IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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INTERIM APPLICATION NO. 13254 OF 2024
IN
FIRST APPEAL (ST.) NO. 24058 OF 2024
IN
REFERENCE NO. 827/KOK/MUM(SOB)/2021

WITH

INTERIM APPLICATION NO.13256 OF 2024
IN
FIRST APPEAL (ST.) NO. 25983 OF 2024
IN
REFERENCE NO. 828/KOK/MUM(SOB)/2021

Municipal Corporation of Greater Mumbai .. Appellant/Applicant

Versus

Anusaya Sitaram Devrukhkar & Ors. .. Respondents

Mr. Girish Godbole, Senior Counsel *a/w Rahul Soman, Aditya Joshi, Vidya Vyavahare, Pallavi Khale for the Applicant/Appellant (MCGM) in FAST 25983/2024 and FAST/24058/2024*

Adv. Anoshak Daver *i/b. Nikhil Mengde a/w Rahul Lathi, Siddhikesh Ghosalkar, Sahil Salunkhe a/w Burjis Doctor for the Respondent Nos. 1, 7 to 11.*

Mr. Anuj Desai *a/w Rajendra B. Singhavi, Dhrumil Shah, Divya*

Dave i/b. Lex Service for Respondent No.12.

Ms. Snehal Bhoir, *Sub Engineer, MCGM (DP) Department is present in Court.*

CORAM: B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.

RESERVED ON: OCTOBER 17, 2024
PRONOUNCED ON: JANUARY 07, 2025

JUDGMENT [PER B. P. COLABAWALLA, J.]

1. Both the above appeals have been filed by the Appellant [**"MCGM"**] challenging the impugned orders/awards dated 13th February 2024 passed by the Presiding Officer of the Land Acquisition and Rehabilitation Authority, Nagpur [**"the Reference Authority"**] in two separate references preferred by some of the Respondents [the Original Claimants]. By the impugned orders/awards, the references filed by the Original Claimants [before the Reference Authority] under the provisions of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* [for short the **"*2013 Act*"**] were partly allowed and the compensation payable to them was enhanced.

2. Since both the above appeals were not filed within the time stipulated under Section 74(1) of the *2013 Act*, the above Interim Applications are filed seeking condonation of delay in filing the above two appeals.

3. As mentioned earlier, the impugned orders were passed on 13th February 2024. The application for a certified copy was filed on the same date and was made available also on the same day. Hence limitation to file the above appeals commenced from 14th February 2024. The provision for filing an appeal to the High Court from the order/award passed by the Reference Authority is provided under Section 74(1) of the *2013 Act* which stipulates that such appeal may be filed in the High Court within a period of sixty days from the date of the award. The proviso to Section 74(1) further stipulates 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 of sixty days, allow it to be filed within a further period not exceeding sixty days.

4. As far as Interim Application No. 13254 of 2024 in First Appeal (ST.) No. 24058 of 2024 is concerned, the same was lodged on 21st August 2024. Thus, First Appeal (ST.) No. 24058 of 2024 was lodged 68 days beyond the extended period prescribed by the proviso to Section 74(1) of the *2013 Act*

and 128 days beyond the period of limitation of sixty days prescribed by Section 74(1) thereof.

5. As far as Interim Application No. 13256 of 2024 is concerned, the same was filed on 5th September 2024 and First Appeal (St.) No. 25983 of 2024 was Lodged on 6th September 2024. Consequently, the said appeal was lodged 84 days beyond the extended period prescribed by the proviso to Section 74(1) of the *2013 Act* and 144 days beyond the period of limitation of sixty days prescribed by Section 74(1) thereof. It is in this light that the above Applications are filed seeking a condonation of delay in filing the above First appeals.

6. Respondent Nos. 1, and 7 to 11, as well as Respondent No.12, opposed the above Interim Applications on the ground that after a total period of 120 days, [as stipulated in Section 74(1) read with its proviso], this Court has no power to condone the delay. This argument is canvassed on the basis that Section 74(1) prescribes that any person aggrieved by the award passed by the Reference Authority under Section 69 may file an appeal to the High Court within sixty days from the date of the award. This is the initial period prescribed under Section 74(1) of the *2013 Act*. However, the proviso to Section 74(1) stipulates that the High Court may, if it is satisfied that the

Appellant was prevented by sufficient cause from filing the appeal within the initial period of sixty days, allow it to be filed within a further period not exceeding sixty days. In other words, once the further period of sixty days expires, the High Court has no power to condone the delay beyond the aforesaid period. In a nutshell, this is the opposition of the Respondents to the above Interim Applications.

7. Considering that this is the argument canvassed on behalf of the concerned Respondents, we have heard the parties on this preliminary issue. If we hold that we have the power to condone the delay, we will then examine if sufficient cause is made out to condone the same. On the other hand, if we come to the conclusion that beyond the total period of 120 days [initial period of sixty days and a further period of sixty days], we have no power to condone the delay, then the cause shown for condoning the delay by the Appellant would be wholly irrelevant.

8. To counter the objection raised by the concerned Respondents regarding the power of this Court to condone the delay beyond the period of 120 days, Mr. Godbole, the learned Senior Counsel appearing for the Appellant, canvassed two basic submissions:

(a) Since the *2013 Act* is a general law, Section 29(2) of the Limitation Act, 1963 would not apply. This argument is canvassed on the basis that Section 29(2) provides that where any special or local law prescribes a period of limitation different from the period prescribed by the Limitation Act, 1963, then the provisions of Sections 4 to 24 shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law. *Since* the *2013 Act* is a general law and not a special or a local law, the provisions of Section 29(2) would be wholly inapplicable and consequently, this Court can exercise power under Section 5 of the Limitation Act, 1963 to condone the delay.

(b) Assuming that the *2013 Act* is a special law, even then, Section 5 of the Limitation Act, 1963 would come to the aid of the Appellant to seek condonation of delay because Section 5 has not been expressly excluded in the language of Section 74 of the *2013 Act*. Obviously, this argument is premised on the basis that under Section 29(2), where any different period of limitation is prescribed under a

special or a local law, then Sections 4 to 24 of the Limitation Act, 1963 would automatically apply, unless expressly excluded.

9. These are the two basic submissions on which Mr. Godbole sought to contend that this court has the power to condone the delay even beyond the period of 120 days, notwithstanding the language of Section 74 of the *2013 Act*. Since these are the two basic points on which Mr. Godbole has canvassed his entire case, we shall deal with them separately.

