

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

WP(C).No. 35078 of 2014 (H)

PETITIONERS:

1. K.N.THANKAPPAN,
KAZHAKKUKANDATHIL HOUSE, KIZHATHIRI (P.O),
KOTTAYAM DISTRICT.
2. SARASWATHIAMMA.K,
KOCHUKANDATHIL HOUSE, KIZHATHIRI (P.O)
KOTTAYAM DISTRICT.
3. C.N. PRABHAKARAN,
VADAKKEL HOUSE, KIZHATHIRI P.O, KOTTAYAM 686 576

BY ADV. SRI.GEORGEKUTTY MATHEW

RESPONDENTS:

1. THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS,
THIRUVANANTHAPURAM 695 001
2. SHANS PAUL,
MANAGING DIRECTOR,
ST. BASIL INDUSTRIES INDIA PRIVATE LIMITED, P.B NO 2,
MMC VI, 710 C9, 2ND FLOOR,
SURYA TOWERS, VELLOORKUNNAM, MUVATTUPUZHA,
ERNAKULAM DISTRICT - 682 007.
3. RAMAPURAM GRAMA PANCHAYATH,
RAMAPURAM,
ERNAKULAM DISTRICT - 682 007,
REPRESENTED BY ITS SECRETARY.
4. THE SECRETARY,
RAMAPURAM GRAMA PANCHAYATH, RAMAPURAM,
ERNAKULAM DISTRICT - 682 001.

R2 BY ADV. SRI.P.VISWANATHAN
R2 BY ADV. SRI.SUNIL N.SHENOI
R2 BY ADV. SRI.BIBIN KUMAR
R2 BY ADV. SMT.NIMITHA SALIM
R3,R4 BY ADV. SRI.P.C.HARIDAS
R BY SRI. JUSTIN JACOB, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06.04.2015, THE COURT ON 03.06.2015 DELIVERED THE
FOLLOWING:

: 2 :

APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE MEMORANDUM OF THE APPEAL DATED 10-07-2013.

EXHIBIT P2 TRUE COPY OF THE JUDGMENT PASSED BY THIS HON'BLE COURT DATED 28-05-2014 IN WPC NO 8123 OF 2014.

EXHIBIT P3 TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A NO 2503/2014 IN APPEAL NO 798 OF 2014 DATED 30-10-2014.

EXHIBIT P4 TRUE COPY OF THE OBJECTION DATED 08-11-2014.

EXHIBIT P5 TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 13-11-2014.

EXHIBIT P6 TRUE COPY OF THE COUNTER AFFIDVIT DATED 14-11-2014.

EXHIBIT P7 TRUE COPY OF THE ORDER PASSED BY THE IST RESPONDENT DATED 18-11-2014.

EXHIBIT P8 TRUE COPY OF THE RELEVANT EXTRACT FROM THE 89TH REPORT OF THE 10TH LAW COMMISSION.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 35078 of 2014

Dated this the 3rd day of June, 2015.

JUDGMENT

I. Prelude:

This writ petition presents for consideration a pure question of law: Whether the Tribunal for Local Self-Government Institutions, a statutory adjudicatory body, can condone the delay in the presentation of appeal either in terms of Section 5 or Section 14 of the Limitation Act, especially in the face of the limitation imposed in Rule 8 of the Tribunal for the Kerala Local Self-Government Institutions Rules?

II. Facts in Brief:

2. To resolve this issue, bare minimum facts are required. Thus, shorn of extraneous particulars, the factual setting is that the second respondent submitted to the third respondent Grama Panchayat an application for permit or licence to establish a granite quarry. With the rejection of the said application on 14.03.2014, the second respondent

initially laid challenge before this Court in W.P. (C) No. 8123 of 2014, which, this Court dismissed through Ext.P2 judgment, dated 28.05.2014; nevertheless by preserving his right to impugn the decision of the Grama Panchayat before statutory appellate authority.

3. On 10.07.2014 the second respondent filed Ext.P1 statutory appeal (Appeal No.798 of 2014) before the first respondent Tribunal. Along with the memorandum of appeal, he has also filed an application to dispense with the requirement of production of the certified copy of the judgment as the same had not been received by then.

4. The petitioners herein, who got impleaded in the statutory appeal before the learned Tribunal as additional respondents 3 to 5 filed Ext.P3 application (I.A. No. 2503 of 2014) for having the issue of maintainability of the appeal considered as a preliminary one. The objection raised is regarding delay. On his part, the second respondent filed Ext.P4 interlocutory application calling in question the maintainability of Ext.P3 application. He has also filed Ext.P5 petition dated 13.11.2014 for the condonation of delay.

