

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 24.04.2015

C.W.P.No.15983 of 2013

K.P.Khemka & another

...Petitioners

Versus

Haryana State Industrial and Infrastructure
Development Corporation Ltd. & others

...Respondents

Present: Mr. Anand Chhibbar, Senior Advocate, with
Ms. Harpriya Khaneka, Advocate, for the petitioners.

Mr. Kamal Sehgal & Mr. Rajesh Hooda, Advocates,
for respondent Nos.1 & 2.

C.W.P.No.26452 of 2014

Charanjeet Gaba

...Petitioner

Versus

State of Haryana & others

...Respondents

Present: Mr. Harkesh Manuja, Advocate,
for the petitioner.

Mr. Vishal Garg, Advocate,
for respondent Nos.2 to 4.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

HEMANT GUPTA, J.

This order shall dispose of aforementioned two writ petitions i.e.

CWP No.15983 of 2013, challenging an order dated 15.11.2012 passed by

respondent No.1 - Haryana State Industrial and Infrastructure Development Corporation Ltd. under Section 3(1)(b) of the Haryana Public Moneys (Recovery of Dues) Act, 1979 (for short 'the Act') as well as CWP No.26452 of 2014 challenging an order passed by the Authority under Section 32G of the State Financial Corporation Act, 1951 (for short 'the SFC Act'). Since identical arguments in law have been raised, both the writ petitions are taken up for decision together. However, for facility of reference, the facts are being taken from CWP No.15983 of 2013.

The petitioners claimed to be the guarantors for the term loan obtained under the Equipment Finance Scheme by M/s Khemka Ispat Ltd. – respondent No.3 from Haryana State Industrial and Infrastructure Development Corporation Ltd. – respondent No.1. Respondent No.3 (now in liquidation), suffered heavy losses from the year 2004 onwards and sought intervention of the Board of Industrial and Financial Reconstruction constituted under Section 15 of the Sick Industrial Companies Act, 1985 on 17.06.2005. In April, 2007, a winding up petition was filed against the Company, in which Delhi High Court ordered provisional winding up on 25.09.2007. On 28.04.2009, the Company was ordered to be wound up. It is pointed out that loan account of respondent No.3 became inoperative on 31.07.2004 in the records of respondent No.1 - Corporation and that a default notice dated 19.08.2004 (Annexure P-4) was issued to respondent No.3 – Company, to show cause as to why the Corporation should not initiate action against the Company for recovery of loan with interest including action under Section 29 of the SFC Act. It is further pointed out that the Corporation was represented before the Delhi High Court in proceedings for sale of assets of the Company (in liquidation). It is, thereafter, a show cause notice dated

10.01.2012 was issued to the petitioners for recovery of Rs.213.19 lacs, which was not received. However, subsequently, an ex parte determination order was passed under the provisions of the Act on 01.02.2012. The petitioners submitted objections to the said order raising a plea that it is a time barred debt and cannot be adjudicated upon under the provisions of the Act. It was the said objections, which were rejected vide order dated 15.11.2012 (Annexure P-15), subject matter of challenge in the present writ petition.

In the written statement filed on behalf of respondent Nos.1 & 2, the stand of the Corporation is that a sum of Rs.108 lacs was sanctioned as term loan on 07.03.2003. An amount of Rs.105.90 lacs was disbursed on 31.03.2003 and another amount of Rs.2 lacs on 15.07.2003. Respondent No.3 – Company has also obtained working capital term loan of Rs.45 lacs out of which Rs.30.72 lacs was disbursed. It is admitted that the Company has repaid the entire working capital term loan, but defaulted in making the payment of term loan. It is pointed out that the Corporation has taken deemed possession of the mortgaged machinery on 01.06.2007, as the plot was mortgaged in favour of M/s ING Vysya Bank. The machinery has since been sold for Rs.2,20,000/-. It is pointed out that show cause notices under Section 3(1)(b) of the Act were issued on 29.10.2009, but the same were received back with the remarks ‘left’ and ‘nobody was found with such name on the given address’. The Branch Officer of the Corporation informed that the promoters/guarantors i.e. the petitioners have sold the property and present addresses were not available. It is, thereafter, on receiving addresses of the promoters from the Branch Office of the Corporation, the present notices were issued to the company/promoters/guarantors on 09/10.01.2012. The notice addressed to the company was received back with the remarks ‘left’,

whereas other notices were duly served. Thereafter, determination order was issued on 02.02.2012. On receiving objections against such determination order, the Corporation has communicated its final decision on such representation on 15.11.2012. Respondent No.3 – the Official Liquidator has also filed the status report.

