

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2597 OF 2013

Development Credit Bank Ltd.	... Petitioners
v/s	
Appellate Tribunal for Forfeited Property, New Delhi and others	... Respondents

Mr Ashish Kamat with Mr Kunal Mehta, Mr Nikhil Rajani, Mr Nilesh Bamne i/b M/s V. Deshpande and Co. for Petitioners.

Mr Pradeep S. Jetly with Mr Anjani Kumar for Respondent Nos.1, 2 and 4.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.**

Reserved On : 7th December, 2015.

Pronounced On : 21st December, 2015.

Judgment [Per B. P. Colabawalla J.] :-

1. Rule. Respondents waive service. By consent of the parties, rule made returnable forthwith and heard finally.

2. By this Petition under Article 226 of the Constitution of India, the Petitioners seek to challenge the order dated 12th March

2013 passed by the *Appellate Tribunal for Forfeited Property, New Delhi*, Respondent No.1 herein. Challenge is also laid to the order dated 23rd September, 2011 passed by the passed by Respondent No.2 under section 7 of the *Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976* (for short **“SAFEMA”**). Respondent No.2 is the Competent Authority under SAFEMA.

3. The brief facts to decide the present controversy is that Respondent No.3 is a sole proprietor of M/s. Aakar Prints and Packs and was the owner of a flat bearing No.G-2, Sushobhit CHS, Charkop, M.G. Road, Sector-2, Kandivli (W), Mumbai-67 (for short, the **“suit property”**) alongwith a Mitsubishi Lancer car bearing registration No.GJ-18-AB-1171. The Petitioner claims to be the mortgagee of the suit property in the facts and circumstances narrated hereafter.

4. On 23rd August 2006, an order of detention was passed against Respondent No.3 under section 3(1) of the *Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974* (for short, **“COFEPOSA”**). In view of the said detention, the

provisions of SAFEMA were made applicable to Respondent No.3 as he was a notified person under the provisions of section 2(2)(b) of SAFEMA. Ms. Pravina L. Patel, 3rd Respondent's wife was also covered under the definition of "relative" as defined under section 2(2)(c) of SAFEMA. Thereafter, an enquiry in relation to Respondent No.3's properties were initiated by the authorities in October/November 2006. Summons were also issued to Respondent No.3 and his wife in January 2008 and Respondent No.3's statement was also recorded in March 2008. Thereafter, further enquiries were conducted which finally culminated in a show cause notice dated 1st September, 2010 being issued to Respondent No.3 and his wife under section 6 of SAFEMA for various properties including the suit property and calling upon them to explain the sources of income through which they were acquired.

5. The above show cause notice was thereafter adjudicated and Respondent No.2, by an order of forfeiture dated 23rd September, 2011, passed under section 7 of SAFEMA held that the suit property was an illegally acquired property and stood forfeited to the Central Government free from all encumbrances. The aforesaid finding was rendered by Respondent No.2 on the basis that Respondent No.3 and his wife failed to produce sufficient

evidence to prove that the suit property was acquired from legal sources. Pursuant to this order, Respondent No.2 put his lock on the suit property.

6. Being aggrieved by the aforesaid order, Respondent No.3 and his wife thereafter, filed an appeal before Respondent No.1. This appeal was also dismissed on 11th March, 2013.

7. In the meanwhile, on 5th January 2010, the Petitioners, at the request of Respondent No.3, sanctioned to him a cash credit facility to the tune of Rs.35,00,000/-. The Petitioners contend that the repayment of the aforesaid cash credit facility was inter alia secured by creation of an equitable mortgage of the suit property. It is stated that this mortgage was created on 29th January, 2010. In view of defaults being committed by Respondent No.3 in repayment, his account was classified as a non-performing asset with effect from 15th December, 2010 and the Petitioners initiated action under the provisions of the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (for short, the “**SARFAESI Act**”). Accordingly, the Petitioners issued a notice dated 1st January, 2011 under section 13(2) of the

SARFAESI Act calling upon Respondent No.3 to pay the total outstanding amount of Rs.35,79,092/- and interest within 60 days of receipt thereof, failing which measures under section 13(4) of the SARFAESI Act would be initiated.

8. As Respondent No.3 committed default in complying with the requisitions contained in the aforesaid notice, the Petitioners filed an application under section 14 of the SARFAESI Act before the Chief Metropolitan Magistrate seeking his assistance for taking physical possession of the suit property and handing over the same to the Petitioners. By an order dated 4th November 2011, the said Application was granted and pursuant thereto, it is the claim of the Petitioners that they have, on or about 23rd January 2013, taken physical possession of the suit property.