THE *2013 ACT* IS A GENERAL LAW AND NOT A SPECIAL LAW OR A LOCAL LAW AS CONTEMPLATED UNDER SECTION 29(2) OF THE LIMITATION ACT, 1963.

10. In support of the proposition that the *2013 Act* is a general law and not a special or a local law as contemplated under Section 29(2) of the Limitation Act, 1963, Mr. Godbole submitted that the *2013 Act* repeals and replaces the *Land Acquisition Act, 1894* [for short the ***"1894 Act"***]. According to Mr. Godbole, it is well settled that the *1894 Act* is a general law/enactment. In support of this proposition, Mr. Godbole relied upon a Constitution Bench Judgment of the Hon'ble Supreme Court in case of ***Shri Ram Tanu Cooperative Housing Society Ltd. V/s. State of Maharashtra &***

Ors. [1970 (3) SCC 323] and a Full Bench decision of the Andhra Pradesh High Court in the case of ***Pithanna Apa Rao V/s. State of Andhra Pradesh [1972 Andhra Pradesh Law Journal 389]***. He submitted that both the aforesaid decisions have clearly taken a view that the *1894 Act* is a general law/enactment. The *2013 Act* is basically a re-enactment of the *1894 Act* and even the preamble of the *2013 Act* makes it clear that it is a general law covering the entire subject of Land Acquisition, Rehabilitation, and Resettlement and is applicable throughout India. Since the *1894 Act* has been held to be a general law, the re-enacted *2013 Act* would also be a general law/enactment and not a special law or a local law as contemplated under Section 29(2) of the Limitation Act, 1963.

11. To buttress this argument, Mr. Godbole submitted that in fact there is intrinsic evidence in the *2013 Act* to show that the *2013 Act* is a general law and not a special law or local law. In this regard, Mr. Godbole submitted that Section 105 of the *2013 Act* read with the 4th Schedule thereof, clearly indicates what are the special enactments with reference to acquisition. Looking at all this material, Mr. Godbole therefore submitted that the *2013 Act* being a general law, Section 29(2) would have no application, and the judgments relied upon by the Respondents either under the Arbitration and Conciliation Act, 1996, Electricity Act, 2003 or the Companies Act, 2013,

would be wholly inapplicable in the present case. In other words, since the *2013 Act* is a general law, and there is no provision in the said Act for the exclusion of the applicability of the Limitation Act, 1963, Section 5 thereof would come to aid of the Appellant to seek condonation of delay in filing the above appeals, even though they have been filed beyond the period of 120 days from the date of the certified copies of the impugned orders were made available to the Appellant.

12. We have heard Mr. Godbole as well as Mr Daver on this aspect. We, unfortunately, are unable to accept the submissions canvassed by Mr. Godbole. Firstly, whether a particular legislation should be classified as a "special law" or a "general law" has to be determined in the context in which it is evaluated and can never be a general classification. In other words, a particular enactment when compared to another, can be a general law, and then again, when compared to some other legislation could be a special law. Whether a particular legislation/enactment is a general law or a special law will necessarily have to be decided relative to some other legislation or provision. In determining whether a statute is a special or a general one, the focus must be on the principal subject matter of the statute and the particular perspective. For certain purposes, an act may be general and for certain other purposes, it may be special. In fact, the Hon'ble Supreme Court in the case of

LIC Vs. D. J. Bahadur [1981 (1) SCC 315] clearly held that when comparing the Industrial Disputes Act, 1947 (**"ID Act"**) with the provisions of the Life Insurance Corporation Act, 1956 (**"LIC Act"**), the ID Act was a special statute because the LIC Act did not at all speak with specific reference to the redressal of grievances of workmen. The relevant portion of this decision reads thus:

> ***"52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes — so too in life.*** *The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission — the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the LIC Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such, are beyond the orbit of and have no specific or special place in the scheme of the LIC Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to.*
>
> ***53.*** *What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is an industrial dispute between the Corporation and its workmen qua workmen. If we refuse to be obfuscated by legal abracadabra and see*

plainly what is so obvious, the conclusion that flows, in the wake of the study I have made, is that vis-a-vis "industrial disputes" at the termination of the settlement as between the workmen and the Corporation, the ID Act is a special legislation and the LIC Act a general legislation. Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the generalia maxim as expounded by English textbooks and decisions leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law.

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55. *In J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. [AIR 1961 SC 1170, 1174 : (1961) 3 SCR 185 : (1961) 1 LLJ 540 : (1960-61) 19 FJR 436] , this Court observed at p. 1174:*

> *"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect.*
>
> *We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely with conditions of service, enumerated in the Schedule, of workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hardwon and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like Section 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity (Supply) Act and Parliament never meant that the Standing Orders Act should stand pro tanto repealed by Section 79(c) of the Electricity Supply Act. We are clearly of the view that the provisions of the Standing Orders Act must prevail over Section 79(c) of the Electricity Supply Act, in regard to matters to which the Standing Orders Act applies."*

I respectfully agree and apply the reasoning and the conclusion to the near-identical situation before me and hold that the ID Act relates specially and specifically to industrial disputes between workmen and employers and the

LIC Act, like the Electricity (Supply) Act, 1948, is a general statute which is silent on workmen's disputes, even though it may be a special legislation regulating the take over of private insurance business.

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57. What is special or general is wholly a creature of the subject and context and may vary with situation, circumstances and angle of vision. Law is no abstraction but realises itself in the living setting of actualities. Which is a special provision and which general, depends on the specific problem, the topic for decision, not the broad rubric nor any rule of thumb. The peaceful coexistence of both legislations is best achieved, if that be feasible, by allowing to each its allotted field for play. Sense and sensibility, not mechanical rigidity gives the flexible solution. *It is difficult for me to think that when the entire industrial field, even covering municipalities, universities, research councils and the like, is regulated in the critical area of industrial disputes by the ID Act, Parliament would have provided an oasis for the Corporation where labour demands can be unilaterally ignored. The general words in Sections 11 and 49 must be read contextually as not covering industrial disputes between the workmen and the Corporation. Lord Haldane had, for instance, in 1915 AC 885 (891) [Watney Combe Reid & Co. v. Berners, 1915 AC 885 : 84 LJ KB 1561 : 113 LT 518] observed that: [Cited in The Political Tradition : The Lord Chancellors, 1912-1940, p. 221]*