Before this Court, learned counsel for the petitioners has vehemently argued that the proceedings against the principal borrower are barred by time, therefore, even proceedings against the guarantors cannot be initiated. It is argued that time barred debt cannot be recovered under the provisions of the Act. It is argued that even though there is no period of limitation prescribed under the Act, but the proceedings for recovery have to be initiated within a reasonable period of the date, when the debts become due and not at any point of time. He strongly relies upon the Hon'ble Supreme Court judgment in State of Kerala & others Vs. V.R.Kalliyankutty & another AIR 1999 SC 1305 as well as an order passed by a Division Bench of this Court on 28.04.2014 in CWP No.8891 of 2007 titled 'Labh Singh Vs. State of Punjab & others', wherein the following issues were referred for the opinion of the larger Bench:

- “(i) Whether the recovery process under Section 32G is applicable to an individual?
- (ii) Whether the Limitation Act is applicable to the recovery process under the said Act including the process under Section 32G?
- (iii) In case the answer to the second question is in the affirmative, which Article of the Limitation Act would apply to recovery process under Section 32G of the said Act?
- (iv) If the answer of question No.2 is in the negative, is the principle of “reasonable time limit” applicable for a recovery process under the said Act?

- (v) Is it open to a Financial Corporation to switch over at any time from a remedy under Section 31 of the said Act to one under Section 32G of the said Act?"

The said writ petition was withdrawn, therefore, such reference to larger Bench came to naught. Learned counsel for the petitioner also relies upon Asia Resorts Ltd. Vs. Usha Breco Ltd. AIR 2002 SC 55 and Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim 1997 (6) SCC 71 to contend that even if the Limitation Act is held to be not applicable, still the power of recovery has to be exercised within reasonable time.

On the other hand, learned counsel for the respondents argued that judgment in V.R.Kalliyanikutty's case (supra) was considering Kerala Revenue Recovery Act, 1968, wherein Section 70 provides the borrower to file a suit for the refund of the whole or part of the sum paid. Since a suit is contemplated to be filed, the Hon'ble Supreme Court interpreted that the recovery if not initiated within time would be barred by limitation. Such judgment has been explained by a Full Bench of Gauhati High Court in a judgment reported as Assam State Electricity Board represented by its Chairman Vs. Mokalbari Kanoi Tea Estate (P) Ltd. 2014 (10) RCR (Civil) 132 as also by a Single Bench of Andhra Pradesh High Court in a judgment reported as M/s Kumar Chemicals and Fertilizers (P) Ltd. & another Vs. Andhra Pradesh Industrial Development Corporation Ltd. & another AIR 2008 (A.P.) 101 apart from Division Bench in Jagdish Rai Vs. The Haryana Financial Corporation AIR 2008 (Punjab) 50. It is argued that the Limitation Act is applicable only to the proceedings before the Civil Court and not to the proceedings before the quasi judicial Tribunals or other authorities. In terms of Section 29(2) of the Limitation Act, 1963, where any special or local law

prescribes time for any suit, appeal or application, a period different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such periods were the periods prescribed by the Schedule. Therefore, if no period of limitation has been prescribed by the special or local law, the period of limitation cannot be read into it on the basis of provisions of the Limitation Act. It is contended that it is well settled that the Limitation Act bars the remedy not the right, therefore, in the absence of any period of limitation in the local or special law, the right to recover will not stand extinguished as the period for limitation prescribed under the Limitation Act, 1963 is not applicable to the proceedings under any such Act. Reference was made to large number of judgments. Some of the judgments will be referred to at the relevant stage.

We have heard learned counsel for the parties at length. It may be mentioned that it was made clear to the learned counsel for the parties, if we are unable to agree with the view taken by this Court in Jagdish Rai's case (supra), the matter would be referred to the larger Bench else we are bound by the aforesaid judgment.

Since the primary reliance of the learned counsel for the petitioner is on the judgment of V.R.Kalliyankutty's case (supra), we may refer to certain provisions of the Kerala Revenue Recovery Act, 1968 and the reasoning of the Hon'ble Supreme Court to return a finding that the claim was barred by limitation. The aforesaid judgment was arising out of an appeal against the Division Bench judgment of Kerala High Court in A.K.Nannu & others Vs. State of Kerala & others 1989 (65) Company Cases 510. Though before the Hon'ble Supreme Court could deliver its judgment in

V.R.Kalliyankutty's case (supra), a Full Bench of Kerala High Court in

Kerala Fisheries Corporation Ltd. Vs. P.S.John 1997 (88) Company Cases 104 overruled the judgment in A.K.Nannu's case (supra). In the said case, the Division Bench of Kerala High Court held that in the absence of a provision creating a substantive right to recover time barred debts, the Act providing for summary recovery does not avail once the period prescribed for recovery under the Limitation Act has expired. The Full Bench in Kerala Fisheries Corporation Ltd.'s case (supra) has held that the provisions of Kerala Revenue Recovery Act, 1968 would override the provisions of the Limitation Act, which is general law and that recovery under the Kerala Revenue Recovery Act is not barred by limitation.

In V.R.Kalliyankutty's case (supra), the Hon'ble Supreme Court dismissed the State's appeal against the judgment of Division Bench in A.K.Nannu's case (supra), whereas allowed the appeal arising out of Kerala Fisheries Corporation Ltd.'s case (supra), when it observed to the following effect:

“11. Therefore, under Section 70(3), a person who has paid under protest can file a suit for refund of the amount wrongly recovered. In law, he would be entitled to submit in the suit that the claim against which the recovery has been made is time barred from him. When the right to file a suit under Section 70(3) is expressly preserved, there is a necessary implication that the shield of limitation available to a debtor in a suit is also preserved. He cannot, therefore, be deprived of this right simply by making a recovery under the said Act unless there is anything in the Act, which expressly brings about such a result.....”