9. Before taking physical possession of the suit property on 23rd January 2013, in furtherance of the measures taken under the provisions of the SARFAESI Act, the Petitioners by a Public Notice dated 10th February, 2012 sought to auction the suit property for recovery of its dues.

10. In view of the aforesaid Public Notice coming to the

attention of the authorities under SAFEMA, the Joint Commissioner, by his letter dated 20th February 2012 called upon the Petitioners not to take further steps in respect of the suit property, as according to him, under section 14 of SAFEMA, there was an express bar in proceeding with the sale of the suit property once it had been declared as a forfeited property under section 7 of the said Act. A copy of the order passed under section 7 of SAFEMA and dated 23rd September, 2011 was also enclosed with the said letter.

11. In reply to the said letter, the Petitioners through their Advocates' letter dated 22nd March, 2012 called upon Respondent No.2 to refrain from taking any action in furtherance of their order dated 23rd September, 2011 owing to the fact that credit facilities were extended to Respondent No.3 who had subsequently defaulted and the consequent measures taken by the Petitioners under the provisions of the SARFAESI Act with respect to the suit property.

12. Thereafter, the Petitioners sent a communication dated 2nd May, 2012 demanding from Respondent No.2 certified copies of certain documents which were duly supplied to the Petitioners on 29th May, 2012. The Petitioners have then filed an appeal under

section 12(4) of SAFEMA on 6th June 2012 challenging the order dated 23rd September, 2011. Along with their appeal the Petitioners also filed an application for condonation of delay, if any, in filing the appeal.

13. This appeal along with the application for condonation of delay was heard by Respondent No.1 and on 12th March 2013, Respondent No.1 passed the impugned order dismissing the appeal of the Petitioners on the ground that it was not filed within the time prescribed under section 12(4) of SAFEMA. Being aggrieved by this order, the Petitioners are before us in our extraordinary, equitable and discretionary jurisdiction under Article 226 of the Constitution of India questioning the legality and validity of the order dated 12th March, 2013 passed by Respondent No.1.

14. In this factual backdrop, Mr. Kamat, learned counsel appearing on behalf of the Petitioners, principally, raised two contentions. The first contention canvassed was that the provisions of the SARFESI Act would override the provisions of SAFEMA insofar as the provisions contained therein are inconsistent with the provisions of the SARFAESI Act. In other

words, it was the submission of Mr. Kamat that the provisions of SARFAESI Act would have primacy over the provisions of SAFEMA. The second contention canvassed before us was that in any event Respondent No.2 was in grave error in not condoning the delay, if any, in filing the appeal under section 12(4) of SAFEMA and thereby there was a clear miscarriage of justice which required our interference under Article 226 of the Constitution of India.

15. Though, the first contention was initially argued quite extensively, on instructions, Mr.Kamat stated that he is not pressing this contention and we should not render any finding on this aspect. In view of this statement we are now only called upon to decide whether Respondent No.1 was justified in rejecting the appeal of the Petitioners on the ground that it was barred by limitation or whether Respondent No.1 ought to have condoned the delay, if any, and heard the Petitioners' appeal on merits.

16. On this aspect, Mr. Kamat submitted that Respondent No.1 was in grave error in dismissing the Petitioners' appeal on the ground that it was not filed within the time period prescribed under section 12(4) of SAFEMA. Mr. Kamat submitted that looking to the facts and circumstances of the present case, there was no delay in

filing the present appeal. Mr. Kamat submitted that even though a copy of the order dated 23rd September, 2011 (and which was impugned in the appeal) was served upon the Petitioner on 20th February, 2012, the papers and proceedings which culminated in the said order, were admittedly served upon the Petitioner only on 29th May, 2012. The appeal before Respondent No.1 was thereafter filed on 6th June, 2012. He, therefore, submitted that looking to these dates, the appeal was filed within the time prescribed under section 12(4) of SAFEMA and there was no delay in filing the appeal. In this regard, Mr. Kamat relied upon the provisions of section 12(4) and contended that the said section stipulates that when any person is aggrieved by the order of the Competent Authority made under section 7, sub-section (1) of section 9 or section 10, shall file an appeal to the Appellate Tribunal within 45 days from the date on which the order is served on him. He submitted that in view of the fact that the Petitioners were not parties to the proceedings that were initiated by the Competent Authority against Respondent No.3 which culminated in the order of forfeiture passed under section 7 of SAFEMA, the words "*from the date on which the order is served on him*" appearing in section 12(4) ought to be construed so as to include service not only of a copy of the order but also the papers and proceedings that

culminated in the said order being impugned. This submission was based on the fact that the Petitioners being a third party could not effectively challenge the order in appeal without having in their possession or custody the papers and proceedings which led to the passing of the order being challenged. It would therefore be necessary for the Petitioners to also be served with the papers and proceedings to effectively challenge the order in appeal. In these circumstances, Mr. Kamat submitted that there was no delay in filing the appeal and Respondent No.1 was in grave error in dismissing the same on the ground that it was barred by limitation.

