Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.83 OF 2023

Mrs. Verlene M. Sequeira,
aged 53 years, Indian National,
Resident of Sabnis Monarch II,
Apartment C-I-3m
Caranzalem-Goa ... PETITIONER

Versus

1 Mr. Derek Sequeira,
Aged 53 years, Indian National,
Resident of Sabnis Monarch II,
Apartment C-I-3, Caranzalem-Goa.;
Presently residing at Flower Queen 2,
G3, Miramar, Near SBI, Goa. 403002 …RESPONDENT

Mr. Dhaval Zaveri with Mr. Sujay Kamulkar, learned Counsel for the Petitioner.

Ms. Sanjana Kakodkar, learned Counsel for the Respondent.

CORAM: AVINASH G. GHAROTE, J.

RESERVED ON: 19th March, 2024

PRONOUNCED ON: 27th March, 2024

JUDGEMENT

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the respective parties.

1. The petition questions the order dated 11.05.2023 passed by the Ld. Additional Sessions Court, FTC-2 Panaji, by which a delay of 17 days occasioned to challenge the Judgment dated

20.07.2021 by the Ld. Judicial Magistrate First Class, 'E' Court at Panaji (JMFC for short) in DVA.31/2018/C, has been condoned (page 31).

2. Mr. Zaveri, the learned counsel for the Petitioner submits as under:

2.1. Since the provisions of the Protection of Women from Domestic Violence Act, 2005(D.V. Act 2005 for short), constitute a complete code in itself, the provisions of section 5 of the Limitation Act, 1963 were not available to the Respondent in the matter of filing an appeal u/s 29 of the D.V. Act which being a special provision, provided for a limitation of only 30 days for filing an appeal against the Order made by the learned Magistrate from the date on which the order is served upon the party.

2.2. That the provisions of the D.V. Act are a complete code in itself, cannot be disputed by the Respondent in view of the aims and objects for which it was created which, *inter alia,* was to secure the rights of the women against domestic violence and also to secure the housing for them, as it also provides the procedure by which the rights conferred under it, are to be

adjudicated.

2.3. Relying upon section 12, 4 and 5 of the D.V. Act, it is also contended that the intent of the legislation is expeditious disposal of the proceedings instituted therein, which is also reflected from the limited period of 30 days provided in section 29 of the D.V. Act for the purpose of filing an appeal from any order passed under the D.V. Act.

2.4. That section 36 of the D.V. Act does not permit importing of the provisions of the Limitation Act for the purpose of an Appeal under Section 29 of the D.V. Act. Section 36 of the D.V. Act, according to him is applicable only to the remedies provided under the D.V. Act and does not apply to the procedural aspects and therefore cannot be used to contend that the provisions of the Limitation Act would become applicable on its basis.

2.5. The matter has to be looked at from the perspective of the D.V. Act and not the Limitation Act and the exclusion of the Limitation Act, has to be inferred by the time frames indicated in the D.V. Act and specifically the limitation of 30 days for filing of the Appeal u/s 29 of the D.V. Act, without any further

provision, for extending the period of limitation by condoning the delay.

2.6. In regard to Section 29(2) of the Limitation Act, it is contended that by providing a limitation of 30 days in section 29 of the D.V. Act, there is an implied exclusion as contemplated by section 29(2) of the Limitation Act.

2.7. Even otherwise, since the disputes under the D.V. Act are species and relating to marriage and divorce, by virtue of section 29(3) of the Limitation Act, the provisions thereto, would be inapplicable to any suit or proceeding under any law relating to marriage and divorce and therefore on this count also the delay could not have been condoned by exercising powers u/s 5 of the Limitation Act.

2.8. Learned Counsel in support of his contention relies upon ***Hukumdev Narayan Yadav V/s Lalit Narayan Mishra, (1974), 2 SCC 133*** (para 10, 13, 17, 18, 19); ***Thirumalai Chemicals Vs. Union Of India, (2011) 6 SCC 739*** (paras 23-29); ***Commissioner of Sales Tax Vs M/s Parson Tools and Plants, Kanpur, (1975) 4 SCC 22*** (paras 12-13-15); ***Commissioner of Customs and Central Excise V.s Hongo India Pvt. Ltd. (2009)***

5 SCC 791 (paras 34-35); ***Patel Brothers V/s State of Assam, (2017) 2 SCC 350***.

2.9. On the point of what is the object of the D.V. Act ***Bhagyashree Vs Purushottam 2022 SCC Online Bombay 6583*** (para 8) is relied upon.

2.10. For what would be sufficient cause for condonation of delay ***Maniben Devraj Shah Vs Municipal Corporation of Brihan Mumbai (2012) 5 SCC 157*** has been relied upon.

2.11. Learned Counsel also relies upon ***Income Tax Dept. V/s Dattaraj Vasudev Salgaonkar, 2021 SCC Online 3918***, in support of his above contention to submit that in a similar provision as contained in section 378 (4) & (5) of Cr.P.C. relating to appeal against acquittal, which was a special law in that regard, the question regarding applicability of Sections 4 to 24 of the Limitation Act by operation of Section 29(2) of the same has already been referred to a larger Bench and since the present petition also raises the similar question, this also is required to be referred to a larger Bench.

3. Ms. Kakodkar, learned counsel for Respondent while supporting impugned order condoning the delay of 17 days in

filing an appeal u/s 29 of the D.V. Act contends as under:

3.1. The exclusion of the provisions of the Limitation Act for an appeal u/s 29 of the D.V. Act cannot be inferred, merely on the ground that section 29 of the D.V. Act, provides for a limitation of 30 days in filing the appeal.