In M/s Kumar Chemicals and Fertilizers (P) Ltd.'s case (supra), a Single Bench of Andhra Pradesh High Court observed that the judgment of the Constitutional Bench in Bombay Dyeing and Manufacturing Company

Ltd. Vs. State of Bombay AIR 1958 SC 328 was not brought to the notice of the Hon'ble Supreme Court in V.R.Kalliyankutty's case (supra), while interpreting Section 70(3) and 71 of the said Act. It was held as under:

“18. The judgment of the Constitution Bench in Bombay Dyeing and Manufacturing Co. Ltd. AIR 1958 SC 328 was not brought to the notice of the Supreme Court in V.R.Kalliyankutty's case (supra), though the judgment in Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur AIR 1978 SC 287 which, as already, noted made a reference to the said Constitution Bench judgment was relied upon by the State of Kerala.

19. On a close analysis of the judgment in V.R.Kalliyankutty's case (supra), the conclusion is irresistible that it turned on the interpretation of the provisions of the 1968 Act, in particular Sections 70(3) and 71 of the said Act. Therefore, in my considered view, the said judgment cannot be understood as laying down a different proposition from the one, which was laid down in Bombay Dyeing and Manufacturing Co. Ltd.'s case (supra).”

In Assam State Electricity Board's case (supra), the Full Bench of Gauhati High Court held as under:

“26. The law of limitation rests on the foundation of public interest. It has been held by Courts that long dormant claims have more of cruelty than justice in them. It is also recognized that with passage of time, the defendant may lose evidence to disprove a stale claim. It is also expected that persons with good causes of action should pursue them with reasonable diligence. In L.S. Synthetics (supra), the Apex Court reiterated that the provisions of Limitation Act, 1963 are not applicable to the proceedings before bodies other than Courts, such as a quasi-judicial tribunal or even an executing authority and that the Act primarily applies to civil proceedings or special criminal proceedings. The Apex Court also noted that even in relation to certain civil proceedings, the Limitation Act may not have any application.

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37. On a consideration of the authorities cited and the scheme of the Act, we are inclined to hold that the word “due” in the context of Section 24 must mean due and payable after a valid bill had been sent to the consumer. The liability to pay may arise when the electricity was consumed by the consumer, but it becomes due and payable only when the liability is quantified and the bill is raised. In our opinion, the ratio laid down in Kalliyankutty (supra) is not applicable to the facts of the instant case inasmuch as period of limitation could be set up by the debtor under the provisions of the Act of 1968. We are also of the opinion that the ratio enunciated in Hindustan Times Limited Vs. Union of India AIR 1998 SC 688 is applicable in absence of any period of limitation to compute and recover arrears by way of a bill.....”

Section 2(j) of the Limitation Act defines ‘period of limitation’ to mean the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act. Section 3 of the said Act provides that Sections 4 to 24 every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. The consistent view of the Hon’ble Supreme Court is that the Limitation Act is applicable to the proceedings before the civil court. Though there are some judgments as to whether, the Limitation Act would be applicable to the Tribunals or the other Authorities created under the Local or Special Acts.

In Sha Mulchand & Co. Ltd. Vs. Jawahar Mills Ltd. AIR 1953 SC 98, the four Judges’ Bench held that Article 181 of the Limitation Act, 1908, corresponding to the present Article 137 of the Limitation Act, 1963, govern only applications under the Code of Civil Procedure. Article applies only to the applications under the Code. The Bench observed as under:

“15. Learned advocate, however, strongly relies on Article 181 of the Limitation Act. That article has, in a long series of decisions of most, if not all, of the High Courts, been held to govern only applications under the Code of Civil Procedure. It may be that there may be divergence of opinion even within the same High Court but the preponderating view undoubtedly is that the article applies only to applications under the Code.”

The Hon'ble Supreme Court in L.S.Synthetics Limited Vs. Fairgrowth Financial Services Limited AIR 2005 SC 1209, while relying upon its earlier three Judges' Bench judgment reported as Nityananda, M. Joshi & another Vs. The Life Insurance Corporation of India & others AIR 1970 SC 209, held as under:

“33. The Limitation Act, 1963 is applicable only in relation to certain applications and not all applications despite the fact that the words "other proceedings" were added in the long title of the Act in 1963. The provisions of the said Act are not applicable to the proceedings before bodies other than courts, such as quasi-judicial tribunal or even an executive authority. The Act primarily applies to the civil proceedings or some special criminal proceedings. Even in a Tribunal, where the Code of Civil Procedure or Code of Criminal Procedure is applicable; the Limitation Act, 1963 per se may not be applied to the proceedings before it. Even in relation to certain civil proceedings, the Limitation Act may not have any application. As for example, there is no bar of limitation for initiation of a final decree proceedings or to invoke the jurisdiction of the Court under Section 151 of the Code of Civil Procedure or for correction of accidental slip or omission in judgments, orders or decrees; the reason being that these powers can be exercised even suo motu by the Court and, thus, no question of any limitation arises. [See Nityananda, M. Joshi and another Vs. the Life Insurance Corporation of India and others, AIR 1970 SC 209, Hindustan Times Ltd. Vs. Union of India and Others, (1998) 2 SCC 242 and Mt. Laxmibai Vs. Tukaram AIR 1930 Nagpur 206]