> *"General words may in certain cases properly be interpreted as having a meaning or scope other than the literal or usual meaning. They may be so interpreted where the scheme appearing from the language of the legislature, read in its entirety, points to consistency as requiring modification of what would be the meaning apart from any context, or apart from the general law."*

To avoid absurdity and injustice by judicial servitude to interpretative literality is a function of the court and this leaves me no option but to hold that the ID Act holds where disputes erupt and the LIC Act guides where other matters are concerned. In the field of statutory interpretation there are no inflexible formulae or foolproof mechanisms. The sense and sensibility, the setting and the scheme, the perspective and the purpose — these help the Judge navigate towards the harbour of true intendment and meaning. The legal dynamics of social justice also guide the court in statutes of the type we are interpreting. These plural considerations lead me to the conclusion that the ID Act is a special statute when industrial disputes, awards and settlements are the topic of controversy, as here. There

may be other matters where the LIC Act I the other statutes will be a special law. I am not concerned with such hypothetical situations now."

(emphasis supplied)

13. This apart, a special law is a law relating to a particular subject. Though a law dealing with a particular subject may be a general law, in the sense that it is a law of general applicability, laying down general rules, yet, it may contain special provisions relating to limitation, in specified cases, different from the general law of limitation. Such a law would be a special law for the purpose of Section 29(2) of the Limitation Act, 1963. In the view that we take, we are supported by a decision of the Hon'ble Supreme Court in the case of ***Kaushalya Rani Vs. Gopal Singh [1963 SCC OnLine SC 41 : AIR 1964 SC 260].*** In this decision, the only question for the determination of the Hon'ble Supreme Court was whether the provisions of Section 5 of the Indian Limitation Act, 1908 applied to an application for special leave to appeal, from an order of acquittal, under sub-section (3) of Section 417 of the Criminal Procedure Code, 1898. In this context, the Hon'ble Supreme Court discussed as to what would be a "special law" as contemplated under Section 29(2) of the Indian Limitation Act, 1908. Whilst on this subject, the Hon'ble Supreme Court came to the conclusion that though the Criminal Procedure Code, 1898 is a general

law regulating the procedure for trial of criminal cases generally, if it does lay down any bar of time in respect of special cases, in special circumstances, like those contemplated by Section 417(3) and 417(4) read together, the same would be a special law contained within the general law. The Hon'ble Supreme Court opined that since the Indian Limitation Act, 1908 has not defined the words "special law" it is neither necessary nor expedient to attempt a definition. In these circumstances, the Hon'ble Supreme Court held that whilst the Indian Limitation Act, 1908 is a general law laying down the general rules of limitation applicable to all cases dealt with by the said Act, there may be instances of a special law of limitation laid down by other statutes, though not generally dealing with the law of limitation. We must mention here that the Hon'ble Supreme Court was interpreting the provisions of Section 29(2) of the Indian Limitation Act, 1908. Because Section 29(2)(b) of the Indian Limitation Act, 1908 stipulated that where any special law prescribes a period of limitation different from the one prescribed by the First Schedule of the said Act, only the provisions contained in Section 4, Sections 9 to 18 and Section 22 would apply and the remaining provisions of the Indian Limitation Act, 1908 would not apply, the Hon'ble Supreme

Court held that since a different period of limitation was set out in Section 417(4), the Criminal Procedure Code, 1898 is a special law regarding limitation governing appeals by private prosecutors, and hence, Section 5 of the Indian Limitation Act, 1908 would not come to the rescue for condoning the delay. Though section 29(2) of the Indian Limitation Act, 1908 is materially different from section 29(2) of the Limitation Act, 1963, the ratio of this judgement would still apply in so far as the findings given by the Hon'ble Supreme Court in relation to a "general law" vis a vis a "special law" in the context of section 29(2). The relevant portion of the decision in ***Kaushalya Rani*** is reproduced hereunder:

> *"7. It has been observed in some of the cases decided by the High Courts that the Code is not a special or a local law within the meaning of Section 29(2) of the Limitation Act, that is to say, so far as the entire Code is concerned because it is a general law laying down procedure, generally, for the trial of criminal cases.* ***But the specific question with which we are here concerned is whether the provision contained in Section 417(4) of the Code is a special law. The whole Code is indeed a general law regulating the procedure in criminal trials generally, but it may contain provisions specifying a bar of time for particular class of cases which are of a special character. For example, a Land Revenue Code may be a general law regulating the relationship between the revenue-payer and the revenue-receiver or the rent-payer and the rent-receiver. It is a general law in the sense that it lays down the general rule governing such relationship, but it may contain special provisions relating to bar of time, in specified cases different from the general law of limitation. Such a law will be a "special law" with reference to the law generally governing the subject-matter of that kind of relationship. A "special law", therefore, means a law enacted for special cases, in special circumstances, in***

contradistinction to the general rules of the law laid down, as applicable generally to all cases with which the general law deals. In that sense, the Code is a general law regulating the procedure for the trial of criminal cases, generally; but if it lays down any bar of time in respect of special cases in special circumstances like those contemplated by Section 417(3) and (4), read together, it will be a special law contained within the general law. *As the Limitation Act has not defined "special law", it is neither necessary nor expedient to attempt a definition. Thus, the Limitation Act is a general law laying down the general rules of limitation applicable to all cases dealt with by the Act; but there may be instances of a special law of limitation laid down in other statutes, though not dealing generally with the law of limitation for example, rules framed under Defence of India Act, vide S.M. Thakur v. State of Bihar [30 Pat 126] ; Canara Bank Ltd. v. Warden Insurance Co. [ILR (1952) Bom 1033] dealing with the special rule of limitation laid down in the Bombay Land Requisition Act (Bom. 33 of 1948). These are mere instances of special laws within the meaning of Section 29(2) of the Limitation Act. Once it is held that the special rule of limitation laid down in sub-section (4) of Section 417 of the Code is a "special law" of limitation, governing appeals by private prosecutors, there is no difficulty in coming to the conclusion that Section 5 of the Limitation Act is wholly out of the way, in view of Section 29(2)(b) of the Limitation Act.*

