Reserved On : 24.06.2024 vs State Of H.P on 18 July, 2024

2024:HHC:5395 IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA .

Cr. Revision No.608 of 2022 Reserved on : 24.06.2024 Date of Decision: 18.07.2024.

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Versus

State of H.P. ...Responde

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Hon'ble Mr Justice Rakesh Kainthla, Judge. Whether approved for reporting?1 Yes For the petitioners : Mr. Atharv Sharma, Advocate.

For the Respondent : Mr. Jitender Sharma, Additional Advocate General, for respondent-

State.

Rakesh Kainthla, Judge The petitioners have filed the present petition under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (Act) against the judgment dated 07.05.2022 passed by learned Sessions Judge, Kangra at Dharamshala, District Kangra, H.P, vide which learned Sessions Judge, set aside the orders dated 06.11.2018 and 05.12.2018 passed by Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Juvenile Justice Board and remanded the matter to Juvenile Justice Board for fresh preliminary assessment.

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2. Briefly stated, the facts giving rise to the present petition are that the police presented a challan against the petitioners before the learned Juvenile Justice Board, Kangra at Dharamshala. The Juvenile Justice Board called for the Social Investigation Report, interacted with the petitioners and transferred the trial to the children's Court vide order dated 06.11.2018.

3. Subsequently, vide order dated 05.12.2018, the Juvenile Justice Board held that the Board was of the opinion that the petitioners have sufficient maturity and ability to understand the consequences of their act. Hence, the file was sent to the Children's Court.

4. Being aggrieved from the orders passed by the Juvenile Justice Board, the petitioners preferred an appeal, which was decided by the learned Sessions Judge. Learned Sessions Judge held that the Board has to conduct a preliminary assessment regarding the mental and physical capacity of a child in conflict with the law, his ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. The Board conducted an .

interactive session with the petitioners, their ability to understand the consequences of the offence and the circumstances in which they allegedly committed the offence.

No preliminary assessment as required under Section 15 of the Act was made. The preliminary assessment was not as per the law; hence the matter was remitted to the Juvenile Justice Board for conducting a preliminary assessment in terms of Section 15, Rules 10 and 10A of the Model Rules as per the law.

5. Being aggrieved from the order passed by the learned Sessions Judge, the present revision has been filed asserting that the Court of Sessions had no jurisdiction to try the matter and only the Children's Court had the jurisdiction. The inquiry is to be conducted within three months from the date of the first production of the child before the Board. The petitioners were summoned on 07.07.2018 and three months expired in October 2018. The challan is to be presented within one month from the date of the offence/FIR and the same was filed beyond the statutory period. The Board has no jurisdiction to entertain the matter; hence, it was prayed that the revision be allowed and the order passed by the learned Sessions Judge be set aside.

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6. I have heard Mr. Atharv Sharma, learned counsel for the petitioners and Mr. Jatinder Sharma, learned Additional Advocate General for the respondent-State.

7. Mr. Atharv Sharma, learned counsel for the petitioners submitted that as per Rule 10(6) of the Model Rules, the final report is to be submitted within a period of 2 months from the date of information to the police. This period is mandatory. The preliminary assessment is to be completed within three months and the learned Sessions Judge erred in remanding the matter to the Board after the expiry of three months. Only the Children's Court could have heard the matter and the learned Sessions Judge erred in exercising the jurisdiction in the present matter. He prayed that the present petition be allowed, the order passed by learned Sessions Judge be set aside, and the petitioners be discharged. He relied upon the judgment of this Court in State of H.P versus Monu 2019 CC OnLine HP 1030 in support of his submission.

8. Mr. Jatinder Sharma, learned Additional Advocate General for the respondent-State submitted that the inquiry .

under Section 15 of the Act is mandatory. He relied upon the judgment of the Hon'ble Supreme Court in Thirumoorthy versus State 2024 SCC Online SC 375 in support of his submission.

9. I have given considerable thought to the submissions at the bar and have gone through the records carefully.

10. Rule 10(6) of the Model Rules provides that in case of petty or serious offences, the final report shall be filed before the Board at the earliest and in any case, not beyond the period of two months from the date of information to the police except in the cases where it was not known that the person involved in the offence was a child in which case the Board may grant an extension of time for filing the final report.