5. The learned Tribunal, having taken up Ext.P3 application for consideration, after hearing all the parties concerned, passed Ext.P7 orders holding that the appeal is maintainable, apart from condoning 12 days' delay. Aggrieved thereby, the additional respondents 3 to 5 therein filed the present writ petition.

6. Given the fact that a profusion of precedents had been cited at the bar by both the learned counsel, this Court, having found some of them seemingly conflicting, requested Mr. George Poonthottam, the learned advocate, to be an amicus curiae. Having readily agreed, the learned amicus curiae has admirably assisted the Court.

III. Submissions:

i) Petitioners':

7. To begin with, in the above factual back drop, Mr. Georgekutty Mathew, the learned counsel for the petitioners, has contended that as per Rule 8 of the Tribunal for Local Self Government Institutions Rules, 1999 (hereinafter referred to as the 'Rules'), the appeal is to be filed within 30 days from the date of the impugned order; the maximum further period that can be allowed under the Tribunal's power of

condonaiton is 30 more days. According to him, the 3rd respondent Panchayath passed orders on 19.03.2014; as such, the appeal ought to have been filed on or before 18.04.2014. The learned counsel has stressed that the Tribunal can condone the delay of 30 days, if there are sufficient reasons. But, no application for the condonation of delay was filed by the 2nd respondent along with Exhibit P1 appeal, according to him.

8. The learned counsel for the petitioners has contended that the Kerala Panchayat Raj Act is a complete code containing detailed provisions for limitation. In support of the said submission, he has placed reliance on **Anandvally v. Ajitha**, 2001 (1) KLT 211. According to him, to apply Section 14 of the Limitation Act, the proceedings must be civil proceedings, ought to be between the same parties, seeking the same relief, and that the petitioners ought to have been prosecuting the case in a wrong forum bona fide. In the light of Section 141 of the Code of Civil Procedure, the second respondent's writ petition cannot be called a civil proceeding, contends the learned counsel.

9. The learned counsel has also submitted that Section 14 of the Limitation Act has no application to an appeal, which the matter pending

before the learned Tribunal is. Reference in that regard is made to Clause 14.2 of the 89th Report of the Law Commission of India to hammer home the point that though there was a recommendation to include 'appeals' also in the fold of Section 14 of the Limitation Act, so far it has not received statutory shape. He has further found fault with the approach of the second respondent in filing appeal very belatedly after the writ petition was disposed of. According to him, having extracted a paragraph from Ext.P2 judgment of this Court, the second respondent could not be heard saying that he did not get the certified copy on time.

10. The learned counsel for the petitioners has advanced an alternative argument to the effect that through Ext.P7 the learned Tribunal condoned 12 days, though the second respondent had not shown any sufficient or reasonable cause for the said purpose.

11. Summing up his submissions, the learned counsel has submitted that this Court in **Thomas Thomas v. Kottayam Municipality**, 2008 (4) KHC 26, has concluded the issue that in the light of the bar imposed under Rule 8 of the Rules by way of fixing the upper time limit for filing the appeals, the party cannot even take recourse to Article 226 to have

the delay condoned, beyond the extended period under the said Rule. Eventually, the learned counsel has urged this Court to set aside Ext.P7 order of the learned Tribunal.

ii) Second Respondent's:

12. Per contra, the learned counsel for the second respondent has submitted that this Court, while dismissing the writ petition, has clearly preserved the liberty of the petitioners to approach the Tribunal. In that regard, he placed reliance on **Maya Devi v. Krishna Bhattathiri**, AIR 1981 Ker. 240. Contradistinguishing Rule 8 of the Rules with Section 34 of the Arbitration & Conciliation Act, 1996, which seems to be an analogous provision, the learned counsel has contended that Rule 8 does not contain any peremptory prohibition against the presentation of the appeal beyond the extended period of 30 days.

13. The learned counsel has also contended that the second respondent has filed the appeal even before he could obtain a copy of Ext.P2 judgment of this Court. According to him, in the first instance he approached this Court soon after the order of rejection was passed by the respondent Grama Panchayat. Since the second respondent had been

prosecuting the case bona fide before this Court, he ought to be given the benefit of Section 14 of the Limitation Act.

14. Placing reliance on **Consolidated Engg. Enterprises v. Irrigation Deptt.**, (2008) 7 SCC 169, the learned counsel has contended that merely because Section 5 of the Limitation Act is not applicable, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable. He has further submitted that in **Thomas Thomas's** case (supra) section 14 of the Act has not at all fallen for consideration. The learned counsel has also referred to Ext.P5, an affidavit filed in support of the Memorandum of Appeal, to counter the petitioners' contention that the second respondent has not pleaded any sufficient grounds for condoning the delay. According to him, there are sufficient grounds pleaded to the satisfaction of the learned Tribunal.

