

(2) The Petitioner raised an objection that the complaint filed by the Respondent was beyond the limitation and the learned Member, Industrial Court failed to frame the issue in that regard.

(3) Learned Counsel for the Respondent submitted that there was no pleading in the reply raising the point of limitation, and therefore, no issue is framed by the learned Member, Industrial Court, Bhandara.

(4) I have perused the complaint and also the written statement filed by the Petitioner.

(5) True it is that there is no point of limitation raised by the Petitioner before the learned Member, Industrial Court, Bhandara. However, it is the duty of the Court to see whether the complaint is filed within limitation, and if it is found that it is not filed within limitation, the Court has to frame the issue accordingly.

(6) Learned Counsel for the Petitioner relied on the judgment of the Hon'ble Supreme Court in the case of **S. Shivraj Reddy**

(Died) through LRs & another vs. S. Raghuraj Reddy & others, 2024 SCC OnLine SC 963, wherein the Hon'ble Supreme Court, in Paragraph No. 15, held as under:-

“15. In the facts and circumstances of the case, we find that the reasoning given by the learned Division Bench while dismissing LPA No. 47 of 2002, that the learned Single Judge ought not to have considered the question of limitation as the defendants did not choose to raise the plea of limitation in the trial Court is ex- facie erroneous. Law in this regard has been settled by this Court through a catena of decisions. We may refer to the judgment in the case of V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao and Another³, wherein this Court held as follows:-

“20. The mandate of Section 3 of the Limitation Act is that it is the duty of the court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence. If a suit is ex facie barred by the law of limitation, a court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation.

21. This Court in Manindra Land & Building Corpn. Ltd. v. Bhutnath Banerjee [(1964) 3 SCR 495 : AIR 1964 SC 1336] held (AIR para 9):

“Section 3 of the Limitation Act enjoins a court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefor by Schedule I irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the court not to proceed with the application if it is made beyond the period of limitation prescribed. The Court had no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the subordinate court comes to an erroneous decision, it is open to the court in revision to interfere with that conclusion as that conclusion led the court to assume or not to assume the jurisdiction to proceed with the determination of that matter.” (emphasis supplied)

(7) As against this, learned Counsel for the Respondent relied on the judgment in the case of **General Manager, Best Undertaking vs. U.B. Mokashi & others, 2023 BHC (AS) 39208**. However, in my considered opinion, the facts involved in the said matter is distinguishable from the facts involved in the present matter, wherein this Court held that there is exception to the Rule of delay and laches when there is continuing wrong.

However, in the present matter, the issue itself is not framed nor any evidence is led by the parties on the same. Learned Counsel for the Respondent also relied on the Full Bench judgment of this Court in the case of **MSRTC, Nagpur vs. Premlal Khatri Gajbhiye, 2003(3) ALL MR 1022**, wherein this Court in Paragraph No. 26, has held as under:-

“26. It is well settled that as long as the default in performance of obligation continues, the wrong is deemed to have continued and therefore, it is to be taken as a continuing wrong. If the duty continues from day to day, the non-performance of that duty from day to day is a continuing wrong. (Vide **Smt. Maya Rani Punj v. Commissioner of Income Tax, Delhi, (1986) 1 SCC 445**)”

(8) However, it is not proved by the parties that default in performance of the obligation continues so as to take benefit of continuing wrong. As such, in my considered opinion, the order passed by the learned Member, Industrial Court, Bhandara in Complaint (ULP) No. 48/2018 is liable to be quashed and set

aside and the learned Member, Industrial Court, Bhandara needs to be directed to frame the issue of limitation afresh and allow the parties to lead evidence on the same. As held in **S. Shivraj Reddy** (supra) that it is the duty of the Court to consider and frame the issue as to whether the complaint is filed within limitation.

(9) Hence, I proceed to pass following order:-

ORDER

(a) The Writ Petition is **partly allowed**.

(b) The impugned judgment dated 12/07/2024 passed by the learned Member, Industrial Court, Bhandara in Complaint (ULP) No. 48/2018 is hereby quashed and set aside.

(c) The matter is remitted back to the learned Member, Industrial Court, Bhandara for framing of the issue of

limitation and to consider the matter afresh by allowing the parties to adduce their evidence on the same.

(d) The parties shall appear before the learned Member, Industrial Court, Bhandara on 05/05/2025.

(e) The learned Member, Industrial Court, Bhandara is directed to decide the said Complaint as expeditiously as possible, preferably within a period of six months from the date of appearance of the parties.

The Petition stands **disposed of** in the above terms.
Pending Application(s), if any, stand(s) **disposed of**.

(M.S. JAWALKAR, J.)