.

9. If the aforesaid two requirements are satisfied the consequences contemplated by Section 29(2) would automatically follow. These consequences are as under :

(i) In such a case Section 3 of the Limitation Act would apply as if the period prescribed by the special or local law was the period prescribed by the schedule.

(ii) For determining any period of limitation prescribed by such special or local law for a suit, appeal or application all the provisions containing Sections 4 to 24 (inclusive) would apply insofar as and to the extent to which they are not expressly excluded by such special or local law.

10. In the light of the aforesaid analysis of the relevant clauses of Section 29(2) of the Limitation Act, let us see whether Section 18 of the Rent Act providing for a statutory appeal to the appellate

authority satisfies the aforesaid twin conditions for attracting the applicability of Section 29(2) of the Limitation Act. It cannot be disputed that Kerala Rent Act is a special Act or a local law. It also cannot be disputed that it prescribes for appeal under Section 18 a period of limitation which is different from the period prescribed by the schedule as the schedule to the Limitation Act does not contemplate any period of limitation for filing appeal before the appellate authority under Section 18 of the Rent Act or in other words it prescribes nil period of limitation for such an appeal. It is now well settled that a situation wherein a period of limitation is prescribed by a special or local law for an appeal or application and for which there is no provision made in the schedule to the Act, the second condition for attracting Section 29(2) would get satisfied. As laid down by a majority decision of the Constitution Bench of this court in the case of Vidyacharan Shukla v. Khubchand Baghel and Ors. , when the first schedule of the Limitation Act prescribes no time limit for a particular appeal, but the special law prescribes a time limit for it, it can be said that under the first schedule of the Limitation Act all appeals can be filed at any time, but the special law by limiting it provides for a different period, while the former permits the filing of an appeal at any time, the latter limits it to be filed within the prescribed period. It is therefore, different from that prescribed in the former and thus Section 29(2) would apply even to a case where a difference between the special law and Limitation Act arose by the omission to provide for limitation to a particular proceeding under the Limitation Act.

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 (supra). 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.

12. It is also necessary to note the change in the statutory settings of Section 29(2) as earlier obtained in the Indian Limitation Act, 1908 and the present Limitation Act of 1963. Section 29(2) as found in Indian Limitation Act, 1908 read as follows :-

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

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

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

13. As per this sub-section, the provisions contained in certain sections of the Limitation Act were applied automatically to determine the periods under the special laws, and the provisions contained in other sections were stated to apply only if they were not expressly excluded by the special law. The provision (Section 5) relating to the power of the court to condone delay in preferring appeals and making applications came under the latter category. So if the power to condone delay contained in Section 5 had to be exercised by the appellate body it had to be conferred by the special law. That is why we find in a number of special laws a provision to the effect that the provision contained in Section 5 of the Limitation Act shall apply to the proceeding under the special law. The jurisdiction to entertain proceedings under the special laws is sometimes given to the ordinary courts, and sometimes given to separate tribunals constituted under the special law. When the special law provides that the provision contained in Section 5 shall apply to the proceedings under it, it is really a conferment of the power of the court under Section 5 to the Tribunals under the special law - whether these tribunals are courts or not. If these tribunals under the special law should be courts in the ordinary sense an express extension of the provision contained in Section 5 of the Limitation Act will become otiose in cases where the special law has created separate tribunals to adjudicate the rights of parties arising under the special law. That is not the intension of the legislature.

14. In view of the aforesaid provision of Section 29(2) as found in Indian Limitation Act, 1908, Section 5 would not have applied to appellate authorities constituted under Section 18 as Section 5 would not get at- traded as per the then existing Section 29(2) of Indian Limitation Act, 1908 which did not include Section 5 as one of the provisions to be applied to such special or local laws. That appears to the reason why during the time when the Limitation Act, 1908 was in force, the Rent Act of 1959 which is the forerunner of present Rent Act of 1965 contained a provision in Section 31 of that Act which read as under :-

31. Application of the Limitation Act:- The provisions of Section 5 of the Indian Limitation Act, 1908 (9 of 1908), shall apply to all proceedings under this Act;

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 Section 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.