15. The learned counsel has eventually submitted that the Tribunal having the necessary jurisdiction, exercising its discretionary powers, has condoned the delay through Ext.P7 order and that it could not be interfered with in a judicial review, because the order does not suffer from any jurisdictional error. Reliance is placed on **Abdul Kareem v. District**

Medical Officer, Ernakulam, 1974 KLT 21, **Arbind Kumar Singh v. Nand Kishore Prasad and Ors.**, AIR 1968 SC 1227, **Anandan v. Damodaran**, 2009 (4) KLT 545, **Deputy Collector, Northern Sub-Division, Panaji v. Comunidade of Bambolim**, (1995) 5 SCC 333, **Devassy Manjooran v. Registrar, University of Kerala**, 1975 KLT 348, **Consolidated Engineering Enterpriss v. Principal Secretary, Irrigation Department & Others**, (2008) 7 SCC 169, **Sumitomo Corporation v. CDC Financial Services (Manutius) Ltd., & Ors**, (2008) 4 SCC 91, **Samuel Joseph v. Ramachandran Chellayyan**, 1991 (1) KLT 218, and **State of Kerala & Ors v. M. G. Presanna**, AIR 2011 SC (Supp) 509.

iii) Grama Panchayat's:

16. The learned counsel for the respondent Grama Panchayat, essentially adopting the arguments of the learned counsel for the petitioners, has contended that Section 3 of the Act, read with Section 29 (2) of the same Act, makes it manifestly clear that neither Section 5 nor Section 14 of the said Act has any manner of application to the proceedings before the learned Tribunal, in view of Rule 8 of the Rules.

He has also submitted that it is elementary to conclude that Section 14 of the Act has no application to appeals. In support of his submissions, the learned counsel has relied on **Sudama Rai v. Bisheshar Prasad**, AIR 1935 ALL 92, and **Brij Indar Singh v. Lala Kanshi Ram & Ors.**, AIR 1917 PC 156.

iv) Amicus Curiae's:

17. Sri George Poonthottam, the learned amicus curiae, has submitted that the judicial tendency is not in favour of non-suiting an aggrieved person. According to him, Sections 5 and 14 of the Act operate in different spheres. Expatiating on his submissions, the learned amicus curiae has submitted that for Section 5 of the Act the paramount consideration is the sufficient cause for the delay to the satisfaction of the Court; for Section 14 of the Act, bona fide approach is material, since it is a matter of exclusion, rather than condonation, of time.

18. The learned amicus curiae has also submitted that there is not a scintilla of doubt that proceedings under Article 226 of the Constitution are civil proceedings. In this regard, he has placed reliance on **Abdul Kareem v. District Medical Officer, Ernakulam**, 1974 KLT 21 (DB).

Further, the learned amicus curiae, drawing my attention to **L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd.**, (2004) 11 SCC 370, has contended that a special statute providing for special limitation must receive a liberal and broader construction but not a rigid or a narrow one.

19. The learned amicus curiae has submitted that there is an apparent conflict between **Sarojini v. Pathummal**, 1987 (2) KLT 578, and **Samuel Joseph v. Ramachandran Chellayyan**, 1991 (1) KLT 218. According to him, going by the ratio in **Jabalpur Bus Operators Association and Ors. v. State of M.P.**, AIR 2001 MP 81 (LB), the conflict is required to be resolved. The learned amicus curiae has also drawn my attention to **Consolidated Engg. Enterprises** (supra) and **Sumitomo Corporation v. CDC Financial Services (Mauritus) Ltd.**, (2004) 4 SCC 91, to contend that section 14 of the Act can be applied to appeal proceedings.

20. Heard the learned counsel for the petitioners, the learned counsel for the second respondent, the learned counsel for the Grama Panchayat and the learned amicus curiae, apart from perusing the record.

V. Issue:

21. Whether Section 5 or Section 14 of the Limitation Act has any application to the case on hand for condoning the delay in presenting the appeal, or excluding the period spent by the petitioners pursuing the writ remedy, in the face of Rule 8 of the Tribunal for the Kerala Local Self Government Institutions Rules, 1999?

