IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : 24.02.2023
Pronounced on : 01.06.2023

1. CWP-1187-2017

Punjab State Co-op Supply Marketing Federation (Marked) ....Petitioner

versus

Financial Commissioner (Co-operation), Punjab and others .... Respondents

2. CWP-1188-2017

Punjab State Co-op Supply Marketing Federation (Marked) ....Petitioner

versus

Financial Commissioner (Co-operation), Punjab and others .... Respondents

3. CWP-1189-2017

Punjab State Co-op Supply Marketing Federation (Marked) ....Petitioner

versus

Financial Commissioner (Co-operation), Punjab and others .... Respondents

4. CWP-3937-2017

Punjab State Co-op Supply Marketing Federation (Marked) ....Petitioner

versus

The Special Secretary (Co-operation), Punjab and others .... Respondents

5. CWP-3948-2017

Punjab State Co-op Supply Marketing Federation (Marked) ....Petitioner

versus

Financial Commissioner (Co-operation), Punjab and others .... Respondents

6. CWP-4144-2017

Punjab State Co-op Supply Marketing Federation (Marked) ....Petitioner

versus

The Special Secretary (Co-op), Punjab and others .....Respondents

7. CWP-6387-2017

Punjab State Co-op Supply Marketing Federation (Marked) ....Petitioner

versus

Additional Registrar (I) Cooperative Societies, Punjab and others ...Respondents

8. CWP-24541-2017

Punjab State Co-op Supply Marketing Federation (Marked) ....Petitioner

versus

Registrar Cooperative Societies, Punjab and others .....Respondents

9. CWP-19552-2019

The Punjab State Co-op Supply and Marketing Federation Ltd. (Marked)

....Petitioner

versus

Assistant Registrar Cooperative Societies and others .....Respondents

10. CWP-33961-2019

Punjab State Cooperative Supply and Marketing Federation Ltd. (Marked)

.....Petitioner

versus

Deputy Registrar Cooperative Societies and others .....Respondents

11. CWP-9478-2022

The Punjab State Co-operative Supply and Marketing Federation Ltd. (Markfed)

....Petitioner

versus

Bisakhi Ram (F.O.) Retired and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Abhishek Arora, Advocate and
Ms. Ananya Ahluwalia, Advocate
for the petitioner(s) in CWP Nos.1187, 1188, 1189, 3937, 3948, 4144, 6387 and 2451 of 2017.

Mr. Amanpreet Singh, Advocate
for the petitioner in CWP-33961-2019.

Mr. Vikas Singh, Advocate
for the petitioner in CWP-9478-2022.

Mr. A.P. Singh, Advocate
for the petitioner in CWP-33961-2019.

Mr. Tahaf Bains, Advocate for
respondents No.4 and 5 in CWP-3948-2017.

Mr. H.S. Bedi, Advocate for
the respondents No.4 and 5 in CWP Nos.3937 and 4144 of 2017.

Mr. Raman Kaplish, Advocate for
Mr. Shiv Kumar, Advocate
for the respondent in CWP-9478-2022.

Mr. Inderpreet Singh Kang, AAG, Punjab.

******

PANKAJ JAIN, J. (Oral)

The afore-captioned 11 writ petitions involve common question of law based upon common set of facts. For convenience, facts are being taken from CWP-1187-2017.

2. Petitioner is a co-operative society. Respondent No.4 was working as Field Officer with the petitioner and was custodian of Wheat stocks for the year 1998-99, 2000-01. Petitioner-Department claims that due to negligence of respondent No.4, the petitioner suffered a loss of Rs.69,83,741/- owing to shortage and rate

difference in the wheat crop for the crop years, he was custodian of the crop. Arbitration proceedings under Section 55-56 of the Punjab Cooperative Societies Act, 1961 (in short '1961 Act') were initiated against respondent No.4 for recovery of 50% of total loss (50% of 6983741 = 3491870.50) alongwith interest @ 18%. Arbitrator-respondent No.3 dismissed the claim petition and answered the arbitral dispute in favour of respondent No.4. Aggrieved by the award, petitioner preferred appeal before Registrar Cooperative Societies against Award (P-1). Section 68 of the 1961 Act provides for appeal. Registrar Cooperative Societies vide order dated 04.12.2013 (P-2) has dismissed the appeal preferred by the petitioner being barred by delay holding as under:-

> "xx xx xx
> After hearing the arguments of the counsels for both the parties, keeping in view the record available in the file and judgments passed by the Hon'ble Punjab and Haryana High Court/Financial Commissioner Cooperation, I have come to this conclusion that the appellant were liable to file the appeal within 60 days under section 68 (2) of the Punjab Cooperative Societies Act, 1961 and this appeal has been filed after 321 days of the limitation period. Therefore, being time-barred, this appeal is hereby rejected. Decision is pronounced in the open court."