16. Mr. Nariman, learned Counsel for respondent tried to salvage the situation by submitting that even if conditions for applicability of Section 29(2) get satisfied, Section 29(2) itself will not apply to them unless it is held that the appellate authority functioning as a court was constituted under the Civil Procedure Code. He contended that unless such courts functioning under special law or local law are constituted under the Civil Procedure Code, Section 29(a) cannot apply to them. This submission is required to be stated to be rejected as it would amount to moving in a circle. If according to Mr. Nariman Section 29(2) can apply to only those courts which are constituted under the Civil Procedure Code then the entire scheme of Limitation Act from Sections 3 to 24 onwards would apply to proceedings of such courts on its own force and in that eventuality provisions contained in Section 29(2) for applying Sections 4 to 24 of Limitation Act, 1963 to such court proceedings would be rendered otiose and redundant. Mr. Nariman tried to get out of this situation by submitting that because of provisions of first part of Section 29(2). Section 3 of the Limitation Act, 1963 is treated to have applied to the periods of limitation prescribed by such special or local law by a deeming fiction. There may be situations wherein even courts constituted under special or local law which are governed by Civil Procedure Code may have prescribed period of limitation for suit, appeal or application under such special or local law and for which provision might not have been made under schedule to the Limitation Act and only for such courts a express provision has to be made for applying Sections 4 to 24 of the Limitation Act as found in second part of Section 29(2) but for which such a machinery may not be available for computing such periods of limitation eventhough by a legal fiction Section 3 of the Limitation Act would apply. It is difficult to countenance this submission. The express language of Section 29(2) clearly indicates that such special or local law must provide for period of limitation for suit, appeal or application entertainable under such laws and for computing period of limitation under such special or local law the Legislature has made available the machinery of Sections 4 to 24 inclusive as found in Limitation Act. Nowhere it is indicated that as per Section 29(2) the courts functioning under such special of local law must be governed whole hog by Civil Procedure Code.

17. In order to support his contention Mr. Nariman invited our attention to the relevant provisions of the Rent Act, namely, Sections 20, 22, 23 as well as second proviso to Section 11(1) and contended that a Rent Court functioning under the Rent Control Act is not a full-fledged civil court. If it was a full- fledged civil court there would have been no occasion for the Legislature to provide that certain provisions of CPC, 1908 will govern such proceedings. To that extent Mr. Nariman is right. We will proceed on the basis that Rent Court functioning under the Rent Act or for that matter the Appellate authority adjudicating disputes between landlords and tenants in a judicial manner may not be considered strictly as civil courts fully governed by the CPC. Still the question remains whether only because of that their proceedings will go out of the provision of Section 29(2) of the Limitation Act. Mr. Nariman submitted that Section 29(2) will apply only to the proceedings of those courts constituted under special or local law which are civil courts, stricto sensu. In order to buttress his

aforesaid submission he invited our attention to four judgments of this court. We will therefore turn to the consideration of these judgments. The first judgment on which reliance was placed by Mr. Nariman is rendered in the case of Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli and Ors. . In that case a bench of two learned Judges of this court was concerned with the short question whether any period of limitation governed an application under Section 33(C)(2) of Industrial Disputes Act, 1947. The High Court had taken the view agreeing with the Labour Court that Article 137 of the Limitation Act, 1963 would govern such applications. Reversing that view it was held that Labour Court exercising powers under Section 33(C)(2) of Industrial Disputes Act may be acting as quasi judicial authority or even a court but as it was not a civil court contemplated by the Civil Procedure Code, Article 137 of the schedule to the Limitation Act could not get attracted. Bhargava, J. speaking for this court held that Article 137 of the Limitation Act, 1963 governs only applications presented to courts under the Civil and Criminal Procedure Codes. The use of the word 'other' in the first column of the article giving the description of the application as 'any other application for which no period of limitation is provided elsewhere in this decision', indicates that the Legislature wanted to make it clear that the interpretation put by this court in Mulchand & Co. Ltd. v. Jawahar Mills Ltd. [1953] SCR 351 and Bombay Gas Co. v. Gopal Bhiva , on Article 181 of the 1908-Act on the basis of ejusdem generis should be applied to Article 137 of 1963-Act also, the language of which, is only slightly different from that of Article 181 of the 1908-Act. That is, in interpreting Article 137 of the 1963-Act regard must be had to the provisions contained in the earlier articles. These articles refer to applications under the CPC, except in two cases of applications under the Arbitration Act, in two cases of applications under the CrPC. This court in Mulchand & Co. Ltd. v. Jawahar Mills (supra) case held that the reference to applications under the Arbitration Act had no effect on the interpretation of Article 181 of the 1908- Act and that, that article applied only to applications under the CPC. On the same principle, the further alteration made in the articles in 1963-Act containing reference to applications under the CrPC could not alter the scope of Article 137 of the 1963-Act. Moreover even the applications under the Arbitration Act were to be presented to courts whose proceedings are governed by the CPC. The further amendment including applications governed by the Criminal Procedure Code still shows that the applications must be to courts. The alterations in the 1963-Act, namely, the inclusion of the words 'other proceedings' in the long title to the 1963-Act, the omission of the preamble and change in the definition so as to include 'petition' in word 'application', do not show an intension to make Article 137 applicable to proceedings before bodies other than courts such as quasi-judicial tribunals and executive bodies.