17. Alternatively, Mr. Kamat submitted that in any event, Respondent No.1 should have condoned the delay, if any. It was Mr Kamat's submission that it was not as if there was any gross delay and/or laches on the part of the Petitioners that had caused any prejudice to any party and a sufficient explanation for the delay had been stated in the application for condonation of delay. In these circumstances, Mr. Kamat submitted that even on this ground, the impugned order was contrary to law that required our interference under Article 226 of the Constitution of India.

18. With the help of the learned counsel, we have gone

through the papers and proceedings in the above Writ Petition along with the Annexures thereto. We have also carefully perused the orders impugned in this Writ Petition. To understand the controversy, it would be apposite to refer to the provisions of section 12 of SAFEMA which read as under:-

“12. Constitution of Appellate Tribunal.—(1) The Central Government may, by notification in the Official Gazette, constitute an Appellate Tribunal to be called the Appellate Tribunal for Forfeited Property consisting of a Chairman and such number of other members (being officers of the Central Government not below the rank of a Joint Secretary to the Government) as the Central Government thinks fit, to be appointed by the Government for hearing appeals against the orders made under Section 7, sub-section (1) of Section 9 or Section 10.

(2) The Chairman of the Appellate Tribunal shall be a person who is or has been or is qualified to be a Judge of the Supreme Court or of a High Court.

(3) The terms and conditions of service of the Chairman and other members shall be such as may be prescribed.

(4) Any person aggrieved by an order of the competent authority made under Section 7, sub-section (1) of Section 9 or Section 10, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain any appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(5) On receipt of an appeal under sub-section (4), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further enquiry as it deems fit, confirm, modify or set aside the order appealed against.

(6) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

(6-A) Notwithstanding anything contained in sub-section (6), where the Chairman considers it necessary so to do for the expeditious disposal of appeals under this section, he may constitute a Bench of two members and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal:

***Provided** that if the members of a Bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing on such point or points and such point or points shall be decided according to the opinion of that member.*

(7) The Appellate Tribunal may regulate its own procedure.

(8) On application to the Appellate Tribunal and on payment of the prescribed fee, the Tribunal may allow a party to any appeal or any person authorised in this behalf by such party to inspect at any time during office hours, any relevant records and registers of the Tribunal and obtain a certified copy of any part thereof.”

(emphasis supplied)

19. As section 12(1) itself suggests, the Appellate Tribunal is constituted by the Central Government for hearing appeals against the orders made under section 7, sub-section (1) of section 9 or section 10 of SAFEMA. Section 12(4) stipulates that any person aggrieved by the order of the Competent Authority made under section 7, sub-section (1) of section 9 or section 10, may, within 45 days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal. The proviso to section 12(4) stipulates that the Appellate Tribunal may entertain any

appeal after the said period of 45 days but not after 60 days from the date aforesaid provided it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time. In other words, the period for filing the appeal under section 12(4) is a period of 45 days and if the appeal is not filed within the aforesaid time period, it has the discretion to condone the delay for an additional period of 15 days. The words “*but not after 60 days*” appearing in the proviso to section 12(4) are of great significance as it clearly mandates that the Appellate Tribunal would have no power to condone the delay beyond the period specified in the proviso to section 12(4). We will deal with this aspect a little later in this judgment. Before we proceed further, we must mention here that we have not dealt with the other sub-sections of section 12 as they are not really germane to the controversy raised before us.

20. Looking to the provisions of section 12(4), it is clear that time to file the appeal starts to run from the date on which the order is served upon a person who is aggrieved by the said order. As the section itself suggests any person aggrieved by the order of the Competent Authority, made under section 7, sub-section (1) of section 9 or section 10, may within 45 days from the date on which the order is served on him, prefer an appeal to the Appellate