3.2. Had it been the intention of the legislature to exclude the applicability of the Limitation Act to Appeals u/s 29 of the D.V. Act, nothing prevented it from making such a provision relating to exclusion.

3.3. That such a provision has not been in-built in Section 29 of the D.V. Act, itself according to her, indicates applicability of the provisions of the Limitation Act.

3.4. Section 29(2) according to learned Counsel is an omnibus provision which makes the provisions of Section 4 to 24 of the Limitation Act applicable to all suits, proceedings and appeals, where there is no express exclusion by any special law and mere providing of time frame for availing of an appellate remedy, without anything more, according to her, cannot be held to infer exclusion of the applicability of the Limitation Act.

3.5. The provisions of Section 29(3) of the Limitation Act,

according to her, have to be strictly construed, as relating to a marriage and divorce, and would not encompass proceedings under the D.V. Act and therefore, would not have the effect of excluding the applicability of the Limitation Act to proceedings thereunder.

3.6. Learned Counsel for the Respondent relies upon ***Shri K.M. Revanasiddeshwara Vs Smt. K. M. Shylaja ILR 2012 KAR 1614***; ***Catherine Rochelle Rodrigo Vs. State of Maharashtra and ors. 2018 SCC online Bom 13253***; ***Mukhtar Ismail Shaikh Vs. Nilofar Mukhtar Shaikh and ors, 2018 SCC Online Bom 13191***; ***Pushpa Yeshwant Patil Vs. State of Karnataka and Ors., 2017 1 Crimes (HC) 663***; ***Suchandra Bhutoria Vs. State of West Bengal & Another; Shri K Jayaram & Ors. Vs. Bangalore Development Authority & Ors, Supreme Court civil Appeal Nos. 7550-7553 of 2021 (arising out of SLP (C) Nos. 2674***; ***Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper & Anr. V/s Excise and Taxation Officer , Sunder Nagar/Assessing Authority 2020 17 SCC 692*** and ***Mohd. Abaad Ali and Anr. Vs. Directorate of Revenue Prosecution Intelligence, 2024 Online***

SC 162 in support of her contentions.

4. The relevant provisions for consideration are Sections 29 & 36 of the D.V. Act and Section 29 of the Limitation Act.

4.1. Section 29 of the Protection of Women from Domestic Violence Act, 2005 reads as under:-

29. Appeal- There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

4.2. Section 36 of the Protection of Women from Domestic Violence Act, 2005 reads as under:-

36. Act not in derogation of any other law- The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

4.3. Section 29 of the Limitation Act, 1963 reads as under:-

29. Savings.—(1)Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

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

for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

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

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.

LEGAL PROPOSITIONS

5. ***Hukumdev Narayan Yadav*** (supra) was a case in which the hon'ble Supreme Court was considering the proposition as to whether the provisions of Section 4 to 24 of the Limitation Act, were applicable for condoning the delay occasioned in filing an election petition, with the aid of Section 29(2) of the Limitation Act, in which it has been held as under:-

> ***17.*** *Though Section 29(2) of the Limitation Act has been made applicable to appeals both under the Act as well as under the Code of Criminal Procedure, no case has been brought to our notice where Section 29(2) has been made applicable to an election petition filed under Section 81 of the Act by virtue of which either*

Sections 4, 5 or 12 of the Limitation Act has been attracted. Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29(2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. It is contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case

where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. The provisions of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117. It will be seen that Section 81 is not the only Section mentioned in Section 86, and if the Limitation Act were to apply to an election petition under Section 81 it should equally apply to Sections 82 and 117 because under Section 86 the High Court cannot say that by an application of Section 5 of the Limitation Act, Section 81 is complied with while no such benefit is available in dismissing an application for non-compliance with the provisions of Sections 82 and 117 of the Act, or alternatively if the provisions of the Limitation Act do not

apply to Section 82 and Section 117 of the Act, it cannot be said that they apply to Section 81. Again Section 6 of the Limitation Act which provides for the extension of the period of limitation till after the disability in the case of a person who is either a minor or insane or an idiot is inapplicable to an election petition. Similarly, Sections 7 to 24 are in terms inapplicable to the proceedings under the Act, particularly in respect of the filing of election petitions and their trial.

18. *It was sought to be contended that only those provisions of the Limitation Act which are applicable to the nature of the proceedings under the Act, unless expressly excluded, would be attracted. But this is not what Section 29(2) of the Limitation Act says, because it provides that 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. If none of them are excluded, all of them would become applicable. Whether those Sections are applicable is not determined by the terms of those Sections, but by their applicability or inapplicability to the proceedings under the special or local law. A person who is a minor or is insane or is an idiot*

cannot file an election petition to challenge an election, nor is there any provision in the Act for legal representation of an election petitioner or respondent in that petition who dies, in order to make Section 16 of the Limitation Act applicable. The applicability of these provisions has, therefore, to be Judged not from the terms of the Limitation Act but by the provisions of the Act relating to the filing of election petitions and their trial to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in Section 29(2) of that Act.