18. We fail to appreciate how the aforesaid decision is of any avail to Mr. Nariman on the facts of the present case. It is obvious that schedule to the Limitation Act is a part and parcel of the Limitation Act. It has therefore to be read in conjunction with Section 3. Sub-section (1) of Section 3 of Limitation Act lays down that subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. It becomes therefore clear that the Act as such governs period of limitation prescribed for suit, appeal or application under the schedule and the schedule to the Limitation Act which consists of different divisions relates to proceedings which are to be filed before full-fledged civil or criminal courts as the case may be. First division deals with suits. Part I deals with suits relating to accounts. Part II deals with suits relating to contracts. Part III deals with suits relating to declarations. Part IV deals with suits relating to

decrees and instruments. Part V deals with suits relating to immovable property. Part VI deals with suits relating to movable property. Part VII deals with suits relating to tort. Part VIII deals with suits relating to trusts and trust property. Part IX deals with suits relating to miscellaneous matters. Part X deals with suits for which there is no prescribed period. It is obvious that provisions of these parts in first division will govern suits to be filed before regular courts functioning under Civil Procedure Code. When we turn to the second division it deals with appeals which may be filed under Civil Procedure Code or Criminal Procedure Code or from a decree or order of any High Court to the same Court. They would obviously refer to appeals before regular Civil or Criminal Courts or High Courts as the case may be. The third division deals with applications. These applications also have to be filed before regular civil courts or High Court or Supreme Court as the case may be. To all these proceedings of these courts, the entire machinery of the Civil Procedure Code would get attracted and they can be considered to be full-fledged civil courts before whom applications can be moved. Consequently, it has to be held that the entire schedule to the Limitation Act prescribes various periods of limitation for suit, appeal or application to be moved before full-fledged civil or criminal courts. As Article 137 deals with one of such applications as found in third division this court held in the case of Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli and Ors. (supra), that the said Article could apply only to application before full-fledged civil court and as the labour court was not one of such courts though established under special or local law, Article 137 could not apply to govern proceedings before it. Such is not the case before us. We are not concerned with applicability of any of the Articles of the schedule for governing the period of limitation as prescribed by Section 18 of the Rent Control Act. That period of limitation is prescribed not by Article 137 or any other article under the schedule but by Section 18 itself which is a part and parcel of special or local law. So far as that period of limitation is concerned Section 29(2) is the only section which can apply. For interpreting Section 29(2) the decision rendered by this court in connection with applicability of any of the Articles to the schedule to the Limitation Act would be totally irrelevant. Mr. Nariman then invited our attention to the decision of this court in the case of Nityananda M. Joshi and Ors. v. Life Insurance Corporation of India and Ors. [1971] 1 SCR 396. That decision also was concerned with the applicability of Article 137 of the Limitation Act of the schedule to the Limitation Act of 1963 of proceedings before Labour Court under Section 33(C)(2) of Industrial Disputes Act. The reasons given by us while dealing with Town Municipal Council, Athani v. Presiding Officer Labour Court, Hubli and Ors. (supra) would squarely get attracted so far as this decision is concerned and would make it inapplicable to the facts of the present case. The third decision to which our attention was invited was rendered in the case of Kerala State Electricity Board, Trivandrum v. T.P.K.K. Amsom and Besom, Kerala . In that decision this court was concerned with similar question whether Article 137 of the Limitation Act, 1963 could be made applicable to petitions under Indian Telegraph Act, 1885. Under the said Act petition could be filed under Section 16(5) by anyone claiming financial compensation against Electricity Board which tried to put up electricity poles in the land of such a person. Such application would lie before District Judge of the District. The question was whether to such applications under special or local law, Article 137 would apply. It was held that the District Judge under the Telegraph Act acts as a Civil Court in dealing with applications under Section 16 of the Telegraph Act and therefore Article 137 of the 1963-Act applies to applications under Section 16 as filed before such courts. In our view even this decision is in line with earlier decisions of this court in the cases of Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli and Ors. (supra) and Nityananda M. Joshi