DISCUSSION:**Statutory Scheme:**

22. The Tribunal for the Kerala Local Self Government Institutions Rules, 1999 ('the Rules' for brevity), govern the eponymous Tribunal, the very Rules having been framed by the Government in exercise of the powers conferred under section 254 of the Kerala Panchayat Raj Act, 1994, read with sections 271 S and 271 U, and section 509 of the Kerala Municipality Act, 1994. Rule 8 governs the procedure for petitioning the Tribunal. It is apt to extract Rule 8 of the Rules, which reads as follows:

"8. Petitions to the Tribunal.—(I) A petition submitted to the Tribunal shall be an appeal or revision against a notice, order or proceedings of the Village Panchayat; or Municipality or its Standing Committee for Finance or the Secretary in respect of any matter specified in the schedule appended to these rules or added to the said schedule by the Government from time to time by notification.

(2) If the concerned Village Panchayat or the Municipality or the Standing Committee for Finance or the Secretary has not taken decision within the prescribed time limit in cases where time limit has been prescribed in the Panchayat Act or the Municipality Act or in the Rules, the affected party may., in this respect, file appeal before the Tribunal.

(3) Petitions under sub-rules (1) and (2) shall be in form 'C' and the same shall be submitted before the Tribunal within thirty days from the date of the notice or order or proceedings against which the petition is filed or within ninety days in cases where decision has not been taken within sixty days of filing appeal before the Local Self Government Institutions:

Provided that the Tribunal may admit a petition submitted within one month after the said time limit, if the Tribunal is satisfied that there is sufficient reason for not submitting the petition within the time limit.

(emphasis added)

23. From the above Rule, it is manifest that petitions shall be submitted before the Tribunal within thirty days from the date of the notice or order or proceedings, though it is ninety days under certain circumstances, which are not relevant for our purpose. The proviso to the Rules makes it clear that the Tribunal may admit a petition submitted within one month after the said time limit, if the Tribunal is satisfied that there is sufficient reason for not submitting the petition within the time

limit. Without an iota of doubt, it can be said that the total permissible time for filing an appeal is sixty days.

24. Before proceeding further, it is incumbent on us to examine Section 29(2) of the Limitation Act as well, which reads as follows:

"29. (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) xxx

(4) xxx"

25. Now, the issue is whether Rule 8 of the Rules admits of condonation of delay or extension of time in filing an appeal: the former is governed by Section 5 and the latter by Section 14 of the Limitation Act. It is to be examined, especially, in the backdrop of exclusion provided under Section 29 (4) of the Limitation Act. Given the statutory mandate under Rule 8 of the Rules, which of these provisions applies; or in the alternative, does neither of these provisions applies to the case on hand?

26. To arrive at a just conclusion, it is appropriate to examine the statutory significance of Sections 5 and 14 of the Limitation Act. To begin with, if we examine Section 5 of the Act, it reads thus:

“5. *Extension of prescribed period in certain cases.*—Any appeal or any application, other than an application under any of the provisions of Order 21 of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

* * *

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 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 (5 of 1882), may for the time being extend.”

Delay Condonation:

27. Section 5 of the Limitation Act is a salutary, beneficial provision, intended to mitigate the hardship of a suitor from the rigours of limitation, because the party may have a justifiable reason for not approaching the court on time. From a plain reading of the provision, it is apparent that it applies to any appeal or application, excluding those Order 21 of the Code of Civil Procedure, 1908, (suits or proceedings of primary instance having not been included), provided the appellant or the applicant satisfies the court that he has sufficient cause for not preferring the appeal or making the application within such period. It is pertinent to observe that in terms of sub-section (2) of Section 5, where any special or local law prescribes for any suit, appeal or application a period of limitation different from that prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule. In fact, 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.

28. In the first place, Section 5 acknowledges the primacy of the special or local laws in the matters of fixing the period of limitation. Once any special or local law fixes a distinct period different from that in the schedule annexed to the Limitation Act, though the statutory succour provided in the provisions from Sections 4 to 24 of the Act can be taken aid of, there is an exclusion of those provisions to the extent expressly provided for in the special or local laws. Thus, if the special or local law, for example, stipulates that cumulative period for presenting an appeal or application shall not exceed 60 days, that imposes a cap, notwithstanding the fact that Section 5 of the Act, the substantive beneficial provision, does not impose any upper limit on the period of delay. The issue, in this context, that begs for attention is the semantic significance of the expression 'express exclusion'.

29. In **Union of India v. Popular Construction Co.**, (2001) 8 SCC 470, the Hon'ble Supreme Court has dealt with Section 34 of the Arbitration & Conciliation Act. Their Lordships have examined the ratio laid

down by a Constitution Bench in **Vidyacharan Shukla v. Khubchand Baghel**, 1951, AIR 1964 SC 1099, regarding an analogous provision, namely section Section 116-A of the Representation of People Act, and also the ratio in **Hukum Narain Yadav v. Lalit Narain Mishra** (1974) 2 SCC 133. Eventually, the Court has held thus:

"10. This decision recognises that it is not essential for the special or local law to, in terms, exclude the provisions of the Limitation Act. it is sufficient if on a consideration of the language of its provisions relating to limitation, the intention to exclude can be necessarily implied...