20. *It is also significant that delay in the presentation of the election petition under the repealed Section 81 could be condoned by the Election Commission in its discretion under the proviso to the repealed Section 85 of the Act. But there was nothing in Section 85 which permitted the Election Commission to condone the non-compliance with the provisions of Section 117 of the Act. When the Act was amended and the jurisdiction was given to the High Court to entertain and try election petitions, a provision similar to the proviso for condoning delay was not enacted. This omission*

> *definitely expresses Parliament's intention not to confer the power to condone any delay in the presentation of the petition. The whole object of the amendment in 1966 was to provide a procedure for a more expeditious method of disposal of election disputes, which experience had shown had become dilatory under the former procedure where election trials were not concluded even after five years when the next elections were held, notwithstanding the fact that every petition was enjoined to be tried as expeditiously as possible and endeavour was required to be made to conclude the trial within six months from the date on which the election petition was presented to the High Court for trial.*
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> ***25.*** *For all these reasons we have come to the conclusion that the provisions of Section 5 of the Limitation Act do not govern the filing of election petitions or their trial and in this view, it is unnecessary to consider whether there are any merits in the application for condonation of delay.*

It would be apparent that the entire matter turned on the language of Section 86 of the Representation of Peoples Act, 1951, which gave a peremptory command that the High

Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117, in the context of which it was held that the intention of the legislature was to ensure the decision of the election petitions before completion of the term of office, and therefore denied the applicability of the Limitation Act, by invoking Section 29(2), thereof. It was also held and rightly so, as submitted by Mr. Zaveri, learned Counsel for the Petitioner, that for the purpose of determining the applicability of the Limitation Act with the aid of Section 29(2) thereof, what was required to be looked into was the scheme of the Act, to which it was being claimed to be applied, whether it was a complete code in itself, and not the language of Section 29(2) of the Limitation Act. It would, therefore, be necessary to examine the D.V. Act, on the above two touchstones.

5.1. ***Commissioner of Sales Tax Vs M/s Parson Tools and Plants, Kanpur, (1975) 4 SCC 22*** (paras 12-13-15) was a case in which what fell for consideration was whether Section 14(2) of the Limitation Act, in terms, or, in principle, can be invoked for excluding the time spent in

prosecuting an application under Rule 68(6) of the U.P. Sales Tax Rules for setting aside the order of dismissal of appeal in default, under the U.P. Sales Tax Act, 1948 (for short, "the Sales Tax Act") for computation of the period of limitation for filing a revision under that Act. The plea of applicability of the Limitation Act, to exclude the time spent in prosecuting other proceedings, was negated on the ground that Section 14 of the Limitation Act, applied to 'Courts', and the Authorities under the Sales Tax Act, were not 'Courts'. The exclusion of the Limitation Act, was also held to be so, in the following words:

> ***12.****Three features of the scheme of the above provision are noteworthy. The first is that no limitation has been prescribed for the suo motu exercise of its jurisdiction by the revising authority. The second is that the period of one year prescribed as limitation for filing an application for revision by the aggrieved party is unusually long. The third is that the revising authority has no discretion to extend this period beyond a further period of six months, even on sufficient cause shown. As rightly pointed out in the minority judgment of the High Court, pendency of proceedings of the nature*

contemplated by Section 14(2) of the Limitation Act, may amount to a sufficient cause for condoning the delay and extending the limitation for filing a revision application, but Section 10(3-B) of the Sales Tax Act gives no jurisdiction to the revising authority to extend the limitation, even in such a case, for a further period of more than six months.

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

14. *It cannot be said that by excluding the unrestricted application of the principles of Sections 5 and 14 of the Limitation Act, the legislature has made the provisions of Section 10 unduly oppressive. In most cases, the*

discretion to extend limitation, on sufficient cause being shown for a further period of six months only, given by sub-section (3-B) would be enough to afford relief. Cases are no doubt conceivable where an aggrieved party, despite sufficient cause, is unable to make an application for revision within this maximum period of 18 months. Such harsh cases would be rare. Even in such exceptional cases of extreme hardship, the revising authority may, on its own motion, entertain revision and grant relief.

15.*Be that as it may, from the scheme and language of Section 10, the intention of the legislature to exclude the unrestricted application of the principles of Sections 5 and 10 of the Limitation Act is manifestly clear. These provisions of the Limitation Act which the legislature did not, after due application of mind, incorporate in the Sales Tax Act, cannot be imported into it by analogy. An enactment being the will of the legislature, the paramount rule of interpretation, which overrides all others, is that a statute is to be expounded "according to the intent of them that made it". "The will of the legislature is the supreme law of the land and demands perfect obedience" [See Maxwell on Interpretation of Statutes, 11th Edn.,*

> *pp. 1, 2 and 251] . "Judicial power is never exercised", said Marshall, C.J. of the United States, "for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law".*
>
> ***16.*** *If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so "would be entrenching upon the preserves of legislature" [At p. 65 in Prem Nath L. Ganesh v. Prem Nath L. Ram Nath, AIR 1963 Punj 62, Per Tek Chand, J.], the primary function of a Court of law being jus dicere and not jus dare.*

What is material to note is that Section 10(3-B) of the Sales Tax Act, which fell for consideration, specifically provided that the application under sub-section (3) thereof shall be made within one year from the date of service of the order complained

of, but the revising authority may on proof of sufficient cause entertain an application within a further period of six months. It is, thus, apparent that the power of condonation of delay in filing of the revision for a further period of six months was provided in the provision itself, and since the legislature then did not provide for any further consideration of the delay which may be occasioned, it was held that the same could not be done by invoking the Limitation Act.