11. It is apparent from the bare perusal of the Section that it applies to petty and serious offences. These terms were defined by the Hon'ble Supreme Court in Shilpa Mittal v. State (NCT of Delhi), (2020) 2 SCC 787: (2020) 1 SCC (Cri) 823 : 2020 SCC OnLine SC 20 as under:

"12. Thereafter, the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "the 2015 Act") was enacted. For the first time, the 2015 Act made a departure from the earlier Acts. Since this Act is the subject matter of discussion in this case, we may refer to .

the following relevant provisions of the Act:

> "2. (12) "child" means a person who has not completed eighteen years of age;
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> (13) "child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

*** (33) "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;

*** (35) "Juvenile" means a child below the age of eighteen years;

*** (45) "petty offences" includes the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment up to three years;

*** (54) "serious offences" includes the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment between three to seven years;"

13. A bare reading of Sections 2(12), 2(13) and 2(35) clearly shows that a child or a juvenile is a person who has not completed 18 years of age, and a child in conflict with the law is a child/juvenile

who commits an offence when that child/juvenile has not completed 18 years of age. "Petty offences" have been defined under Section 2(45) to mean offences for which the maximum punishment provided under any law including the IPC, is imprisonment up to 3 years. "Serious offences" mean, offences for which punishment under any law is imprisonment between 3-7 years. "Heinous offences" have been defined to mean offences for which the minimum punishment under any .

law is imprisonment for 7 years or more. This was a departure from the previous legislation on the subject where the offences had not been categorised as heinous or serious."

12. In the present case, the FIR has been registered for the commission of offences punishable under Section 376D of the Indian Penal Code (IPC), Section 6 of the Protection of Children from Sexual Offences Act (POCSO) and other Sections.

Section 376D of the IPC provides rigorous imprisonment which shall not be less than 20 years but which may extend to life.

Similarly, Section 6 of the POCSO Act provides for punishment which shall not be less than 20 years but which may extend to imprisonment for life. Hence, these offences will fall within the definition of heinous offences and the provisions of Section 10(6) of the Model Rules will not apply to the present case.

13. In Monu (supra) the Court was concerned with the commission of an offence, punishable under Section 379 of IPC which is punishable with imprisonment upto three years and falls within the definition of a petty offence. Hence, this judgment will not apply to the present case.

14. It was submitted that the learned Sessions Judge had no jurisdiction to hear and entertain the present appeal and only .

the Children's Court was competent to hear and entertain the present appeal. This submission cannot be accepted. The Juvenile Justice Board conducted the investigation and passed an order under Section 15 of the Juvenile Justice (Care and Protection) Act, 2015. An appeal lies against the order passed under Section 15 under Section 101(2) of the JJ Act before the Sessions Court. Section 101(2) of the Act reads as under:

> "101.Appeals.-(1) xxx (2) An appeal shall lie against an order of the board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section."

15. It is apparent from the bare language of Section that an appeal lies against the order of the Board making the preliminary assessment under Section 15 of the JJ Act before the Court of Sessions and the submission that learned Sessions Judge has no jurisdiction to hear and entertain the appeal is

not acceptable.

16. It was laid down by the Hon'ble Supreme Court in Thirumoorthy (supra) that the provisions of Sections 15 and 19 of .

the Juvenile Justice Act, 2015 are mandatory. It was observed:

> "32. There is no dispute on the aspect that the offences of which the accused appellant was charged with, fall within the category of 'heinous offences' as defined under Section 2(33) of the JJ Act. Section 15(1) provides that in case where a heinous offence/s are alleged to have been committed by a child who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he committed the offence. The Board, after conducting such assessment, may pass an order in accordance with the provisions of sub-section (3) of Section 18 of the JJ Act. Section 15(2) provides that where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for the trial of summons case under CrPC. Under the first proviso to this sub-section, the order passed by the Board is appealable under Section 101(2) of the JJ Act.
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> 33. Section 18(3) provides that where the Board after preliminary assessment under Section 15 opines that there is a need for the said child to be tried as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.
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> 34. By virtue of Section 19(1), the Children's Court, upon receiving such report of preliminary assessment undertaken by the Board under Section 15 may further decide as to whether there is a need for trial of the child as an adult or not.
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> 35. The procedure provided under Sections 15 and 19 has been held to be mandatory by this Court in the case of Ajeet Gurjar v. State of Madhya Pradesh 2023 SCC OnLine .
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> SC 1492. In the said case, this Court considered the import of Section 19(1) of the JJ Act and held that the word 'may' used in the said provision be read as 'shall'. It was also held that holding an inquiry under 19(1)(i) is not an empty formality. Section 19) (1)(ii) provides that after examining the matter, if the Children's Court comes to the conclusion that there is no need for a trial of the child as an adult, instead of sending back the matter to the Board, the Court itself is empowered to conduct an inquiry and pass appropriate orders in accordance with provisions of Section 18 of the JJ Act. The trial of a child as an adult and his trial as a juvenile by the Children's Court have different consequences.