3. In all these writ petitions, the disputes relate to recovery proceedings initiated by the petitioner against the employees for having caused loss. In all these matters, the appeals preferred by the petitioner have been filed beyond prescribed period. The same are accompanied by applications seeking condonation of delay. The appeals have been dismissed holding that there is no provision contained in the 1961 Act to condone the delay. It has been held that in the absence of any enabling provision, the authority has no power to condone the delay and thus sufficient cause as pleaded cannot be looked into.

4. Counsel for the petitioner has pressed into service provision contained in Section 29(2) of the Limitation Act to claim that since 1961 Act being Special/Local law provides for appeal, a period of limitation is different from the period prescribed by the schedule appended to the Limitation Act, 1963, the provision contained in

Section 4 to 24 (inclusive) shall apply as there is no express exclusion thereof by 1961 Act.

5. Reliance is being placed upon three bench judgment rendered by Apex Court in ***Civil Appeal No.8276/8277 of 2019,*** titled as ***'Superintending Engineer/Dehar Power House Circle BBMB vs. Excise and Taxation Officer, Sunder Nagar'*** decided on 25.10.2019.

6. Per contra, counsels representing the respondents have very eloquently submitted that as per settled law, there is no provision enabling the Appellate Authority to condone delay in filing the appeal. The matter is fully covered by decision rendered by Division Bench of this Court in ***LPA-755-2013 decided on 13.07.2015*** titled as ***'Balbir Singh Jammu vs. Financial Commissioner, Cooperation, Punjab and others',*** wherein it was held that Section 68 of the 1961 Act does not empower the Appellate Authority to condone the delay beyond the prescribed period. Further, reliance is being placed upon ratio of law laid down by Apex Court in ***M/s. Bhagwandas B. Ramchandani vs. British Airways 2022(11) Scale 566*** to submit that the exclusion as contemplated under Section 29(2) has to be gathered from the scheme of the Act and the same depends upon each and every case. The 1961 Act being a complete code governing the issues related to Cooperative Societies, the Limitation Act cannot be read into the same and the exclusion of the same has to be inferred and thus the present writ petitions deserve to be dismissed.

7. I have heard counsel for the parties and have gone through the records of the case.

8. It will be apposite to first peruse scheme of 1961 Act under which the present proceedings have been initiated. Chapter VIII thereof deals with settlement of disputes. The same reads as under:-

> **"Section 55 - Disputes which may be referred to arbitration :-** (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or

the business of a co-operative society arises-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or

(d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society; such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purpose of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of co-operative society, namely -

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not ;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not; and

(c) any dispute arising in connection with the election of any officer of the society.

(3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a co-

operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

SECTION – 56

56. Reference of disputes to arbitration :- (1) The Registrar may, on receipt of the reference of dispute under section 55.-

(a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf, or

(c) refer it for disposal to one arbitrator.

(2) The Registrar may withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause (c) of that sub-section and decide it himself or refer the same to another arbitrator for decision.

(3) The Registrar or any other person to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice.

9. Chapter 11 provides for appeals and revision. Section 68 which is relevant for the adjudication of the present case reads as under:-

"68. Appeals.- (1) An appeal shall lie under this section against-

xx xx xx xx

(h) any decision or award made under section 56;

xx xx xx xx

[2][(2) An appeal against any decision or order under sub-section (1) shall be made within sixty days from the date of decision or order,

(a) if the decision or order was made by the Assistant Registrar to the Deputy Registrar;

(b) if the decision or order was made by the Deputy Registrar to the Registrar or such Additional Registrar or Joint Registrar as may be authorised by the Registrar in this behalf;

(c) if the decision or order was made by the Joint Registrar or Additional Registrar, to the Registrar;

(d) if the decision or order was made by the Registrar, to the Government;

(e) if the decision or order was made by any other person, to the Registrar or such Additional Registrar or Joint Registrar or Deputy Registrar or Assistant Registrar as may be authorised by the Registrar in this behalf.