5.2 ***Commissioner of Customs and Central Excise Vs Hongo India Pvt. Ltd. (2009) 5 SCC 791*** lays down two propositions: One that the nature of the remedy provided in the Statute ought to be such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it and Second that even if there is no express exclusion of the applicability of the Limitation Act, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. It was also held that the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Act to which it

was sought to be made applicable by virtue of Section 29(2). The Statute under consideration in this case was the Central Excise Act 1944 and considering the scheme of the said Act, it was held that the time-limit prescribed under Section 35-H(1) to make a reference to the High Court was absolute and unextendable by a Court u/s 5 of the Limitation Act. It is also necessary to be borne in mind that what was under consideration was a Taxing Statute, which generally has to be construed strictly. Same principles have been reiterated in ***Patel Brothers V/s State of Assam, (2017) 2 SCC 350*** (supra) which was a case under the Assam Value Added tax, 2003

5.3. ***Thirumalai Chemicals Vs. Union Of India, (2011) 6 SCC 739*** holds that the law relating to forum and limitation is procedural in nature and unless the amending act, expressly states so, has to be construed as prospective in nature, in the sense that they neither have the effect of reviving the right of action which is already barred on the date of their coming into operation, nor do they have the effect of extinguishing a right of action subsisting on that date.

5.4. The question in the recent past has been considered in ***Bhakra Beas Management Board Vs. Excise & Taxation***

Officer, (2020) 17 SCC 692 where a learned Three Judges Bench of the hon'ble Apex Court, after considering ***Lata Kamat Vs. Vilas (1989) 2 SCC 613*** – in which considering that limitation provided in Section 28(4) of the Hindu marriage Act, was different from the schedule of the Limitation Act, it has been held that by virtue of Section 29(2) of the Limitation Act, Section 2 to 24 thereof were applicable and therefore time to obtain certified copy of the judgment was required to be excluded; ***State of W. B. Vs. Kartick Chandra Das, (1996) 5 SCC 342***- in which considering requirement of filing of appeal under Section 19 of the Contempt of Courts Act, 1971, within 30 days of the date of the order, which was delayed, it was held that in view of Section 29 of the Limitation Act, 1963, there was no exclusion in either the Contempt of Courts Act, 1971 or the Rules framed on the Appellate Side for entertaining appeals under clause 15 of the Letters Patent to infer exclusion of the Limitation Act; ***Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, (1995) 5 SCC 5*** – in which while considering the period for filing the appeal under Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965, it was held that there were two requirements for the applicability of Section 29 of the Limitation Act, namely

(i) different period of limitation being prescribed under the local or special law, which could be so construed even where there was omission to provide for limitation in the Limitation Act [majority view in ***Vidyacharan Shukla Vs. Khubchand Baghel AIR 1964 SC 1099***] and (ii) there is no express exclusion of the provisions of the limitation Act, and upon the same being satisfied, the consequences of applicability of Section 3 to 24 of the Lamination Act, would follow; as well as after considering ***Hukumdev Narain Yadav***, ***Hongo (India) (P) Ltd***, ***Patel Brothers*** (supra), and after considering the scheme of the Himachal Pradesh Value Added Tax, 2005, it was held as under:

> ***28.****In the light of the decisions as mentioned earlier, when we examine the scheme of the 2005 Act, the provisions contained in Section 45 provide for an appeal from every original order passed under the Act or the Rules made thereunder. Sub-section (4) of Section 45 provides appeal to be filed within 60 days, or such more extended period as the appellate authority may allow, for reasons to be recorded in writing. Thus, because of the provisions contained in Section 45(4), the principles of Section 5 would apply to an appeal before the appellate authority, which otherwise in the*

absence of specific provision would not have applied to authority. The revision is provided to the Commissioner suo motu under the provisions of Section 46(1), and the period provided is 5 years for suo motu exercise of revisional power. However, the tribunal has the power to entertain application within 60 days from the date of communication of the order. When we consider the provisions of Section 48, revision is provided to the High Court, and an aggrieved person may within 90 days of the communication of such order, file a revision. Section 48(1) nowhere expressly excludes the applicability of the provisions of the Limitation Act. The provisions of Section 5 are applicable to Section 48 as they are not expressly excluded by the provisions under the 2005 Act. More so, in view of the provisions in Section 45(4), which makes provisions to condone the delay like the Limitation Act, conferring power upon an authority also to condone delay. Further, suo motu revision has also been provided under Section 46. In Section 48, there is no express exclusion. Because of the scheme of the Act, it cannot be inferred that by implication, the provisions of Section 5 of the Limitation Act are excluded. Provisions contained in Section 29(2)

of the Limitation Act would be attracted as there is no express exclusion or by implication, in view of the provisions of the 2005 Act. We hold that by virtue of the provisions contained in Section 29(2), provisions of Section 5 of the Limitation Act would apply to proceedings under Section 48 of the 2005 Act.

29. *The High Court has relied upon the decision of this Court in Patel Bros. [Patel Bros. v. State of Assam, (2017) 2 SCC 350 : (2017) 1 SCC (Civ) 658] in the context of the Assam VAT Act in which the abovementioned provision of Section 84 made the difference, which makes specific provision that only Sections 4 and 12 of the Limitation Act are applicable. Consequently, it follows that other provisions are not applicable. The decision in Hongo (India) (P) Ltd. [Commr. of Customs v. Hongo (India) (P) Ltd., (2009) 5 SCC 791] also turned on the scheme of the Excise Act. The scheme of the Excise Act is materially different than that of the Himachal Pradesh VAT Act. Thus, the decision in Hongo (India) (P) Ltd. [Commr. of Customs v. Hongo (India) (P) Ltd., (2009) 5 SCC 791] also cannot be said to be applicable to interpret the Himachal Pradesh VAT Act. As the revision under the 2005 Act lies to the High*

Court, the provisions of Section 5 of the Limitation Act are applicable, and there is no express exclusion of the provisions of Section 5 and as per Section 29(2), unless a special law expressly excludes the provision, Sections 4 to 24 of the Limitation Act are applicable. When we consider the scheme of the Himachal Pradesh VAT Act, 2005, it is apparent that its scheme is not ousting the provisions of the Limitation Act from its ken which makes principles of Section 5 applicable even to an authority in the matter of filing an appeal but for the said provision the authority would not have the power to condone the delay. By implication also, it is apparent that the provisions of Section 5 of the Limitation Act have not been ousted; they have the play for condoning the limitation under Section 48 of the 2005 Act. Suo motu provision of revisional power is also provided to the Commissioner within 5 years. Thus, the intendment is not to exclude the Limitation Act. We condone the delay in filing of revision.