> 36. It was further held that the Children's Court cannot brush aside the requirement of holding an inquiry under Section 19(1)(i) of the JJ Act. Thus, all actions provided under Section 19 are mandatorily required to be undertaken by the Children's Court.
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> 37. As can be seen from the facts of the present case, there has been a flagrant violation of the mandatory requirements of Sections 15 and 19 of the JJ Act. Neither was the charge sheet against the accused appellant filed before the Board nor was any preliminary assessment conducted under Section 15, so as to find out whether the accused appellant was required to be tried as an adult.
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> 38. In the absence of a preliminary assessment being con- ducted by the Board under Section 15, and without an or- der being passed by the Board under Section 15(1) read with Section 18(3), it was impermissible for the trial Court to have accepted the charge sheet and to have proceeded with the trial of the accused."

17. Thus, the learned Sessions Judge had rightly held that the case could not have been transferred to the Children's Court without conducting the preliminary assessment required under Section 15 of the Act.

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18. It was submitted that the inquiry can be conducted within 3 months and it is impermissible to conduct the inquiry after the lapse of a long time. This submission is not acceptable.

It was laid down by Hon'ble Supreme Court, in Child in Conflict with Law versus State of Karnataka 2024 SCC OnLine 798 that the period for completion of preliminary assessment under Section 12(3) is not mandatory but directory. It was observed:

> "II WHETHER THE PERIOD PROVIDED FOR COMPLETION OF PRELIMINARY ASSESSMENT UNDER SECTION 14(3) OF THE ACT IS MANDATORY OR DIRECTORY.
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> 9. Section 15 of the Act enables the Board to make a preliminary assessment into heinous offences where such an offence is alleged to have been committed by a child between 16 and 18 years of age. The preliminary assessment is to be conducted with regard to his mental and physical capacity to commit such an offence, his ability to understand the consequences of the offence and the circumstances in which the offence was allegedly committed. Proviso to the aforesaid section provides that for making such an assessment the Board may take the assistance of an experienced psychologist or psycho- social worker or other experts. Explanation thereto provides that the process of preliminary assessment is not a trial but merely to assess the capacity of such a child to commit and understand the consequences of the alleged offence. The importance of the assistance from the expert is even evident from Section 101(2) of the Act. While considering the appeal against an order passed under

Section 15, the appellate authority can also take the assistance of experts other than those who assisted the .

Board.

9.1 The importance of the aforesaid provision was considered by this Court in Barun Chandra Thakur's case (supra) where the requirement of such assistance was held to be mandatory, even though the words used in proviso to Section 15(1) and Section 101(2) of the Act are 'may'.

9.2 Section 14(3) of the Act provides that the preliminary assessment in terms of Section 15 is to be completed by the Board within a period of three months from the date of the first production of the child before the Board.

9.3 In case the Board after preliminary assessment under Section 15 of the Act comes to a conclusion that the trial of the CCL is to be conducted as an adult, then the Board shall transfer the records to the Children's Court having jurisdiction.

9.4 The argument raised by learned counsel for the appellant was that the CCL was produced before the Board on 03.11.2021. The period of three months having expired on 02.02.2022, any order passed by the Board thereafter is non-est, and the trial of CCL cannot now be transferred to the Children's Court.

9.5 What we need to consider is as to whether the timeline for the conclusion of inquiry as envisaged under Section 14 is mandatory or directory?

9.6 As per the scheme of Section 14 of the Act, sub- section (1) thereof provides that, when a CCL is produced before the Board, after holding an inquiry, it may pass an order in relation to such CCL as it deems fit under Section 17 and 18 of the Act.

