



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 2038 OF 2024

Abhay S/o Narayan Raje,
Age : 72 years, Occ. Business,
R/o New area ward, Near Bramhan Sangh,
Bhusawal, Tq. Bhusawal, Dist. Jalgaon.

..PETITIONER

-VERSUS-

1. Kala Hanuman Urban Cooperative Credit Society Limited, Bhusawal having its registered address at Near Kulkarni Mala, Behind Court, Bhusawal, Tq. Bhusawal, Dist. Jalgaon.
2. Vijay S/o Natthu Aamodkar
Age : 66 years, Occ. Retired
3. Rajani w/o Vijay Aamodkar
Age : 61 years, Occ. Household
4. Akshay S/o Vijay Aamodkar
Age : 36 years, Occ. Education

All Respondent nos. 2 to 4,
R/o. 82, A, Near Datta Mandir,
Datta Nagar Area, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon
5. Sanjay S/o Changdeo Varke.
Age : 62 years, Occ. Business,
R/o. Behind Biyani Chamber,
Professor Colony, Bhusawal,
Tq. Bhusawal, Dist : Jalgaon.
6. Ashol S/o Mohan Badlani. [Died]

7. Subhash S/o Ashok Tambat
Age : 65 years, Occ. Business,
R/o. Near Renuka Dairy, Kasturinagar, Bhusawal,
Dist. Jalgaon
8. Dhiraj S.o Dharmaji Dandi. [Died]
9. Uday S/o Pandarinath Relkar
Age : 60 years, Occ : Business,
R/o. Maheshnagar, Vanjola Road, Bhusawal, Dist. Jalgaon.
10. Ajay S/o Pahelraj Bajaj
Age : 63 years, Occ. Business,
R/o. Bajaj Cloth Center, Bhusawal, Dist. Jalgaon.
11. Shilpa Rajnikant Khedulkar
Age : 61 years, Occ. Business
R/o. Near J.D.C. Bank,
Tq. Bhusawal, Dist. Jalgaon.

..RESPONDENTS

...
Shri R.N Dhorde, Senior Advocate i/b Shri V.R. Dhorde, Advocate
for the petitioner
APP for Respondent- State : Mr. N.R. Dayama

...
**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATED : 20th DECEMBER, 2024.

JUDGMENT (PER ROHIT W. JOSHI, J.) :

. The present petition is filed under Article 226 of the
Constitution of India in order to seek a declaration that Execution
Application No.10/2020 filed against the petitioner under Section 27 of
the Consumer Protection Act, 1986 (Hereinafter referred to as “CP Act,
1986” for brevity) pending on the file of learned District Consumer

Redressal Forum, Jalgaon is not maintainable as the order dated 12.07.2018, pursuant to which the said proceeding is filed, is void ab initio and a nullity in the eyes of law, in as much as it is passed in a proceeding which was filed beyond the prescribed period of limitation and further because the delay caused was not condoned. The petitioner has also invoked our inherent powers vested under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023.

2. Brief facts of the case are as under :-

Respondent Nos.2, 3 and 4 in the present petition had filed a Consumer Complaint bearing number 140 of 2017 against respondent No.1, which is a Urban Co-operative Credit Society along with its Administrator, Chairman and other office bearers. The said Consumer Complaint is allowed by the learned District Consumer Disputes Redressal Forum, Jalgaon vide order dated 12.07.2018. However, since the order has not been complied, respondent Nos. 2 to 4 have filed Execution Application No.10 of 2020 under Section 27 of the CP Act, 1986. Section 27 of the CP Act provides for penalty for non-compliance of an order passed by the Consumer Forum.

3. The petitioner has raised a challenge that the said proceeding filed under Section 27 of the CP Act, 1986 is not

maintainable, in as much as the order dated 12.07.2018 passed in Consumer Complaint No. 140 of 2017 is passed beyond the prescribed period of limitation and is, therefore, *non est* and void *ab initio*.

4. We have heard Mr. R. N. Dhorde, learned senior counsel for petitioner. The petitioner is arrayed in the Consumer Complaint as opposite party No. 3 in the capacity of Chairman of the opposite party No. 1/Credit Co-operative Society. Learned senior counsel has taken us through the consumer complaint which is filed at Exhibit-C along with the petition. Perusal of the complaint will indicate that the complaint was filed for refund of Term Deposits kept by respondent Nos. 2 to 4 with respondent No. 1 Credit Society along with interest. Learned senior counsel has drawn our attention to paragraph 2 of the complaint in which the details of all the term deposit receipts are mentioned. The said deposits were to mature on different dates, the last date of maturity being 04.01.2013. With this, our attention is drawn to the fact that the consumer complaint is filed on 06.05.2017 i.e. after a period of around 4 years and 4 months from the last date of maturity. Learned senior counsel contends that as per Section 24-A(1) of the CP Act, 1986, the prescribed period of limitation is 2 years from the date on which the cause of action arises. According to him, the cause of action with respect to each of the deposits will arise on separate dates i.e. on

their respective dates of maturity. He would submit that the last date of maturity is 04.01.2013 and even if the limitation is counted from the said date, the limitation period of 2 years expired on 03.01.2015. He therefore, submits that the complaint filed on 06.01.2017 is hopelessly barred by limitation. He has further drawn our attention to Section 24-A(2) which provides power to the District Forum to condone the delay caused in filing of complaint for sufficient cause. Having referred to the said provision, he lays emphasis on proviso thereto to contend that a complaint which is filed beyond period of limitation cannot be entertained unless the District Forum condones the delay by recording reasons for doing so.

5. Having referred to the aforesaid provisions, learned senior counsel would contend that there is a statutory injunction against entertaining complaints which are filed beyond the prescribed period of limitation unless the delay is condoned. He states that an order of condonation of delay is a *sine qua non* for entertaining a complaint on merits which is not filed within the prescribed period of limitation. On the backdrop of aforesaid submissions, he contends that the order passed by the learned Forum is clearly passed beyond the prescribed period of limitation. The learned Forum has failed to observe the mandate of proviso to Section 24-A(2) of the CP Act by entertaining the

complaint which is barred by limitation, without condoning the delay and therefore, the order passed by the learned Forum is wholly without jurisdiction. He further contends that the District Forum will not have jurisdiction to impose any penalty under Section 27 of the CP Act on the basis of an order which is *non est* in the eyes of law and void *ab initio*.

6. In order to buttress his contentions, learned senior counsel has placed reliance upon judgments of the Hon'ble Supreme Court in the matters of *Ragho Singh Vs. Mohan Singh and others* reported in *2001 AIR SCW 2351*, *State Bank of India Vs. M/s. B. S. Agricultural Industries* reported in *AIR 2009 SC 2210* and unreported judgment dated 20.10.2010 in the matter of *Dr. V. N. Shrikhande Vs. M/s. Anita Sena Fernandis (Civil Appeal No. 8983 of 2010)*.

7. In the matter **Ragho Singh (supra)**, an appeal was preferred which was filed beyond the period of limitation. The appeal was delayed by period of 10 days and although the appellate authority had the power to condone the delay, application for condonation of delay was not filed and as such the delay was not condoned and yet the appeal was entertained on merits. In this backdrop, the Hon'ble Supreme Court has held in paragraph 6 of the judgment that since

there was a delay in filing the appeal which was not condoned, the appellate authority viz. Additional Collector had no jurisdiction to allow the appeal. The appeal was liable to be dismissed on the ground of limitation itself. It is held that the appellate order was passed without jurisdiction.

8. In the said judgment of the Hon'ble Supreme Court, the decision of appellate authority was challenged by filing a revision before the board of revenue. Thus, an appropriate statutory remedy for setting aside the appellate order which entertained the appeal barred by limitation was resorted to and said appellate order was set aside.

9. The second decision relied upon by the petitioner in the matter of *State Bank of India (supra)* is a case under the CP Act, where a complaint barred by limitation was allowed. The order passed in the complaint was challenged by taking recourse to remedies under the CP Act, 1986. The authorities under the Act did not interfere with the order passed by District Forum although a time barred claim was allowed by the Forum disregarding the mandate of proviso to Section 24-A(2) of the CP Act, 1986. In this backdrop the matter reached the Hon'ble Supreme Court. The Hon'ble Supreme Court has held that proviso to Section 24-A(2) is preemptory in nature and that before it

admits a complaint, it is duty of a Consumer Forum to ensure that the same is filed within the prescribed period of limitation. It is further stated that although the Forum may condone the delay in case where the complaint is filed beyond limitation, unless the delay is condoned, the complaint cannot be entertained on merits. The Hon'ble Supreme Court has laid emphasis on the words, "shall not admit a complaint" in Section 24-A(1) of the Act and stated that it is legislative command to a Consumer Forum to examine as to whether complaint is filed within the prescribed period of limitation. It is thereafter stated that in view of Section 24-A(2) and proviso thereto, a complaint which is filed beyond period of limitation can be entertained on merits only when the delay is condoned for reasons to be recorded in writing. The contents of paragraph 8 of the judgment are reproduced herewith for ready reference:-

"8. It would be seen from the aforesaid provision that it is peremptory in nature and requires consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The consumer forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. The expression, 'shall not admit a complaint' occurring in Section 24A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within limitation period prescribed thereunder. As a matter of law, the consumer

forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of Section 24A and give effect to it. If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside.”

10. We may point out that in this matter as well the order by Consumer Forum was challenged by availing appropriate statutory remedies under the CP Act, 1986. The matter was carried to the State Commission and thereafter to National Commission and lastly to the Hon’ble Supreme Court by availing statutory remedies available under the Act to challenge the order which was barred by limitation.

11. Similar is the view taken in the matter of **Dr. V. N. Shrikhande (supra)**. The Hon’ble Supreme Court referring to the legislative mandate of Section 24-A(1) r/w 24-A(2) has stated that if the complaint is barred by limitation and complainant does not seek the condonation of delay, Consumer Forum shall have no option, but to dismiss the complaint. In this matter also, the order passed by the Consumer Forum was assailed by availing remedies as per the

provisions of the Act. The order which was barred by limitation was thus set aside in a proceeding in which it was challenged.

12. The following words of Justice Hidayatullah in the matter *Abdul Kayoom v. CIT*, reported in *AIR 1962 SC 680* have become locus classicus -

“19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect.....”

13. There is a peculiar distinction between all the aforesaid cases and case at hand. In the case at hand, the order passed by the learned Consumer Forum has gone unchallenged. It is not assailed by filing appeal or revision in accordance with the provisions of the Act. In the present case, it is undisputed that the order passed by the learned Forum has not been challenged by filing substantive appeal or revision and although it may be termed to be erroneous, it is still holding the field in as much as it is not set aside.

14. We have to consider the issue as to whether, such an order which is passed beyond the prescribed period of limitation should be considered as *non est* and void *ab initio* and consequently hold that Section 27 proceeding will not be maintainable on the basis of such

order or the order is simply an erroneous order which will bind the parties unless it is set side by a Competent Higher Forum.

15. At the outset we refer to judgment of the Hon'ble Supreme Court in the matter of *Urban Improvement Trust, Jodhpur Vs. Gokul Narain and Another* reported in *AIR 1996 Supreme Court 1819*. The Supreme Court has held that a decree passed by Court without jurisdiction over the subject matter which goes to the root of its exercise of jurisdiction or inherent jurisdiction is a nullity. A decree passed by a Court or Authority without inherent jurisdiction is a nullity and *non est* and its invalidity can be set-up even in an execution proceeding. The said judgment also makes a distinction between inherent lack of jurisdiction and procedural aspects of jurisdiction. It is then held that if the Court has the inherent jurisdiction and then there is a jurisdictional defect which does not go to root of the matter such as territorial jurisdiction, etc. then the decree will not be a nullity and will have to be executed. Objection to procedural aspects of a decree even though it pertains to jurisdiction cannot be raised before the Executing Court.

16. In view of this legal position we need to consider as to whether an error of jurisdiction relating to limitation will go to root of the matter and whether a proceeding under Section 27 of the CP Act,

1986 will be maintainable for imposing penalty on account of non-compliance of an order which is passed in a time barred complaint.

17. The Hon'ble Supreme Court in the matter of ***Ittavira Mathai vs. Varkey Varkey reported in AIR 1964 SC 907***, held as under:-

“If the suit was barred by time and yet, the court decreed it, the court would be committing an illegality and therefore the aggrieved party would be entitled to have the decree set aside by preferring an appeal against it. But it is well settled that a court having jurisdiction over the subject-matter of the suit and over the parties thereto, though bound to decide right may decide wrong; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do.... If the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity.”

18. Similar view is taken by the Hon'ble Supreme Court in the matter of ***Bhawarlal Bhandari Vs. Universal Heavy Mechanical Lifting Enterprises***, reported in ***(1999) 1 SCC 558***. Paragraph 10 of the judgment reads as under:

“10. The aforesaid decision of this Court squarely applies to the fact of the present case. This is not a case in which the award decree on the face of it was shown to be without jurisdiction. Even if the decree was passed beyond the period of limitation, it would be an error of law or at the highest, a

wrong decision which can be corrected in appellate proceedings and not by the executing court which was bound by such decree. It is not the case of the respondent that the Court which passed the decree was lacking inherent jurisdiction to pass such a decree.”

19. In paragraphs 11 and 12, the Hon’ble Supreme Court has distinguished an earlier decision in the matter of ***Patel Motibhai Naranbhai & Anr. vs Dinubhai Motibhai Patel & Ors.*** Reported in ***(1996) 2 SCC 585*** by observing as under -

“11.In the case of Patel Motibhai Naranbhai this Court was concerned with the award decree which itself was sought to be challenged in appeal before this Court in the hierarchy of proceedings meaning thereby that the legality of the award decree itself was on the anvil of scrutiny before this Court.”

“12. It becomes clear that in the aforesaid decision, the Court was not concerned with the present fact situation where the award decree which was allegedly passed after expiry of limitation was sought to be challenged in collateral execution proceedings if the decree had become final. If the present proceedings had arisen against the award decree, all these questions would have survived for consideration. But in the present case, the award decree has become final and that too when the respondent-judgment-debtor did not think it fit to contest the proceedings and did not contend that no decree could be passed. He cannot now, in the execution proceedings, contend that the decree should be ignored as being a nullity.....”

20. It is clearly held in both the judgments referred above that an order or decree which is passed in a time barred proceeding does not suffer from lack of jurisdiction, which goes to root of the matter. There is no inherent lack of jurisdiction in such a case. Such an order or decree, therefore, cannot be treated as a still born child. Unless an order which is passed in a time barred proceeding is got rid of by challenge before higher judicial authority, it will bind the parties. Both these judgments clearly hold that a decree passed in proceeding which is barred by limitation will not be a nullity in the eyes of law, and therefore, the Executing Court will be bound to execute the same although it may be erroneous.

21. In view of what we have held, we are, therefore, of the considered opinion that the judgments relied upon by learned senior counsel do not assist him in the facts of the case. The distinguishing feature between the present case and the reported judgments relied upon by the learned senior counsel for the petitioner is that in those matters the order itself was challenged in appeal and in the present case objection to enforcement/ implementation/ imposition of penalty under Section 27 is challenged on the ground that the order passed by the Forum is *non est* and void ab initio on the ground that the original proceeding was barred by limitation. The words jurisdictional error,

lack of jurisdiction, etc. used in the said judgments have to be understood in the backdrop of facts of those cases. The ratio of the said judgments would not be applicable in facts of the present case. In as much as the order passed by the Consumer Forum is not challenged in appeal, but it is sought to be contended that it is void *ab initio* and *non est* in the eyes of law being passed in a proceeding filed beyond limitation. On the other hand, other judgments, particularly in the matters of *Ittavira Mathai and Bhawarlal Bhandari (supra)* is directly on the point, the controversy in the present case is covered by the judgments of the Hon'ble Supreme Court.

22. Learned senior counsel has argued that the judgments pertaining to execution of decrees passed by the Civil Court will not apply to an order passed by Consumer Forum. He states that proviso to Section 24-A(2) of the Act provides the unique scheme which is different from the procedure prescribed for adjudication of a suit. The contention is that if a complaint is not filed within the prescribed period of limitation, the Consumer Forum must first condone the delay for reasons to be recorded in writing and that it will get jurisdiction to adjudicate the complaint on merits only if the delay is condoned. According to learned senior counsel such is not the case in civil suits. He states that statutory injunction embedded in proviso to Section 24-

A(2) is the distinguishing feature between jurisdiction of a Civil Court and jurisdiction of Consumer Forum.

23. We are afraid. We are unable to accede to the said contention raised by learned senior counsel. In this regard we must have regard to the mandate of Section 3 of the Limitation Act, 1963, which applies to civil suits. Section 3(1) of the Limitation Act reads as under:

“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.”

24. A perusal of the said provision will indicate that there is a statutory mandate to every Civil Court to dismiss each and every suit which is instituted beyond the prescribed period of limitation. The provision is absolutely mandatory, in as much as the statutory mandate is qualified by the words, “although the limitation has not been set-up as a defence”. It will be pertinent to mention here that delay caused in institution of a suit cannot be condoned. Section 5 of the Limitation Act which confers power on a Court to condone delay is not applicable to civil suit.

25. A distinction is sought to be made between the scheme of Section 3 of the Limitation Act and proviso to Section 24-A(2) of CP Act contending that the Court has jurisdiction to entertain every suit and then if it is found to be beyond period of limitation, duty is cast by Section 3 of the Limitation Act to dismiss the suit; whereas, under the scheme of CP Act, the complaint itself cannot be entertained unless an order of condonation of delay is first passed. The contention is liable to be rejected, in as much as both the provisions prohibit granting of a decree/order in a proceeding, which is barred by limitation. There is a statutory injunction in both provisions against granting relief, which is barred by limitation. The stages at which the issue of limitation will be decided may vary. That is a matter of procedure. However, substantive part of both the provisions is that if a proceeding is barred by limitation, relief should not, rather cannot be granted. The stage at which question of limitation is to be decided will not make any difference so far as the mandate of Section 3 of the Limitation Act is concerned. It is equally mandatory and peremptory as Section 24 of the CP Act. It needs to be reiterated that a consumer complaint can be entertained by condoning the delay but a suit which is barred by limitation can never be entertained. The bar under section 3 of the Limitation Act is absolute.

26. Proviso to Section 24-A(2) is a deviation from the general legal principle that delay caused in institution of original proceeding cannot be condoned. The legislature in its wisdom has conferred a power of condonation of delay in entertaining original proceeding to the forums under the CP Act. This provision in sense is unique and different from the general law of limitation. It is, therefore, that a proviso is appended to Section 24-A(2) which states that unless the delay is condoned, matter shall not be entertained on merits. As regards the Civil Courts, there is no question of condonation of delay and a suit has to be dismissed if it is barred by limitation.

27. The term jurisdiction in its plain and simple terms means authority to decide. When a Court or Forum does not have authority, the lack of authority is inherent lack of jurisdiction. Such an order is an order without jurisdiction. However, if there is jurisdiction to decide subject matter of the lis, then other aspects of jurisdiction such as pecuniary jurisdiction, territorial jurisdiction, limitation, etc. do not go to root of matter in as much as these are merely procedural aspects of jurisdiction. In case an order suffers from such procedural aspects of jurisdiction it is a case of error within jurisdiction or error in exercise of jurisdiction which is otherwise possessed. Order falling in the former

category of inherent lack of jurisdiction is like a still born child. It is void ab initio. However order falling under the later category of error within jurisdiction is valid and binding unless set aside. Illegal orders or transactions or actions broadly fall under three categories, voidable, void and void ab initio. This distinction is succinctly explained by the Hon'ble Supreme Court in several judgements, including in the matter of *Dhurandhar Prasad Singh v/s Jai Prakash University, reported in AIR 2001 SC 2552*. Unless the order of action is void ab initio it will have to be successfully challenged to avoid the consequences flowing therefrom.

28. We sum up the discussion holding that the issue of limitation is an issue pertaining to jurisdiction of the Court/Forum. However, error of jurisdiction on account of limitation does not go to root of the matter and as such a proceeding in which an order or decree is passed beyond the prescribed period of limitation cannot be termed as nullity. It will be binding on the parties unless set aside in appropriate legal proceeding. Such decrees/orders are executable. Objection pertaining to limitation cannot be raised in execution proceeding.

29. In view of the above, we do not deem this to be a fit case

to exercise our powers either under Article 226 of the Constitution of India or our inherent powers under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023. The petition is therefore deserves to be dismissed at the threshold. Hence, we pass the following order :-

ORDER

- (i) The petition stands dismissed.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

K.Komal/