8. But the question is whether it can be said that even though the provisions of Section 417(4) are a "special law", they prescribe a different period of limitation from that prescribed by the First Schedule of the Limitation Act, because Section 29(2) applies where there is a difference between the period prescribed by the Limitation Act and that prescribed by the special law. It is said that the Limitation Act does not prescribe any period of Limitation for an application for special leave to appeal from an order of acquittal at the instance of a private prosecutor. In the first instance, the Limitation Act, Article 157, has prescribed the rule of Limitation in respect of appeals against acquittal at the instance of the State. Hence, it may be said that there is no limitation prescribed by the Limitation Act for an appeal against an order of acquittal at the instance of a private prosecutor. ***Thus, there is a difference between the Limitation Act and the rule laid down in Section 417(4) of the code in respect of limitation affecting such an application. Section 29(2) is supplemental in its character insofar as it provides for the application of Section 3 to such cases as would not come within its purview but for this provision. And for the purposes of determining any period of limitation prescribed by any special law, it has made the provisions of the Limitation Act, referred in clause (a)***

> ***of sub-section (2) of Section 29 applicable to such cases to the extent to which they are not expressly excluded by such special or local law, and clause (b) of that sub-section expressly lays it down that the remaining provisions of the Limitation Act shall not apply to cases governed by any special or local law. In our opinion, therefore, the provisions of the Code supplemented by the provisions of Section 29(2) of the Limitation Act, make it clear that Section 5 of the Limitation Act would not apply to an application for special leave to appeal under Section 417(3) of the Code."***
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> (emphasis supplied).

14. We find that this decision of the Hon'ble Supreme Court clearly answers the argument canvassed by Mr. Godbole. Though one may be able to say that the *2013 Act* is a general law in relation to the subject of acquisition of land for public purposes, Section 74 which prescribes a different period of limitation for filing appeals from what is set out in the Schedule to the Limitation Act, 1963, would be a special law in relation to the subject of limitation. In other words, though the *2013 Act* may be classified as a general law regulating the procedure of acquisition of land generally, if it lays down any bar of time in respect of special cases in special circumstances, like those contemplated under Section 74(1) read with its proviso, it would be a "special law" contained within the general law. We, therefore, find that the argument canvassed by Mr. Godbole that the *2013 Act* being a general law, and therefore, Section 29(2) of the Limitation Act, 1963 would not apply, is totally misconceived and is therefore rejected.

15. As far as the decisions relied upon by Mr. Godbole in the case of Shri ***Ramtanu Co-operative Housing Society Limited & Anr. (supra)*** and ***Pithanna Apparao (supra)*** are concerned, we find that these decisions are of no assistance to Mr. Godbole. In the case of ***Shri Ramtanu Co-operative Housing Society Limited & Anr. (supra)***, the Hon'ble Supreme Court was considering the provisions of the Maharashtra Industrial Development Act, 1961 *vis a vis*, the provisions of the Land Acquisition Act, 1894. It is in this context that the Hon'ble Supreme Court *inter-alia* held that the Land Acquisition Act, 1894 is a general law and the Maharashtra Industrial Development Act, 1961 is a special law. We fail to understand how this decision can be of any assistance to Mr. Godbole for the proposition that for all purposes, the *2013 Act* is a general law. One would have to first examine the context in which the respective Acts are being interpreted to come to the conclusion whether a particular Act is a general law or a special law depending on its comparison to another legislation. Similarly, in the case of ***Pithanna Apparao (supra)*** the Full Bench of Andhra Pradesh was considering the provisions of the Land Acquisition Act, 1894 and the Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956. It is in this context that the Full Bench of the Andhra Pradesh High Court held that the Land Acquisition Act, 1894 is a general law. These decisions would only show that the general

provisions in the land acquisition law were being compared with the special provisions governing land acquisition contained in other legislations.

16. In view of the foregoing discussion, we find that the argument canvassed by Mr. Godbole that the *2013 Act* is a general law for every conceivable purpose, and consequently, Section 29(2) of the Limitation Act, 1963 would have no application at all, is misconceived and rejected.

ASSUMING THAT THE *2013 ACT*, AND MORE PARTICULARLY SECTION 74 THEREOF, IS A SPECIAL LAW, EVEN THEN SECTION 5 WOULD BE APPLICABLE AS THE SAME HAS NOT BEEN EXPRESSLY EXCLUDED BY THE LANGUAGE OF SECTION 74 OF THE *2013 ACT*.

17. The next argument canvassed by Mr. Godbole was that assuming that the *2013 Act,* and more particularly Section 74 thereof, is a special law, even then, Section 5 of the Limitation Act, 1963 would be applicable as the same has not been expressly excluded by the language of Section 74. In this regard, Mr. Godbole submitted that there is a marked difference in Section 29 of the Indian Limitation Act, 1908 and that of the Limitation Act, 1963. Mr. Godbole submitted that under the provisions of Section 29(2) of the Indian Limitation Act, 1908, where any special or local law prescribed for any period of limitation different from the period prescribed by the First Schedule of the

said Act, then, only the provisions contained in Sections 4, 9 to 18, and 22 applied, in so far as, and to the extent to which they were not expressly excluded by such special or local law. In other words, he submitted that under Section 29(2) of the Indian Limitation Act, 1908, the applicability of Section 5 was expressly excluded. On the other hand, Section 29(2) of the Limitation Act, 1963 makes a significant departure in as much as where any special or local law prescribes for any period of limitation different from the period prescribed by the Schedule of the said Act, then the provisions of Sections 4 to 24 are made applicable, unless they are expressly excluded by the language of the special or local law. Thus, the legislative intent is clearly to apply Section 5 of the Limitation Act, 1963 to an appeal, unless the special law expressly excludes the same by a specific provision. Mr. Godbole submitted that when one reads the provisions of Section 74 of the *2013 Act*, there is nothing in the Section that expressly excludes the provisions of Section 5 of the Limitation Act, 1963. To take this argument further, Mr. Godbole submitted that an express exclusion means that the language of the special or local law must itself mention that any provision of the Limitation Act, 1963 is specifically excluded, and there cannot be any implied exclusion in the special or local law.