(3) No appeal shall lie under this section from any decision or order made by any authority in appeal.

(4) Any appeal under sub-section (1) pending immediately before the commencement of the Punjab Co-operative Societies (Amendment) Act, 1969, before any authority shall stand transferred to the authority to whom such appeal lies on such commencement.].

10. As per Section 68(2), the appeal against any decision or order under sub-section 1 has to be made within 60 days from the date of decision or order. The Act is silent on the issue of condoning delay in filing appeal. Counsel for the petitioner relies upon Section 29(2) of the Limitation Act, 1963 to make provisions of Section 5 applicable to the appellate proceedings under the 1961 Act.

11. The appellate authority under the provisions of 1961 Act being not a Court, provisions of Section 29(2) of the Limitation Act will not be applicable. Thus, the contention raised by counsel for the petitioner(s) cannot be accepted.

12. Having held that, does it mean that the authority entertaining the appeal under Section 68 of the 1961 Act is precluded from entertaining appeal beyond 60 days even when the appellant has sufficient cause to satisfy the Court for not preferring the appeal within 60 days?

13. Counsel for the respondents have relied upon judgment dated 13.07.2015 passed by Division Bench of this Court in ***Balbir Singh Jammu's case (supra)*** to contend that once there is no provision in the Act enabling the Appellate Authority to condone the delay even if the facts and circumstances of the case so warrants such power cannot be exercised. The Division Bench relied upon law laid down in

Commissioner of Customs & Central Excise vs. Hongo India (P) Ltd. and another 2009 (5) SCC 791 and ***Popat Bahiru Govardhane Etc. vs. Special Land Acquisition Officer and another 2013 (10) SCC 765.***

14. The precise issue regarding competence of the Courts to condone the delay in filing of appeal in the absence of any enabling provision alongwith the law laid down in ***Hongo's case (supra)*** was reconsidered by three judges bench of Supreme Court in the case of ***Government of Maharashtra vs. M/s. Borse Brothers Engineers and Contractors Pvt. Ltd. Reported as 2021 (6) SCC 460***. The Apex Court specifically holding that Hongo's case was distinguishable and interpreting somewhat similar provision as is contained in the present case held as under:-

> "xx xx xx
>
> 34. The vexed question which faces us is whether, first and foremost, the application of section 5 of the Limitation Act is excluded by the scheme of the Commercial Courts Act, as has been argued by Dr. George. The first important thing to note is that section 13(1A) of the Commercial Courts Act does not contain any provision akin to section 34(3) of the Arbitration Act. Section 13(1A) of the Commercial Courts Act only provides for a limitation period of 60 days from the date of the judgment or order appealed against, without further going into whether delay beyond this period can or cannot be condoned.
>
> 35. It may also be pointed out that though the object of expeditious disposal of appeals is laid down in section 14 of the Commercial Courts Act, the language of section 14 makes it clear that the period of six months spoken of is directory and not mandatory. By way of contrast, section 16 of the Commercial Courts Act read with the Schedule thereof and the amendment made to Order 8, Rule 1 of the CPC, would make it clear that the defendant in a suit is given 30 days to file a written statement, which period cannot be extended beyond 120 days from the date of service of the summons; and on expiry of the said period, the defendant forfeits the right to file the written statement and the court cannot allow the written statement to be taken on record. This provision was enacted as a result of the judgment of this Court in Salem Advocate Bar Assn. (2) v. Union of India.
>
> 36. In a recent judgment of this Court namely, ***SCG Contracts***

(India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd., a Division Bench of this Court referred to the aforesaid amendment and its hard and fast nature as follows: (SCC pp.214-15, paras 8-11)

> "8. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23-10-2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order 5, Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:
>
> > "Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record."
>
> Equally, in Order 8, Rule 1, a new proviso was substituted as follows:
>
> > "Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record."
>
> This was re-emphasised by re-inserting yet another proviso in Order 8, Rule 10 CPC, which reads as under:
>
> > ***"10. Procedure when party fails to present written statement called for by court.***-Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the

court, as the case may be, the court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:

Provided further that no court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement."

A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order 8, Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.