5.5. In ***Sridevi Datla v. Union of India*, (2021) 5 SCC 321** while considering the question of condonation of delay, it was held that there can be no dispute that the

period of limitation set out in a special law, which provides for remedies and appeals, has to be construed in its terms and without reference to the Limitation Act, if it contains specific provisions delineating the time or period within which applications or appeals can be preferred, and confines the consideration of applications for condoning the delay to a specific number of days and undoubtedly, in such cases, the Limitation Act would be inapplicable. This was in the context of the language of the proviso to Section 16 of the National Green Tribunals Act, 2010, which permitted condonation of delay upto but not exceeding 60 days on sufficient cause been shown, thereby marking an outer limit for the exercise of discretion of the Tribunal upto which the delay could be condoned.

5.6. In ***Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., (2021) 10 SCC 401*** while considering the provisions of the I B Code, Section 61(1) of which provides an appeal to any person, who is aggrieved by the order of the adjudicating authority before the NCALT, which under Section 61(2) has to be filed within 30 days,

which by virtue of the proviso thereto, is extendable by a period not exceeding 15 days, on showing sufficient cause, it has been held that since there is a period different from the one which is prescribed by the Schedule to the Limitation Act, the limitation for an appeal would be governed by Section 61 of the I&B Code, which is a special statute.

5.7. ***Debasish Paul v. Amal Boral*, (2024) 2 SCC 169** while considering the provisions of the West Bengal Premises Tenancy Act, 1997, holds that though generally the Limitation Act is applicable to the provisions of the said Act in view of Section 40 of the said Act, however since Section 7(1) enjoined upon the tenant to pay the arrears of rent within one month of the service of summons, or when the tenant appeared in the proceedings without a summons, within one month of such appearance, and in case of a dispute as to the rent payable by the tenant, under Section 7(2) is to deposit the amount admitted by the tenant within one month, which was extendable only once by a period not exceeding two month, which was a lesser time period specified as

limitation in the said Act, then the provisions of the Limitation Act cannot be used to expand the same. In this case the provisions of Section 7(1) and 7(2) of West Bengal Premises Tenancy Act, not only prescribed a specific time period for deposit of the rent, but the proviso to Section 7(2), mandated that extension of time could be granted only once and that too for a period which would not exceed two months. Thus the language used was peremptory, imposing an outer limit for the exercise of the discretion for extension of time, which was the reason why the applicability of the Limitation Act, 1963, was held to be excluded.

5.8. In ***Mohd. Abaad Ali*** (supra) the hon'ble Apex Court, in context of the reliance placed on ***Kaushalya Rani Vs. Gopal Singh (1964) 4 SCR 982***, had noted that the same was distinguished in ***Mangu Ram Vs. Municipal Corporation of Delhi, (1976) 1 SCC 392*** and had the following to say as regards the exposition made therein :

> ***"12.*** *As Kaushalya Rani (supra) was decided under provisions of old Limitation Act of 1908,*

this Court in Mangu Ram (supra) distinguished Kaushalya Rani and held as under:

"There is an important departure made by the Limitation Act, 1963 in sofar as the provision contained in Section 29, subsection (2), is concerned. Whereas, under the Indian Limitation Act, 1908, Section 29, sub-section (2), clause (b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions of the Indian Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22, shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded, Section 29, subsection (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply insofar as and to the extent to which they are not expressly excluded by such special or local law. Section 29, sub-section (2), clause (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, sub-section (2) of the Limitation Act, 1963, in

clear and unambiguous terms, provides for the applicability of Section 5 and the ratio of the decision in Kaushalya Rani case can, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section 5 was excluded by reason of Section 29(2)(b) of the Indian Limitation Act, 1908. Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29, sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law, if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced. Here, as pointed out by this Court in Kaushalya Rani case the time limit of sixty days laid down in sub-section (4) of Section 417 is a special law of limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5. It is true that the language of sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to

appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in subsection (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it.

(emphasis supplied)

While considering ***Hukumdev Narain Yadav*** (supra), it held, considering the language in sec.86 of the Representation of Peoples Act, 1951 and specifically the dictum as contained therein that the High Court shall dismiss an election petition which does not comply with the provisions of sec.81, 82 or 117 as contained therein, Sec.81 thereof prescribing a specific period of 45 for filing the election petition from the date of election, that the Court had no choice, but to dismiss the petition. It was also held that though ***Hukumdev Narain Yadav*** (supra) and ***Gopal Sardar Vs. Karuna Sardar (2004) 4 SCC 252,*** deal with special laws which prescribed a period of limitation, however the expression of the language contained in the law was very clear that under no circumstances can such a limitation be condoned.

6. The following principles therefore have to be taken into consideration, while examining a plea of applicability of the Limitation Act, to a special statute by virtue of Section 29(2) of the Limitation Act:

(a) Nature of the remedy provided in the Statute ought to be such that the legislature intended it to be a complete code by

itself which alone should govern the several matters provided by it;

(b) The Special Statute provides that under no circumstances can such a limitation be extended by condoning the delay.