34. Even no period of limitation is prescribed in relation to a writ proceeding.

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40. A statute of limitation bars a remedy and not a right. Although a remedy is bared, a defence can be raised. In construing a special statute providing for limitation, consideration of plea of hardship is irrelevant. A special statute providing for special or no period of limitation must receive a liberal and broader construction and not a rigid or a narrow one. The intent and purport of the Parliament enacting the said Act furthermore must be given its full effect. We are, therefore, of the opinion that the provisions of the Limitation Act have no application, so far as directions required to be issued by the Special Court relating to the disposal of attached property, are concerned.”

Considering the provisions of the Limitation Act, 1908 the Constitution Bench in Bombay Dyeing and Manufacturing Company Ltd.’s case (supra) held that the statute of Limitation only bars the remedy, but does not extinguish the debt and that lapse of time does not extinguish the right of a person thereto. The Bench observed as under:

“19.On this, the question arises for consideration whether a debt which is time-barred can be the subject of transfer, and if it can be, how it can benefit the Board to take it over if it cannot be realised by process of law. Now, it is the settled law of this country that the statute of Limitation only bars the remedy but does not extinguish the debt. Section 28 of the Limitation Act provides that when the period limited to a person for instituting a suit for possession of any property has expired, his right to such property is extinguished. And the authorities have held-and rightly, that when the property is incapable of possession, as for example, a debt, the section has no application, and lapse of time does not extinguish the right of a person thereto. Under Section 25(3) of the Contract Act, a barred debt is good consideration for a fresh promise to pay the amount. When a debtor makes a payment without any direction as to how it is to be appropriated, the creditor has the right to appropriate it towards a

barred debt. (Vide Section 60 of the Contract Act). It has also been held that a creditor is entitled to recover the debt from the surety, even though a suit on it is barred against the principal debtor.....”

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29. It has been already mentioned that when a debt becomes time-barred, it does not become extinguished but only unenforceable in a court of law. Indeed, it is on that footing that there can be a statutory transfer of the debts due to the employees, and that is how the Board gets title to them. If then a debt subsists even after it is barred by limitation, the employer does not get, in law, a discharge therefrom. The modes in which an obligation under a contract becomes discharged are well-defined, and the bar of limitation is not one of them. The following passages in Anson’s Law of Contract, 19th Edition, page 383, are directly in point:

“At Common Law lapse of time does not affect contractual rights. Such a right is of a permanent and indestructible character, unless either from the nature of the contract, or from its terms, it be limited in point of duration.”

“But though the right possesses this permanent character, the remedies arising from its violation are withdrawn after a certain lapse of time; interest reipublicae ut sit finis litium. The remedies are barred, though the right is not extinguished.”

Another Constitution Bench in Tilokchand and Motichand & others Vs. H.B.Munshi & another AIR 1970 SC 898 was considering the applicability of the Limitation Act to a petition under Article 32 of the Constitution. In the said case, Hon’ble Mr. Justice R.S.Bachawat speaking for the majority observed as under:

“37-A. Similarly this Court acts on the analogy of the statute of limitation in respect of a claim under Article 32 of the Constitution though such claim is not the subject of any express statutory bar of limitation. If the right to a property is extinguished by prescription under Section 27 of the Limitation Act, 1963 the petitioner has no subsisting right which can be enforced under Article 32 (see Sobhraj Odharmal v. State of Rajasthan AIR 1963 SC 640. In other cases

where the remedy only and not the right is extinguished by limitation, it is on grounds of public policy that the Court refuses to entertain stale claims under Article 32.”

Hon’ble Mr. Justice M. Hidayatullah also agreed with the said view, when it was observed as under:

“9. In India we have the Limitation Act which prescribes different periods of limitation for suits, petitions or applications. There are also residuary articles which prescribes limitation in those cases where no express period is provided. If it were a matter of a suit or application, either an appropriate article or the residuary article would have applied. But a petition under Article 32 is not a suit and it is also not a petition or an application to which the Limitation Act applies.”

In an another judgment reported as the Commissioner of Sales Tax, U.P. Lucknow Vs. M/s Parson Tools and Plants, Kanpur, (1975) 4 SCC 22, the Hon’ble Supreme Court held that the provisions of the Limitation Act cannot be applied to the proceedings under the U.P.Sales Tax Act. It has been observed as under:

“9. The above observations were quoted with approval by this Court in *Jagannath Prasad vs. State of U.P. AIR 1963 SC 416* and it was held that a Sales Tax Officer under U.P. Sales Tax Act, 1948 was not a *court* within the meaning of Section 195 of the Code of Criminal Procedure although he is required to perform certain quasi-judicial functions. The decision in *Jagannath Prasad case* it seems, was not brought to the notice of the High Court. In view of these pronouncements of this Court, there is no room for argument that the Appellate Authority and the Judge (Revisions) Sales tax exercising jurisdiction under the Sales Tax Act, are “courts”. They are merely Administrative Tribunals and “not courts”. Section 14, Limitation Act, therefore, does not, in terms apply to proceedings before such tribunals.