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 Section 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."

30. Indeed, in **Popular Construction's case** the Hon'ble Supreme Court has examined the significance of the expression 'but not thereafter' employed in 34 of the 1996 Act, which is absent in the present instance. Laying emphasis on the above expression, the Apex Court has held that that 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.

31. In **Chattisgarh SEB v. Central Electricity Regulatory Commission**, (2010) 5 SCC 23, the Supreme Court has examined 125 of the Electricity Act, which is analogous to Rule 8 of the Rules herein, save to the extent of employing a specific expression "within a further period not exceeding sixty days." The Hon'ble Supreme Court has, by examining Section 125 of the Electricity Act vis-à-vis Section 5 of the Limitation Act, in the context of exemption carved out in Section 29 (2) of the same Act, has held as follows:

"16. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory.

32. In **Hukumdev Narain Yadav v. L. N. Mishra**, (1974) 2 SCC 133, a three-Judge Bench of the Supreme Court has considered semantic

significance of the expression "expressly excluded" employed in Section 29(2) of the Limitation Act. Repelling the contentions 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, their Lordships have held thus:

"17. [w]hat 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 Section 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..."

33. In **Ketan V. Parekh v. Enforcement Directorate**, (2011) 15 SCC 30, the Hon'ble Supreme Court has examined Section 35 of Foreign Exchange Management Act, 1999, wherein it is mandated that an appeal to High Court is to be filed within sixty days, extendable to a period not exceeding sixty days. The question that arose for consideration was whether the High Court can entertain an appeal under Section 35 of the

Act beyond 120 days. The Apex Court has surveyed the precedential position obtaining as on that date by referred to the following decisions:

Union of India v. Popular Construction Company (2001) 8 SCC 470, **Singh Enterprises v. CCE** (2008) 3 SCC 70, **Commissioner of Customs, Central Excise v. Punjab Fibres Ltd.** (2008) 3 SCC 73, **Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and Ors. (supra)** (2008) 7 SCC 169, **Commissioner of Customs and Central Excise v. Hongo India Private Limited** (2009) 5 SCC 791 and **Chattisgarh State Electricity Board v. Central Electricity Regulatory Commission and Ors.** (2010) 5 SCC 23. It has eventually held that Section 5 of the Limitation Act cannot be invoked for condonation of delay in filing an appeal under the Act because that would be tantamount to amendment of the legislative mandate by which special period of limitation has been prescribed. The Supreme Court has, however, held that Section 14 can be invoked in an appropriate case for exclusion of the time during which the aggrieved person may have prosecuted with due diligence remedy before a wrong forum. Nevertheless, on the scrutiny of the facts, it was held that

Section 14 of the Limitation, too, has no application. In fact, in **Anandavally v. Ajitha**, 2001 (1) KLT 211, this Court has held that Kerala Panchayat Raj Act is a completely code in itself regarding the issue of limitation.

34. In the light of the above ratio, if we examine the expressions "Within one month after the said time limit" in Rule 8 of the Rules juxtaposed with "a further period of not exceeding sixty days" in Section 125 of the Electricity Act juxtaposed, the expression employed in Rule 8 of the Rules may not have any significant semantic difference. The latter provision, at best, is more emphatic having been couched in negative terms. Thus, the upshot of the above discussion is that in the face of the expandable time limit expressly stated in Rule 8 of the Rules, Section 5 of the Limitation Act has no application in the present instance.

35. It is further pertinent to observe that in terms of sub-section (2) of Section 29 of the Limitation Act, the express exclusion of any extension or condonation of time is held to be manifest. An express exclusion is not a mere verbal assertion of words of exclusivity; it is, on the contrary, legislative intent manifest from the plain reading of the provision, which

does not, even by way of construction, does not admit of any other meaning. The statutory mandate that a petition can be submitted "within one month" after the expiry of the initial period, in my view, excludes, in no uncertain terms, presentation of a petition beyond one month. Harsh as the consequences may be, I am afraid, the legislative mandate cannot be tinkered with.

