



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25th DAY OF SEPTEMBER, 2019

PRESENT

THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MR. JUSTICE K.NATARAJAN

MISCELLANEOUS FIRST APPEAL No.3806 OF 2019 [LAC]

BETWEEN:

THE DEPUTY COMMISSIONER AND
SPECIAL LAND ACQUISITION OFFICER,
VISHWESHWARAIAH TOWERS, 3RD FLOOR,
PODIUM BLOCK,
BENGALURU - 560 001.

... APPELLANT

(BY SRI VASANT FERNANDES, HCGP)

AND:

M/S. S.V. GLOBAL MILL LIMITED,
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES ACT, 1956,
AND HAVING ITS REGISTERED OFFICE AT,
NO.106, ARMENIAN STREET, CHENNAI,
REPRESENTED BY ITS
AUTHORISED SIGNATORY &
MANAGER, MR.K.JOHNSON.

... RESPONDENT

(BY SRI SAJAN POOVAYYA AND
DR.ADITYA SONDHI, SENIOR ADVOCATES FOR
SRI SHIRISH KRISHNA & SMT. MONICA PATIL, ADVOCATES)

THIS APPEAL IS FILED UNDER SECTION 54(1) OF THE
LAND ACQUISITION ACT, AGAINST THE JUDGMENT AND
AWARD DATED 29/10/2018 PASSED IN LAC No.33 OF 2017 ON

THE FILE OF THE II ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (C.C.H.No.17), ALLOWING THE REFERENCE PETITION FILED UNDER SECTION 64(1) OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013.

APPEAL RESERVED ON : 26.07.2019;
JUDGMENT PRONOUNCED ON : 25.09.2019.

THIS APPEAL COMING ON FOR *HEARING ON IA* ON 26.07.2019 AND THE SAME HAVING BEEN HEARD AND RESERVED, TODAY, **NAGARATHNA J.**, PRONOUNCED THE FOLLOWING:

J U D G M E N T

The Deputy Commissioner, also the Special Land Acquisition Officer, Bengaluru ('SLAO' for short) has preferred this appeal assailing the judgment and award dated 29/10/2018 passed in Land Acquisition Case No.33 of 2017 (LAC No.33 of 2017) by the II Additional City Civil and Sessions Judge (C.C.H. No.17) at Bengaluru (hereinafter referred to as 'reference court' for the sake of convenience). By the said judgment and award, the reference made by the SLAO under Section 64(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ('2013 Act' for the sake of convenience) is allowed and total compensation of Rs.207,75,63,348/- (Rupees two

hundred and seven crore, seventy five lakh, sixty three thousand, three hundred and forty-eight only) at the rate of Rs.8,624/- per square feet has been awarded in lieu of Rs.4,620/- per square feet awarded by the SLAO. Determination has also been made under Section 26(c) and additional compensation of 75% of the total compensation under Section 27 and 100% solatium under Section 30 of 2013 Act has been awarded. Further, interest on the amount calculated at the rate of 12% under Section 69(2) of 2013 Act and interest at the rate of 9% per annum on the excess amount from the date of taking over of possession of the acquired property i.e., from 16/01/2014 for the first year and interest at the rate of 16% per annum for the subsequent years till deposit of entire compensation amount under Sections 72 and 80 of 2013 Act have also been awarded.

2. Being aggrieved by the enhancement of compensation made by the reference court, this appeal has been preferred. There is a delay of 75 days in filing the appeal. Hence, IA No.1 of 2019 has been filed seeking condonation of delay. Statement of objections has been filed by the respondent enclosing two documents.

Submissions:

3. We have heard Sri Vasant Fernandes, learned High Court Government Pleader (HCGP) for the appellant and learned senior counsel, Sri Sajan Poovayya as well as Dr.Aditya Sondhi and learned counsel, Sri Shirish Krishna for the respondent and perused the material on record.

4. At the outset, it may be stated that the appeal has been filed under Section 54(1) of the Land Acquisition Act, 1894 ('LA Act' for short), though the award has been made under the provisions of 2013 Act. Consequently, the application seeking condonation of delay has been filed under Section 5 of the Limitation Act, 1963 (hereinafter referred to as the 'Limitation Act' for the sake of brevity).

5. Learned senior counsel and learned counsel for the respondent contended that the appeal filed by the appellant is not maintainable having regard to Section 74(1) of 2013 Act. It was submitted that the impugned judgment and award was passed on 29/10/2018, but the appeal has been filed on 13/05/2019. That under Section 74(1) of 2013 Act, the limitation period prescribed for

preferring an appeal to the High Court is sixty (60) days from the date of the award. But, the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period of not exceeding sixty days. That in the instant case, the award was passed on 29/10/2018 and sixty days from the date of the award is 28/12/2018. Further period of sixty days is provided for filing the appeal which is the extended period, provided the appellant is able to satisfy the High Court that he was prevented by sufficient cause from filing the appeal within sixty days. That, beyond the initial period of sixty days, a further period of only sixty days is provided to file an appeal which ended in the instant case on 26/02/2019. But, the instant appeal is filed beyond the said extended period of sixty days on 13/05/2019. That such an appeal is not maintainable and hence, the application seeking condonation of delay filed under Section 5 of the Limitation Act ought to be dismissed and such an application under 2013 Act is not at all maintainable as the said Section does not apply to Section 74 of 2013 Act. In this regard, our attention was drawn to Section 29 of the Limitation Act to

contend that the savings clause under Section 29(2) of the Limitation Act is not applicable to Section 74(1) of 2013 Act and the provisions contained in Sections 4 to 24 (inclusive) of the Limitation Act are not applicable. This is because, Section 74(1) of 2013 Act, which is a special law, excludes the applicability of the provisions of the Limitation Act. In this regard, several judgments of the Hon'ble Supreme Court and other Courts were cited to contend that the application filed by the appellant under Section 5 of the Limitation Act be dismissed as the said Act is not applicable to Section 74(1) of 2013 Act, which shall be discussed later.

6. *Per contra*, learned High Court Government Pleader preferred that though 2013 Act is a special enactment, Section 74(1) of the said Act does not exclude the provisions of Sections 4 to 24 (inclusive) of the Limitation Act.

7. In the circumstances, at the outset, we have to decide, as to, whether, the delay in filing the appeal by the appellant ought to be condoned or not.

8. While considering this question, we have construed this appeal to have been filed under Section 74(1) of 2013 Act though in the memorandum of appeal it is stated as Section 54(1) of the LA Act.

Legal Framework:

9. Before proceeding to unravel the conundrum, it would be useful to refer to Section 74 of 2013 Act as well as Sections 3, 5 and 29 of the Limitation Act. They are extracted as under:

2013 Act:

"74. Appeal to High Court.-(1) The Requiring Body or any person aggrieved by the Award passed by an Authority under section 69 may file an appeal to the High Court within sixty days from the date of Award:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

(2) Every appeal referred to under sub-section (1) shall be heard as expeditiously as possible and endeavour shall be made to dispose of such appeal within six months from the date on which the appeal is presented to the High Court.

Explanation.—For the purposes of this section, “High Court” means the High Court within the jurisdiction of which the land acquired or proposed to be acquired is situated.”

X X X

Limitation Act:

“3. Bar of limitation.—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), 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.

(2) For the purposes of this Act,—(a) a suit is instituted,—

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted—

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

x x x

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

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

x x x

"29. Savings.—(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any

period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

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

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."

It would also be useful to extract Sections 4 and 12 to 14 of the Limitation Act as under:

"4. Expiry of prescribed period when court is closed.— Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.

12. Exclusion of time in legal proceedings.—

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.

13. Exclusion of time in cases where leave to sue or appeal as a pauper is applied for.—In

computing the period of limitation prescribed for any suit or appeal in any case where an application for leave to sue or appeal as a pauper has been made and rejected, the time during which the applicant has been prosecuting in good faith his application for such leave shall be excluded, and the court may, on payment of the court fees prescribed for such suit or appeal, treat the suit or appeal as having the same force and effect as if the court fees had been paid in the first instance.

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

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

which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

- (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;
- (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;
- (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

10. In light of the aforesaid legal framework, the main contention urged on behalf of the respondent is that in the instant case, the appeal ought to have been filed within sixty days from the date of the award and/or if the

appellant satisfies this Court that he was prevented by sufficient cause from filing the appeal within the said period, he could have preferred the appeal within a further period not exceeding sixty days, but not thereafter. Admittedly, in the instant case, the appeal is filed beyond one hundred and twenty (120) days from the date of the award (sixty days + sixty days) and hence, the appeal itself is not maintainable as Section 5 of the Limitation Act cannot be invoked under Section 74(1) of the 2013 Act, is the contention of the respondent.

11. This contention is, however, rebutted by learned HCGP by submitting that the provision of Section 5 of the Limitation Act is applicable and even if the appeal is filed beyond one hundred and twenty days (120 days), there is scope for condoning the same under Section 5 of the Limitation Act. That such an application has been filed and it may be allowed. That Section 29(2) of the Limitation Act does not expressly exclude Sections 4 to 24 of the Limitation Act particularly Section 5 thereof, is the submission of learned HCGP.

12. At the outset, it must be noted that Section 74 of 2013 Act deals with filing an appeal to the High Court by a person being aggrieved by an award passed by the reference Court.

Right to file an appeal:

13. It is a settled position of law that the right to file an appeal is a statutory right or a creature of the statute and no other right to file an appeal can be recognized *de hors* a statute. A right of appeal is a creature of statute and no appeal can be filed unless it is clearly expressed in terms of a statute. Further, the right of appeal is a substantive right and not merely a matter of procedure. It is a vested right which can be exercised when the adverse judgment is pronounced. Though it exists from the date the *lis* commences, such right is governed by the law prevailing on the date of the institution of the suit or proceeding and not by the law that prevails on the date of its decision or on the date of the filing of the appeal, vide ***Garikapati Veeraya vs. N.Subbaiah Chaudhry, [AIR 1957 SC 540]*** (*Garikapati Veeraya*).

14. In **Anant Mills Company Limited vs. State of Gujarat, [AIR 1975 SC 1234: (1975) 2 SCC 175]** (*Anant Mills Company*), it has been held that though the right of appeal is a creature of a statute, there is no reason why the legislature while granting the right cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory.

15. There is a fundamental distinction between a right to file a suit and right to file an appeal which has been explained by Y.V.Chandrachud J. (as he then was) in the case of **Ganga Bai vs. Vijay Kumar, [(1974) 2 SCC 393]** (*Ganga Bai*) as under:

“There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite.

The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law."

16. On the question of a party having a right to file an appeal, one could usefully recall His Lordship Krishna Iyer J's observation in ***Sita Ram vs. State of U.P., [(1979) 2 SCC 656]*** (*Sita Ram*), wherein he has observed that "an appeal is the right of entering a superior court and invoking its aid and interposition to redress the error of the court below". "In an appeal, strictly the question is whether the order of the court from which the appeal is brought was right on the materials which that court had before it"... "A right of appeal, where it exists, is a matter of substance, and not of procedure. Thus, the right of appeal is paramount, the procedure for hearing canalises so that extravagant prolixity or abuse of process can be avoided and a fair workability provided. Amputation is not procedure while pruning may be. That an appeal is a remedial right and if the remedy is reduced to a husk by procedural excess, the right becomes a casualty. That cannot be."