9. In ***Bihar Rajya Bhumi Vikas Bank Samiti***, a question was raised as to whether section 34(5) of the Arbitration and Conciliation Act, 1996, inserted by Amending Act 3 of 2016 is mandatory or directory. In para 11 of the said judgment, this Court referred to ***Kailash v. Nanhku***, referring to the text of Order 8, Rule 1 as it stood pre the amendment made by the Commercial Courts Act. It also referred (in para 12) to *Salem Advocate Bar Assn. (2) v. Union of India*, which, like the *Kailash* judgment, held that the mere expression "shall" in Order 8, Rule 1 would not make the provision mandatory. This Court then went on to discuss in para 17 of *State v. N.S. Gnaneswaran*, in which section 154(2) of the Code of Criminal Procedure, 1973 was held to be directory inasmuch as no consequence was provided if the section was breached. In para 22 by way of contrast to Section 34, Section 29-A of the Arbitration Act was set out. This Court then noted in para 23 as under: (*Bihar Rajya Bhumi Vikas Bank Samiti case*, SCC p. 489)

"23. It will be seen from this provision that, unlike Sections 34(5) and (6), if an award is made beyond the stipulated or extended period contained in the section, the consequence of the mandate of the arbitrator being terminated is expressly provided. This provision is in stark contrast to Sections 34(5) and (6) where, as has been stated hereinabove, if the period for deciding the application under Section 34 has elapsed, no consequence is provided. This is one more indicator that the same Amendment Act, when it provided time periods in different situations, did so intending different consequences."

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

11. We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order 8, Rule 1 on the filing of written statement under Order 8, Rule 1 has now been set at naught."

37. By way of contrast, there is no such provision contained in section 13 of the Commercial Courts Act. The judgment in *Hongo*, strongly relied upon by Dr. George, is clearly distinguishable. In *Hongo*, Section 35-H of the Central Excise Act provided for a period of 180 days for filing a reference application to the High Court. The scheme of the Central Excise Act was adverted to in paragraph 15 of the judgment, which reads as follows: (SCC p.796)

"15. We have already pointed out that in the case of appeal to the Commissioner, Section 35 provides 60 days' time and in addition to the same, the Commissioner has power to condone the delay up to 30 days, if sufficient cause is shown. Likewise, Section 35-B provides 90 days' time for filing appeal to the Appellate Tribunal and sub-section (5) therein enables the Appellate Tribunal to condone the delay irrespective of the number of days, if sufficient cause is shown. Likewise, Section 35-EE which provides 90 days' time for filing revision by the Central Government and, proviso to the same enables the revisional authority to condone the delay for a further period of 90 days, if sufficient cause is shown, whereas in the case of appeal to the High Court under Section 35-G and reference to the High Court under Section 35-H of the Act, total period of 180 days has been provided for availing the remedy of appeal and the reference. However, there is no further clause empowering the High Court to condone the delay after the period of 180 days."

38. The Court then went on to observe: (*Hongo case,* SCC pp. 801-802, paras 33-36)

"33. Even otherwise, for filing an appeal to the Commissioner, and to the Appellate Tribunal as well as revision to the Central Government, the legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided with to enable the Commissioner and the other party to avail the same. We are of the view that the legislature provided sufficient time, namely, 180 days for filing reference to the High Court which is more than the period prescribed for an appeal and revision.

34. Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted, what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to the High Court.

35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is 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 considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.
>
> *36.* The scheme of the Central Excise Act, 1944 supports the conclusion that the time-limit prescribed under Section 35-H(1) to make a reference to the High Court is absolute and unextendable by a court under Section 5 of the Limitation Act. It is well-settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act."

39. Unlike the scheme of the Central Excise Act relied upon in *Hongo*, there are no other provisions in the Commercial Courts Act which provide for a period of limitation coupled with a condonation of delay provision which is either open-ended or capped. Also, the period of 180 days provided was one indicia which led the Court to exclude the application of section 5 of the Limitation Act, as it was double and triple the period provided for appeals under the other provisions of the same Act. Section 13(1A) of the Commercial Courts Act, by way of contrast, applies an intermediate period of 60 days for filing an appeal, that is, a period that is halfway between 30 days and 90 days provided by Articles 116 and 117 of the Limitation Act.