Tribunal. In the facts of the present case, admittedly, the order dated 23rd September, 2011 (and which was impugned in the Petitioners' appeal) was served upon the Petitioners on 20th February, 2012. We are, therefore, clearly of the view that the time to file the appeal started to run from the aforesaid date (i.e. 20th February, 2012). We are unable to accept the submission of Mr. Kamat that when an appeal is filed by a third party, then, not only a copy of the order but also the papers and proceedings should be served on the party, failing which the time does not start to run. To our mind, that would clearly violate the plain language of the statute and by the process of judicial interpretation we cannot supply words therein, which are otherwise clear and unambiguous, and alter the mandate of the legislature. It is pertinent to note that there was no bar or fetter on the Petitioners from filing their appeal once they received a copy of the order on 20th February, 2012. Instead of filing their appeal, the Petitioners engaged in correspondence with the authorities. We do not think that entering into such correspondence would stall the time to run against the Petitioners to file their appeal. We, therefore, have no hesitation in rejecting the contention of Mr. Kamat that there was no delay in filing the appeal.

21. Having held so, we shall now examine the alternate argument of Mr. Kamat that in any event, Respondent No.1 should have condoned the delay and heard the appeal of the Petitioners on merits. In the facts of the present case, as stated earlier, a copy of the order dated 23rd September, 2011 was served on the Petitioners on 20th February, 2012. The appeal admittedly was filed on 6th June, 2012. Therefore clearly the appeal was filed after a period of 106 days from the date on which the order was served upon the Petitioners.

22. On an ex-facie reading of section 12(4), it is clear that the appeal is to be filed within a period of 45 days from the date on which the order is served on the aggrieved person. If the appeal is not filed within the aforesaid period, under the proviso to section 12(4), the Appellate Tribunal is given the power to condone the delay for an additional period of 15 days, but not thereafter. This is ex-facie apparent from the clear language of the proviso to section 12(4) which categorically stipulates that the Appellate Tribunal may entertain an appeal after the said period of 45 days but not after 60 days from the date aforesaid, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time. The words "*but not after 60 days*" are of great

significance. These words indicate that there is a clear mandate that beyond the period of 60 days from the date on which the order is served upon the aggrieved person, the Appellate Tribunal has no power to condone the delay.

23. It cannot be seriously disputed that SAFEMA is a special law and that section 12(4) provides for a period of limitation different from that prescribed under the Limitation Act, 1963. Section 29(2) of the Limitation Act, inter alia stipulates that where any special or local law prescribes for any suit, appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, provisions of section 3 thereof shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed by any such special or local law, the provisions contained in sections 4 to 24 of the Limitation Act shall apply only insofar as and to the extent to which, they are not expressly excluded by such special or local legislation. Section 29 of the Limitation Act, 1963 reads thus:-

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

(2) *Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period*

prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

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

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

(emphasis supplied)

24. On perusing section 29(2) of the Limitation Act, it is *ex-facie* clear that the provisions of sections 4 to 24 would apply when (i) there is a special or local law which prescribes a different period of limitation for any suit, appeal or application; and (ii) the special or local law does not expressly exclude those sections. In other words, if the special or local law expressly excludes the provisions of sections 4 to 24 of the Limitation Act, then, recourse cannot not be had to any of those sections as they have been expressly excluded.

25. As stated earlier, there is no dispute that SAFEMA is a special law and that section 12(4) provides for a period of

limitation different from that prescribed under the Limitation Act. Looking to the clear language of section 12(4) and specifically to the words “*but not after 60 days*” appearing in the proviso thereto, we are clearly of the view there was an express exclusion within the meaning of section 29(2) of the Limitation Act to the applicability of section 5 thereof. To our mind, Parliament did not need to go any further. To hold that the Appellate Tribunal could entertain the appeal under section 12(4) even beyond the extended period as stipulated in the proviso thereof, would render the phrase “*but not after 60 days*”, wholly otiose. No principle of interpretation would justify such a result. We are, therefore, clearly of the view that under the provisions of section 12(4) read with the proviso thereto, the Appellate Tribunal had no power to condone the delay beyond the period of 60 days from the date on which the order impugned in the appeal was served on the aggrieved party. In the facts of the present case, admittedly, the appeal of the Petitioners was filed beyond the period of 60 days from the date on which the order was served upon them. We, therefore, find no infirmity in the impugned order dated 12th March, 2013 passed by Respondent No.1.