(c) Even if there is no express exclusion of the applicability of the Limitation Act, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.

(d) The applicability of the provisions of the Limitation Act, is to be judged not from the terms of the Limitation Act but by the provisions of the Act to which it was sought to be made applicable by virtue of sec.29(2).

THE PURPOSE/OBJECT OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005.

7. The scheme of the D.V. Act will have to be therefore examined for the purpose of determining whether, any exclusion of the provisions of the Limitation Act, can be inferred therefrom.

7.1. In ***Indra Sarma Vs. V.K.V. Sarma*, (2013) 15 SCC 755** the hon'ble Apex Court in this context has held that the D.V. Act has been enacted to provide a remedy in civil law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence in the society and also to provide an effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family. Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the D.V. Act. Chapter IV of the DV Act, which according to it is the heart and soul of the enactment, in the background of the definitions of 'aggrieved person' [Sec.2(a)]; 'domestic relationship' [Sec.2(f)]; 'respondents' [Sec.2(q)]; 'shared household' [2(s)], as contained therein has been analyzed as under :

> ***"19.*** *Section 3 of the DV Act deals with "domestic violence" and reads as under:*
>
> ***3.Definition of domestic violence****.—For the purposes of this Act, any act, omission or com-*

mission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purpose of this section—

*(i) '**physical abuse**' means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;*

*(ii)'**sexual abuse**' includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;*

*(iii) '**verbal and emotional abuse**' includes—*

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

*(iv) '**economic abuse**' includes—*

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of

the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes 'domestic violence' under this section, the overall facts and circumstances of the case shall be taken into consideration."

17.1. *Payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for injuries caused by the acts of domestic violence committed by the adult male member, with a prayer for set-off against the amount payable under a decree obtained in court;*

17.2. *The Magistrate, under Section 18 of the DV Act, can pass a "protection order" in favour of the aggrieved person and prohibit the respondent from:*

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order."

17.3. *The Magistrate, while disposing of an application under Section 12(1) of the DV Act, can pass a "residence order" under Section 19 of the DV Act, in the following manner:*

*"**19.Residence orders**.—(1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—*

(a) restraining the respondents from dispossessing or in any other manner distributing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared house-

hold or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman."

17.4. *An aggrieved person, while filing an application under Section 12(1) of the DV Act, is also entitled, under Section 20 of the DV Act, to get "monetary reliefs" to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to—*

20.Monetary reliefs*.—(1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to—*

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order

under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force."

The monetary reliefs granted under the above mentioned section shall be adequate, fair, reasonable and consistent with the standard of living to which an aggrieved person is accustomed and the Magistrate has the power to order an appropriate lump sum payment or monthly payments of maintenance.

17.5. *The Magistrate, under Section 21 of the DV Act, has the power to grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent.*

17.6.*The Magistrate, in addition to other reliefs, under Section 22 of the DV Act, can pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent.*

18. *Section 26 of the DV Act provides that:*

> *"**Relief in other suits and legal proceedings**.—(1) Any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, Family Court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act."*
>
> *Further, any relief referred to above may be sought for in addition to and along with any other reliefs that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. Further, if any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief."*

7.2. In ***Kusumben Ambalal Shah / State of Gujarat 2016 SCC OnLine Guj 9620*** it has been held that the scope of both the acts are altogether different, wherein object of Domestic Violence Act is not to convict the respondent but to grant several legitimate benefits in favour of the aggrieved person.

7.3. ***Geeta Kapoor Vs. State of Haryana, 2013 SCC OnLine P&H 21779*** goes on to hold that the Domestic Violence Act is a

social welfare legislation and the proceedings has to be construed as civil in nature. The proceedings under the D.V. Act, are of summoning nature and immediate relief is to be granted to a victim. The main object of the D.V. Act, is to provide protection to a helpless woman so that she is not ousted from the husband's house or she is compelled to leave her in-laws house by the Acts of her in-laws' family members. Besides, allowing shelter in her in laws house, she is also granted financial support from the coffer of her husband, but it is not provided under Section 498-A of the Code.

7.4. In ***Bhagyashree Vs. Purushottam*** (supra) the purpose of the D.V. Act, has been well enunciated as under :

> ***'8.*** *The object of PWDV Act is to provide for effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The very purpose of including the Domestic Violence Act was to provide for a remedy which is an amalgamation of the civil rights of the complainant i.e. the aggrieved person. The intention was to protect the women from violence of any kind, especially*

that occurring within the family as the civil law does not trust this enactment in its entirety. The purpose of including the law was to provide a remedy in civil law for the protection of women from being the victims of domestic violence and prevent the occurrence of domestic violence in society. It is for this reason that the scheme of the Act, provides that in the first instance, the order that would be passed by the Magistrate on a complaint by the aggrieved person would be of civil nature, and if the said order is violated, it assumes the character of criminality. The object of this Act is to provide a minimum relief to the aggrieved person extending the emergent help of the Court orders to provide, for protection from violence, immediate assistance for residents, medications and fooding. The Act has special features granting the powers to the Magistrate to prescribe his own precedent to make the law most effective and protect women from domestic violence Act. Section 36 of PWDV Act provides that the provisions of the said Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force. The Legislature has taken due care by inserting Section 36 in the said Act to protect the rights of the women arising out of a matrimonial

> *dispute under the existing laws. The provisions of any law if in addition and not in derogation of existing laws does not affect the rights of the parties conferred under the existing laws.'*

8. It is thus apparent that the D.V. Act is a beneficial and social welfare piece of legislation enacted for conferring several benefits on women by conferring upon them statutory rights and providing remedies for enforcing such rights.