40. The other judgments relied upon by Dr. George are all distinguishable in that they are judgments which deal with provisions that provide for a period of limitation and a period of

condonation of delay beyond which delay cannot be condoned, such as section 125 of the Electricity Act. (See *Suryachakra Power Corpn. Ltd. v. Electricity Deptt.*, at para 10; and *ONGC v. Gujarat Energy Transmission Corpn. Ltd.* at paras 5-10)

41. Section 21 of the Commercial Courts Act was also pressed into service stating that the non-obstante clause contained in the Commercial Courts Act would override other Acts, including the Limitation Act, as a result of which, the applicability of section 5 thereof would be excluded. This argument has been addressed in the context of the IBC in *B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*, as follows: (SCC p. 644, para 41)

> "41. Shri Dholakia argued that the Code being complete in itself, an intruder such as the Limitation Act must be shut out also by application of Section 238 of the Code which provides that, "notwithstanding anything inconsistent therewith contained in any other law for the time being in force", the provisions of the Code would override such laws. In fact, Section 60(6) of the Code specifically states as follows:
>
> > ***"60. Adjudicating authority for corporate persons***.-
> >
> > (1)-(5) * * *
> >
> > (6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."
>
> This provision would have been wholly unnecessary if the Limitation Act was otherwise excluded either by reason of the Code being complete in itself or by virtue of Section 238 of the Code. Both, Section 433 of the Companies Act as well as Section 238-A of the Code, apply the provisions of the Limitation Act "as far as may be". Obviously, therefore, where periods of limitation have been laid down in the Code, these periods will apply notwithstanding anything to the contrary contained in the Limitation Act. From this, it does not follow that the baby must be thrown out with the

> bathwater. This argument, therefore, must also be rejected."
>
> 42. For all these reasons we reject the argument made by Shri George that the application of section 5 of the Limitation Act is excluded given the scheme of Commercial Courts Act."

15. The Apex Court was considering the similar provision which provided for a limitation period of 60 days from the date of judgment or order appealed against without further going into whether delay beyond the said period can or cannot be condoned. The Court tested the basic principle underlying Section 5 of the Limitation Act on the touchstone of the scheme of the Commercial Courts Act. It was held that Section 5 of the Limitation Act is not excluded given the scheme of the Commercial Courts Act.

16. Before applying the afore prescribed test, it needs to be reminded that part II of the Limitation Act contains Section 3 to Section 11. The same deals with limitation of suits, appeal and applications. Section 4 deals with the situation when Court is closed on the day the limitation period prescribed for any suit, appeal or application expires and provides that in such situation, the suit, appeal or application expires and provides that in such situation, the suit, appeal or application may be instituted, preferred or made on the date when the Court reopens. Section 5 provides for that any appeal, or application may be admitted beyond the prescribed period if the appellant or the applicant satisfies the Court that he has sufficient reason for not preferring the appeal within such period. Though, the heading of the provision reads "extension of prescribed period in certain cases", however, Section 5 does not extend the period of limitation. It only addresses the situation where an appeal or application could not be preferred within prescribed period for a cause which is sufficient to condone the delay to the satisfaction of the Court. The objective behind law of limitation has been spelled out by Apex Court in the case of ***Basawaraj vs. Land Acquisition Officer, reported as (2013) 14 SCC 81*** in the following terms:

> "xx xx xx

> 13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to *Halsbury's Laws of England,* Vol. 28, p. 266:
>
> > "*605. Policy of Limitation Acts*.-The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, *(1)* that long dormant claims have more of cruelty than justice in them, *(2)* that a defendant might have lost the evidence to disprove a stale claim, and *(3)* that persons with good causes of actions should pursue them with reasonable diligence".

17. Law of limitation does not extinguish claim but bars the remedy. The claim having been rendered stale is pre-requisite to bar the remedy on account of delay.

18. The issue thus is whether the exercise of power by the Appellate Authority to condone delay for sufficient cause militates against the scheme of the 1961 Act or is rather in sync with the same.

19. The said being the issue, this Court finds that interpreting the provision of limitation so strictly that it ousts even consideration of sufficient cause will amount to ignoring the very concept of co-operative movement. The objectives of co-operative movement and the legislation have been succinctly described by Mr. Watkin in his preface to International Handbook of Cooperative Legislation as under:-

> "xx xx xx
>
> "True co-operation draws its inspiration from realms where the State's writ does not run. Co-operative movements are not created by legislation. Nevertheless, without an appropriate legislative framework a co-operative movement in the form of a growing economic organism is not possible or even conceivable. The right of individuals to associate in co-

> operative societies and the right of the societies to unite in federations must be recognised........ The legal harness must allow for the free play of fundamental co-operative principles and the normal development of co-operative organisations according to the needs of their members and their own laws of growth."