18. To buttress this argument, Mr. Godbole relied upon a decision of the Madhya Pradesh High Court in the case of **Sardar Sarovar Project and**

others Vs. Purushottam [First Appeal No. 225 of 2021, decided on 29th May, 2024] wherein the delay of filing an appeal under Section 74 of the *2013 Act* was condoned beyond the period of 120 days, as well as a decision of the Tripura High Court in the case of ***Shikha Rani Das Sarkar Vs. The State of Tripura and Paltu Ranjan Sarkar Vs. State of Tripura*** **[I.A. NO.1 of 2024 in L.A. APP. NO.37 of 2024 decided on 15th July 2024].** Mr. Godbole also relied upon the Judgment of the Madhya Pradesh High Court in the case of ***Kapil and others Vs. Union of India and another [(2017) 4 MPLJ 660]*** to buttress his argument that when the legislation is a beneficial legislation, the provisions thereof should be liberally construed. To put it in a nutshell, Mr. Godbole submitted that when interpreting the provisions of a beneficial or welfare legislation, such as *the 2013 Act*, and when two constructions are possible, the interpretation which is more beneficial for the purpose and for the persons for whom that Act was made, must be accepted. According to Mr. Godbole, if the proviso to Section 74(1) of *the 2013 Act* is interpreted in a restricted or narrow manner, it would be contrary to the beneficial intendment of the legislation and therefore such an interpretation ought to be avoided.

19. Mr. Godbole also relied upon Judgments of the Hon'ble Supreme Court in the case of ***(i) Superintendent Engineer/Dehar Power House***

Circle Bhakra Beas Management Board (PW) Slapper and another Vs. Excise and Taxation Officer, Sunder Nagar/Assessing Authority [(2020) 17 SCC 692]; (ii) Mangu Ram Vs. Municipal Corporation of Delhi [1976 (1) SCC 392]; and (iii) Mohd. Abaad Ali and Another Vs. Directorate of Revenue Prosecution Intelligence [(2024) 7 SCC 91]; to submit that when one reads Section 74(1) of the *2013 Act* along with its proviso, there is no express exclusion of Section 5 of the Limitation Act, 1963 and therefore, we would certainly have the power to condone the delay by invoking Section 5 of the Limitation Act, 1963.

20. We have heard Mr. Godbole as well as Mr. Daver on this issue. Before we proceed to examine this issue, it would be apposite to set out the provisions of Section 74 of *the 2013 Act* as well as Sections 5 and 29 of the Limitation Act, 1963. Section 74 of the *2013 Act* reads as under:

> ***"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."

(emphasis supplied)

21. As can be seen from the aforesaid provision, the Requiring Body or any person aggrieved by the award passed by the Reference Authority under Section 69, may file an appeal to the High Court within sixty days from the date of the award. The proviso to sub-section (1) of Section 74 stipulates that the High Court may, if it is satisfied that the Appellant was prevented by sufficient cause from filing the appeal within the initial period of sixty days, allow it to be filed within a further period not exceeding sixty days. Sub-section (2) of Section 74 mandates that every appeal referred to under sub-section (1) shall be heard as expeditiously as possible and an endeavor should be made to dispose of such appeal within six months from the date on which the appeal is presented to the High Court. From these provisions, *ex-facie*, it is clear that an appeal has to be filed within sixty days [the initial period], and if not done so, then, on sufficient cause being shown, the High Court can condone the delay of up to a further period of sixty days. The question that arises in the present case, is whether by virtue of the said proviso, the applicability of Section 5 of the Limitation Act, 1963 is excluded. As mentioned earlier, to understand this issue, one will also have to note the provisions of Section 5 and Section 29 of the Limitation Act, 1963 as well. Section 5 reads thus:

> ***"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.**"***

22. Section 29 of the Limitation Act, 1963 reads as under:

> ***"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.**"***
>
> (emphasis supplied)

23. Section 29(2) basically stipulates that where any special or local law, for any suit, appeal, or application, prescribes a period of limitation

different from the period prescribed by the Schedule of the Limitation Act, 1963, then, for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any such 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 law or local law.

24. Though not really relevant for the present purposes, we agree with Mr. Godbole that there is a marked difference between the language of Section 29(2) of the Indian Limitation Act, 1908 and that of Section 29(2) of the Limitation Act, 1963. Under the Indian Limitation Act, 1908, when any special or local law prescribed a period of limitation different from the one prescribed in the First Schedule of the said Act, then, for the purposes of determining any period of limitation prescribed for any suit, appeal or application by any special law or local law, only the provisions of Sections 4, 9 to 18 and 22 applied, unless expressly excluded. The applicability of Section 5 was specifically excluded by Section 29(2)(b) of the Indian Limitation Act, 1908 itself. Therefore, as per the provisions of Section 29(2) of the Indian Limitation Act, 1908 if there was any delay in filing an appeal under a special or local law, one could not take the aid of Section 5 to condone the delay. Under the Limitation Act, 1963, there is a complete departure from this position. Under the Limitation Act, 1963, where

any special or local law prescribes for any suit, appeal or application, a period of limitation different from the Schedule of said Act, for the purposes of determining any period of limitation for any suit, appeal or application prescribed by such special or local law, the provisions contained in Sections 4 to 24 shall apply, unless and to the extent they are expressly excluded by the language of such special or local law. In other words, Section 5 of the Limitation Act, 1963 would apply [unlike under Section 29(2)(b) of the Indian Limitation Act, 1908], unless expressly excluded by the language of the concerned special or local law.

25. The question that remains is whether in the language used in Section 74 of the *2013 Act* there is an express exclusion to the applicability of Section 5 of the Limitation Act, 1963. We, after perusing the provisions of Section 74, are clearly of the view that when the said section is read as a whole, the inescapable conclusion is that Section 5 of the Limitation Act, 1963 cannot be invoked for condoning the delay beyond the total period of 120 days as stipulated in Section 74(1) read with its proviso. If the legislature had in fact intended that Section 5 of the Limitation Act, 1963 would apply to an appeal to be filed under Section 74(1) of *the 2013 Act*, the legislature would not have inserted the proviso to Section 74(1) which [after the initial period of sixty days to file an appeal under Section 74(1)], gives power to the High Court to

condone the delay for a further period not exceeding sixty days. The legislature would have stopped by simply saying that the Requiring Body or any person aggrieved by the award passed by the Reference Authority under section 69, may file an appeal to the High Court within sixty days from the date of the award. If that's all that was said by legislature, the applicability of Section 5 of the Limitation Act, 1963 could not have been construed as being expressly excluded because a mere provision of a period of limitation [in a special or local law], in howsoever peremptory or imperative language, is not sufficient to displace the applicability of Sections 4 to 24 [which includes Section 5] of the Limitation Act, 1963. However, the proviso to Section 74(1) specifically stipulates that the High Court shall have the power to condone the delay, after the initial period of sixty days, for a further period ***not exceeding sixty days***. This would most definitely amount to an express exclusion to the applicability of Section 5 of the Limitation Act, 1963, to an appeal to be filed under Section 74(1) of the *2013 Act*. To hold that the High Court can entertain an appeal even beyond the extended period [as stipulated in the proviso to Section 74(1)] would render the words *"not exceeding sixty days"* wholly otiose. No principle of interpretation would justify such a result.