17. With regard to filing of a suit or an appeal within the prescribed period of limitation, in ***N.Balakrishnan v. M. Krishnamurthy, [(1998) 7 SCC 123]*** (*N.Balakrishnan*), the Hon'ble Supreme Court has held as under:

"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

18. In ***State of Madhya Pradesh vs. Pradeep Kumar, [(2000) 7 SCC 372]*** (*Pradeep Kumar*), on the question of a belated appeal being unaccompanied by an application seeking condonation of delay and the consequences of not filing the said application along with the memorandum of appeal and the fact that the said defect is curable, the Hon'ble Supreme Court has observed as under:

"12. It is true that the pristine maxim *vigilantibus non dormientibus jura subveniunt* (law assists those who are vigilant and not those who sleep over their rights). But even a vigilant litigant is prone to commit mistakes. As the aphorism "to err is human" is more a practical notion of human behaviour than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judicature permanently closed before him. The effort of the Court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed by him, but to see whether it is possible to entertain his grievance if it is genuine."

Analysis of Section 74(1) of 2013 Act and Section 29(2) of Limitation Act:

19. Section 74(1) of 2013 Act states that the Requiring Body or any person aggrieved by the Award passed by an Authority under Section 69 may file an appeal to the High Court within sixty days from the date of the Award. The crucial words are "within sixty days from the date of the award". Thus, the limitation period commences "from the date of the award". The proviso however states that if the appellant has not preferred the appeal within sixty days from the date of the award and he could satisfy that he was prevented by sufficient cause from filing the appeal, then the High Court could, on being satisfied, allow the said appeal to be filed beyond the period of sixty days from the date of the award. Further, the appeal ought to have been filed "within a further period not exceeding sixty days from the expiry of sixty days from the date of the award". In other words, on a simple reading of Section 74(1) of 2013 Act and the proviso thereto, it would imply that an appeal could be filed within sixty days from the date of the award; that 60 days is the prescribed period of limitation under the 2013

Act. But, a further period of sixty days is provided to file the appeal provided the appellant satisfies the High Court that he was prevented by sufficient cause from filing the appeal within the initial period of sixty days. Thus, the submission of the learned senior counsel and learned counsel for the respondent is that beyond the period of one hundred and twenty days (120 days) from the date of the award no appeal is maintainable and cannot be entertained by the High Court.

20. As already noted, in the instant case, the application has been filed under Section 5 of the Limitation Act by the appellant herein seeking condonation of delay of seventy-five days (75 days) in filing the appeal. In this regard, learned counsel for the appellant placed reliance on Section 29(2) of the Limitation Act to contend that even if the appeal has been filed beyond the extended period of sixty days i.e., beyond one hundred and twenty days from the date of the award, the High Court has the power to condone the delay in filing the appeal under Section 5 of the Limitation Act and that under Section 29 of the Limitation Act, Sections 4 to 24 (inclusive) of the

Limitation Act are not excluded from being applied to Section 74 of 2013 Act and thus, Section 29 of the Limitation Act has to be considered. Hence, the application filed under Section 5 of the Limitation Act is maintainable and may be considered and allowed.

21. Sub-section (2) of Section 29 of the Limitation Act states that where any special or local law for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule (to the Limitation Act), the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are "not expressly excluded by such special or local law". What is significant in sub-section (2) of Section 29 of the Limitation Act are: (i) prescription of a period of limitation under any special law or local law different from the period prescribed by the Schedule under the Limitation Act and (ii) in such a case, the period of

limitation prescribed under the special or local law shall be deemed to be the period prescribed for the purpose of Section 3 of the Limitation Act and (iii) Section 3 of the Limitation Act shall apply accordingly.

22. Sub-section (1) of Section 3 of the Limitation Act states that 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. Clause (a) to sub-section (2) of Section 3 of the Limitation Act deals as to when a suit is instituted. Clause (b) to sub-section (2) of Section 3 states as to when a claim by way of set off or a counter claim is deemed to have been instituted and Clause (c) to sub-section (2) of Section 3 states that an application by notice of motion in a High Court is made when the application is presented to the proper officer of that Court. Section 3 of the Limitation Act has been adverted to in the case of ***State of Orissa vs. Mamata Mohanti, [(2011) 3 SCC 436]*** (*Mamata Mohanti*), wherein it has been observed that by virtue of Section 3 of the Limitation Act, it is obligatory on the part of the Court to dismiss a suit or appeal, if filed after the

prescribed period even though the limitation is not set up as a defence or there is no defence raised on the issue of limitation, even at the appellate stage, because in some of the cases, it may go to the root of the matter. However, Section 3 is subjected to Sections 4 to 24 (inclusive) of the Limitation Act. Sections 4 to 24 (inclusive) of the Limitation Act essentially deal with computation of period of limitation under certain circumstances and in substance excludes time from the prescribed period of limitation. It is not necessary to go into the details of those sections at this stage, except to highlight the fact that Sections 4 to 24 (inclusive) shall apply only insofar as and to the extent to which they are not expressly excluded by such special or local law and in the instant case to appeals.

23. Hence, the question in the instant case is, *whether Section 74(1) of 2013 Act, which is a special law prescribing a different period of limitation than as prescribed under the schedule to the Limitation Act, in terms of Section 3 of the Limitation Act excludes the application of Sections 4 to 24 (inclusive) of the Limitation Act and particularly Section 5 thereof?*

In other words, if on a reading and interpretation of Section 74(1) of 2013 Act it is held that Sections 4 to 24 (inclusive) of the Limitation Act are expressly excluded, then there cannot be any extension of time or condonation of delay as sought for by the appellant under Section 5 of the Limitation Act. On the other hand, if on a plain reading and interpretation of Section 74(1) of 2013 Act, it is held that Sections 4 to 24 (inclusive) of the Limitation Act are not excluded under Section 74(1) of 2013 Act, then the application filed by the appellant under Section 5 of the Limitation Act has to be held to be maintainable and considered.

24. Section 5 of the Limitation Act states that any appeal or any application other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. The explanation states that the fact that the appellant or the applicant was misled by any order, practice or

judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section.

25. In this context, learned senior counsel and learned counsel appearing for the respondent have cited a catena of judgments, which may be adverted to at this stage to deduce the development of law on the point for consideration.

26. ***Hukumdev Narain Yadav vs. Lalit Narain Mishra, [(1974) 2 SCC 133]***, (*Hukumdev Narain Yadav*), is a matter which arose under the Representation of People Act, 1951. Under Section 81 of the said Act, a period of 45 days from the date of the election of a returned candidate is the limitation time prescribed within which an election petition calling in question any election on one or more grounds specified in sub-section (1) of Sections 100 and 101 has to be presented to the High Court. In the said case, the election petition had been presented beyond the period of 45 days and had been dismissed. One of the questions considered was, by virtue of Section 29(2) of the Limitation Act, whether the provisions of Sections 4 to 24

of the said Act were applicable to election petitions and if so, whether Section 5 of the Limitation Act was applicable. Also, whether the facts of the case therein warranted condonation of delay. Thus, unless Section 5 of the Limitation Act was made applicable, the discretion of the Court to extend the time would not be available.

27. In the said case, a comparison of Section 29(2) of the Limitation Act, 1908 with Section 29(2) of the Limitation Act, 1963 was made and the question was whether Section 5 of the Limitation Act was applicable. It was observed that even if the Limitation Act was applicable to election petitions under the Representation of the People Act, 1951, whether Section 5 thereof particularly was excluded from application in the case of an election petition. It was contended in the said case that the words 'expressly excluded' would mean that there must be an "express reference" made in a special or local law to the specific provision of the Limitation Act of which the operation is to be excluded. But, the Hon'ble Supreme Court observed that what has to be seen is whether the scheme of the special law and the nature of remedy

provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act and particularly Section 5 thereof, are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the special law. That 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 would exclude their operation. It was contended that only those provisions of the Limitation Act which are applicable to the nature of the proceedings under the Act, unless expressly excluded, would be attracted. But the same was not accepted by the Hon'ble Supreme Court as it observed that the intent of Section 29(2) of the Limitation Act must be noted. That Section 29(2) of the Limitation Act provides that Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such

special or local law. If none of them are excluded, all of them would become applicable. Whether those sections are applicable is not determined by the terms of those sections, but by their applicability or inapplicability to the proceedings under the special or local law. Ultimately, it was held on a consideration of the scheme of the provisions concerning the filing of election petition under the Representation of the People Act, 1951, that Section 5 of the Limitation act did not govern the filing of the election petition or their trial and hence, the application filed for condonation of delay did not warrant any consideration.

28. In ***Union of India vs. Popular Construction Company, [2001 (8) SCC 470]*** (*Popular Construction Company*), the question that arose for determination was whether Section 5 of the Limitation Act was applicable to an application challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Arbitration Act"). Section 34 of the Arbitration Act states that an application seeking setting aside an arbitral award may not be made after three

months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal. The proviso thereto further states that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, "but not thereafter". Interpreting the expression "but not thereafter" used in the proviso to sub-section (3) of Section 34, the Hon'ble Supreme Court held that the said phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act and would, therefore, bar the application of Section 5 of the Act. It was held that the expression "but not thereafter" clearly meant that an application to set aside the award beyond the extended period under the provision to Section 34(3) of the Arbitration Act was sufficient indication of the exclusion. In the circumstances, after going through the history and scheme of the Arbitration Act, it was held that Section 5 of the Limitation Act was not applicable to an

application challenging an award under Section 34 of the said Act beyond the extended period and the question was answered in the negative.

29. ***Nasiruddin vs. Sita Ram Agarwal, [(2003) 2 SCC 577]*** (*Nasiruddin*), has also been cited by the respondent. In the said case, the controversy was as regards the applicability of Section 5 of the Limitation Act in the matter of default in deposit of rent under Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. The said Section states that a tenant is required to deposit the amount of rent determined by the Court under sub-section (3) of the said section within 15 days of the date of determination or within such further time not exceeding three months, as may be extended by the Court. The question was as to whether the provision is directory or mandatory would inevitably depend upon the language employed therein. It was held that Section 5 of the Limitation Act had no application as the deposit of rent did not require any application to be made and therefore, Section 5 could not be extended where the default took place in complying with Section 13(4) of the said Act.

30. In ***Fairgrowth Investments vs. Custodian [(2004) 11 SCC 472]*** (*Fairgrowth Investments*), the question regarding limitation arose in the context of Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992. Section 3(3) of the said Act empowers the custodian to notify the name of the persons in the official gazette involved in any offence relating to transactions and securities for the specified period. From the date of such notification, properties (both movable and immovable) belonging to such person, stood attached under Sub Section (3) of Section 3. Section 4(2) of the Act permits any person aggrieved by a notification issued under Section 3(2) to file an objection within 30 days of its issuance. Question arose whether the said period of limitation of 30 days prescribed under Section 4(2) of the said Act was mandatory, or could be extended by resort to Section 5 of the Limitation Act. The Supreme Court held that the period of limitation prescribed in Section 4(2) of the said Act was mandatory and invoked Section 29(2) of the Limitation Act to exclude the application of Section 5 of the Limitation Act by observing that the Act in question

was a special statute. The Supreme Court also observed that in view of express provision for condonation of delay, coupled with a *non-obstante* provision which states that the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any instrument having effect by virtue of any law or in any decree or order of any court, tribunal or other authority, excluded application of Sections 5 to Section 42 of the Limitation Act to the provisions of the said Act.

31. ***Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur, [(2008) 3 SCC 70]*** (*Singh Enterprises*) considered the expression “*sufficient cause*” and elucidated on the same. The said expression is found in Section 5 of the Limitation Act and also other special statutes which prescribe a specific period of limitation and thereafter, a further grace period within which an appeal or any other proceedings could be filed. The Hon’ble Supreme Court observed that sufficient cause therein means adequate or enough. There cannot be any straight jacket formula for accepting or rejecting the

explanation offered for condoning the delay caused in taking steps. It was also observed that when a statute prescribes a particular period of limitation, the Court cannot direct condonation of delay beyond that specific period; in such an event, the specific provision providing for limitation would be rendered otiose.

32. ***Commissioner of Customs, Central Excise, Noida vs. Punjab Fibres Limited, Noida, [(2008) 3 SCC 73]*** (*Punjab Fibres Limited*) also considered the question whether the High Court has power to condone the delay in presentation of the reference under Section 35-H(1) of the Central Excise Act, 1944. The said provision prescribes a period within 180 days of the date upon which the Commissioner of Central Excise or any other party is served with notice of an order under Section 35-C passed on or before the 1st day of July 1999, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal. It was observed that the High Court was justified in holding that there was no power for condonation of delay in filing the reference application as it was made

beyond the prescribed period of limitation under the said provision.

33. ***Good Earth Steels (P) Limited vs. Commissioner of Central Excise, [(2008) 3 SCC 77]*** (*Good Earth Steels*), also follows earlier judgment in *Punjab Fibres Limited*.

34. ***Consolidated Engineering Enterprises vs. Pri. Secretary, Irrigation Department, [(2008) 7 SCC 169]***, (*Consolidated Engineering Enterprises*), is another judgment of a three Judge Bench of the Hon'ble Supreme Court on the proviso to Section 34(3) of the Arbitration Act. In the said case, after referring to section 34 of the Arbitration Act, and considering the same in light of Section 29(2) of the Limitation Act, it was observed that when any special statute prescribes certain period of limitation as well as provision for extension up to specified time limit on sufficient cause being shown, the period of limitation prescribed under the special law shall prevail and to that extent, the provisions of Limitation Act shall stand excluded. This is because of the intention of the Parliament in enacting sub-section (3) of Section 34 of the

Act of 1996. That an application for setting aside the award must be made within three months and the period can be further extended on sufficient cause being shown by another period of thirty days, but not thereafter. Hence, Section 5 of the Limitation Act is inapplicable as it stands excluded under Section 29(2) of the Limitation. Further, it was also observed that even though Section 5 of the Limitation act is not applicable to an application filed under Section 34 of the Act for setting aside the award, one need not conclude that Section 14 of the Limitation Act would also be inapplicable to an application filed under Section 34 of the Act of 1996.

(a) In the said case, His Lordship, *Raveendran J.* gave a separate but concurring opinion. His Lordship referred to Section 43 of the Arbitration Act to hold that Section 43 makes an express reference to the Limitation Act both in the Court and in arbitration. That there is also no express exclusion by an application of the provision of the Limitation Act to the proceedings under the Arbitration Act. But, there are some specific departures from the general provisions of Limitation Act, such as, the proviso to

section 34(3) and sub-sections (2) to (4) of Section 43 of the Act. His Lordship observed that 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. But, 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) would be attracted. In that event, the provisions of Section 3 of Limitation Act will apply, as if the period of limitation prescribed under the special law was the period prescribed by the Schedule to 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. That the object of

Section 29(2) is to ensure that the principles contained in Sections 4 to 24 of 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.

(b) In this context, it was clarified that the provisions of the Limitation Act would not apply to appeals or applications before Tribunals, unless expressly provided. This is because, the Schedule to the Limitation Act prescribes the period of limitation only to proceedings in Courts and not to any proceedings before any Tribunal or quasi-judicial authority. Therefore, it was held that the provisions of the Limitation Act could apply to all proceedings under the Arbitration Act both in Court and in arbitration except to the extent expressly excluded by the provisions of the Arbitration Act. This was because of the express reference to applicability of the Limitation Act to the proceedings in Court and arbitral Tribunal under Section 43 of the Arbitration Act.

(c) The next question considered by his Lordship was whether under the proviso to Section 34(3) of the Arbitration Act, Section 14 of Limitation Act was excluded. Section 14 of Limitation Act relates to exclusion of time when proceeding *bona fide* in a court without jurisdiction. While considering Section 14 in light of Section 34(3) of the Arbitration Act and the proviso thereto, it was observed that the use of the words "but not thereafter" in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. Differentiating between the proviso to section 34(3) of Arbitration Act and Section 5 of the Limitation Act, it was observed that they both vest a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. Section 5 of Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-section 3 of section 34 of the Arbitration Act places a limit on the period of extension of the period of limitation. It differs in regard to period of

extension and it has the effect of excluding section 5 alone of the Limitation Act. Hence, it was held that having regard to Section 29(2) of the Limitation Act, Section 14 of the Act would be applicable to an application under Section 34(1) of Arbitration Act. Even when there is cause to apply Section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under section 34(1) of the Arbitration Act, the time during which the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted *bona fide* and with due diligence. While holding so, the judgment in ***State of Goa vs. Western Builders [(2006) 6 SCC 239]***, (*Western Builders*) was approved.

35. In *Western Builders* after referring to the scheme of the provisions under the Arbitration Act, the Hon'ble Supreme Court held that wherever the Parliament wanted to give power to the Court, it has been incorporated in the provisions of the Arbitration Act. Thus, no further power would lie in the hands of the Court so as

to enable to exclude the period spent in prosecuting a remedy before another forum, but it was further emphasized that there was no prohibition incorporated in the Arbitration Act for curtailing the power of the Court under Section 14 of the Limitation Act. That much would depend upon the words of the statute and not general principles applicable. That by virtue of Section 43 of the Arbitration Act, the Limitation Act applies to the proceedings under the former Act and the provisions of the Limitation Act can only stand excluded to the extent wherever different period has been prescribed under the Arbitration Act. Since, there is no prohibition provided under Section 34, there is no reason why Section 14 of the Limitation Act should not be read into the Arbitration Act, which would advance the cause of justice. Thus, if a statute is silent and if there is no specific provision, then the statute should be interpreted which advances the cause of justice. The same view was reiterated in ***Coal India Limited vs. Ujjal Transport Agency, [(2011) 1 SCC 117]*** (*Ujjal Transport Agency*).

36. In ***Commissioner of Central Excise & Customs vs. Hongo India (P) Ltd., [(2009) 5 SCC 791]*** (*Hongo India*), the question for consideration was whether the High Court had the power to condone the delay in presentation of the reference application under the unamended Section 35-H(1) of the Central Excise Act, 1944 beyond the prescribed period by applying Section 5 of the Limitation Act. Section 35-H(1) states that the Commissioner of Central Excise or other party, within a period of 180 days of the date upon which he is served with notice of an order under Section 35C, direct the Tribunal to refer to the High Court any question of law arising from such order of the Tribunal. In the said matter, the Commissioner of Customs and Central Excise had approached the High Court by way of a reference application beyond the prescribed period of 180 days. After referring to the scheme of the Central Excise Act (special law) and the nature of remedy provided therein, it was held that the said enactment was a complete Code by itself which alone should govern the several matters provided by it. It is observed there that 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. It was further observed 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 has to be judged not from the terms of the Limitation Act but by the provisions of the special enactment (Central Excise Act in the said case) relating to filing of reference application to the High Court. After considering the scheme of the Central Excise Act, 1944, the Hon'ble Supreme Court held that the time limit prescribed under Section 35H(1) to make a reference to High Court is absolute and unextendable by court under Section 5 of the Limitation Act. It was held that by giving a liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Act. Hence, the application filed seeking condonation of delay in filing

the reference application under Section 5 of the Limitation Act was held to be rightly dismissed by the Allahabad High Court.

37. ***Smt. Hetal Alpesh Muchhala vs. Adityesh Educational Institute & others, [2009 SCC Online Bom. 1454]*** (*Smt. Hetal Alpesh Muchhala*) is a case which took into consideration Section 10F of the Companies Act, 1956 and the question which arose for determination was whether Section 5 of the Limitation Act was applicable to an appeal filed under Section 10F of the Companies Act, 1956. Section 10F, *inter alia*, states that any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court within sixty days from the date of communication of the decision or order by the Company Law Board to him on any question of law arising out of such order. The proviso states that if the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period (of sixty days), it could allow the appeal to be filed within a further period "not exceeding sixty days". It was observed that the Companies Act,

1956 being a special enactment and the Company Law Board being a special Tribunal, there was curtailment of the Court's power by the exclusion of operation of Section 5 of the Limitation Act, 1963, if the appeal was filed beyond 120 days.

38. In ***Chhattisgarh State Electricity Board vs. Central Electricity Regulatory Commission and others, [(2010) 5 SCC 23]*** (*Chhattisgarh State Electricity Board*), the question was whether Section 5 of the Limitation Act, 1963 could be invoked by the Hon'ble Supreme Court for allowing the aggrieved persons to file an appeal under Section 125 of the Electricity Act, 2003 after more than 120 days from the date of communication of the decision or order of the Appellate Tribunal for Electricity. Section 125 of the Electricity Act, 2003 states that any person aggrieved by any decision or order of the appellate tribunal, may file an appeal to the Supreme Court, within sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908). The proviso

states that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

39. At this stage itself, it may be stated that the proviso to Section 74(1) of the 2013 Act is similar to the proviso to Section 125 of the Electricity Act. But, the main Section under Section 125 of the said Act prescribes a limitation of sixty days from the date of the communication of the decision or order by the appellate tribunal to an aggrieved party. Under Section 74(1) of the 2013 Act, the limitation period prescribed is sixty days from the date of the award and not from the date of the communication of the award. After considering Section 29(2) of the Limitation Act in light of Section 125 of the Electricity Act, the Hon'ble Supreme Court considered the scheme of Electricity Act and observed that it is a self-contained comprehensive legislation and a special adjudicatory forum i.e., Tribunal has been established to deal with a grievance of any person who may be aggrieved by an order of an adjudicating officer or of an appropriate Commission. That

the Electricity Act is a special legislation within the meaning Section 29(2) of the Limitation Act and Section 3 of the Limitation Act would apply as if such period was the period prescribed by the schedule and provisions contained in Section 4 to 24 (inclusive) shall apply for the purpose of determining any period prescribed for any suit, appeal or application, unless they are expressly excluded by a special or local law. After referring to certain decisions, the Hon'ble Supreme Court distinguished the said case from ***Mukri Gopalan vs. Cheppilat Puthanpurayil Aboobacker, [(1995) 5 SCC 5]*** (*Mukri Gopalan*) and held that Section 5 of the Limitation Act cannot be invoked by the Hon'ble Supreme Court by entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. That any other interpretation would defeat the object of the legislation, namely to provide special limitation for filing an appeal against the decision or order of the Tribunal or otherwise proviso to Section 125 would then become nugatory.

The Hon'ble Supreme Court then went on to consider the question as to what was the date of the communication of the decision or order for the purpose of Section 125 of the Electricity Act in the said case. In that context, ***Harish Chandra Raj Singh vs. Land Acquisition Officer, [AIR 1961 SC 1500]***, (*Harish Chandra Raj Singh*) was referred to in the context of the provisions of the Land Acquisition Act, 1894 and as to whether an award made under the aforesaid Act can be treated to have been communicated on the date of its making. It was held that the period of limitation for seeking a reference would commence from the date the award was made known to the party under Section 12(2) of the said Act. It would be useful to extract paragraph 6 of *Harish Chandra Raj Singh*:

"6. There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an

essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it, it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair-play and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words 'from the date of the Collector's award' used in the proviso to Section 18 in a literal or mechanical way."

40. The aforesaid would be apposite in the context of Section 74(1) of the Act as the limitation period prescribed to file an appeal to the High Court is sixty days from the date of the award. In the circumstances, the expression "the date of the award" must mean the date the award is either communicated to the party or is known by him either actually or constructively. The said expression cannot be construed in a literal or mechanical way.

41. Reference could also be made to ***Transport Commissioner vs. Nand Singh, [(1979) 4 SCC 19]***, wherein a similar question in the context of filing of an appeal under Section 15 of the U.P. Motor Vehicles Taxation Act, 1935 was construed and the Allahabad High Court held that the date of the communication of the order will be the starting point for limitation of filing an appeal. While approving the view taken by the High Court, Hon'ble Supreme Court observed in paragraph 2 as under:

"2. In our opinion, the judgment of the High Court is right and cannot be interfered with by this Court. Apart from the reasons given by this Court in the earlier judgment to the effect that the order must be made known either directly or constructively to

the party affected by the order in order to enable him to prefer an appeal if he so likes, we may give one more reason in our judgment and that is this: It is plain that mere writing an order in the file kept in the office of the Taxation Officer is no order in the eye of law in the sense of affecting the rights of the parties for whom the order is meant. The order must be communicated either directly or constructively in the sense of making it known, which may make it possible for the authority to say that the party affected must be deemed to have known the order. In a given case, the date of putting the order in communication under certain circumstances may be taken to be the date of the communication of the order or the date of the order but ordinarily and generally speaking, the order would be effective against the person affected by it only when it comes to his knowledge either directly or constructively, otherwise not. On the facts stated in the judgment of the High Court, it is clear that the respondent had no means to know about the order of the Taxation Officer rejecting his prayer until and unless he received his letter on October 29, 1964. Within the meaning of Section 15 of the U.P. Motor Vehicle Taxation Act that was the date of the order which gave the starting point for preferring an appeal within 30 days of that date."

42. Similarly, in ***Muthiah Chettiar vs. CIT, [AIR 1951 Mad 204]*** (*Muthiah Chettiar*), it was observed that

“if a person is given a right to resort to the remedy to get rid of an adverse order within a prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order & therefore, must be presumed to have had knowledge of the order.”

43. In ***CCE vs. M.M.Rubber Co., [1992 Supp (1) SCC 471]*** (*M.M.Rubber Co.*), a three Judge Bench of the Hon'ble Supreme Court highlighted a distinction between making of an order and communication thereof to the affected person in the context of Section 35-E (3) and (4) of the Central Excise Act, 1944. It was observed that when the order is subjected to an appeal, the same is required to be communicated to the affected person.

44. Adverting to several decisions on the meaning of the expression “from the date of decision or order” (in the instant case, the expression “from the date of award”), with reference to the limitation for filing an appeal under the statute, it was observed by the Hon'ble Supreme Court that in case a person is aggrieved and intends to file an appeal, limitation period shall commence from the date of

communication of the decision or order appealed against. Ultimately, in the said case, it was held that the appellant therein had come to know through proper channel that the Tribunal had pronounced the order dated 14.05.2007, but the limitation period commenced from 07.06.2007, the date on which the impugned order that was passed was conveyed to the parties by letter signed by the Deputy Registrar of the appellate tribunal. It was further held that the appellant despite receipt of letter dated 07.06.2007, or the communication sent by respondent therein on 17.07.2007, filed the appeal almost six months therefrom. It was held that the appeal had been filed after more than 120 days from the date of communication of the Tribunal's order, as such the same could not be entertained.

45. ***Ketan vs. Special Director, Directorate of Enforcement and another, [(2011) 15 SCC 30]*** (*Ketan*) raised the question, as to, whether, the High Court could entertain an appeal under Section 35 of the Foreign Exchange Management Act, 1999, from an order of the Appellate Tribunal beyond 120 days. Section 35 of the said Act states that any person aggrieved by any decision

or order of the appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of the said order. The proviso states that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. In the said case, the applicability of Section 14 of the Limitation Act also came up for consideration. It was held that Section 5 of the Limitation Act could not be invoked or otherwise, it would tantamount to amendment of the legislative mandate by which the special period of limitation has been prescribed. But, the benefit of Section 14 of the Limitation Act was not excluded. Hence, it could be available where an aggrieved party may have prosecuted with due diligence a remedy before a wrong forum, but on facts, the benefit of Section 14 was not made available to the appellant therein.

46. In ***M.P. Steel Corporation vs. C.C.E., [(2015) 7 SCC 58]*** (*M.P. Steel Corporation*), it was held

that Section 14 of the Limitation Act contains a principle based on advancing the cause of justice, it would certainly apply to exclude time taken in prosecuting proceedings which are *bona fide* and with due diligence pursued, which ultimately end without a decision on the merits of the case. The same has been applied to the provisions of Arbitration Act which also contains a provision similar to Section 74 of 2013 Act.

47. In ***Bihar Industrial Area Development Authority vs. The State of Bihar, the Collector, Patna and others, [First Appeal No.96/2016, D.D. 13.11.2017]*** (*Bihar Industrial Area Development Authority*) an identical question as in the instant case arose. The Patna High Court considering the case under Section 74 of the 2013 Act, in light of the facts that emerged in the said case, found that the appeal had been filed within the extended period of sixty days and under the proviso, the Court, on being satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period of sixty day, condoned the delay under the proviso to Section 74(1) of the 2013 Act.

48. Learned counsel for the respondent has also cited ***State of Haryana vs. Hindustan Machine Tools Limited, [AIR 2015 P&H 45]*** (*Hindustan Machine Tools Limited*), which is a judgment rendered by a Full Bench of the Punjab and Haryana High Court which considered the proviso to Section 25(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA, 1985). Under Section 25(1) of the SICA, 1985, the question was whether it was permissible for AAIFR (appellate authority) under the said Act, to condone the delay beyond the period of 45 days plus 60 days and whether the High Court in exercise of power under Article 226 of the Constitution of India would condone the delay and remit the matter for decision on merits by the AAIFR. In that context, the question as to whether Section 5 of the Limitation Act was applicable was also considered. After elucidating on the scheme of law, under SICA, 1985 and by observing that it is a complete code by itself and the nature of the remedy provided therein is covered by the said Act, it was observed that the intention of the Legislature in enacting sub-section (1) of Section 25 of the SICA, 1985 and

proviso thereunder is that the appeal should be preferred within 45 days from the date of issue of the order to a person and the said period can be further extended on sufficient cause being shown, by another 15 days, but not thereafter. That the said period is absolute and cannot be extended under Section 5 of the Limitation Act. Hence, it was held that Section 5 of the Limitation Act was excluded because of the provisions of Section 29(2) of the Limitation Act. It was held the appellate authority lacked jurisdiction to condone the delay in filing the appeal under Section 25(1) of the SICA, 1985 beyond the period prescribed thereunder and Section 5 of the Limitation Act was excluded from its applicability beyond sixty days enacted in the said provision.

It was further held that the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, cannot permit or direct an infraction by the authorities created by a statute and that an adjudicatory or appellate authority cannot be directed to breach the provision of limitation prescribed under Section 25(1) of SICA, 1985.

49. In ***Oil and Natural Gas Corporation Limited vs. Gujarat Energy Transmission Corporation Limited and Others, [(2017) 5 SCC 42]*** (*ONGC Limited*), while considering Section 125 of the Electricity Act, 2003, the Hon'ble Supreme Court held, when there is a statutory command by the legislation as regards the limitation there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy. That when there is a special adjudicatory forum meant for expeditious decision on the grievance of a person, the special legislation prescribing a particular limitation period has a binding effect and the same has to be followed, regard being had to its mandatory nature. Therefore, it is equivalent to Section 3 of the Limitation Act. Hence, the delay cannot be condoned by taking recourse to Article 148 of the Constitution.

50. ***Patel Brothers vs. State of Assam, [(2017) 2 SCC 350]*** (*Patel Brothers*) considered Sections 81 and 84 of the Assam Value Added Tax Act, 2003 (Assam VAT Act) and Section 5 read with Sections 29(2) of the

Limitation Act, in the matter of delay in filing a revision petition and condonation of the same. The question for determination was whether Section 5 of the Limitation Act was applicable in respect of a revision petition filed in the High Court under Section 81 of the Assam VAT Act. Section 81 of the Assam VAT Act states that any dealer or other person, who is dissatisfied with the decision of the Appellate Tribunal, or the Commissioner may, within sixty days after being notified of the decision of the Appellate Tribunal, file a revision to the High Court, and the dealer or other person so appealing shall serve a copy of the notice of revision on the respondents to the proceedings. Section 84 of the Assam VAT Act states that in computing the period of limitation under that Chapter, the provisions of Sections 4 and 12 of the Limitation Act, 1963 shall, so far as may be, apply. The Hon'ble Supreme Court held, on a scrutiny of the scheme of the VAT Act, it showed that it is a complete Code by not only laying down the forum but also prescribing the time-limit within which each forum is competent to entertain the appeal or revision. The underlying object of the Act appears to be not only to shorten the length of the proceedings initiated under the

different provisions contained therein, but also to ensure finality of the decision made thereunder. The fact that the period of limitation described therein has been equally made applicable to the assessee as well as the Revenue lent ample credence to such a conclusion. Therefore, it was held that the application of Section 5 of the Limitation Act to a proceeding under Section 81(1) of the VAT Act was excluded by necessary implication, by virtue of the language employed in Section 84 of the said Act.

51. In ***P.Radha Bai and others vs. P. Ashok Kumar and another, [AIR 2018 SC 5013 : 2018 SCC Online SC 1670]*** (*P.Radha Bai*), the question that arose was the applicability of Section 17 of the Limitation Act for condoning the delay caused on account of alleged fraud played on the objector (party challenging the award), beyond the period prescribed under Section 34(3) of the Arbitration Act. In the said case, there was a delay in filing the suit and an application under Section 34(3) of the Arbitration Act was filed. The trial court had dismissed the said suit/application stating that it was filed beyond the limitation period stipulated under Section 34 of the

Arbitration Act. But the High Court had remanded the matter by stating that the trial court had not considered the applicability or otherwise of Section 17 of the Limitation Act which deals with the effect of fraud or mistake on the period of limitation. Aggrieved by the remand order, the appellants therein had approached the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the exclusion of Section 17 was necessarily implied on a reading of the scheme and object of the Arbitration Act. Firstly, the purpose of the Arbitration Act was to provide for a speedy dispute resolution process. Secondly, extending Section 17 of the Limitation Act to Section 34 would do violence to the scheme of the Arbitration Act. If Section 17 of the Limitation Act were to be extended to Section 34, the determination of "time for making an application to set aside the arbitral award" in Section 36 will become uncertain and create confusion in the enforcement of the award. This would run counter to the scheme and object of the Arbitration Act. Thirdly, Section 34(3) reflects the principle of unbreakability i.e., the period of limitation under Section 34(3) of the Arbitration Act is "unbreakable" and is meant to run continuously. It

was held that once the party has received the award passed under the Arbitration Act, the limitation period under Section 34(3) of the said Act commences. Hence, Section 17 of the Limitation Act would not come to the rescue of such objecting party.

52. But, in the instant case, under Section 74(1) of the 2013 Act what is stipulated is the limitation period which commences sixty days from the date of the award and not from the date of receipt of the award. Hence, the question is whether the principle of unbreakability of time once the award has been passed by the reference Court has to be considered and answered.

53. ***Bengal Chemists and Druggists Association vs. Kalyan Chowdhury, [(2018) 3 SCC 41]*** (*Bengal Chemists*) is a case which arose under Sections 421(3) and 433 of the Companies Act, 2013 in the context of limitation period of forty-five (45) days prescribed in Section 421(3) plus additional forty-five (45) days in its proviso, to file an appeal from the orders of the Tribunal. Section 421(3) speaks that every appeal under Section 421(1) shall be filed within a period of forty-five

days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form and accompanied by such fees as may be prescribed. The proviso states that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period. Section 433 states that the provisions of the Limitation Act shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be. In the said case, the Hon'ble Supreme Court while distinguishing ***Partap Singh vs. Directorate of Enforcement, [(1985) 2 SCC 72]***, which dealt with Section 37(2) of the Foreign Exchange Regulation Act, 1973 and ***Mangu Ram vs. MCD [(1976) 1 SCC 392]***, and by following other decisions such as in the case of *Popular Construction Company, ONGC Limited* and *Chhattisgarh State Electricity Board*, held that Section 421(3) of the Companies Act, 2013 does not merely contain the initial period of 45 days being for filing an

appeal, but also goes on to state that another period of 45 days, being a grace period, given by the Legislature cannot be exceeded, provided sufficient cause is made out within the aforesaid grace period to entertain the appeal. That the grace period of 45 days, being a special in-built kind of Section 5 of the Limitation Act, has been incorporated. It is under a special statute namely, Companies Act, 2013, which means that beyond the second period of 45 days, there can be no further condonation of delay. Emphasis was laid on the expression "not exceeding 45 days" in the proviso to Section 421(3) of the Companies Act, 2013, to state that it would have the same effect as the expression "but not thereafter" in the proviso to Section 34(3) of the Arbitration Act.

54. In ***Nasir Ahmmed vs. National Investigation Agency [(2015) 3 KLT 320 : 2016 Cri.L.J. 1101]*** (*Nasir Ahmmed*), the controversy revolved on the question whether an appeal under Section 21 of the National Investigation Agency Act, 2018 (NIA Act) could be validly filed before the High Court after the expiry of ninety days from the date the judgment or sentence or order

appealed from and whether the High Court could condone the delay in filing the appeal under Section 5 of the Limitation Act. Section 21(1) of the NIA Act states that notwithstanding anything contained in the Code, an appeal shall lie from any judgment/sentence or order, not being an interlocutory order of a special Court, to the High Court both on facts and on law. Sub-section (5) states that every such appeal under this Section shall be preferred within a period of thirty day from the date of the judgment, sentence or order appealed from; provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days. The Section further provides that no appeal shall be entertained after the expiry of the period of ninety days. The Division Bench of the Kerala High Court, on a reading of the scheme of the NIA Act and in particular, Section 21 of the said Act, held that the High Court had no jurisdiction to condone the delay in filing the appeal beyond the period of ninety days. It was observed that the power of the High Court under the first proviso to sub-section (5) of Section 21 of the said

Act was curtailed and a further restriction in the second proviso thereto was a clear indication that the High Court cannot exercise the power under Section 5 of the Limitation Act to condone the delay. Hence, there was an express exclusion of Section 5 of the Limitation Act as contemplated under Section 29(2) thereof. In the said case, there was delay of 164 days in filing the appeal and the appeal was dismissed as not maintainable.

55. ***Farhan Shaikh vs. State (National Investigation Agency), [(2019) SCC Online Del.9158]*** (*Farhan Shaikh*) is also a matter which arose under Section 21 of the NIA Act, but the Division Bench of the Delhi High Court after considering the case regarding the delay in filing the appeal noted that the appellant therein had sought condonation of delay of 314 days in filing the appeal and further delay of 44 days in re-filing the appeal. It was held that the appellant had proved sufficient cause for the delay in filing and re-filing the appeal and condoned the same. Further, this judgment is contrary to the judgment of the Kerala High Court where the delay of 164 days in filing the appeal was not

condoned and the appeal was dismissed as not maintainable.

56. The Hon'ble Supreme Court in ***Abdul Ghafoor and Another v. State of Bihar, [(2011) 14 SCC 465]*** (*Abdul Ghafoor*), observed that the law of limitation indeed must get due respect and observance by all courts. But in cases of conviction and imposition of sentence of imprisonment, the court must show far greater indulgence and flexibility in applying the law of limitation than in any other kind of case.

57. In ***Simplex Infrastructure Limited vs. Union of India [(2019) 2 SCC 455]*** (*Simplex Infrastructure Limited*) also it has been held that Section 5 of the Limitation Act has no application to a suit / application filed under Section 34 of the Arbitration Act. But Section 14 of the Limitation Act applies to Section 34 of the Arbitration Act. In the said case, it was held that the High Court was not justified in condoning the delay of 514 days in filing the application (suit) under Section 34(3) of the said Act.

58. Learned HCGP has relied upon an order of this Court passed in ***Writ Petition Nos.16886-87 of 2013 (GM-DRT)*** dated 27/09/2013 passed by a Co-ordinate Bench of this Court wherein the question was whether Section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short) provides for condonation of delay or not. In the said case, it was observed that the provisions of the Limitation Act as are applicable to an appeal filed before an appellate tribunal under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('Debts Recovery Act' for short) are applicable under SARFAESI Act also.

The said judgment, however, does not deal with the point under consideration namely, as to whether when a specific period of limitation is prescribed under the 2013 Act which would exclude the application of Section 5 of the Limitation Act. Hence, the aforesaid order of the Co-ordinate Bench of this Court is of no assistance to the appellant.

Scheme of 2013 Act and Article 300A of the constitution:

59. The right to file an appeal under Section 74(1) of the Act and the restriction vis-à-vis limitation period in filing the same must be viewed in light of the scheme of 2013 Act. But before doing so, it would be useful to refer to Article 300A of the Constitution which states that no person shall be deprived of his property save by authority of law, although this appeal is filed by the State but Article 300A would assume importance while applying Section 74(1) of the 2013 Act when a land loser seeks to file an appeal. The said Article was inserted by the Constitution (44th Amendment) Act, 1978 with effect from 20th June 1979. Prior to the amendment, deprivation of property save by authority of law was guaranteed by Article 31 as a fundamental right. But on repeal of Article 31, the said right is no longer a fundamental right but a Constitutional right. Article 300A ensures that the right to property cannot be abridged or curtailed by the State except in accordance with law.

60. In the context of Article 300A, deprivation of property could take place in a myriad ways including acquisition of property under the *eminent domain* doctrine. Entry No.42 of List-III of the VII Schedule deals with "acquisition and requisitioning of property". The doctrine of *eminent domain* means that the person has an inherent or natural right to property irrespective of any Constitutional guarantee but the State has the power to over-ride the said natural right by compulsorily acquiring such property in exercise of its sovereign power of eminent domain provided the acquisition is made for a public purpose and the State pays the compensation to the expropriated owner. **[Source: "Commentary on the Constitution of India" by Dr.Durga Das Basu, 8th Edition, Volume 8, 2011, Art.300A]** Payment of compensation must be just, fair and reasonable and not a mirage and under the 2013 Act, the object and recognition is a right to fair compensation.

61. Thus, the right of a land-loser to seek a just and fair compensation as recognized under Article 300A of the Constitution by filing an appeal to the High Court must

be considered in the light of the appellate remedy being circumscribed by the law of limitation. As already noted, it is a settled position that a right of appeal is a substantive right, while the period of limitation within which such an appeal could be filed is procedural in nature. If the substantive right to file an appeal is curtailed by a procedural restriction such as prescribing a specific period of limitation under the 2013 Act, which is lesser than the limitation period prescribed by the Limitation Act, can it be said that there is a curtailment of the substantive right of a land-loser (or the requisitioning authority) from filing an appeal against a judgment and award of the reference Court to the High Court under a restricted or shortened period of limitation prescribed under the special statute namely, the 2013 Act so as to violate Article 300A of the Constitution. We do not think that the substantive right to file an appeal by a by a land-loser to the High Court under Section 74(1) of the 2013 Act, (or for that matter, by an Acquiring Authority or a Requiring Authority or a State) is curtailed by a shortened limitation period prescribed under Section 74(1) of the 2013 Act so as to cause an infraction of Article 300A of the Constitution provided the provision is

given a meaningful interpretation so as to advance the cause of justice both from the point of view of a land loser as well as a requiring authority or the State. The reasons for the same are not far to see. The Land Acquisition Act, 1894 has been repealed by 2013 Act. The latter law has been enacted by the Parliament to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families. The 2013 Act also provides for just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement. The 2013 Act also ensures that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic

status and for matters connected therewith or incidental thereto.

62. In order to achieve the aforesaid objects, the 2013 Act has been enforced with effect from 01/01/2014, wherein several time-lines have been prescribed under various Sections in order to mitigate the difficulties of a land-loser and also, at the same time, be conscious of the requirement of land for developmental purposes whether infrastructural or other such purposes, including socio-economic purposes, which are public purposes. Chapter II of the said Act deals with determination of social impact and public purpose. It is in two parts: part-A deals with preliminary investigation for determination of social impact and public purpose, while part-B deals with appraisal of social impact assessment report by an expert group. The second proviso to Section 4 states that the appropriate Government shall ensure the completion of the Social Impact Assessment study within a period of six months from the date of its commencement. The said assessment must be made by the appropriate Government by issuance

of a notification for commencement of consultation and the social Impact Assessment study.

63. Under Section 7 of the Act, the appropriate Government shall ensure that the Social Impact Assessment report is evaluated by an independent multi-disciplinary Expert Group, as may be constituted by it and the Expert Group shall make recommendation if it is of the opinion that (a) the project does not serve any public purpose; or (b) the social costs and adverse social impacts of the project outweigh the potential benefits within two months from the date of its constitution, to the effect that the project shall be abandoned forthwith and no further steps to acquire the land will be initiated in respect of the same. Similarly, if the Expert Group is of the opinion that, (a) the project will serve any public purpose; and (b) the potential benefits outweigh the social costs and adverse social impacts, the Expert Group shall make specific recommendations within two months from the date of its constitution whether the extent of land proposed to be acquired is the absolute bare-minimum extent needed for the project and whether there are no other less displacing

options available. Under Section 9, it is stated that where land is proposed to be acquired invoking the urgency provisions under section 40 of the 2013 Act, the appropriate Government may exempt undertaking of the Social Impact Assessment study by the Expert Group.

64. Section 10A which is in Chapter IIIA empowers the appropriate Government in public interest by notification to exempt any of the projects stated therein from the application of the provisions of Chapters II and III of the 2013 Act.

65. Chapter IV deals with the notification of acquisition. Section 11 of the Act deals with notification and acquisition. Once a notification is issued under Section 11 of the Act, stating that any land in any area is required or likely to be required for any public purpose, a preliminary survey of the land has to be carried out by giving at least sixty days prior notice. Further, where a preliminary notification under Section 11 is not issued within twelve months from the date of appraisal of the Social Impact Assessment Report submitted by the Expert Group under Section 7, then, such report shall be deemed

to have lapsed and a fresh Social Impact Assessment shall be required to be undertaken prior to acquisition proceedings under section 11. Further, the appropriate Government has the power to extend the period of twelve months, if in its opinion circumstances exist justifying the same after recording in writing the reasons. Once a land is notified under sub-section (1) of section 11, any person interested in such land may within sixty days from the date of the publication of the preliminary notification, object to— (a) the area and suitability of the land proposed to be acquired; (b) justification offered for public purpose; (c) the findings of the Social Impact Assessment report; after the objection are heard, the Government shall take a decision on the same.

66. Further, Section 16 of the Act pertains to the preparation of Rehabilitation and Resettlement Scheme by the Administrator. The Draft Scheme must include a time limit for implementing the said scheme. When the appropriate Government is satisfied that any particular land is need for public purpose, a declaration should be made to that effect. Such a declaration must be made

within a period of twelve months from the date of publication of preliminary notification under Section 11. If no such declaration is made within the said twelve months, then such notification issued under Section 11(1) shall be deemed to have been rescinded. The appropriate Government has the power to extend the period of twelve months if in its opinion circumstances exist justifying the same, provided the reasons are recorded in writing and the same are notified and uploaded on the website of the authority concerned.

67. Under Section 21 of the Act, a public notice has to be issued by the Collector stating that the Government is intending to take possession of the land and that claims to compensation and rehabilitation and resettlement for all interests in such land may be made to him. On issuance of the public notice, the persons interested in the land could appear personally or through their representatives before the Collector at a time and place mentioned in the public notice, not being less than thirty days and not more than six months after the date of publication of the notice, and to state the nature of their

respective interests in the land and the amount and particulars of their claims to compensation for such interests, their claims to rehabilitation and resettlement along with their objections, if any, to the measurements made under section 20.

68. Section 25 states that the Collector shall make an award within a period of twelve months from the date of publication of the declaration under section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. However, the appropriate Government has the power to extend the period of twelve months, if in its opinion, circumstances exist justifying the same.

69. The Collector may at any time, but not later than six months from the date of award or where he has been required under the provisions of the Act to make a reference to the Authority under section 64, before the making of such reference, by order, correct any clerical or arithmetical mistakes in either of the awards or errors arising therein either on his own motion or on the application of any person interested or local authority,

after giving reasonable opportunity of making representation in the matter to any person to be prejudicially affected. Under Section 37(2) of the Act, on the making of the award, the Collector has to give immediate notice of his award to such of the persons interested who are not present personally or through their representatives when the awards are made.

70. Under Section 38, the power to take possession of the land acquired is envisaged. The Collector can take possession of the land after ensuring that the full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 30. However, the components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the

award. In the case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands acquired.

71. Under section 64(1), any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority and if the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, requesting it to direct the Collector to make the reference to it within a period of thirty days. The said application shall (a) If the person making it was present or represented before the Collector at the time when he made the award, within six weeks from the date of the Collector's award; (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector's award, whichever period shall first

expire., provided the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso i.e., within the period of 30 days.

72. Under Section 73, a person aggrieved by the award of the Collector may, notwithstanding that he had not made an application to the Collector, in writing to the Collector within three months from the date of the award of the Authority, in respect of other persons seeking re-determination of compensation on the basis of the amount of compensation awarded by the authority in respect of other lands. The said application may be in writing and to be made within three months from the date of the award of the Authority. When such an application is received, the Collector shall, hold an inquiry and re-determine the amount.

73. Section 74 is the Section under consideration. It pertains to filing of an appeal to High Court by any person aggrieved by the Award passed by an Authority whereunder the period of limitation is sixty days from the

date of Award with an extended period of another sixty days. On a consideration of the scheme of the Act, it is evident that the acquisition and requisition of the land and payment of fair compensation to the land-loser is based on specific time lines at various stages. Thus, the object of 2013 Act is to ensure that the land which is sought to be acquired is not subject to uncertainty and endless passage of time and the said land-owner is not in any way prejudiced on account of the acquisition sought to be made by the authority. It is in light of the said scheme of the Act that Section 74(1) must be interpreted by bearing in mind Section 29(2) of the Limitation Act. In this regard, it is also significant to note that any appeal filed under Section 74(1) of the Act to the High Court must be heard expeditiously and an endeavor must be made to dispose of such appeal within six months date of which it was presented to the High Court.

Object and purpose of Limitation Act:

74. As a preface to the matter under discussion, paragraphs 12 and 13 of ***Basavaraj vs. Land Acquisition***

Officer [(2013) 14 SCC 81] (Basavaraj) could be cited as under:

"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "*dura lex sed lex*" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

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”.

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.

(See: ***Popat and Kotecha Property v. State Bank of India Staff Assn.*** (2005) 7 SCC 510; ***Rajendar Singh & Ors. v. Santa Singh & Ors.***, AIR 1973 SC 2537; and ***Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project***, (2008) 17 SCC 448).”

75. Similarly, in ***Rohitash Kumar and others vs. Om Prakash and others***, [(2013) 11 SCC 451] (*Rohitash Kumar*) at paragraphs 23 to 30, it has been observed as under:

“Hardship of an individual:

23. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigour.

It is a well settled principle of interpretation that hardship or inconvenience caused cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the Statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice. (Vide: **CIT (Ag.), West Bengal v. Keshab Chandra Mandal**, AIR 1950 SC 265; and **D.D. Joshi. v. Union of India & Ors.**, AIR 1983 SC 420).

24. In **Bengal Immunity Co. Ltd. v. State of Bihar & Ors.**, AIR 1955 SC 661 it was observed by a Constitution Bench of this Court that, if there is any hardship, it is for the legislature to amend the law, and that the Court cannot be called upon, to discard the cardinal rule of interpretation for the purpose of mitigating such hardship. If the language of an Act is sufficiently clear, the Court has to give effect to it, however, inequitable or unjust the result may be. The words, '*dura lex sed lex*' which mean "the law is hard but it is the law." may be used to sum up the situation. Therefore, even if a statutory provision causes hardship to some people, it is not for the Court to amend the law. A legal enactment must be interpreted in its plain and literal sense, as that is the first principle of interpretation.

25. In **Mysore State Electricity Board v. Bangalore Woolen, Cotton & Silk Mills Ltd. & Ors.**, AIR 1963 SC 1128 a Constitution Bench of this Court held that, "inconvenience is not" a

decisive factor to be considered while interpreting a statute.

26. In ***Martin Burn Ltd. v. The Corporation of Calcutta***, AIR 1966 SC 529, this Court, while dealing with the same issue observed as under:- "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not." (See also: ***The Commissioner of Income Tax, West Bengal I, Calcutta v. M/s Vegetables Products Ltd.***, AIR 1973 SC 927; and ***Tata Power Company Ltd. v. Reliance Energy Limited & Ors.***, (2009) 16 SCC 659).

26. Therefore, it is evident that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision, if the language used therein, is unequivocal.

Addition and Subtraction of words:

27. The Court has to keep in mind the fact that, while interpreting the provisions of a Statute, it can neither add, nor subtract even a single word. The legal maxim "*A Verbis Legis Non Est Recedendum*" means, "From the words of law, there must be no departure". A section is to be interpreted by reading all of its parts together, and it is not permissible, to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the Statute has committed a mistake; it must proceed on the

footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act. The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, cannot add words to a Statute, or read words into it which are not part of it, especially when a literal reading of the same, produces an intelligible result. (Vide: **Nalinakha Bysack v. Shyam Sunder Haldar & Ors.**, AIR 1953 SC 148; **Sri Ram Ram Narain Medhi v. State of Bombay**, AIR 1959 SC 459; **M. Pentiah & Ors. v. Muddala Veeramallappa & Ors.**, AIR 1961 SC 1107; **The Balasinor Nagrik Co-operative Bank Ltd. v. Babubhai Shankerlal Pandya & Ors.**, AIR 1987 SC 849; and **Dadi Jagannadham v. Jammulu Ramulu & Ors.**, (2001) 7 SCC 71).

28. The Statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The Courts have to administer the law as they find it, and it is not permissible for the Court to twist the clear language of the enactment, in order to avoid any real, or imaginary hardship which such literal interpretation may cause.

29. In view of the above, it becomes crystal clear that, under the garb of interpreting the provision, the Court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation.”

76. At this stage, it is necessary to delineate on the object and purpose of the Limitation Act, 1963. The said Act consolidates and amends the law of limitation of suits, appeals and applications and for purposes connected therewith. The law of limitation is an adjective law containing procedural rules and do not create any right in favour of any person, but simply prescribes that the remedy can be exercised only up to a certain period and not beyond. The Limitation Act therefore does not confer any substantive right nor define any right or cause of action. The law of limitation is based on delay and laches. It is well known that the Limitation Act only bars the remedy without extinguishing the rights. It is made to ensure that a plaintiff does not resort to procrastination or dilatory tactics, but seeks the remedy within a time fixed by the legislature. But in certain special circumstances like Section 27 of the Limitation Act, once the remedy becomes barred by limitation, the right itself gets extinguished, that

is, when a suit for possession of any property gets extinguished on the determination of period of limitation. That unless there is a complete cause of action, limitation cannot run and there cannot be complete cause of action unless there is a person who can sue and a person who can be sued. There is also an important principle which is crystallized in the form of maxim that "*when once the time has begun to run, nothing stops it*".

77. On a reading of Section 29(2) of the Limitation Act, it becomes clear that where any special or local law prescribes, *inter alia*, any appeal to be filed within a period of limitation different from the period prescribed by the schedule under the Act, Section 3 of the Limitation Act shall apply and the provisions contained in Sections 4 to 24 inclusive shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law. Before ascertaining as to whether there is an exclusion of Sections 4 to 24 of the Limitation Act and particularly Section 5 thereof under the provisions of the 2013 Act, it is necessary to have a bird's view of relevant

Sections from 4 to 24 of the Limitation Act applicable to appeals only.

78. Section 4 deals with expiry of prescribed period when the Court is closed. It states that where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the Court re-opens. The explanation states that the Court shall be deemed to be closed on any day within the meaning of the Section, if during any part of its normal working hours it remains closed on that day.

79. In computing the period of limitation in filing an appeal, a litigant is not entitled to take into account the time taken in obtaining the judgment and decree appealed from, if the application for those copies is made before the expiry of the period of limitation notwithstanding the fact that the right to file an appeal still subsists in view of the provisions of Section 4 of the Limitation Act. Section 4 does not extend or enlarge the period of limitation, but such a provision has been made having regard to the practicality of the matter.

80. Section 5 of the Limitation Act deals with extension of prescribed period in certain cases. The moot point in the instant case is, whether having regard to Section 74 of 2013 Act, whether Section 5 of the Act is excluded. Section 5 states that an appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he has sufficient cause for not preferring the appeal or making the application within such period. By way of explanation, it is stated that the fact that an appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section. Section 5 of the Limitation Act may be contrasted with Section 74 of the 2013 Act.

81. Under Section 74(1) of the 2013 Act it is stated that a person aggrieved may file an appeal before the High Court within sixty days from the date of the award. The proviso states that if the High Court is

satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. Thus, it is observed that while under Section 5 of the Limitation Act the period prescribed is as per the schedule to the said Act, for an appeal under Section 74(1) of the 2013 Act, the period of limitation prescribed is sixty days from the date of the award. While Section 5 permits extension of the prescribed period of limitation if the appellant satisfies the appellate Court that he had sufficient cause for not preferring the appeal or making the application within the period of limitation but by not prescribing any period of extension as such, under the proviso to Section 74(1) of the 2013 Act, the extension beyond the period of limitation which is only sixty days from the expiry of the initial period of sixty days. Thus, the extended period of limitation is fixed under Section 74(1) of the 2013 Act. The controversy in the instant case is whether Section 5 of the Limitation Act would apply or whether it is excluded in view of the specific provision provided under Section 74(1) of the 2013 Act. Having regard to the dictum of the Hon'ble Supreme Court in the

case of *Popular Construction Company* and other judgments of the Hon'ble Supreme Court, it is held that Section 74(1) of the 2013 Act excludes Section 5 of the Limitation Act as the extended period of limitation is fixed as 60 days under the proviso to Section 74(1) of the 2013 Act.

82. But the question that still remains is as to whether Section 4 and any of Sections 6 to 24 of the Limitation Act are excluded. The expression used in Section 74(1) of the Act is sixty days from the date of the award. The said expression has to be construed in light of the contingencies which arise subsequent to passing of the award which will have to be discerned in light of Section 4 to Section 24 of the Limitation Act when they are applicable to appeals. We have already dealt with Section 4 of the Act. Sections 6 to 11 both inclusive are not relevant to the present case.

83. The exclusion of time in legal proceedings is delineated in Section 12 of the Act. Sub-section(1) of Section 12 states that in computing the period of limitation for, *inter alia*, an appeal, the day from which such period is

to be reckoned, shall be excluded. Sub-section(2) of Section 12 states that in computing the period of limitation *inter alia*, for an appeal or an application for leave to appeal, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, award or order appealed from shall be excluded. Sub-section(3) states that where a decree or order is appealed from or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall be excluded. Sub-section(4) states that in computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded. Under the explanation it is stated that in computing the period under this section, the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.

84. Section 14 deals with exclusion of time of proceeding *bona fide* in Court without jurisdiction. It

states that in computing the period of limitation for any suit or an application, the time during which the plaintiff or the applicant had been prosecuting with due diligence another civil proceeding, whether in the Court of first instance or of appeal or revision, against the defendant or respondent shall be excluded, where the proceeding relates to the same cause of action and is prosecuted in good faith in a Court which, from the defect of jurisdiction or other cause of action of a like nature are unable to entertain it. Explanation (a) states that in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted. For the purpose of this Section, the plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding; for the purpose of this Section, misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction. Under Section 14, insofar as an appeal is concerned, the time spent in prosecution before a wrong forum would have to be excluded, the principles stated therein would be applied insofar as the appeals under the 2013 Act are concerned,

by filing an application under the proviso to Section 74(1) of the 2013 Act and seeking condonation of delay in filing an appeal before the competent Court having jurisdiction by seeking exclusion of time spent in *bona fide* prosecuting the appeal before the wrong appellate forum. In such an event, if the appellate court is satisfied having regard to the requirement of Section 14 thereof, it could constitute sufficient cause for filing the appeal within the period of sixty days under sub-section (1) of Section 74 as well as the extended period of sixty days under the proviso thereto, as the case may be. Thus, the expression "not exceeding sixty days" cannot be applied in a literal sense as application of Section 14 of the Limitation Act is not excluded under Section 74(1) of the 2013 Act. In such circumstances, the expression "not exceeding sixty days" cannot be given a verbatim meaning or a plain meaning but a contextual and practical meaning as, in our view, the said expression is applicable in relation to Section 74(1) of 2013 Act. Any other interpretation would deprive an appellant of his remedy before the High Court.

85. Even though the High Court may be one for the State, but as far as State of Karnataka is concerned, there are three Benches and territorial jurisdiction are assigned to the Principal Bench at Bengaluru and the Benches at Dharwad and Kalaburagi and hence, time spent in prosecution of an appeal before a Bench not having competency to deal with the appeal and being transferred to another Bench or being returned to be re-filed before the appropriate Bench or if the appeal being withdrawn before a particular Bench to be re-filed before the competent Bench, before the Bench not having competency to deal with the matter would have to be inevitably excluded in a case when the appeal is re-presented or re-filed before the competent Bench. Thus, under Section 14 of the Limitation Act seeking exclusion of time spent in prosecuting the appeal before a Court or Bench not having the jurisdiction to adjudicate upon the same would apply. Similarly, having regard to the pecuniary jurisdiction of the High Court and District Court time spent in an appeal *bona fide* prosecuted before the District Court when it had to be prosecuted before the High

Court has to be excluded while considering the proviso to Section 74(1) of the 2013 Act.

86. Section 19 states that where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. The proviso is not relevant for the instant case. Explanation (b) of Section 19 states that the expression "debt" does not include money payable under a decree or order of a court. Thus, in substance, Section 19 is not applicable to the case at hand.

Conclusions:

87. Thus, what emerges from the aforesaid judicial precedent and discussion is that whenever there is a special enactment prescribing a limitation period different from the Limitation Act, it is necessary to consider as to whether Section 5 of the Limitation Act is excluded. Of course, in Section 29(2) of the Limitation Act, the expression used is "expressly excluded by special or local

law". But, with the passage of time, the expression "expressly excluded" has also been interpreted to also mean exclusion by necessary implication having regard to the scope, object and scheme of the special law being a code by itself prescribing a limitation period different from the Limitation Act, which would exclude application of Section 5 of the Limitation Act.

88. Applying the aforesaid judicial dicta, it is held that the phrase 'within sixty days from the date of the Award' in Section 74(1) of the 2013 Act and the expression "within a further period not exceeding sixty days" in the proviso thereto must be interpreted to mean that there is a specific limitation prescribed in the 2013 Act, which is a code by itself in the matter of grant of fair compensation in respect of acquisition of land and other matters incidental thereto. Therefore, the special statute having a specific provision regarding limitation period would prevail over the Limitation Act, which is a general law and hence, Section 5 of the Limitation Act is not applicable to Section 74(1) of the 2013 Act as it prescribes a specific period of limitation

different from what is prescribed under Article 116 of the Schedule to the Limitation Act.

89. But, the matter does not end. The further consideration which has to be made is as to whether the other provisions of the Limitation Act which are applicable to appeals would apply to Section 74 of the 2013 Act having regard to Section 29(2) of the Limitation Act. While on a consideration of the scheme of the 2013 Act, in light of the decisions of the Hon'ble Supreme Court, it is held that Section 5 of the Act does not apply, it is necessary to consider as to whether Sections 4 and 12 to 14 would apply. Thus, the interpretation is to be placed on the expression "within sixty days from the date of the Award" in Section 74(1) of the 2013 Act. Does it mean that the said period of sixty days must be calculated in a mechanical or pedantic manner or in a practical way? If Section 12 of the Limitation Act is considered, it is noted that in computing the period of limitation for any appeal, the day from which such period is to be reckoned has to be excluded i.e., date of the award in the instant case. In other words, the day on which the judgment i.e., the

Award in the instant case, was made or drawn has to be excluded. This is also having regard to Section 9 of the General Clauses Act, 1899. The time taken for preparing the certified copy of the Award sought to be appealed against, has to be excluded. If an extreme situation is considered, there could be expiry of sixty days from the date of the Award in the preparation of the certified copy of the award itself, in that, after the pronouncement of the judgment, the reference court would take some time for the preparation of the award and thereafter the certified copy of the Award would have to be made ready, by which time, sixty days may lapse from the date of the award. In such a case, there is no doubt further period of sixty days for filing of the appeal under the proviso to Section 74(1) of the 2013 Act, would apply. But the question is, if for any reason beyond the control of the appellant the certified copy of the Award is received by the aggrieved party beyond 120 days, i.e., (60 days + 60 days) from the date of the Award, then whether the period of limitation could be construed by exclusion of the periods mentioned under Section 12 of the Limitation Act. While considering the expression 'sixty days from the date of the Award' and

'further period not exceeding sixty days', in our view, the day on which the Award was signed which is the date of the Award would have to be excluded. Further, the period taken for preparation of the certified copy of the judgment and Award would also have to be excluded. If after such exclusion of the aforesaid period, if the appeal is filed within a period of sixty days, then there would be no delay in filing of the appeal to the High Court. If it is beyond that period, then the proviso would apply, provided the appeal is filed within sixty days as mentioned in the proviso to Section 74(1) of 2013 Act.

90. Similarly, under Section 13 of the Limitation Act, while computing the period of limitation prescribed for filing of an appeal under Section 74(1) of the 2013 Act in cases where leave to sue or appeal as a pauper is applied for, the time during which the appellant has been prosecuting in good faith his application for such leave regarding payment of the Court fees prescribed for filing of an appeal to the High Court, shall have to be excluded by treating the appeal as having the same force and effect as if the court fees had been paid in the first instance.

Section 13 of the Limitation Act may have relevance to appeals filed by land losers as court fees would have to be paid on the enhanced compensation sought by the land-loser.

91. Similarly, in computing the period of limitation for filing an appeal under Section 74(1) of the 2013 Act, the time spent in prosecuting *bona fide* with due diligence an appeal before an appellate court not being the competent court in good faith has to be excluded. In fact, Section 14 of the Limitation Act has been made applicable to Section 34(3) of the Arbitration Act in the cases of *Popular Construction Limited, Consolidated Engineering Enterprises, Ketan, Western Builders, Simplex Infrastructure Limited* and such other cases where provisions similar to Section 74(1) of the 2013 Act have been considered.

92. Thus, there can be no exception to the period of limitation to file an appeal to the High Court and the 60 days has to be computed after application of Sections 12, 13 and 14 of the Limitation Act. In other words, while applying the period of limitation prescribed under Section

74(1) of the 2013 Act in the matter of filing an appeal to the High Court against the judgment and Award of the reference court, while considering as to whether the appeal filed is within the period of 60 days, the exclusion of time as envisaged under Sections 12, 13 and 14 must be made applicable. In our view, such an interpretation would also be in consonance with Article 300A of the Constitution, which recognizes the Constitutional right of a person to his property as no person can be deprived of such a Constitutional right except by authority of law. The same is also in line with the interpretation made by the Hon'ble Supreme Court vis-à-vis other special statutes. Further, on a reading of Section 74(1) of the 2013 Act, there is no bar, either express or implied, which excludes application of Sections 12 to 14 of Limitation Act. On the other hand, if a mechanical interpretation is given to the words "within sixty days from the date of the Award" and the expression "a further period not exceeding sixty days", without taking into consideration Sections 12, 13 and 14 of the Limitation Act, it would result in violation of the Constitutional right of a land-loser to seek enhancement by filing an appeal to the High Court and also disable him from seeking

enhancement of compensation. The application of Sections 12 to 14 of Limitation Act is in order to advance justice as the reasons for exclusion of the periods mentioned in those Sections while computing the limitation period are those which are beyond the control of the party seeking to file an appeal to the High Court. In the same vein Section 4 of the Limitation Act is applicable. Thus, a pedantic interpretation of the 2013 Act must be avoided. It must be interpreted in such a manner that the judicial dicta with regard to the applicability of a distinct limitation period under the Special Act in light of Section 29(2) of the Limitation Act on the one hand, is balanced with the Constitutional right of a land-loser on the other hand. This would also advance the cause of justice of the stake holders involved in the acquisition of land under the 2013 Act as in the instant case.

93. The application of the aforesaid principles to the instant case must be now made having regard to the facts herein. On a perusal of the certified copy of the impugned judgment of the reference court, it is noted that the impugned judgment was rendered by the reference

court on 29/10/2018 and the impugned Award was signed and made on 27/11/2018. The time period till the making of the Award or till the date of the Award (the date on which the Award was made), namely till 27/11/2018 has no relevance as limitation period begins from the date of the award. If the limitation period of sixty days is calculated mechanically, then the period of sixty days from 27/11/2018 would end on 26/01/2019. The said date being a holiday (Republic Day) and 27/01/2019 being Sunday, the appeal had to be filed on or before 25/01/2019 in terms of Section 74(1) of the 2013 Act *de hors* Section 4 of the Limitation Act. But, the expression used is "within sixty days from the date of the Award". It does not mean, fifty-nine days, it means sixty days. That means, on the sixtieth day also, from the date of the award, the appeal could be filed after excluding the day of making of the award. But, if the sixtieth day happens to be a holiday, as in the instant case which was 26/01/2019 (Republic Day), then the appeal could be filed on next working day i.e., on 28/01/2019 (27/01/2019 being Sunday) under sub-section (1) of Section 74 of the 2013 Act, if Section 4 of the Limitation Act is applied. Hence,

the said period of 60 days cannot be considered mechanically, but by also applying Section 4 of the Limitation Act as the same applies to Section 74(1) of 2013 Act.

94. Similarly, application of Section 12 of the Limitation Act would have to be considered in the instant case, as Sections 13 and 14 of the said Act are not applicable to the instant case. This is because, the instant appeal was not filed on or before 28/01/2019 and we have to apply Section 74(1) of the 2013 Act to the instant case meaningfully. It is noted that a further period of sixty days is envisaged under the proviso to Section 74(1) of the 2013 Act by which the limitation period is extended, which in the instant case, has expired on 27/03/2019 when calculated from 27/01/2019. But, the appeal in the instant case has been filed on 13/05/2019, when the Court was closed for Summer Vacation.

95. Therefore, we have perused the certified copy of the impugned Award so as to ascertain the time taken for the preparation of the same, as the said period would have to be excluded as per Section 12 of the Limitation Act

while computing the period of limitation, even when the proviso to Section 74(1) is applied. On perusal of the same, particularly the seal at page No.94 of the Memorandum of appeal, it is noted as under:

“The date on which the certified copy was applied for was : 09/11/2018;
The applicant was required to appear on : 10/12/2018;
The copy was ready on : 01/12/2018.”

Thereafterwards, there is no noting as to when the applicant i.e., appellant herein appeared nor when the certified copy was delivered to the appellant herein. Although the copy was to be ready on 01/12/2018 and the appellant herein was required to appear on 10/12/2018, in the absence of knowing as to when the appellant appeared and as to when the certified copy was actually delivered to the appellant in the instant case, in other words, received by the appellant, the calculation of the limitation period of sixty days is incomplete, the reason being, the appellant could not have preferred the appeal without receiving the certified copy of the Award. But it is not known as to on what date appellant actually appeared before the concerned officer of the reference court for receiving the

copy. No doubt, having regard to the specific period of limitation prescribed under Section 74(1) of the 2013 Act and there being exclusion of Section 5 of the Limitation Act, due diligence must be exercised by the aggrieved party in availing the certified copy of the impugned Award by applying for the same, within a period of sixty days from the date of its preparation and to file the appeal within sixty days from the date of the award after excluding the day on which the Award was made and the time taken for preparation of the certified copy. In the instant case, the date on which certified copy of the award was applied for, was within the period of sixty days and it was also ready within the said period and the appellant was also to appear within the period of sixty days and it was also ready within the said period and the appellant was also to appear within the period of sixty days. But it is not written in the certified copy of the impugned award as to when the appellant appeared and when the certified copy was actually delivered to the appellant in the absence of any noting of the same in the certified copy. In the absence of there being any date indicated in the certified copy produced by the appellant herein as to when the

certified copy was actually delivered to the appellant, the question is whether the benefit of the same must be given to the appellant herein. We do not think so. The appellant could have collected the certified copy on 10/12/2018 or any date subsequent thereto so as to file the appeal on or before 28/01/2019 or even within the further period of 60 days as per proviso to Section 74(1) of 2013 Act, provided sufficient cause was made out. If the Registry of the reference court had only indicated the date on which the certified copy of the impugned award was handed over to the appellant, we would have been in a better position to appreciate the delay if any, in filing this appeal in light of Section 74(1) of the 2013 Act. But in the absence of there being any indication in the certified copy as to when it was delivered to the appellant or on what date the applicant appeared before the Officer concerned in the reference court, we are in a position to hold that there has been a lapse on the part of the concerned Officer (may be the Chief Ministerial Officer) of the reference court in not indicating as to when the applicant appeared and when the certified copy of the impugned award was delivered to him. Therefore, while considering the facts of the present case,

we find that the appeal could have been filed, if not within 60 days, at least within 120 days from 27/11/2018 as, from the certified copy of the impugned award it is noted that the certified copy of the award was ready on 01/12/2018.

96. We have already interpreted Section 74(1) of 2013 Act in light of Section 29(2) of the Limitation Act by holding that Section 5 thereof is not applicable whereas Section 4 and Sections 12, 13 and 14 are applicable while computing the period of limitation of 60 days + 60 days. As already noted, there is no indication as to when the certified copy was delivered to the appellant even though it was prepared on 01/12/2018 and the appellant was required to appear on 10/12/2018. In the instant case, while we accept the contentions of learned counsel for the respondent that Section 5 of the Limitation Act is not applicable to Section 74(1) of the 2013 Act and there cannot be any condonation of delay as contemplated under the said Section in the instant case, nevertheless, Sections 4, 12 to 14 of the Limitation Act are applicable to Section 74(1) of the 2013 Act while computing the period of sixty days + sixty days under Section 74(1) of the 2013 Act.

Further, we do not venture to condone any delay that has occurred in filing of this appeal under Section 5 of the Limitation Act as the same is not applicable to Section 74(1) of the 2013 Act.

97. In the above context, we also have perused the affidavit in support of the application seeking condonation of delay in filing the appeal in order to ascertain the real reason for the delay in not filing the appeal in time and as per Section 74(1) of 2013 Act. The relevant portion of it reads as under:

"4. I submit that pursuant to the order, the present Appeal is filed on the grounds which are urged in the Appeal. It is further submitted that the opinion of the District Government Pleader was required in the process and upon the opinion of the Law Department as well as the Office of the Special Land Acquisition Officer, had discuss the case and it was direction of the Government that the Appeal to be filed has the award passed is illegal, arbitrary and extensive. Hence, the correspondence between one office to other office have consumed hence bonafide delay.

5. I submit that after the order of the Trial Judge an opinion was sought from the Government Pleader, Office of the District Government Pleader, Bengaluru and there was delay in obtaining

certified copy of the judgment, further more the Law Officer had also requested the certified copy of the evidence and cross-examination of the case below, again the District Government Pleader had applied the certified copy and obtained there also certain delay has been caused.

6. I submit that after obtaining the documents the same was put up before the Law Department and also a communication was made to BBMP letting them to know that they were not party in the proceedings and further a series of communication was made in order to secure further instructions in the matter and every correspondence was a due procedure, cannot take appropriate actions immediately. I also submit that an independent decision cannot be made and approvals from the higher authorities also be taken mandatorily and further more the delay is on the account of administrative reasons. The same is required to be condoned in the interest of justice and equity.”

(underlining by us)

98. The appellant has expressly admitted that there was a delay in obtaining the certified copy of the award. The reason for the same is not explained. In the circumstances, we hold that this appeal is filed belatedly even after giving the benefit of the proviso to Section

74(1) of the Act. Hence, the application (I.A.No.1 of 2019) is liable to be ***dismissed***.

99. Before parting with this case, we would like to observe on two aspects. Firstly, having regard to specific period of limitation within which an appeal could be filed before the High Court under Section 74 of the 2013 Act, it is just and necessary for the Chief Ministerial Officer or the Officer concerned in the reference court to clearly indicate the date on which the certified copy of the award is prepared; when the applicant has to appear and the date on which it is delivered to the applicant. In the instant case, the aforesaid aspects are conspicuous by their absence in the certified copy of the impugned award.

100. Secondly, there has been laxity on the part of the appellant / State in appearing before the concerned Officer in the reference court so as to receive the certified copy of the award for the purpose of filing this appeal. The real reasons for the same are not known. However, this would only indicate that the authorities concerned are unaware of the provision of Section 74(1) of the 2013 Act prescribing a specific period of limitation for filing of an

appeal before the High Court against the judgment and award of the reference court so as to seek reduction of the quantum of compensation awarded by the reference court. In fact, in the instant case also the application seeking condonation of delay is not filed under the proviso to Section 74(1) of the 2013 Act. It is under Section 5 of the Limitation Act. Ignorance of law is no excuse. In the instant case, there is a blatant ignorance of law on the part of the Department / State. Therefore, it is necessary for all concerned to become aware of the specific period of limitation prescribed under Section 74(1) of the 2013 Act so that the right to file an appeal is not lost either on account of ignorance of the provision or due to laxity in acting within time.

I.A. No.1 of 2019 is *dismissed*. Consequently, the appeal is also ***dismissed***.

Parties to bear their respective costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

RK/-S*