and Ors. v. Life Insurance Corporation of India and Ors. (supra) and cannot be of any assistance to Mr. Nariman in the present case as we are not concerned with applicability of Article 137 to the proceedings of appellate authority under Section 18 of the Rent Act. Mr. Nariman then preached his faith on a later decision of this court rendered in the case of The Commissioner of Sales Tax, Uttar Pradesh, Lucknow v. Parson Tools and Plants, Kanpur . In that case a Bench of three learned Judges of this court was concerned with the question whether the revisional authority functioning under U.P. Sales Tax Act, 1948 could extend the period of limitation beyond six months even on sufficient cause being shown and whether the principle of Section 14(2) of the 1963 Act could be imported into Section 10(3)(B) of that Act by analogy. Section 10(3)(B) of the U.P. Sales Tax Act provided for filing revisions under the Act. As per Sub-section 3(B) of Section 10 such applications had to be made within one year form the date of service of order but the revising authority may on proof of sufficient cause entertain an application within a further period of six months. In view of this express provision in the special Act it was held by this court that the general provisions of Section 14(2) of the Limitation Act could not get attracted. It is trite to observe that as per Section 14(2) of the Limitation Act if the applicant was persuing any civil proceedings with due diligence in a first court or any higher court therein against the same party for the same relief the period spent shall be included if such proceedings were found to have been filed in good faith in a court which, from defect of jurisdiction or other cause of a like nature was unable to entertain it. The entire period spent in such fruitless proceedings had to be excluded for computing the period of limitation for any application as laid down by Section 14(2) of the Limitation Act. It is easy to visualise that if Section 14(2) applied to applications for revisions under Section 10(3)(B) of the U.P. Sales Tax Act, then even if such fruitless proceedings had lingered on for one or two years or even more the entire period spent in such proceedings would get excluded for computing the period of limitation for filing such revisions under Section 10(3)(B) of the U.P. Sales Tax Act. However, there was an express provision in Sub-section (3)(B) of Section 10 of the U.P. Sales Tax Act putting a ceiling on the powers of the revisional authority even on proof of sufficient cause to entertain such applications and that was only upto a further period of six months beyond one year as prescribed. Consequently, this express provision to the contrary as found in Section 10(3(B) of the U.P. Sales Tax Act made the general provisions of Section 14(2) inapplicable as it was an express provision to the contrary to what is provided by Section 14(2). It is precisely for that reason that this court in the aforesaid decision speaking through Sarkaria, J. held 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, for computation of the period of limitation prescribed for filing a revision under the Sales Tax Act. It is true that in the decision under appeal before this court learned single Judge, Hari Swarup, J. had taken the view that the judge (Revisions) Sales Tax while hearing the revisions under Section 10 of the U.P. Sales Tax Act does not act as a court but only as a revenue tribunal and hence the provisions of the Indian Limitation Act cannot apply to proceedings before him. If the Limitation Act does not apply then neither Section 29(2) nor Section 14(2) of the Limitation Act would apply to proceedings before him. But so far as this court is concerned it did not go into the question whether Section 29(2) would not get attracted because the U.P. Sales Tax Act Judge (Revisions) was not a court but it took the view that because of the express provision in Section 10(3)(B) applicability of Section 14(2) of the Sales Tax Act was ruled out. Implicit in this reasoning is the assumption that but for such an express conflict or contrary intention emanating

from Section 10(3)(B) of the U.P. Sales Tax Act which was a special law, Section 29(2) would have brought in Section 14(2) of Limitation Act even for governing period of limitation for such revision applications. In any case, the scope of Section 29(2) was not considered by the aforesaid decision of the three learned Judges and consequently it cannot be held to be an authority for the proposition that in revisional proceedings before the Sales Tax authorities functioning under the U.P. Sales Tax Act Section 29(2) cannot apply as Mr. Nariman would like to have it.