Exclusion of Time:

36. We may begin our discussion by examining Section 14 of the Limitation Act, which reads thus:

14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of that Order, where such permission is

granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

37. It is beyond the pale of any controversy that Sections 5 and 14 of the Limitation Act apply under different circumstances: the former extends the time and the latter excludes it. Section 14 of the Limitation Act lays down the rules for the exclusion of time of proceeding bona fide in court without jurisdiction. It applies to the institution of suits or making application. The moot question is whether it applies for the purposes of computation of time for appeals also. It is, however, not in dispute that the principle underlying this section may be applied as constituting a sufficient cause within the meaning of Section 5 for the purposes of condonation of delay in appeals.

38. In **Consolidated Engg. Enterprises v. Irrigation Dept.** (2008) 7 SCC 169, the Hon'ble Supreme Court has held that merely

because it is held that Section [5](#) of the Limitation Act is not applicable to an application filed under Section [34](#) of the Act for setting aside an award, one need not conclude that provisions of Section [14](#) of the Limitation Act would also not be applicable to an application submitted under Section [34](#) of the Act of 1996. It further delineated on the scope and applicability of Section 14 of the Limitation Act, which deals with exclusion of time of proceeding bona fide in a court without jurisdiction, and held that the following conditions must be satisfied before Section [14](#) could be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (5) Both the proceedings are in a court.

39. Indeed, the Apex Court has served a word of caution that the policy of the Section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. The Supreme Court has concluded the discussion holding that, keeping in view the intention of the legislature, the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.

40. Examining the application of Section 14 of the Limitation Act in the face of Section 34 of the Act of 1996, the Apex Court has held that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. As a natural corollary it has further held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award.

41. As could be seen, through numerous judicial pronouncements courts have held that Section 14 of the Limitation Act, a beneficial provision, must be construed liberally so as to suppress the mischief and advance its object.

42. If we examine the ratio of **Consolidated Engg. Enterprises** (supra), the petitioner has to answer the following requirements: (1) that both the prior and subsequent proceedings are civil proceedings prosecuted by the same party; (2) that the prior proceeding had been prosecuted with due diligence and in good faith; (3) that the failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature; (4) that the earlier proceeding and the latter proceeding must relate to the same matter in issue and; and (5) that both the proceedings are in a court.

43. In **Arbind Kumar Singh v. Nand Kishore Prasad and Ors.**, (AIR 1968 SC 1227), a three-Judge Bench of the Supreme Court has held that a writ under Article 226 of the Constitution to bring up a proceeding concerning civil rights is a civil proceeding. In **Devassy Manjooran v. Registrar, University of Kerala**, 1975 KLT 348, a learned Division

Bench of this Court has taken a similar view that writ proceedings are civil proceedings; to the same effect is the proposition of law in **Abdul Kareem v. District Medical Officer, Ernakulam**, 1974 KLT 21, a judgment of another learned Division Bench. It is, thus, to be concluded that both the prior and subsequent proceedings prosecuted by the second respondent are civil proceedings, because the writ proceedings, too, are proceedings of civil nature.

44. It is not the case of the petitioners that the second respondent has not prosecuted the prior proceedings—the writ proceedings—with due diligence and in good faith. Indeed, this Court has refused to entertain the writ petition only on the ground of alternative remedy, if not on the ground of defect of jurisdiction; the subsequent appellate proceedings, therefore, can be treated as another cause of like nature. Without much cavil, it is to be held that the earlier proceeding and the subsequent proceeding related to the same matter in issue, and that both the proceedings are in a court. Once the second respondent fulfils the entire criteria laid down in **Consolidated Engg. Enterprises** (supra), what

prevents the second respondent from having the benefit of Section 14 of the Limitation Act?

45. Before proceeding further, we may examine the authorities cited at the bar by all the learned counsel concerned. In **ITC v. Union of India**, (1998) 8 SCC 601, the Supreme Court has permitted the appellant therein to file an appeal even beyond the period of limitation prescribed in the statute. In **Thomas Thomas** (supra), referring to **ITC** (supra), Antony Dominic J has observed that in it was evidently a judgment rendered by the Apex Court invoking the power under Article 142 of the Constitution, which power is not conferred on the High Court. His Lordship has further observed that the ratio in **ITC** (supra) was not followed in **Singh Enterprises v. Commissioner of Central Excises**, 2008 (221) ELT 163 (SC), wherein it was clarified that the judgment in ITC (supra) was rendered taking note of the peculiar background facts of the case. In the end, this Court, placing reliance on **Krishnan T. and Anr. v. State of Kerala and Ors.**, ILR 2007 Ker. 233, and **Consolidated Engineering Enterprises** (supra), has held that if a special statute has prescribed a period of limitation, to that extent, the provisions of the

Limitation Act will stand excluded as provided in Section 29 (2) of the Limitation Act.