26. The reason for putting a time frame in which an appeal can be filed is also not far to seek. This is for the reason that only a person who is

vigilant about his rights can avail of the appellate remedy. If the person aggrieved by the award does not avail of the appellate remedy within the time stipulated there is a *quietus* to the litigation. This is also clear from Section 74(2), which in fact mandates that the High Court should make every endeavor to dispose of the appeal filed before it within a period of six months from the date on which the appeal is presented. Another factor which persuades us to take such a view are the provisions of appeal under the *1894 Act*. Section 54 of the *1894 Act* provided for appeals to the High Court from the order of the reference court without putting any fetter on the court's power to condone the delay. In contrast, when *the 2013 Act* was brought into force, the legislature, in its wisdom, deemed it appropriate to ensure that if the appellate remedy is to be availed of, it should be done in a time bound manner, after which, the aggrieved party loses its right of appeal. This is also another factor which leads to the inescapable conclusion that Section 74(1) of the *2013 Act* read with its proviso, expressly excludes the provisions of Section 5 of the Limitation Act, 1963.

27. We are unable to agree with Mr. Godbole that an express exclusion only means that Section 74 ought to expressly mention the exclusion of Section 5. An express exclusion would mean that the language of the statute clearly indicates that Section 5 has been excluded. The words used in the

proviso to Section 74(1) *"within a further period not exceeding sixty days"* clearly therefore excludes the applicability of Section 5 of the Limitation Act, 1963. If we were to hold otherwise, as mentioned earlier, would render the said words otiose and would be against all principles of interpretation.

28. In the view that we take, we are supported by several decisions of the Hon'ble Supreme Court. The first decision of the Hon'ble Supreme Court is in the case of ***Union of India vs. Popular Construction Company [(2001) 1 SCC 470]***. In this decision, the Hon'ble Supreme Court was considering the provisions of Section 34(3) of the *Arbitration and Conciliation Act, 1996* which stipulated that an application for 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 was disposed of by the Arbitral Tribunal. The proviso to Section 34(3) stipulated 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. The Hon'ble Supreme Court, while interpreting this provision, came to the conclusion that had the proviso to Section 34(3) merely provided for a period within which the court could exercise its discretion, that

would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act, 1963. However, the crucial words in the proviso *"but not thereafter"* used therein clearly amounted to an express exclusion of Section 5 of the Limitation Act, 1963. To hold otherwise would render the phrase *"but not thereafter"* wholly otiose, was the finding. The relevant portion of this decision reads thus:

> ***"4.*** *Before us, the appellant has not disputed the position that if the Limitation Act, 1963 and in particular Section 5, did not apply to Section 34 of the 1996 Act, then its objection to the award was time-barred and the appeal would have to be dismissed. The submission, however, is that Section 29(2) of the Limitation Act makes the provisions of Section 5 of the Limitation Act applicable to special laws like the 1996 Act since the 1996 Act itself did not expressly exclude its applicability and that there was sufficient cause for the delay in filing the application under Section 34. Counsel for the respondent, on the other hand, has submitted that the language of Section 34 plainly read, expressly excluded the operation of Section 5 of the Limitation Act and that there was as such no scope for assessing the sufficiency of the cause for the delay beyond the period prescribed in the proviso to Section 34.*
>
> ***5.*** *The issue will have to be resolved with reference to the language used in Section 29(2) of the Limitation Act, 1963 and Section 34 of the 1996 Act. Section 29(2) provides that:*
>
> > *"29. (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 insofar as, and to the extent to which, they are not expressly excluded by such special or local law."*
>
> ***6.*** *On an analysis of the section, it is clear that the provisions of Sections 4 to 24 will apply when:*
> *(i) there is a special or local law which prescribes a different period*

of limitation for any suit, appeal or application; and
(ii) the special or local law does not expressly exclude those sections.

7. *There is no dispute that the 1996 Act is a "special law" and that Section 34 provides for a period of limitation different from that prescribed under the Limitation Act. The question then is — is such exclusion expressed in Section 34 of the 1996 Act? The relevant extract of Section 34 reads:*

> *"34. Application for setting aside arbitral award.—(1)-(2)****
> *(3) An application for setting aside 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:*
> ***Provided 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, <u>but not thereafter</u>.****"*

8. Had the proviso to Section 34 merely provided for a period within which the court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5" [Mangu Ram v. Municipal Corpn. of Delhi, (1976) 1 SCC 392 at p. 397, para 7 : 1976 SCC (Cri) 10].

9. *That was precisely why in construing Section 116-A of the Representation of the People Act, 1951, the Constitution Bench in Vidyacharan Shukla v. Khubchand Baghel [AIR 1964 SC 1099] rejected the argument that Section 5 of the Limitation Act had been excluded: (AIR p. 1112, para 27)*

> *"27. It was then said that Section 116-A of the Act provided an exhaustive and exclusive code of limitation for the purpose of appeals against orders of tribunals and reliance is placed on the proviso to sub-section (3) of that section, which reads:*
> *'Every appeal under this Chapter shall be preferred within a period of thirty days from the*

> *date of the order of the Tribunal under Section 98 or Section 99.*
> *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 such period.'*
>
> *The contention is that sub-section (3) of Section 116-A of the Act not only provides a period of limitation for such an appeal, but also the circumstances under which the delay can be excused, indicating thereby that the general provisions of the Limitation Act are excluded. There are two answers to this argument. Firstly, Section 29(2)(a) of the Limitation Act speaks of express exclusion but there is no express exclusion in sub-section (3) of Section 116-A of the Act; secondly, the proviso from which an implied exclusion is sought to be drawn does not lead to any such necessary implication."*

10. This decision recognises that it is not essential for the special or local law to, in terms, exclude the provisions of the Limitation Act. It is sufficient if on a consideration of the language of its provisions relating to limitation, the intention to exclude can be necessarily implied. *As has been said in Hukumdev Narain Yadav v. Lalit Narain Mishra [(1974) 2 SCC 133] : (SCC p. 146, para 17)*

> *"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."*

11. *Thus, where the legislature prescribed a special limitation for the purpose of the appeal and the period of limitation of 60 days was to be computed after taking the aid of Sections 4, 5 and 12 of the Limitation Act, the specific inclusion of these sections meant that to that extent only the provisions of the Limitation Act stood extended and the applicability of the other provisions, by necessary implication stood excluded [Patel Naranbhai Marghabhai v. Dhulabhai Galbabhai, (1992) 4 SCC 264] .*

12. 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 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.**"*
>
> (emphasis supplied)

29. The second decision of the Hon'ble Supreme Court which supports the view that we have taken is in the case of ***Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and others [(2010) 5 SCC 2023]***. In the aforesaid decision, the Hon'ble Supreme Court was considering the provisions of Section 125 of the Electricity Act, 2003. Section 125 of the Electricity Act, 2003 inter-alia provided 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, on any one or more grounds specified in Section 100 of the CPC, 1908. The proviso to Section 125 stipulated 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***. Whilst interpreting the aforesaid provision, the Hon'ble Supreme Court took the view that Section 5 of the Limitation Act, 1963 cannot be invoked for entertaining an appeal filed against the decision or order of the Appellate

Tribunal beyond the total period of 120 days specified in Section 125 of the Electricity Act, 2003 read with its proviso. Any Interpretation of Section 125 which may attract the applicability of Section 5 of the Limitation Act, 1963 read with Section 29(2) thereof, would defeat the object of the legislation, namely, to provide a special limitation for filing an appeal against the decision or order of the Appellate Tribunal and the proviso to Section 125 would be rendered nugatory. The relevant portion of this decision reads thus:

> ***"25.*** *Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits, etc.* ***The use of the expression "within a further period of not exceeding 60 days" in the proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days****.*
>
> ***26.*** *The object underlying establishment of a special adjudicatory forum i.e. the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate Commission with a provision for further appeal to this Court and prescription of special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided by an expert body and no court, except this Court, may entertain challenge to the decision or order of the Tribunal. The exclusion of the jurisdiction of the civil courts (Section 145) qua an order made by an adjudicating officer is also a pointer in that direction.*

27. *It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act, which lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and provisions contained in Sections 4 to 24 (inclusive) shall apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law.*

28. *In Hukumdev Narain Yadav v. Lalit Narain Mishra [(1974) 2 SCC 133] this Court interpreted Section 29(2) of the Limitation Act in the backdrop of the plea that the provisions of that Act are not applicable to the proceedings under the Representation of the People Act, 1951. It was argued that the words "expressly excluded" appearing in Section 29(2) would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. While rejecting the argument, the three-Judge Bench observed: (SCC p. 146, para 17)*

> *"17. ... what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the 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 are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, 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."*
>
> *(emphasis supplied)*

30. *In Singh Enterprises v. CCE [(2008) 3 SCC 70] the Court interpreted Section 35 of the Central Excise Act, 1944 which is pari materia to Section 125 of the Electricity Act and observed: (SCC p. 72, para 8)*

> *"8. The Commissioner of Central Excise (Appeals) as also the tribunal being creatures of statute are not vested with*

jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short 'the Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

(emphasis supplied)

The same view was reiterated in CCE and Customs v. Punjab Fibres Ltd. [(2008) 3 SCC 73]

***31.** In CCE and Customs v. Hongo India (P) Ltd. [(2009) 5 SCC 791] a three-Judge Bench considered the scheme of the Central Excise Act, 1944 and held that the High Court has no power to condone delay beyond the period specified in Section 35-H thereof. The argument that Section 5 of the Limitation Act can be invoked for condonation of delay was rejected by the Court and observed: (SCC pp. 801-02, paras 30, 32 & 35)*

"30. In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the

number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court under Section 35-G and reference application to the High Court under Section 35-H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.

***

32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

***

35. It was contended before us that the words 'expressly excluded' would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of

the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court."
(emphasis supplied)

32. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for 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. Any interpretation of Section 125 of the Electricity Act which may attract the applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory."
(emphasis supplied)

30. This decision was followed by a three-Judge Bench of the Hon'ble Supreme Court in the case of ***Oil and Natural Gas Corporation Ltd. Vs. Gujrat Energy Transmission Corporation Ltd. And Others [(2017) 5 SCC 42]***. In fact, in this case, the appeal was presented before the Hon'ble Supreme Court on 7th February 2008 and the office note recorded that the appeal was barred by 71 days. The appeal was listed before the Bench on 29th January 2010 on which date, the Supreme Court condoned the delay and admitted the appeal. When the matter was taken up for hearing, an objection was raised by the 1st Respondent that the Supreme Court could not have condoned the delay of 71 days in view of the language of Section 125 of the Electricity Act, 2003 and that the condonation of delay was done without

notice to the 1st Respondent and deserves to be recalled. As a *sequitur*, the appeal be dismissed without adverting to the same on merits, was the contention. It is in these facts that the Supreme Court examined the provisions of Section 125 of the Electricity Act, 2003 and found immense force in the preliminary objection raised by the 1st Respondent, accepted the same, and dismissed the appeal. Since the said decision affirms the decision of the Hon'ble Supreme Court in the case of ***Chhattisgarh State Electricity Board (supra)***, we are not burdening this Judgment by reproducing the relevant paragraphs. Suffice it to state that the decision rendered by the Hon'ble Supreme Court in the case of ***Chhattisgarh State Electricity Board (supra)*** has been affirmed by a three-judge Bench of the Hon'ble Supreme Court in the case of ***Oil and Natural Gas Corporation Ltd (supra).***

31. The third decision which supports the view that we have taken is in the case of ***Bengal Chemist and Druggists Association Vs. Kalyan Choudhary [(2018) 3 SCC 41]***. In this decision, the Hon'ble Supreme Court was considering the provisions of Section 421 (3) of the Companies Act, 2013 which provided for appeals from the order of the Tribunal and stipulated that every appeal under sub-section (1) of Section 421 shall be filed within a period of 45 days from the date on which a copy of the order of the Tribunal is

made available to the aggrieved person. The proviso stipulated that the Appellate Tribunal may entertain an appeal after the expiry of the said period of 45 days from the aforesaid date, but within a ***further period not exceeding 45 days***, provided the Appellate Tribunal was satisfied that the Appellant was prevented by sufficient cause from filing the appeal within the said further period. Whilst interpreting the aforesaid proviso, the Hon'ble Supreme Court *inter-alia* held that by virtue of the language of the proviso, the Appellate Tribunal had no power to condone the delay beyond the period stipulated in the proviso to Section 421(3). The relevant portion of this decision reads thus:

> ***"3.*** *Before coming to the judgments of this Court, it is important to first set out Section 421(3) and Section 433 of the Act. These provisions read as follows:*
>
> *"**421. Appeal from orders of Tribunal**.—(1)-(2) * * **
> (3) Every appeal under sub-section (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:*
> *Provided 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. ...*
>
> ***
>
> ***433. Limitation**.—The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be."*
>
> ***4.*** *A cursory reading of Section 421(3) makes it clear that the proviso provides a period of limitation different from that provided in the*

Limitation Act, and also provides a further period not exceeding 45 days only if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period. Section 433 obviously cannot come to the aid of the appellant because the provisions of the Limitation Act only apply "as far as may be". In a case like the present, where there is a special provision contained in Section 421(3) proviso, Section 5 of the Limitation Act obviously cannot apply.