9.7 Section 17 of the Act envisages the order regarding a child not found to be in conflict with the law. Whereas Section 18 (1) envisages an order passed in case a child is found to be in conflict with the law. It includes the child of the age of 16 years and above, who is involved in a heinous .

offence, but inquiry is to be conducted by the Board.

9.8 Section 14(2) of the Act provides that the inquiry as envisaged under Section 14(1) thereof shall be completed within a period of four months from the date of the first production of the child before the Board. The time is extendable by the Board for a maximum period of two months, for the reasons to be recorded. The consequences of non-conclusion of any such inquiry have been provided in Section 14(4) of the Act, only with reference to petty offences. The aforesaid sub-section provides that if inquiry by the Board under sub-section (2) for petty offences remains inconclusive

even after the extended period, the proceedings shall stand terminated. Proviso to the aforesaid sub-section provides that in case the Board requires a further extension of time for completion of an inquiry into serious and heinous offences, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

9.9 Meaning thereby that as far as inquiry of CCL, as envisaged under Section 14(1) of the Act, by the Board for heinous offences is concerned, there is no deadline after which either the inquiry cannot proceed further or has to be terminated.

9.10 Now coming to the issue in hand. It is not in dispute that the CCL has allegedly committed a heinous offence. The argument is with reference to the period provided for the conclusion of preliminary assessment under Section 15 of the Act and passing of an order under Section 15(2) or 18(3) of the Act, namely as to whether the matter is to be enquired into by the Board or is to be transferred to the Children's Court for trial of the CCL as an adult.

9.11 We may add here that apparently, the placement of Section 18(3) does not seem to be appropriate. Sub- sections (1) and (2) of Section 18 deal with final orders to .

be passed by the Board on inquiry against the CCL, whereas sub-section (3) envisages passing of an order by the Board as to whether the trial of CCL is to be conducted by the Children's Court in terms of a preliminary assessment, as envisaged in Section 15 thereof. Passing of such an order could very well be placed in Section 15 itself after sub-section (2) thereof.

9.12 The inquiry as envisaged in Section 15(1) of the Act enables the Board to take assistance from experienced psychologists or psychosocial workers or other experts. The proviso has a nexus with the object sought to be achieved. The Act deals with the CCL. The preliminary assessment as envisaged in Section 15 has large ramifications, namely, as to whether inquiry against the CCL is to be conducted by the Board, where the final punishment, which could be inflicted is lighter or the trial is to be conducted by the Children's Court treating the CCL as an adult, where the punishment could be stringent.

9.13 As noticed earlier, the preliminary assessment into the heinous offence by the Board in terms of Section 15(1) of the Act has to be concluded within a period of three months in terms of Section 14(3) of the Act. The Act as such does not provide for any extension of time and also does not lay down the consequence of non-

compilation of inquiry within the time permissible. In the absence thereof the provision prescribing a time limit of the completion of inquiry cannot be held to be mandatory. The intention of the legislature with reference to serious or heinous offences is also available from the language of Section 14 of the Act which itself

provides for further extension of time for completion of inquiry by the Board to be granted by the Chief Judicial Magistrate or Chief Metropolitan Magistrate for the reasons to be recorded in writing. It is in addition to two months' extension which the Board itself can grant.

9.14 As in the process of preliminary inquiry there is involvement of many persons, namely, the investigating officer, the experts whose opinion is to be obtained, and .

thereafter the proceedings before the Board, where for different reasons any of the party may be able to delay the proceedings, in our opinion the time so provided in Section 14(3) cannot be held to be mandatory, as no consequences of failure have been provided as is there in case of enquiry into petty offences in terms of Section 14(4) of the Act. If we see the facts of the case in hand, the investigating officer had taken about two months time in getting the report from the NIMHANS.

9.15 Where consequences for default for a prescribed period in a Statute are not mentioned, the same cannot be held to be mandatory. For this purpose, reference can be made to the following decisions of this Court.