It would be interesting to make reference to the speech of Sir Denzil Ibbeston introducing Co-operative Credit Societies Bill, 1904, which sets out broad principles and precautions in respect of legislation regarding co-operative societies :

> "The people must in the main be left to work out their own salvation on their own lines, the function of Government being confined to hearty sympathy, assistance and advice."

20. The legislation of co-operative was enacted by introduction of Co-operative Credit Societies Bill 1904. It prescribes the basic rule that the bye-laws of a co-operative expresses its real intention of the participating members, and should be framed within the parameter of the Act and the Rules. The cooperative laws do not attempt a legal definition of co-operative, but the basic principles characteristic of co-operatives are incorporated in the law. The Commission on Co-operative Principles appointed by the International Co-operative Alliance and which was presided over by the renowned Indian Co-operator, late Prof. D.G. Karve, has re-enunciated these principles as follows :

> "(i) Membership of a co-operative society should be voluntary and available without artificial restriction or any social, political racial or religious discrimination, to all persons who can make use of its services and are willing to accept the responsibilities of membership;
>
> (ii) Co-operative societies are democratic organisations, their affairs should be administered by persons elected or appointed in the manner agreed by the members;
>
> (iii) the members should provide for development of the business of the cooperative, provide for common services and distribute amongst the members the profits made."

21. Recognizing the aforesaid principles, arbitration has been provided as the dispute resolution and the underlying objective is to keep disputes out of purview

of ordeal of facing Court proceedings and strict principles of law. Guidelines for disposal of Arbitration cases under the Punjab Cooperative Societies Act, 1961 to provided as under:-

> "Arbitration is a settlement of dispute by the decision of a person Or persons chosen and accepted as Judges or Umpires. The need for arbitration arises due to failure of adherence to procedures and rules laid down under the Punjab Cooperative Societies Act, 1961. The recourse to arbitration indicates a failure to attain the Cooperative ideal of strict supervision and mutual control. Careful selection of members, regular insistence on security and active pressure on sureties and other members or defaulters should reduce the need for such legal measures to a minimum. Slackness in any of these conditions involves the trouble of attendance in Courts and the burden of contest.
>
> 2.0 The objective of Cooperative Societies is to improve the economic condition of the members by inculcating among them the habits of thrift, self and mutual help."

22. Thus, the very foundation of co-operative movement is based upon mutual cooperation punctuated with an objective to minimise interference from outside. It is based upon organizing the 'units' into unity. Cooperative societies engage employees for their business. It is these employees who act as their arms, mind and thus are responsible for filing appeals within prescribed period of limitation. Thus, to interpret Section 68 by closing doors even for entertaining the plea of there being a sufficient cause for condoning the delay would be an anti thesis to the very objective of the co-operative movement itself i.e. 'mutual co-operation'. Resultantly, the remedy of appeal should not be rendered redundant in cases where there is a sufficient cause to explain the delay in filing appeal.

23. In view of above, when the basic principle underlying Section 5 is tested on the touchstone of the scheme of 1961 Act, this Court finds that condoning the delay for sufficient cause not only advances the object of the Act, but rather taking

the other view would militate the very soul of the co-operative movement i.e. mutual co-operation. Without doubt speedy disposal is essence of judicial process, yet the doors cannot be closed to entertain the plea based upon sufficient cause.

24. Thus, the authority erred in law in rejecting the appeals without testing the sufficient cause shown by the petitioner for not preferring the appeal within the prescribed period.

25. Consequently, the present writ petitions are allowed. Impugned orders dated 04.12.2013 (P-2), 09.02.2016 (P-4) and that of 27.05.2011 (P-1) are set aside. Matters are remanded back to the appellate authority to consider the appeals afresh and to decide whether sufficient cause has been shown by the petitioner for not preferring the appeals within prescribed period of time, strictly in accordance with law.

26. Ordered accordingly.

27. A photocopy of this order be placed on the files of other connected cases.

(PANKAJ JAIN)
JUDGE

01.06.2023
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes