

TERA CHINAPPA REDDY & ORS.
Appellant(s)

Ap

VERSUS

DIST.COLLECTOR & DIST.MAGISTRATE & ANR.
Respondent(s)

Re

O R D E R

1. The challenge in this appeal is against the order dated 20.10.2008 passed by the High Court of Andhra Pradesh by which an order dated 5.10.2007 passed by the learned District Judge, Khammam had been affirmed. By the aforesaid order, the learned District Judge, acting as the Special Court under the provisions of Andhra Pradesh Depositors in Financial Establishment Act, 1999 (hereinafter referred to 'the Act') had condoned the delay of 40 days (claimed to be longer by the appellants herein) in filing a petition under Section 4(3) of the aforesaid Act for making absolute an order of ad interim attachment passed by the Government under the provisions of Section 3 of the Act.

2. The application for making the order of ad interim attachment absolute is required to be filed within 15 days of the receipt of the order under Section 3 by the competent authority from the Government. Section 4 is silent as to the power of the Special Court to entertain an application after the expiry of a period of 15 days by

condoning the delay; as may have occurred.

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However, in present case, the learned District Judge as well as the

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Meenakshi Kohli
Date: 2015.03.20
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Reason:

High Court thought it appropriate to condone the delay in filing the application primarily on the ground that the Act is intended for the benefit of the depositors and delay caused for the bona fide reasons at the instance of the competent authority should not work to the prejudice of the depositors.

3. Being aggrieved, this appeal has been filed.

4. We have heard Mr. A.T.M. Ranga Ramanujam, learned senior counsel for the appellants and Mr. S. Udaya Kumar Sagar and Mr. Shakil Ahmad Syed, learned counsel for the respondents.

5. Mr. A.T.M. Ranga Ramanujam, learned senior counsel for the appellants has urged that in the absence of any power conferred by the legislature in the Special Court to condone the delay that may have occurred in filing an application under Section 4(3) of the Act, the courts below were wholly unjustified in condoning the delay. Reliance

in this regard had been placed on a decision of this Court in the Commissioner of Sales Tax, U.P., Lucknow vs. Parson Tools & Plants, Kanpur [(1975) 4 SCC 22]. Specific emphasis has been laid on the views expressed by this Court in paras 12, 13, 14 and 15 of the opinion rendered in Parson Tools & Plants (supra). On the aforesaid basis,

it is contended that the power of condonation of delay not being available under the provisions of the Act, the learned District Judge as well as the High Court had committed serious errors of jurisdiction in entertaining the plea of condonation of the delay that has occurred.

6. Opposing, Mr. S. Udaya Kumar Sagar and Mr. Shakil Ahmad Syed, learned counsel for the respondents had placed before the Court provisions of Section 29 (2) of the Limitation Act, 1963 which is in the following terms:

"29. Savings.-

(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."

7. Two decisions of this Court in Mangu Ram vs. Delhi Municipality [(1976) 1 SCC 392] (para 7) and Mukri Gopalan vs. Cheppilat Puthanpurayil Aboobacker [(1995) 5 SCC 5] (para 15) have been placed to elucidate the earlier views of this Court with regard to the effect, purport and scope of application of Section 29(2) of the Limitation Act, 1963. So far as the application of Section 5 is concerned.

The converse of the situation i.e. when the provisions of Section 5 can be said to be excluded by operation of Section 29 (2) of the Limitation Act, 1963 has also been sought to be explained by relying on a third decision of this Court in Union of India vs. Popular Construction Co. [(2001) 8 SCC 470] (paras 5,6,7 & 8).

8. We have considered the submissions advanced at the Bar. Admittedly, Section 4 of the Act is silent with regard to the power of condonation of delay of the Special Court. In such circumstances, the endeavour of the Court in the present case would be to find out the true purport, scope and meaning of the provisions of Section 29 (2) of the Limitation Act, 1963. The position has been explained in para 7 of the opinion rendered by this Court in Mangu Ram (supra) wherein it has been clearly held that unlike the pari materia provisions of the Indian Limitation Act, 1908, Section 29(2) of the Limitation Act, 1963 would make the provisions of Section 5 thereof applicable so to vest powers in the Court to condone the delay in a situation where such power is not expressly excluded. In fact, in Mukri Gopalan (supra), the position has been further

elaborated in para 15 of the report, contents whereof may be usefully extracted herein below:

"After repealing of Indian Limitation Act, 1908 and its replacement by the present Limitation Act of 1963 a fundamental change was made in Section 29(2). The present Section 29(2) as already extracted earlier clearly indicates that once the requisite conditions for its applicability to given proceedings under special or local law are attracted, the provisions contained in Sections 4 to 24 both inclusive would get attracted which obviously would bring in Section 5 which also shall apply to such proceedings unless applicability of any of the aforesaid sections of the Limitation Act is expressly excluded by such special or local law. By this change it is not necessary to expressly state in a special law that the provisions contained in Section 5 of the Limitation Act shall apply to the determination of the periods under it. By the general provision contained in Section 29(2)

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this provision is made applicable to the periods prescribed under the special laws. An express mention in the special law is necessary only for any exclusion. It is on this basis that when the new Rent Act was passed in 1965 the provision contained in old Section 31 was omitted. It becomes therefore apparent that on a conjoint reading of Section 29(2) of Limitation Act of 1963 and Section 18 of the Rent Act of 1965, provisions of Section 5 would automatically get attracted to those proceedings, as there is nothing in the Rent Act of 1965 expressly excluding the applicability of Section 5 of the Limitation Act to appeals under Section 18 of the Rent Act."

9. The net result of the aforesaid two decisions rendered by this Court in Mangu Ram (supra) and Mukri Gopalan (supra) is that it is not necessary that in the special law there should be an express recital that the provisions contained in Section 5 of the Limitation Act would apply and it would be sufficient if there is no express exclusion of the said provisions of the Act.

10. In Union of India vs. Popular Construction Co. (supra), the position in the reverse situation i.e. where the special law specifically excludes the provisions of Section 5 of the Limitation Act had been dealt with. Para

12 of the report is relevant and needs to be extracted for a full illumination of the issues that arise in the present case:

"As far as the language of Section 34 of the 1996

Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an

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application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result."

11. On behalf of the appellant, reference has been made to another decision of this Court in Commissioner of Customs and Central Excise versus Hongo India Private Limited and Another [(2009) 5 SCC 791] wherein this Court had considered the expression "expressly excluded" as appearing in Section 29(2) of the Limitation Act, 1963. It is urged on behalf of the appellant that express exclusion must necessarily mean that there must be a specific reference in the special or local law to the provisions of the Limitation Act, 1963 operations of which are excluded. While it is correct that in its opinion in Commissioner of Customs and Central Excise versus Hongo India Private Limited and Another (supra) this Court had expressed the view that "even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation", the ultimate conclusion has to be arrived at on a consideration of the provisions of the special law; the subject matter dealt with and the scheme thereof. Taking into account the aforesaid parameters laid down in

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Commissioner of Customs and Central Excise versus Hongo India Private Limited and Another (supra), we cannot find

fault with the conclusion of the High Court that having regard to the object of the Act the power to condonation of delay under Section 5 of the Limitation Act, 1963 ought not to be understood to have been excluded by the Act.

12. In the light of the above discussions, we are of the view that having regard to the provisions of Section 4(3) of the Act, the power of condonation of the delay is vested in the Special Court by virtue of Section 29 (2) of the Limitation Act, 1963 and the learned Special Court as well as the High Court had not committed any error, whatsoever, in coming to the impugned conclusion so as to justify the interference in the present appeal.

13. The appeal, consequently, is dismissed, however, without any order as to cost.

.....J.
[RANJAN GOGOI]

.....J.
[N.V. RAMANA]

NEW DELHI
MARCH 10, 2015

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CORRECTED COPY

ITEM NO.103

COURT NO.8

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 7111/2009

TERA CHINAPPA REDDY & ORS.

Appellant(s)

VERSUS

DIST.COLLECTOR & DIST.MAGISTRATE & ANR.
(With office report)

Respondent(s)

Date : 10/03/2015 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE N.V. RAMANA

For Appellant(s) Mr. A.T.M. Ranga Ramanujam, Sr.Adv.
Mr. Hitesh Kumar Sharma, Adv.
Ms. Bhakti Pasrija Sethi, Adv.
Mr. Devesh Singh, Adv.

Ms. Anu Gupta, Adv.

For Respondent(s) Mr. Shakil Ahmed Syed, Adv.
Mohd. Parvez Dabas, Adv.
Mr. Uzmi Jameel Husain, Adv.
Mr. Milan Laskar, Adv.

Mr. S. Udaya Kumar Sagar, Adv.
Mr. Krishna Kumar Singh, Adv.

Mr. Guntur Prabhakar, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The civil appeal is dismissed in terms of the signed order.

(MEENAKSHI KOHLI)
COURT MASTER

(ASHA SONI)
COURT MASTER

[Signed Order is placed on the file]