10. Further question that remains is: Is the general *principle* underlying Section 14(2) applicable on grounds of justice, equity and

good conscience for excluding the time spent in prosecuting the abortive applications under Rule 68(6) before the Appellate Authority, for computing limitation for the purpose of revision applications. Mr Karkhanis maintains that the answer to this question, also, must be in the negative because definite indications are available in the scheme and language of the Sales Tax Act, which exclude the application of Section 14(2) of the Limitation Act, even in principle or by analogy. Learned counsel further submits that the *ratio* of the Privy Council decision in *Ramdutt Ramkissen Dass v. F.D. Sasson & Co. AIR 1929 PC 103* relied upon by the majority judgment of the High Court is not applicable for computing limitation prescribed under the Sales Tax Act. Reference in this connection has been made to *Purshottam Dass Hassaram v. Impex (India) Ltd. AIR 1954 Bom. 309* wherein a Division Bench of the Bombay High Court explained the rule of decision in *Ramdutt case* and found it to be inapplicable for the purpose of computing limitation for applications under the Arbitration Act, 1940.

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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 vs. 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*.

17. In the light of what has been said above, we are of the opinion that the High Court was in error in importing whole hog the principle of Section 14(2) of the Limitation Act into Section 10(3-B) of the Sales Tax Act.”

The same view was echoed by the Hon’ble Supreme Court in its later judgment reported as Punjab National Bank & others Vs. Surendra Prasad Sinha AIR 1992 SC 1815 holding that the time barred debt does not cease to exist by reason of Section 3 of the Limitation Act, 1963. That right can be exercised in any other manner than by means of a suit. It was held to the following effect:

“4. Admittedly, as the principal debtor did not repay the debt, the bank as creditor adjusted at maturity of the F.D.R., the outstanding debt due to the bank in terms of the contract and the balance sum was credited to the Saving Banks account of the respondent. The rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act 36 of 1963, for short "the Act" only bars the remedy, but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation. Only exception in which the remedy also becomes barred by limitation is that right itself is destroyed. For example under Section 27 of the Act a suit for possession of any property becoming barred by limitation, the right to property itself is destroyed. Except in such cases which are specially provided under the right to which remedy relates in other case the right subsists. Though the right to enforce the debt by judicial process is barred under Section 3 read with the relevant Article in the schedule, the right to debt remains. The time barred debt does not cease to exist by

reasons of Section 3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed. What Section 3 refers is only to the remedy but not to the right of the creditors. Such debt continues to subsists so long as it is not paid. It is not obligatory to file a suit to recover the debt. It is settled law that the creditor would be entitled to adjust, from the payment of a sum by a debtor, towards the time barred debt. It is also equally settled law that the creditor when he is in possession of an adequate security, the debt due could be adjusted from the security in his possession and custody.....”

The judgments in Bombay Dyeing and Manufacturing Company Ltd.’s case (supra) and Tilokchand and Motichand’s case (supra) were not brought to the notice of the Bench deciding V.R.Kalliyanikutty’s case (supra). Though Tilokchand and Motichand’s case (supra) deals with extension of the Limitation Act to the writ proceedings, but it has been held that the Limitation Act is applicable only to a suit or an application to a court. Therefore, in other words, the provisions of the Limitation Act are not applicable to proceedings, which are not suits, appeals or applications.

There are some other judgments such as New Delhi Municipal Committee Vs. Kalu Ram (1976) 3 SCC 407, wherein it was held that a creditor whose suit was barred by limitation is free to invoke other legal remedies permitting him to enforce his claim. In Prakash H. Jain Vs. Ms. Marie Fernandes AIR 2003 SC 4591, the Hon’ble Supreme Court held that the Rent Controller under the Maharashtra Rent Control Act, 2000 has no power to condone delay as it is not a Court, thus the provisions of the limitation Act were found to be not applicable to the proceedings before the Rent Controller. Similar is the judgment of the Hon’ble Supreme Court in Om Prakash v. Ashwani Kumar Bassi, (2010) 9 SCC 183. On the other hand, in

Kerala State Electricity Board Vs. T.P.Kunhaliumma (1976) 4 SCC 634, it was held that Article 137 of the Limitation Act is applicable to an application filed under Section 20 of the Arbitration Act, 1940 as such application is filed before the Court.

In Consolidated Engg. Enterprises Vs. Irrigation Department (2008) 7 SCC 169, a three Judges' Bench held that the Limitation Act will not apply to appeals or applications before the tribunals, unless expressly provided. It has been held as under:

“43. Where the Schedule to the Limitation Act prescribes a period of limitation for appeals or applications to any court, and the special or local law provides for filing of appeals and applications to the court, but does not prescribe any period of limitation in regard to such appeals or applications, the period of limitation prescribed in the Schedule to the Limitation Act will apply to such appeals or applications and consequently, the provisions of Sections 4 to 24 will also apply. Where the special or local law prescribes for any appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, then the provisions of Section 29(2) will be attracted. In that event, the provisions of Section 3 of the Limitation Act will apply, as if the period of limitation prescribed under the special law was the period prescribed by the Schedule to the Limitation Act, and for the purpose of determining any period of limitation prescribed for the appeal or application by the special law, the provisions contained in Sections 4 to 24 will apply to the extent to which they are not expressly excluded by such special law. The object of Section 29(2) is to ensure that the principles contained in Sections 4 to 24 of the Limitation Act apply to suits, appeals and applications filed in a court under special or local laws also, even if it prescribes a period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application of any or all of those provisions.