9.16 This Court in Topline Shoes Ltd. v. Corporation Bank (2002) 6 SCC 33: 2002 INSC 287 : (2002) 3 SCR 1167 while interpreting Section 13(2)(a) of the repealed Consumer Protection Act, 1986 prescribing time limit for filing reply to the complaint, held the same to be directory in nature. Relevant para 11 thereof is extracted below:

"11. We have already noticed that the provision as contained under clause (a) of sub-section (2) of Section 13 is procedural in nature. It is also clear that with a view to achieve the object of the enactment, that there may be speedy disposal of such cases, that it has been provided that reply is to be filed within 30 days and the extension of time may not exceed 15 days. This provision envisages that proceedings may not be prolonged for a very long time without the opposite party having filed his reply. No penal consequences have however been provided in case an extension of time exceeds 15 days. Therefore, it could not be said that any substantive right accrued in favour of the appellant or there was any kind of bar of limitation in the filing of the reply within extended time though beyond 45 days in all.

The reply is not necessarily to be rejected. All facts and circumstances of the case must be taken into account. The Statement of Objects and Reasons of the Act also .

provides that the principles of natural justice have also to be kept in mind." (emphasis supplied) 9.17 This Court in Kailash v. Nanhku (2005) 4 SCC 480: 2005 INSC 186: (2005) 3 SCR 289 while interpreting Order VIII Rule 1 CPC prescribing time limit for filing written statement, held the same to be directory in nature. Relevant paras 30 and 46 thereof are extracted below:

> "30. It is also to be noted that though the power of the court under the proviso appended to Rule 1 Order 8 is circumscribed by the words "shall not be later than ninety days" but the consequences flowing from non-extension of time are not specifically provided for though they may be read in by necessary implication. Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.
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46. We sum up and briefly state our conclusions as under:

> (i) - (iii) xxxx
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> (iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing.

The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Rule 1 Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power .

of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.

(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily, the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for an extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."

(emphasis supplied) 9.18 This Court in State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti (2018) 9 SCC 472: 2018 INSC 648: (2018) 7 SCR 1147 while section 34 (5) and (6) of the Arbitration and Conciliation Act, 1996 held the period prescribed in sub-section (6) to be directory. The relevant

paras 23, 25 and 26 are extracted below:

> "23. It will be seen from this provision that, unlike Sections 34(5) and (6) if an award is made beyond the stipulated or extended period contained in the section, the .
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> consequence of the mandate of the arbitrator being terminated is expressly provided. This provision is in stark contrast to Sections 34(5) and (6) where, as has been stated hereinabove, if the period for deciding the application under Section 34 has elapsed, no consequence is provided. This is one more indicator that the same Amendment Act, when it provided time periods in different situations, did so intending different consequences.
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25. We come now to some of the High Court judgments. The High Courts of Patna [Bihar Rajya Bhumi Vikas Bank Samiti v. State of Bihar, 2016 SCC OnLine Pat 10104], Kerala [Shamsudeen v. Shreeram Transport Finance Co. Ltd., 2016 SCC OnLine Ker 23728], Himachal Pradesh [Madhava Hytech Engineers (P) Ltd. v. Executive Engineers, 2017 SCC OnLine HP 2212], Delhi [Machine Tool India Ltd. v. Splendor Buildwell (P) Ltd., 2018 SCC OnLine Del 9551], and Gauhati [Union of India v. Durga Krishna Store (P) Ltd., 2018 SCC OnLine Gau 907] have all taken the view that Section 34(5) is mandatory in nature. What is strongly relied upon is the object sought to be achieved by the provision together with the mandatory nature of the language used in Section 34(5). Equally, analogies with Section 80 CPC have been drawn to reach the same result. On the other hand, in Global Aviation Services (P) Ltd. v. Airport Authority of India [Global Aviation Services (P) Ltd. v. Airport Authority of India, 2018 SCC OnLine Bom 233], the Bombay High Court, in answering Question 4 posed by it, held, following some of our judgments, that the provision is directory, largely because no consequence has been provided for breach of the time-limit specified. When faced with the argument that the object of the provision would be rendered otiose if it were to be construed as directory, the learned Single Judge of the Bombay High Court held as under: (SCC OnLine Bom para 133) .

> "133. Insofar as the submission of the learned counsel for the respondent that if Section 34(5) is considered as directory, the entire purpose of the amendments would be rendered otiose is concerned, in my view, there is no merit in this submission made by the learned counsel for the respondent. Since there is no consequence provided in the said provision in case of non-compliance thereof, the said provision cannot be considered as mandatory. The purpose of avoiding any delay in proceeding with the matter expeditiously is already served by the insertion of appropriate rules in the Bombay High Court (Original Side) Rules. The Court can always direct the petitioner to issue notice along with papers and proceedings upon the other party before the matter is heard by the Court for admission as well as for final hearing. The vested rights of a party to challenge an award under Section 34 cannot be taken away for non-compliance of issuance of prior notice before filing of the arbitration petition."

The aforesaid judgment has been followed by recent judgments of the High Courts of Bombay [Maharashtra State Road Development Corpn. Ltd. v. Simplex Gayatri Consortium, 2018 SCC OnLine Bom 805] and Calcutta [Srei Infrastructure Finance Ltd. v. Candor Gurgaon Two Developers and Projects (P) Ltd., 2018 SCC OnLine Cal 5606].

26. We are of the opinion that the view propounded by the High Courts of Bombay and Calcutta represents the correct state of the law. However, we may add that it shall be the endeavour of every court in which a Section 34 application is filed, to stick to the time limit of one year from the date of service of notice to the opposite party by the applicant, or by the Court, as the case may be. In case the Court issues notice after the period mentioned in Section 34(3) has elapsed, every court shall endeavour to dispose of the Section 34 .

application within a period of one year from the date of filing of the said application, similar to what has been provided in Section 14 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. This will give effect to the object sought to be achieved by adding Section 13(6) by the 2015 Amendment Act." (emphasis supplied) 9.19 This Court in C. Bright v. District (2021) 2 SCC 392:

> 2020 INSC 633 : (2020) 7 SCR 997 while interpreting the nature of section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 held the period prescribed therein mandating the District Magistrate to deliver possession of a secured asset within 30 days, extendable to an aggregate of 60 days, to be directory in nature. The relevant paras 8 and 11 are extracted below:
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> "8. A well-settled rule of interpretation of the statutes is that the use of the word "shall" in a statute, does not necessarily mean that in every case it is mandatory that unless the words of the statute are literally followed, the proceeding or the outcome of the proceeding, would be invalid. It is not always correct to say that if the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid [State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912] and that when a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute [State of U.P. v. Babu Ram Upadhya, AIR 1961 SC 751]. The principle of literal construction of the statute alone in all circumstances without examining the context and scheme of the statute may not serve the purpose of the statute [RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424].
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11. In a judgment reported as Remington Rand of India Ltd. v. Workmen [Remington Rand of India Ltd. v. Workmen, AIR 1968 SC 224], Section 17 of the Industrial Disputes Act, 1947 came up for consideration. The argument raised was that the time limit of 30 days of publication of the award by the Labour Court is mandatory. This Court held that though Section 17 is mandatory, the time limit to publish the award within 30 days is directory inter alia for the reason that the non- publication of the award within the period of thirty days does not entail any penalty."

(emphasis supplied) 9.20 As against above, where consequences of non- compliance within the period prescribed for anything to be done in the statute have been mentioned, the same was held to be mandatory by this Court in SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd. (2019) 12 SCC 210: 2019 INSC 187 : (2019) 3 SCR 1050 It was with reference to Order VIII Rule 1 CPC as amended for suits relating to commercial disputes in terms of Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Relevant paras of the judgment are extracted hereinbelow:

"10. Several High Court Judgments on the amended Order 8 Rule 1 have now held that given the consequence of non-filing of written statements, the amended provisions of the CPC will have to be held to be mandatory. See Oku Tech (P) Ltd. v. Sangeet Agarwal, 2016 SCC OnLine Del 6601 by a learned Single Judge of the Delhi High Court dated 11-8-2016 in CS (OS) No. 3390 of 2015 as followed by several other judgments including a judgment of the Delhi High Court in Maja Cosmetics v. Oasis Commercial (P) Ltd., 2018 SCC OnLine Del 6698.

11. We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written .

statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order 8 Rule 1 on the filing of written statement under Order 8 Rule 1 has now been set at naught."

(emphasis supplied) 9.21 The judgment of this Court in Barun Chandra Thakur's case (supra) does not come to the rescue of the appellant. This Court in the aforesaid judgment had only noticed the scheme of the Act in paras 59 and 60 and concluded that the conclusion of the inquiry and trials under the Act should be expeditious, is the scheme of the Act.

9.22 Hence, we are of the opinion that the time provided in Section 14(2) of the Act to conduct the inquiry is not mandatory but directory. The time so provided in Section 14(3) can be extended by the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be, for the reasons to be recorded in writing.

9.23 After holding that the period as provided for under Section 14(3) for completion of the preliminary assessment is not mandatory, what further? We deem it our duty to clarify the position further. For this purpose, the tools of interpretation as were used in Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited (2010) 8 SCC 24: 2010 INSC 431 :

> (2010) 8 SCR 1053 could be aptly used to clarify the position further. In the aforesaid case, the consideration before this Court was the interpretation of Section 89 CPC.

(See: paragraphs 20 and 21) 9.24 The rule of causus omissus i.e. 'what has not been provided in the Statute cannot be supplied by the courts' in the strict rule of interpretation. However, there are certain exceptions thereto. Para '19' of the judgment of this Court in Surjit Singh Kalra v. Union of India (1991) 2 SCC 87: 1991 INSC 36 : (1991) 1 SCR 364 throws light thereon. The same is extracted below:

> .
>
> "19. True it is not permissible to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words" (Craies Statute Law, 7th ed., p.109). Similar are the observations in Hameedia Hardware Stores v. B. Mohan Lal Sowcar, (1988) 2 SCC 513, 524-25 where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See: Sirajul Haq Khan v. Sunni Central Board of Waqf, 1959 SCR 1287, 1299: AIR 1959 SC 198)"

(emphasis supplied) 9.25 The issue was thereafter considered by this Court in Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University, Sirsa (2008) 9 SCC 284: 2008 INSC 913 : (2008) 11 SCR 992.

In the aforesaid case, this Court observed as: 'where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a strict construction which leads to absurdity or deprives certain existing words of all meaning, and in this situation it is permissible to supply the words (vide Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., pp.71-76)'. This Court also considered the traditional principles of interpretation known as the 'Mimansa rules of interpretation'. The issue under consideration in the aforesaid case was regarding the requisite academic qualification for appointment to the post of Reader in the University in Public Administration. Applying the tools of interpretation, this Court opined that 'relevant subject' .

should be inserted in the qualification required for the post of Reader after the words at the Master's degree level' to give the rules a purposive interpretation by filling in the gap.

9.26 The same principles were followed by this Court in Central Bureau of Investigation, Bank Securities and Fraud Cell v. Ramesh Gelli (2016) 3 SCC 788: 2016 INSC 134 : (2016) 1 SCR 762.

9.27 In our opinion, the guidance as is evident from sub-section (4) of section 14 of the Act enabling the Chief Judicial Magistrate or Chief Metropolitan Magistrate to extend the period of inquiry as envisaged under Section 14(1), shall apply for an extension of the period as envisaged in sub-section (3) also. Such an extension can be granted for a limited period for the reasons to be recorded in writing. While considering the prayer for an extension of time, the delay in receipt of the opinion of the experts shall be a relevant factor. This shall be in the spirit of the Act and giving the same a purposive meaning.

9.28 We approve the views expressed by the High Court of Madhya Pradesh in Bhola v. State of Madhya Pradesh 2019 SCC OnLine MP 521 and the High Court in Delhi in CCL v. State (NCT) of Delhi 2023 SCC OnLine Del 5063 who while dealing with the provisions of section 14 of the Act have held that the time period prescribed for completion of the preliminary assessment is not mandatory but merely directory in nature. We also approve the views expressed by the High Court of the Punjab and Haryana in Neeraj v. State of Haryana 2005 SCC OnLine P&H 611 and by the High Court of Delhi in X (Through his Elder Brother) v. State 2019 SCC OnLine Del 11164 who also expressed similar views while dealing with the pari materia provisions of the repealed Juvenile Justice (Care and Protection of Children) Act, 2000."

19. In the present case, the delay in the inquiry occurred .

due to the filing of the appeal by the petitioners and thereafter revision before this Court. Hence, the petitioners cannot take advantage of the time spent by them in the proceedings initiated at their instance.

20. Consequently, there is no infirmity in the order passed by the learned Sessions Judge; hence, the present petition fails and the same is dismissed. The observation made herein before shall remain confined to the disposal of the revision and will have no bearing whatsoever on the merits of the case.

21. Parties through their respective counsel are directed to appear before the learned Juvenile Justice Board on 07.08.2024.

(Rakesh Kainthla) Judge 18th July, 2024 (Ankit)