19. On the other hand, there are two decisions of this court which have directly spoken on the point, and on which reliance was rightly placed by the counsel for appellant. The first decision rendered in the case of Commissioner of Sales Tax, U.P. v. Madan Lal Dan & Sons, Bareilly by a bench of three learned Judges of this court was concerned with the question whether Section 12(2) of the Limitation Act, 1963 would be applicable to revision petitions filed under Section 10 of the same U.P. Sales Tax Act. The appellant had contended that the time spent by him in obtaining certified copy of the order of the lower authority was required to be excluded for computing period of limitation for filing revision under Section 10, as per provisions of Section 12 of the Limitation Act. Khanna, J. speaking for this court held that 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 in so far as, and to the extent to which they are not expressly excluded by such special or local law, and there is nothing in the U.P. Sales Tax Act expressly excluding the application of Section 12(2) of the Limitation Act. Consequently, the said provision was held applicable to the filing of revision applications under Section 10 of the U.P. Sales Tax Act. It becomes therefore obvious that the aforesaid decision clearly applied Section 29(2) to the revision petitions filed before revision authorities under a special law like U.P. Sales Tax Act and via Section 29(2) applied Section 12(2) of the Limitation Act to such revisional proceedings. Mr. Nariman contended that the said decision was per incurium as the earlier decision of three learned Judges in The Commissioner of Sales Tax, Uttar Pradesh, Lucknow v. Parson Tools and Plants, Kanpur (supra) was not cited before them. As we have already held earlier the said decision proceeded on the language of Section 10(3)(B) of the U.P. Sales Tax Act for excluding the applicability of Section 14(2) of the Limitation Act. It had no relevance for deciding the question whether Section 12(2) of the Limitation Act could be applied to such revisional proceedings when there was no express exclusion of Section 12(2) by the special law, namely, the U.P. Sales Tax Act. Consequently, it cannot be said that the decision rendered by this court in Commissioner of Sales Tax, U.P. v. Madan Lal Dan & Sons, Bareilly (supra) was per incurium. On the other hand, it is a direct decision on the point, namely, applicability of Section 29(2) of the Limitation Act for computing periods of limitation prescribed by local or special law even though the authority before which such proceeding may be filed under the local or special law may not be full-fledged civil courts.

20. Our attention was also invited by counsel for the appellant to a later decision of this court in the case of The Sahkari Ganna Vikas Samiti Ltd. v. Mahabir Sugar Mills (P) Ltd. . In that case a bench of two learned Judges was concerned with the question whether Divisional Commissioner acting under the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 acted as a revenue court or whether he was a persona designata. It was held that the Divisional Commissioner had been constituted as appellate authority under the Act. That showed that the Divisional Commissioner was made an appellate court not as persona designata but as a revenue court. That being so it was

obvious that Section 5 of the Act applied to appeals before Divisional Commissioner and he could condone the delay in filing appeals. It becomes obvious that this court in the aforesaid decision was dealing with revenue court constituted under U.P. Sugarcane (Regulation of Supply and Purchase) Act which was a special law. It was in terms held that Section 5 of the Limitation Act was applicable to revisional proceedings before such Revenue Courts. It is of course true as pointed out by Mr. Nariman that in the said decision no other decision of this court was cited and Section 29(2) was not expressly referred to but the ratio of the decision is necessarily and implicitly based on the applicability of Section 29(2) but for which Section 5 of the Limitation Act would not have been made applicable to such revision proceedings before revenue court functioning under the special law. Before parting with the discussion on this question we may also refer to one submission of Shri Nariman. He submitted that Sections 4 to 24 of the Limitation Act would apply to civil courts as duly constituted under the Civil Procedure Code and if that is so even if they are to be made applicable to suit, appeal or application governed by periods of limitation prescribed by any special or local law, they necessarily require such suit, appeal or application to be filed under special or local law before full-fledged civil courts as otherwise Sections 4 to 24 by themselves would not apply to them. It is difficult to agree. It has to be kept in view that Section 29(2) gets attracted for computing the period of limitation for any suit, appeal or application to be filed before authorities under special or local law if the conditions laid down in the said provision are satisfied and once they get satisfied the provisions contained in Sections 4 to 24 shall apply to such proceedings meaning thereby the procedural scheme contemplated by these Sections of the Limitation Act would get telescoped into such provisions of special or local law. It amounts to a legislative shorthand. Consequently, even this contention of Shri Nariman cannot be countenanced.

21. Before parting with the discussion we may also note that a division bench of Madras High Court in the case of Rethinasamy v. Komalavalli and Anr. took the view that the Tamil Nadu Buildings (Lease and Rent Control) Act was a special and local enactment and as Sections 4 to 24 of the 1963 Act were not excluded in their application to the appeals filed under Section 23 of the Rent Control Act, Section 29(2) enabled the application of Sections 4 to 24 to Rent Control Courts. Consequently, Section 5 of the Limitation Act is applicable to an appeal preferred before the appellate authority, constituted under Section 23(1(b) of the Rent Control Act. We entirely agree with the aforesaid view. In the said decision the majority view of the Full Bench of Kerala High Court in Jokkim Fernandez v. Amina Kunhi Umma (supra) was dissented from and the minority view as found therein was accepted. The said decision of the Madras High Court lays down the correct law and has rightly dissented from the majority view of the full bench of the Kerala High Court and has rightly accepted the minority view as discussed by us earlier. Our attention was also invited by learned Counsel for the appellant to the decision of a learned single Judge of the Andhra Pradesh High Court in the case of G. Bulliswamy v. Smt. C. Annapurnamma . In that decision the learned Judge held relying on Section 3 as found in Evidence Act, 1872 that Rent Controller acting under the A.P. Buildings (Lease, Rent & Eviction) Control Act who is authorised to record evidence of the parties before him by virtue of Rule 8(2) of the Rules framed under the Act, is a court within the meaning of Section 3 and therefore revision application against order of Rent Controller was maintainable under Section 18 before the High Court. In the case of Smt. Vidya Devi, widow of Ramji Dass v. Firm Madan Lal Prem Kumar AIR (1971) Punjab & Haryana 150 a full bench of the Punjab & Haryana High Court was concerned with the question whether Rent Controller and appellate authority under Punjab

Rent Restriction Act are courts or civil courts for purposes of Sections 195(1)(b), 476 and 479A of Criminal Procedure Code. Tuli, J speaking for the full bench held that they were such courts and could issue show cause notice why complaint under Section 193 should not be filed against persons committing perjury before Rent Controller and to file complaint under Section 195(1)(b) of Criminal Procedure Code if it is found expedient in the interest of justice.

22. As a result of the aforesaid discussion it must be held that appellate authority constituted under Section 18 of the Kerala Rent Act, 1965 functions as a court and the period of limitation prescribed therein under Section 18 governing appeals by aggrieved parties will be computed keeping in view the provisions of Sections 4 to 24 of the Limitation Act, 1963 such proceedings will attract Section 29(2) of the Limitation Act and consequently Section 5 of the Limitation Act would also be applicable to such proceedings. Appellate authority will have ample jurisdiction to consider the question whether delay in filing such appeals could be condoned on sufficient cause being made out by the concerned applicant for the delay in filing such appeals. The decision rendered by the High Court in the present case as well as by the appellate authority taking contrary view are quashed and set aside. The proceedings are remanded to the court of the appellate authority, that is, District Judge, Thalassery. Rent Control Appeal No. 9/94 filed before the said authority by the appellant is restored to its file with a direction that the appellate authority shall consider LA. 56/94 filed by the applicant for condonation of delay on its own merits and then proceed further in accordance with law. Appeal is allowed accordingly. In the facts and circumstances of the case there will be no order as to costs.