44. It may be noticed at this juncture that the Schedule to the Limitation Act prescribes the period of limitation only to proceedings

in courts and not to any proceeding before a tribunal or quasi-judicial authority. Consequently Sections 3 and 29(2) of the Limitation Act will not apply to proceedings before the tribunal. This means that the Limitation Act will not apply to appeals or applications before the tribunals, unless expressly provided.”

The Hon’ble Supreme Court in State of M.P. Vs. Anshuman Shukla, (2008) 7 SCC 487, referred to Administrative Law (2nd Edition) by Durga Das Basu and observed that the root of the word ‘tribunal’ is a Latin word meaning a raised platform on which the seats of the tribunes or the magistrates are placed. These administrative tribunals or the administrative courts are authorities outside the ordinary court system which interpret and apply the laws when acts of public administration are attacked in formal suits or by other established methods. In essence the administrative tribunals may be called a specialized court of law, although it does not fulfil the criteria of a law court as is understood inasmuch as it cannot like an ordinary law court entertain suits on various matters, including the matter relating to the vires of legislation. However, such a tribunal like ordinary law courts, as found hereinbefore, are bound by the rules of evidence and procedure as laid down under the law and are required to decide strictly, as per the law. Thus, all courts are tribunals but all tribunals are not courts.

In the light of the aforesaid judgments, we find that the Limitation Act is applicable only to the Courts or to the Tribunals having the trappings of the Court, but in respect of proceedings under any special or local Act, if there is no provision of limitation of initiation of proceedings, the same cannot be applied on the analogy of principle of Limitation Act, as the said Act will not be applicable to such proceedings in view of Section 3 read

with Section 29 of the said Act.

The Haryana Public Moneys (Recovery of Dues) Act, 1979 contemplates recovery of certain dues as arrears of land revenue. Section 3(1) of the Act prescribes that what is recoverable is ‘any sum’, which does not have any indication of any period of time. Similarly, under Section 32(G) of the State Financial Corporation Act, 1951, the power of recovery to the financial institution is of ‘any amount due’. Therefore, either under the Haryana Public Moneys (Recovery of Dues) Act, 1979 or the State Financial Corporation Act, 1951, where the recovery is being sought without the assistance of a Court or a Tribunal having the trappings of the Court, the period of limitation as provided under the Limitation Act, 1963 is not applicable.

Thus, we respectfully agree with the following view taken by a Division Bench of this Court in Jagdish Rai’s case (supra):

“10. A perusal of the aforementioned provision makes it evident that when the Financial Corporation or any person authorized by it in writing makes an application to the State Government for recovery of the amount due to it then on the satisfaction of the State Government or any such authority specified in this behalf, may issue a certificate for that amount to the Collector. The amount so due is then to be recovered in the same manner as an arrear of land revenue. This provision was added in the year 1985 by the Amendment Act 43 of 1985. There is no reference either in Section 32G of the Act or any other section to the provisions of Limitation Act, which implies the intention of the Legislature to exclude the application of the aforementioned statute. It is well settled principle of interpretation of statute that the intention of Legislature is either expressed or could be inferred from necessary intendment. In that regard reliance may be placed on Constitution Bench judgments of Hon’ble the Supreme Court in the cases of Shyam Sunder v. Ram Kumar, (2001) 8 SCC 24 and R. Rajagopal Reddy v. Padmini Chandra-sekharan, (1995) 2 SCC 630. We are also fortified in our view by the judgment of Hon’ble the

Supreme Court in the case of Hindustan Times Ltd. (supra). The Supreme Court in the aforementioned judgment had considered the question as to whether the provisions of Limitation Act would apply to the 1952 Act. Rejecting the arguments that the Limitation Act was to apply, it has been held as under:-

“19. Now the Act does not contain any provision prescribing a period of limitation for assessment or recovery of damages. The monies payable into the Fund are for the ultimate benefit of the employees but there is no provision by which the employees can directly recover these amounts. The power of computation and recovery are both vested in the Regional Provident Fund Commissioner or other officer as provided in Section 14-B. Recovery is not by way of suit. Initially, it was provided that the arrears could be recovered in the same manner as arrears of land revenue. But by Act 37 of 1953 Section 14-B was amended providing for a special procedure under Sections 8-B to 8-G. By Act 40 of 1973 Section 11 was amended by making the amount a first charge on the assets of the establishment if the arrears of employee’s contribution were for a period of more than 6 months. By Act 33 of 1988, the charge was extended to the employee’s share of contribution as well.