46. In **Samuel Joseph v. Ramachandran Chellayyan & Ors**, 1991 (1) KLT 218, a learned Single Judge of this Court has observed, almost in passing, that Section 14 of the Limitation Act has an application to appeals. In **State of Kerala v. M. G. Presanna**, AIR 2011 SC (Supp) 509, a two-Judge Bench of the Hon'ble Supreme Court, too, extended the benefit of Section 14 of the Limitation Act to appeal proceedings. Since no specific grounds have been stated by the Court in that regard, it is to be accepted as an instance of applying Article 142 of the Constitution of India. In **Sumitomo Corpn. v. CDC Financial Services (Mauritius) Ltd.**, (2008) 4 SCC 91, which was subsequently overruled on another point in **Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.** (2013) 1 SCC 641, a two-Judge Bench of the Supreme Court has, in the last lines of the judgment, held thus:

“[I]t is made clear that the time taken by the appellant in pursuing their appeal before the Delhi High Court as well as this Court shall be excluded for the purpose of limitation. No costs.”

47. In **Maya Devi v. Krishna Bhattathiri**, AIR 1981 Kerala 240, the appellant filed an application for condonation of delay in filing the appeal. A learned Single Judge, however, having doubted the correctness of the decision in **Padmavathi v. Kalu**, (1980 KLT 306), referred the matter to a Division Bench. If facts are examined deeper, in **Maya Devi** (supra) by the time the appeal was filed, the time to file the appeal was over; but no petition to exclude the delay was filed along with the appeal. The Registrar returned the memorandum of appeal and granted 15 days' time to cure the defects. After curing the defect, the appellant represented the appeal, along with a petition to condone the delay. When the respondent entered appearance on receipt of notice of the delay petition, he took up a preliminary objection that there was no valid presentation of the appeal, that no petition to exclude the delay was filed along with the memorandum of appeal, as provided for under Order 41, Rule 3A C.P.C., and that, as a result, the petition has to be dismissed.

48. In the above context, the learned Division Bench has held that Rule 3A is intended only to emphasise that if the appeal had been filed out of time before an appeal is taken up for consideration, the question of

delay must be considered before any other order is passed in the appeal. It is to achieve this objective, that the Rule provides that the appeal should be accompanied by a petition to exclude the delay. If the petition to exclude delay is filed consequent to the direction of the court, as a part of curing the defect, there is a valid presentation of the appeal on curing of the defect. As a result, the learned Division Bench overruled the dictum laid down in **Padmavathi** (supra). Incidentally, the Court has also held that once the appeal is represented after curing the defect, the presentation for the purpose of limitation dates back to the original defective presentation, though.

49. In **Sarojini v. Pathummal**, 1987 (2) KLT 578, a learned Division Bench of this Court has held that the cardinal policy of Section 14 of the Limitation Act is to furnish protection against the bar of limitation to a person who honestly and diligently solicits a trial on merits in a forum having no jurisdiction and which forum cannot afford him such a trial. Such a relief cannot, it is held, be denied to a person who, owing to the technical plea, is forced to choose another forum, provided he had acted in good faith and with due diligence. Finally, their Lordships, quoting with

approval the ratio laid down in **Munshi Ram v. Punna Ram**, AIR 1974 P & H 229, have held that though S.14 in terms applies to suits and applications only and not to appeals, the circumstances envisaged in the section can very well constitute a "sufficient cause" within the purview of S.5 of the Act for the purpose of appeals also. In this case, the salutary principle of 'sufficient cause' has been engrafted into the exclusionary clause under Section 14 of the Act, without expressly holding, in my considered opinion, that Section 14 applies to appeals.

50. In *Sudama Rai* (supra) it is held that Section 14 of the Limitation Act is not applicable to appeals. In **Brij Indar Singh** (supra), AIR 1917 PC 156, the Privy Council has held thus:

"This, it will be observed, does not in terms apply, as it deals with suits and not with appeals, but its relevance will be seen by the judgments afterwards quoted."

51. In the light of the ratio laid down in **Thomas Thomas & Brij Indar Singh** (supra), I am to hold that Section 14 of the Limitation Act has no application to appeals. As can be seen from clause 14.2 of the 89th Report of the Law Commission of India, it recommended to include

'appeals' also in the fold of Section 14 of the Limitation Act, but so far the recommendation has not received statutory approval.

52. In *Aspects of Justice* (3rd Indian Reprint, 2009), C.K. Allen, under the caption 'Justice and Expediency' opines thus (P.53):

"I do not deny, however, that ideal justice sometimes has to give way to practical convenience. Justice, at least as applied in law, has to guard itself against too easy breach of rules by means which it is impracticable to prevent...Innumerable laws in modern society are dictated by the prudential necessities of social co-existence, and in their substance have no relation to morality; and I think that a good deal of misdirected ingenuity is devoted to trying to establish a connection between specific laws and morality or religion, when the real morality of law-abidingness is not that we obey particular rules of law because we necessarily think them just or wise, but because we believe it right to submit ourselves to *law* as a necessary discipline of society.