26. In taking this view, we are supported by a decision of

the Supreme Court in the case of **Union of India v/s Popular Construction Company**.¹ The issue involved before the Supreme Court in the aforesaid decision was whether the Court entertaining a challenge to an Arbitral Award under section 34 of the Arbitration and Conciliation Act, 1996 had the power to condone the delay beyond the period specified in the said section. Whilst analyzing the law on the subject, the Supreme Court held as under:-

“4. Before us, the appellant has not disputed the position that if the Limitation Act, 1963 and in particular Section 5, did not apply to Section 34 of the 1996 Act, then its objection to the award was time-barred and the appeal would have to be dismissed. The submission, however, is that Section 29(2) of the Limitation Act makes the provisions of Section 5 of the Limitation Act applicable to special laws like the 1996 Act since the 1996 Act itself did not expressly exclude its applicability and that there was sufficient cause for the delay in filing the application under Section 34. Counsel for the respondent, on the other hand, has submitted that the language of Section 34 plainly read, expressly excluded the operation of Section 5 of the Limitation Act and that there was as such no scope for assessing the sufficiency of the cause for the delay beyond the period prescribed in the proviso to Section 34.

5. The issue will have to be resolved with reference to the language used in Section 29(2) of the Limitation Act, 1963 and Section 34 of the 1996 Act. Section 29(2) provides that:

“29. (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are

¹ (2001) 8 SCC 470

not expressly excluded by such special or local law.”

6. *On an analysis of the section, it is clear that the provisions of Sections 4 to 24 will apply when:*

- (i) there is a special or local law which prescribes a different period of limitation for any suit, appeal or application; and*
- (ii) the special or local law does not expressly exclude those sections.*

7. *There is no dispute that the 1996 Act is a “special law” and that Section 34 provides for a period of limitation different from that prescribed under the Limitation Act. The question then is — is such exclusion expressed in Section 34 of the 1996 Act? The relevant extract of Section 34 reads:*

*“34. Application for setting aside arbitral award.—(1)-(2)****

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the Arbitral Tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

8. *Had the proviso to Section 34 merely provided for a period within which the court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because “mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5” [Mangu Ram v. Municipal Corpn. of Delhi, (1976) 1 SCC 392 at p. 397, para 7 : 1976 SCC (Cri) 10] .*

11. *Thus, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary*

implication stood excluded [Patel Naranbhai Marghabhai v. Dhulabhai Galbabhai, (1992) 4 SCC 264] .

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.”

27. The principle of law laid down in the aforesaid decision of the Supreme Court clearly supports the view that we have taken in this judgment.

28. We may also refer to a decision of a Division Bench of this Court to which one of us was a party (S. C. Dharmadhikari, J.), in the case of **Flemingo (Duty Free Shop) P. Ltd V/s Commissioner of Customs (Appeals), Mumbai-I.**² Paragraph 27 of this judgment reads thus:-

“27. We have referred to a Judgment of the Hon'ble Supreme Court recently delivered by a three Judge Bench in the order passed by us in the case of M/s. Jonson and Jonson (supra). That decision of the Hon'ble Supreme Court makes detailed reference to several decisions rendered either by two Judge or three Judge Bench of the Hon'ble Supreme Court. The Hon'ble Supreme Court proceeds to hold that when applicability of section 5 of the Limitation Act is not absolute, but circumscribed or restricted,

² 2015 (315) E.L.T. 321 (Bom.)

then, the statutory provision restricting or circumscribing it must be given effect to in the light of clear language of sub-section (2) of section 29 of the Limitation Act, 1963. In other words, sections 4 to 24 (inclusive) shall apply only insofar as and to the extent to which they are not excluded by the special or local law. In our case, beyond further period of 30 days and total period of 90 days, there is no further application of section 5 of the Limitation Act, 1963. The extent to which section 5 can be applied having been enumerated and set out in section 128(1) of the Customs Act, 1963, which is a special law, then, for the further delay in filing or presenting the Appeal, applicability of section 5 of the Limitation Act, 1963 is expressly ruled out. The language of section 128(1), which is a special law, therefore cannot be ignored or brushed aside.”

29. In view of the authoritative pronouncements of the Supreme Court as well as a Division Bench of this Court, we are clearly of the view that Respondent No.1 had no power to condone the delay beyond the period of 60 days from the date on which the order was served upon the Petitioners. As stated earlier, it is admitted that the appeal of the Petitioners was not filed within the aforesaid period, and therefore, clearly time barred. In this view of the matter, no fault can be found with the impugned order requiring interference in our extraordinary, equitable and discretionary jurisdiction under Article 226 of the Constitution of India.

30. Before concluding this judgment, we must clarify that any observations made herein are without prejudice to the rights

and contentions that the Petitioners may have against Respondent No.3 and nothing in this judgment should be construed to mean that we have foreclosed any such rights or contentions of the Petitioners. With this clarification, Rule is discharged and the Writ Petition is dismissed. However, in the facts and circumstances of the case, we leave parties to bear their own costs.

(B.P. COLABAWALLA J.)

(S.C. DHARMADHIKARI J.)