20. In spite of all these amendments, over a period of more than thirty years, the legislature did not think fit to make any provision prescribing a period of limitation. This in our opinion is significant and it is clear that it is not the legislative intention to prescribe any period of limitation for computing and recovering the arrears. As the amounts are due to the Trust Fund and the recovery is not by suit, the provisions of the Indian Limitation Act, 1963 are not attracted. In *Nityananda M. Jishi v. LIC of India* (1969) 2 SCC 199, it has been held that the Limitation Act, 1963 has no application to Labour Courts and, in our view, that principle is equally applicable to recovery by the authority concerned under Section 14-B.”

Thus, we are of the opinion that the Limitation Act is not applicable to the recovery process under the Act including the process under Section 32G of the SFC Act.

The reliance on Mohamad Kavi Mohamad Amin's case (supra), to contend that where no period of limitation is prescribed, the power of recovery could be exercised within a reasonable time, is of no help to the facts of the present case. In the said case, it was the exercise of suo- motu power to revise an order under Section 84C of the Bombay Tenancy and Agricultural Lands Act, 1976. The revisional jurisdiction even in the absence of any limitation can be exercised only within a reasonable time. Such judgment does not deal with the right of recovery under a special or a local law not prescribing period of limitation. Therefore, there is no extension of principle of reasonable time to recover public money either under the Act or the SFC Act.

In respect of question as to whether the proceedings under Section 29 alone can be initiated against guarantor, reference may be made to the Full Bench judgment of this Court in CWP No.7446 of 2011 titled 'Shiv Charan Singh Vs. Haryana State Industrial & Infrastructure Development Corporation Limited and another' decided on 09.01.2012. In the aforesaid case, it was held that proceedings under Section 29 of the Act can be initiated only against an industrial concern. Section 31 of the SFC Act provides that proceedings under said section are without prejudice to the provisions of Section 29 of the said Act. Section 32G permits the Financial Corporation or any person authorized by it in writing in this behalf may, without prejudice to any other mode of recovery, to make an application to the State Government.

The proceedings under Section 32G are without prejudice to any other mode

of recovery. Thus, the proceedings under Section 32G of the SFC Act can be initiated against an individual. In fact, such is the view of the Hon'ble Supreme Court in a judgment reported as Karnataka State Financial Corporation Vs. N. Narasimahaiah & others (2008) 5 SCC 176, when it held as follows:

“37. The legislative intent, in our opinion, is manifest. The intention of Parliament in enacting Sections 29 and 31 of the Act was not similar. Whereas Section 29 of the Act consists of the property of the industrial concern, Section 31 takes within its sweep both the property of the industrial concern and as that of the surety. None of the provisions control each other. Parliament intended to provide an additional remedy for recovery of the amount in favour of the Corporation by proceeding against a surety only in terms of Section 31 of the Act and not under Section 29 thereof.

The effect—of

38. A corporation, after coming into force of Section 32-G of the Act has four remedies viz.:

- (i) to file a suit;
- (ii) to take recourse to Section 29;
- (iii) to take recourse to Section 31; and
- (iv) to take recourse to Section 32-G of the Act.

39. In *A.P. State Financial Corpn. v. Gar Re-Rolling Mills (1994) 2 SCC 647* this Court held: (SCC p. 663, para 19)

“19. The right vested in the Corporation under Section 29 of the Act is besides the right already possessed at common law to institute a suit or the right available to it under Section 31 of the Act.”

Section 32-G of the Act provides for an additional remedy. It is, however, interesting to note that while upholding the right of the Corporation to opt for either Section 29 or Section 31 of the Act, it was opined: (*A.P. State Financial Corpn. Case (supra)*, SCC pp. 660-61, para 15)

“15. ... In our opinion the Corporation can initially take recourse to Section 31 of the Act but withdraw or abandon it

at *any stage* and take recourse to the provisions of Section 29 of the Act, which section deals with not only the rights but also provides a self-contained remedy to the Corporation for recovery of its dues. If the Corporation chooses to take recourse to the remedy available under Section 31 of the Act and pursues the same to the logical conclusion and obtains an order or decree, it may thereafter execute the order or decree, in the manner provided by Sections 32(7) and (8) of the Act. The Corporation, however, may withdraw or abandon the proceedings at that stage and take recourse to the provisions of Section 29 of the Act.”

(emphasis in original)

40. Right to property, although no longer a fundamental right, is still a constitutional right. It is also human right. In absence of any provision either expressly or by necessary implication, depriving a person therefrom, the court shall not construe a provision leaning in favour of such deprivation. Recently, this Court in *P.T. Munichikkanna Reddy v. Revamma* (2007) 6 SCC 59 dealing with adverse possession opined: (SCC p. 77, para 43)

“43. Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quite visible from the judgement of *Beaulane Properties Ltd. v. Palmer* (2005) 3 WLR 554 and *JA Pye (Oxford) Ltd. v. United Kingdom* (2005) 49 ERG 90. The Court herein tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights.”