9. The right to appeal is a substantial and valuable right in such a scheme, as that confers a right to challenge any order passed under the aforesaid provisions before the Appellate Authority. Section 29 of the D.V. Act, recognises such a right of appeal, in both the 'aggrieved person' and the 'respondent'. Though it provides for filing of an appeal within a period of 30 days from the date of service of the order by the Magistrate, it does not either provide for any further period in which such an appeal can be filed, at the same time, it also does not provide for any embargo or impose any prohibition upon the Appellate Court in entertaining the appeal, beyond the time indicated therein, by using words which indicate curtailment of the rights of the Appellate Court in that regard. There does not appear in

the Scheme of the D.V. Act, anything to indicate that it intended exclusion of the applicability of the Limitation Act, 1963 to appeals to be filed u/s 29 of the D.V Act. All that Section 29 of the D.V. Act requires is for the appeal to be filed in 30 days. It does not provide for any consequences, such as the taking away of the right of the appellant, for not filing the appeal within the time period stipulated. The language used in Section 29 of the D.V. Act, will therefore have to be understood in a purposeful and meaningful manner, so as to include the applicability of the provisions of the Limitation Act, 1963 to the filing of the appeals u/s 29 of the D.V. Act, for the remedy of an appeal to be effective and meaningful, for to hold otherwise, would mean that an 'aggrieved person', would also be precluded from filing an appeal beyond the period of 30 days as provided in section 29 of the D.V. Act, if the such 'aggrieved person', was not satisfied by the order passed by the Magistrate under any of the provisions of the D.V. Act, which would not only whittle away the rights which the enactment of the D.V. Act was intended to confer upon the 'aggrieved person', but would also render the very purpose of enacting the D.V. Act, ineffective and redundant. What is stated about the 'aggrieved person', would equally be

applicable to a 'respondent', as defined in sec.2(q) too.

10. In fact a reading of section 26 of the D.V. Act, would indicate that the rights as conferred upon the 'aggrieved person', and the reliefs to which such person is entitled to, are not restricted to proceedings instituted under the D.V. Act, but are also available to be sought in any legal proceedings before a Civil Court, Family Court or Criminal Court, which would indicate that the enforcement of the rights is not restrictive but is expansive in nature. For example, let us imagine a situation where in a suit pending before the Civil Court, an application u/s 19(1)(a) of the D.V. Act is filed seeking a residence order, which is a relief in the nature of an injunction, is allowed or rejected by the Civil Court. Such an order would be an appealable order under Order 43 Rule 1(r) of the CPC, even beyond the time stipulated for filing an appeal, by invoking sec.5 of the Limitation Act. However to say that such an order if passed by the Magistrate u/s 19(1)(a) of the D.V. Act, would not be appealable under section 29 of the D.V. Act, on account of | Section 5 of the Limitation Act being not available would create an anomalous situation, which surely cannot be said to further the purpose, object and intent in enacting the D.V. Act.

11. In ***Rajnesh v. Neha*, (2021) 2 SCC 324** while considering the concept of overlapping jurisdictions, as the wife has a right under the D.V. Act to claim maintenance and so also u/s 125 of the Cr.P.C., the hon'ble Apex Court, has held that in such a case, there is an obligation upon the wife to disclose the maintenance received under any other enactment, which the Court considering the claim in any subsequent proceedings, then would be entitled to take into consideration for determining the quantum of maintenance to be granted. The concept of overlapping jurisdiction, would equally strengthen the plea of applicability of the provisions of sec.4 to 24 of the Limitation Act, to an appeal filed u/s 29 of the D.V. Act, for as indicated above, to hold otherwise, would lead to incongruous results, where in a particular enactment, the plea for condonation of delay would be available, while against a similar order, the plea would be excluded, in another enactment, which provides for the same right to be raised and enforced.

12. The concept of an Act being a complete Code in itself, has to be understood, in the contextual background of the scheme of the Act, where the Act itself contains provisions, which would indicate that it provides for a right and a complete remedy for

the enforcement of such a right. In the context of the D.V. Act, it cannot be said that the same is a complete Code in itself, for by reason of Section 26 of the D.V. Act, it permits the rights created under the D.V. Act, to be enforced in any proceedings pending or instituted in a Civil, Criminal or Family Court. Thus the concept of exclusive jurisdiction of a particular Court, is absent in the D.V. Act, rather the language of Section 26 of the same, expands the enforcements of the rights created thereunder, to all types of proceedings, of whatsoever nature, as indicated therein. This would also indicate that the D.V. Act, itself creates multiple jurisdiction for the enforcement of the rights conferred by it, upon the 'aggrieved person', which cannot be sought to be curtailed by presuming exclusion of the applicability of the Limitation Act, 1963 in the matter of filing of an appeal under section 29 of the D.V. Act.

13. Though it is contended by Mr. Zaveri, learned Counsel for the petitioner, that Section 36 of the D.V. Act, has to be read in a restrictive sense, considering the specific time of 30 days as provided in Section 29 therein for filing an appeal and does not contemplate importing of the provisions of the Limitation Act, 1963, into the D.V. Act, for the purpose of governing the time

lines as prescribed therein, on account of the D.V. Act, being a special law, however, in my considered opinion, when a Statute incorporates a provision such as Section 36 of the D.V. Act, that by itself indicates that the concerned Statute is not to be construed as a complete code in itself, for the rights and remedies as created thereunder, would themselves indicate that they would be in addition to and not in substitution of the rights and remedies in respect of the same subject matter, which may be available to the 'aggrieved person', under any other law, which would also govern the subject. This is further strengthened by what has been provided for in Section 26 of the D.V. Act, as indicated above, which expands the jurisdictional avenues for availing the rights and enforcing the remedies under the D.V. Act. The mere providing of time lines, in a particular Statute, without anything more, would not indicate the express or implied exclusion of the Limitation Act, to Section 29 of the D.V. Act.