53. Posing unto himself a question whether law can be unjust, the learned author answers thus (P.65):

"Justice, in its purely ethical aspect, is justness, a moral quality residing, as we have seen, in a disposition of character. But law is not necessarily justness. In its content, and even in its aim, it has no necessary relationship at all to morality or even to utility. It may be, in the view of the moralist, grossly wrong, and yet be law...

54. While focusing on the judicial interpretative leverage, we may observe that in **Seaford Court Estates Ltd. v. Asher**, (1949) 2 K.B. 481, Lord Denning, sitting in the Court of Appeal, has advocated the

device of judicial legislation as a means of legislative substitute. He has held to the effect:

“[W]hen a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, ... and then he must supplement the written word so as to give ‘force and life’ to the intention of the legislature. ... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.”

55. It is pertinent to note that when **Seaford Court Estates Ltd.**, (supra) was appealed against before the House of Lords, though the appeal was dismissed, in his dissenting judgment Lord McDermott has observed in **Asher v. Seaford Court Estates Ltd.**, [1950] A.C. 508, thus:

“I cannot but think that the principles applicable to the interpretation of statutes as enunciated in the judgment of Denning L.J. and followed by him in reaching this conclusion are stated rather widely.”

56. Similar is the result when Lord Denning has observed in **Magor & St. Mellons Rural District Council v. Newport Corporation**, [1950] 2 All ER 1226, to the effect: ‘We do not sit here to pull the language of Parliament to pieces and make nonsense of it. We sit here

to find out the intention of Parliament and carry it out and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis'. When the matter was appealed against, as reported in [1952] A.C. 189, Lord Simons has excoriated the approach of Lord Denning by observing thus:

“[T]his proposition, which restates in a new form the view expressed by the Lord Justice in the earlier case of *Seaford Court Estates Ltd.* [supra] (to which the Lord Justice himself refers), cannot be supported. It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act.”

57. Indeed, fidelity to law is paramount. While interpreting, hardship is not a recognised exception to any cannon of construction. Adherence to the law and its enforcement true to the legislative intent is sine qua non. Indisputably, in the event of doubt, interpretation of law is permissible to throw light and make things clear, even to ameliorate a hardship, but interpolation of judicial ideals is not tantamount to interpretation of legislative intent.

58. All through the conduct of the second respondent cannot be termed as blameworthy, or remiss in any sense. He has, indeed,

prosecuted his case with due diligence, albeit before a constitutional court, when he has an efficacious alternative remedy. On that ground alone has he been non-suited. He was, in fact, given liberty to approach the appellate forum. The fact, however, remains that this Court's direction in W.P. (C) No. 8123 of 2014 of granting liberty, does not, to me, appear to have the potential of nullifying a statutory mandate as to limitation.

59. It is lamentable that a person has to be non-suited on a technicality of limitation, thereby making, presumably, a just cause perish on the altar of technicalities. Law may be harsh, law may be onerous, law may be, in a sense, unjust, but so long as it is not illegal or ultra vires, there is nothing a court of law could do. If any piece of legislation has wrought hardship on a litigant, it is for the legislature to remedy the situation. There may not be any justification in not extending the benefit of Section 14 of the Limitation Act to appeals, as has been pointed out by the Law Commission in its 89th report; yet, it is for the legislature to reform and reframe the law.

60. Harsh as the decision may sound, there is no escape from the rigours of law. Let expediency make way, for law has to rule; and rule it

shall. Law is not, I must state, value-neutral, operating in inert and sterile circumstances; on the contrary, it admits of interpretative judicial gloss, but only when it has an element of ambiguity. How aptly has William Blackstone has warned against legislation in the name of interpretation!

“[L]aw, without equity, though hard and disagreeable, is much more desirable for the public good, than equity without law: which would make every judge a legislator, and introduce most infinite confusion.”

(1 Commentaries on the Laws of England 62)

61. Before concluding the issue, this Court places on record its deep appreciation of the admirable assistance rendered by Sri George Poonthottam, the learned amicus curiae

In the facts and circumstances, the writ petition is allowed, as a consequence of which, Ext.P7 order of the first respondent is set aside; the necessary corollary being that Ext.P1 appeal is declared to have been barred by limitation. No order as to costs.

DAMA SESHADRI NAIDU, JUDGE.