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45. It is now well settled that when more than one remedy is provided for an option is given to a suitor to opt for one or the other remedy. Such a provision is not ultra vires as has been held by this Court in *Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay* (1974) 2 SCC 402, *Director of Industries v. Deep Chand Agarwal* (1980) 2 SCC 332 and *Delhi Financial Corporation vs. Rajiv Anand* (2004) 11 SCC 625.”

Thus, a Corporation has multiple remedies i.e. to file a suit; to take recourse to Section 29; to take recourse to Section 31; to take recourse to Section 32G of the SFC Act as well as under Section 3 of the Haryana Public Moneys (Recovery of Dues) Act, 1979. In terms of N. Narasimahaiah's case (supra), the proceedings against the guarantor cannot be initiated under Section 29 of the SFC Act, whereas proceedings under Section 31 of the said Act can be initiated against the industrial concern as well against the borrower. Therefore, the Corporation can always decide to take recourse to proceedings under Section 29 and/or under Section 31 against the industrial concern and against the borrower. The remedy under Section 32G is without prejudice to any other remedy under the Act. Therefore, the Corporation is at liberty to initiate proceedings for recovery of public dues even without withdrawing the proceedings under Sections 29 and 31 of the SFC Act, such power being without prejudice to the provisions of Sections 29 and 31. On the other hand, the Haryana Public Moneys (Recovery of Dues) Act, 1979 also confers another provision for recovery of public dues as arrears of land revenue. This is still an additional remedy, which can be exercised by the Corporation at any stage.

In a judgment reported as Lachhman Dass Vs. State of Punjab, AIR 1963 SC 222, the right to recovery public money by a special procedure

was upheld holding that it serves public purpose and is constitutionally permissible. It was held that When a State establishes a Bank, it is the funds of the State to which the tax payers contribute that are utilized for running it. The State Bank differs from Banks established by private agencies in which the working capital is subscribed by individuals and when a State does establish a Bank, it is with a view to confer benefits on the general public, such as, for example, developing commerce and industry within its territories. On the other hand when private agencies establish a Bank it is as an investment for those who subscribe capital to it. Thus, a Bank established by a State has got distinctive features which differentiate it from the other Banks and for purpose of Article 14 it forms a category in itself. It was held that a law which provides for State funds being advanced to customers through State Bank can also provide for its being recovered in the same manner as revenue. It was held as follows:

“22. It cannot be disputed that the impugned Act and the rules framed thereunder put Patiala State Bank in a position different from that of the other Banks under the ordinary law. The question is whether this difference amounts to discrimination within Article 14. The contention of the respondents is that Patiala State Bank forms a category in itself and the law which prescribes a special procedure in relation to the settlement of disputes between that Bank and its customers is valid because it is based on a classification having a just relation to the objects of the legislation. It is the correctness of this contention that now falls to be considered. When a State establishes a Bank, it is the funds of the State to which the tax payers contribute that are utilised for running it. In this respect a State Bank differs from Banks established by private agencies in which the working capital is subscribed by individuals. It should be noted that it is not part of the governmental functions of a State to run a Bank, and when a State does establish a Bank, it is with a view to confer benefits on the

general public, such as, for example, developing commerce and industry within its territories. On the other hand when private agencies establish a Bank it is as an investment for those who subscribe capital to it. Thus a Bank established by a State has got distinctive features which differentiate it from the other Banks and for purpose of Article 14 it forms a category in itself. The law is now well settled that while Article 14 prohibits discriminatory legislation directed against one individual or class of individuals, it does not forbid reasonable classification, and that for this purpose even one person or group of persons can be a class. Professor Willis says in his *Constitutional Law* p. 580 “a law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it”. This statement of the law was approved by this Court in *Chiranjit Lal Chowdhury v. Union of India AIR 1951 SC 41*. There the question was whether a law providing for the management and control by the Government, of a named company, the Sholapur Spinning & Weaving Company Ltd. was bad as offending Article 14. It was held that even a single company might, having regard to its features, be a category in itself and that unless it was shown that there were other companies similarly circumstanced, the legislation must be presumed to be constitutional and the attack under Article 14 must fail. In *Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar AIR 1958 SC 538* this Court again examined in great detail the scope of Article 14, and in enunciating the principles applicable in deciding whether a law is in contravention of that Article observed:

“that a law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others that single individual may be treated as a class by himself.”

23. On the principles stated above we are of the opinion that Patiala State Bank is a class by itself and it will be within the power of the State to enact a law with respect to it. We are also of the opinion that the differentia between Patiala State Bank and the other Banks has a rational bearing on the object of the legislation. If the funds of the Patiala State Bank are State funds, a law which assimilates the procedure for the determination and recovery of amounts due to the

Bank from its customers to that prescribed for the determination and recovery of arrears of revenue must be held to have a just and reasonable relation to the purpose of the legislation. A law which provides for State funds being advanced to customers through State Bank can also provide for its being recovered in the same manner as revenue.....”

Thus, we find that special summary procedure for the recovery of public money serves public purpose and payment of such public money cannot be permitted to be scuttled in the manner raised.

In view of the above discussion, we do not find that the matter requires consideration by the larger Bench. Consequently, the present writ petitions are dismissed.

[HEMANT GUPTA]
JUDGE

24.04.2015
Vimal

[LISA GILL]
JUDGE