14. The contention regarding the inapplicability of the Limitation Act, 1963, based upon based Section 29(3) therein is misconceived, for the reason, that Section 29(3) contemplates a suit or other proceedings and not an appeal. This was considered

in ***Lata Kamat v. Vilas*****, (1989) 2 SCC 613**, in light of the definition of 'suit', as defined in Section 2(l) of the Limitation Act, which defines a 'suit', not to include an appeal or an application. The expression 'other proceedings', will also have to be construed accordingly by holding that it will mean original proceedings and not an appeal, by applying the principle of '*ejusdem generis*' [see ***U.P. SEB v. Hari Shankar Jain*****, (1978) 4 SCC 16**].

15. The right to appeal under Section 29 of the D.V. Act, being aggrieved by an order in the proceedings under the D.V. Act, will therefore have to be construed in a wider sense in order to give full and effective, meaning to the intent of the D.V. Act and it will have to be held that any delay occasioned in filing the appeal, is liable to be condoned by the aid of Sec.5 of the Limitation Act, 1963.

16. I am in agreement with ***Sri K.M. Revanasiddeshwara / Smt. K.M. Shylaja, 2012 SCC OnLine Kar 1733*****,** relied upon by Miss Kakodkar, which takes a similar view to what has been discussed above.

17. In so far as the contention of Mr. Zaveri learned Counsel for the petitioner seeking reference based upon ***Dattaraj***

Vasudev Salgaonkar (supra) on the ground that in a similar provision as contained in Section 378 (4) & (5) of Cr.P.C. relating to appeal against acquittal, which was a special law in that regard, the question regarding applicability of Sections 4 to 24 of the Limitation Act by operation of Section 29(2) of the same has already been referred to a larger Bench, it is material to note that the learned Division Bench, to which the same was referred, has, in light of what has been held in ***Mohd. Abaad Ali Vs. Directorate of revenue Prosecution Intelligence, 2024 SCC Online 163***, already answered the reference in the negative, on 12/3/2024, holding that an application for condonation of delay in seeking to file special leave to appeal against acquittal, is maintainable, as there was no exclusion of the applicability of the Limitation Act, to appeals against acquittal, on account of a limitation having been provided therein. The plea for a reference is therefore turned down.

18. In so far as the question of delay is concerned, though ***Maniben Devraj Shah*** (supra) has been relied upon by Mr. Zaveri, learned Counsel for the petitioner, it was a case of inordinate delay, even then a liberal, justice oriented approach has been advocated. In ***Sridevi Datla v. Union of India*****, (2021) 5**

SCC 321 after considering ***Maniben Devraj Shah*** (supra) it has been held that the term *sufficient cause* is relative, fact dependent, and has many hues, largely deriving colour from the facts of each case, and the behaviour of the litigant who seeks condonation of delay (in approaching the court) and what can broadly be said to be universally accepted is that in principle, the applicant must display bona fides, should not have been negligent, and the delay occasioned should not be such that condoning it would seriously prejudice the other party. ***Catherine Rochelle Rodrigo Vs. State of Maharashtra and Others, 2018 SCC OnLine Bom 13253; Pushpa Yeshwant Patil Vs. State of Karnataka (Supra); Mukhtar Ismail Shaikh Vs. Nilofar Mukhtar Shaikh, 2018 SCC OnLine Bom 13191; Suchandra Bhutoria Vs. The State of West Bengal, 2015 SCC OnLine Cal 1886*** relied upon by Miss Kakodkar learned Counsel for the Respondent, are on sufficient cause, which issue is covered by ***Sridevi Datla*** (supra). In the instant case, the delay is of 17 days, considering which also no fault can be found in condoning the same, on the question of sufficient cause, considering its quantum.

19. Shri K. Jayaram Vs. Bangalore Development Authority (supra) relied upon by Miss Kakodkar, learned Counsel for the respondent, is on the scope of interference by this Court in its jurisdiction under Article 226 of the Constitution and holds that a prerogative remedy is not a matter of course, as while exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court and if the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done," which rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. There can be no dispute with the proposition as laid down, however, on facts, nothing has been pointed out as to what was the suppression by the petitioner, on account of which the above proposition is of no assistance in determining the matter in issue in the present petition.

20. I, therefore hold that the provisions of the Limitation Act, 1963 are applicable to an appeal filed under Section 29 of the

D.V. Act and an application for condonation of delay, in exercise of Section 5 of the Limitation Act, would be maintainable for the purpose of condoning the delay, occasioned in filing of an appeal, in case sufficient cause is shown to the satisfaction of the Appellate Court.

21. In view of the discussion made above, I do not find any merit in the petition. The same is therefore dismissed. Rule is made absolute in the above terms. In the circumstances there shall be no order as to costs.

AVINASH G. GHAROTE, J.

JUDGEMENT CONTINUED

22. At this stage, learned counsel for the Petitioner seeks stay of Judgment. Since the petition has been dismissed, I do not see any reason to accept the request. The request is declined.

AVINASH G. GHAROTE, J.