5. *Another very important aspect of the case is that 45 days is the period of limitation, and a further period not exceeding 45 days is provided only if sufficient cause is made out for filing the appeal within the extended period. According to us, this is a peremptory provision, which will otherwise be rendered completely ineffective, if we were to accept the argument of the learned counsel for the appellant. If we were to accept such argument, it would mean that notwithstanding that the further period of 45 days had elapsed, the Appellate Tribunal may, if the facts so warrant, condone the delay.* ***This would be to render otiose the second time-limit of 45 days, which, as has been pointed out by us above, is peremptory in nature****.*

6. *We are fortified in this conclusion by the judgment of this Court in Chhattisgarh SEB v. CERC [Chhattisgarh SEB v. CERC, (2010) 5 SCC 23] . The language of Section 125 of the Electricity Act, 2003, which is similar to the language contained in Section 421(3) of the Companies Act, 2013, came up for consideration in the aforesaid decision. The issue that arose before this Court was whether Section 5 of the Limitation Act can be invoked for allowing the aggrieved person to file an appeal beyond 60 days plus the further grace period of 60 days. This Court held that Section 5 cannot apply to Section 125 of the Electricity Act in the following terms: (SCC p. 32, para 25)*

> *"25. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits, etc. The use of the expression "within a further period not exceeding 60 days" in the proviso to Section 125 makes it clear that the outer*

limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days."

The aforesaid judgment was reiterated and followed in ONGC Ltd. v. Gujarat Energy Transmission Corpn. Ltd. [ONGC Ltd. v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47] , SCC at para 5.

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10. *The third judgment is Mangu Ram v. MCD [Mangu Ram v. MCD, (1976) 1 SCC 392 : 1976 SCC (Cri) 10] . In this judgment, Section 417 of the Code of Criminal Procedure, 1898 provided for special leave to appeal from an order of acquittal. Section 417(4) required that the application for special leave should be made before the expiry period of 60 days from the date of the order of acquittal. Applying Section 29(2) of the Limitation Act, this Court held that Section 5 of the Limitation would not be impliedly excluded in such case despite the mandatory and peremptory language contained in Section 417(4) CrPC. This Court held that all periods of limitation are cast in such mandatory and peremptory language and, therefore, Section 5 could not be said to be impliedly excluded.*

11. *This case again is wholly distinguishable.* ***It applies only to a period of limitation which is given beyond which nothing further is stated as to whether delay may be condoned beyond such period****. In the present case, Section 421(3) does not merely contain the initial period of 45 days, in which case the aforesaid judgment would have applied. Section 421(3) goes on to state that another period of 45 days, being a grace period given by the legislature which cannot be exceeded, alone would apply, provided sufficient cause is made out within the aforesaid grace period.* ***As has been held by us above, it is the second period, which is a special inbuilt kind of Section 5 of the Limitation Act in the special statute, which lays down that beyond the second period of 45 days, there can be no further condonation of delay. On this ground therefore, the aforesaid judgment also stands distinguished****.*

12. *One further thing remains — and that is that the learned counsel for the appellant pointed out the difference between the expression used in the Arbitration Act as construed by Popular Construction [Union of India v. Popular Construction Co., (2001) 8 SCC 470] and its absence in the proviso in Section 421(3).* ***For the***

> ***reasons given above, we are of the view that this would also make no difference in view of the language of the proviso to Section 421(3) which contains mandatory or peremptory negative language and speaks of a second period not exceeding 45 days, which would have the same effect as the expression "but not thereafter" used in Section 34(3) proviso of the Arbitration Act, 1996."***
>
> (emphasis supplied)

32. When one examines all these decisions, we are clearly of the view that on reading the proviso to Section 74(1) of the *2013 Act*, and which is not only almost identical to the provisions of 125 of the Electricity Act, 2003, but also similar to the provisions of Section 421(3) of the Companies Act, 2013, the inescapable conclusion is that the proviso to Section 74 (1) expressly excludes the applicability of Section 5 of the Limitation Act, 1963. Once this is the case, we would have to hold that we have no power to condone the delay beyond the maximum period of 120 days as stipulated in Section 74(1) read with its proviso, by resorting to the provisions of Section 5 of the Limitation Act, 1963.

33. Before concluding, it would only be fair to refer to the Judgments relied upon by Mr. Godbole to see if the ratios laid down therein apply to the facts of the present case. The first decision relied upon by Mr. Godbole was a decision of a Single Judge of the Madhya Pradesh High Court at Indore in the case of **Sardar Sarovar Project and others Vs. Purushottam [First Appeal No. 225 of 2021, decided on 29th May 2024].** It is true that in

this judgment what the Madhya Pradesh High Court was considering were the provisions of Section 74 of the *2013 Act*. According to the Madhya Pradesh High Court, in the facts of that case, there was a delay of 28 days which the court condoned. The reason for condoning the delay can be found in paragraph 17 of this decision which states that the reasons assigned for obtaining the certified copies of the order and relaxation of the Corona pandemic, appeared *bonafide* and therefore condoned the delay. We are unable to see how this Judgment can be of any assistance to the Appellants in the present case. The delay was condoned on the basis of the factual situation before the Madhya Pradesh High Court. This Judgment does not lay down any proposition that even beyond maximum period of 120 days as stipulated in Section 74(1) read with its proviso, the Court has the power to condone the delay by invoking the provisions of Section 5 of the Limitation Act, 1963. In fact, Section 29(2) of the Limitation Act, 1963 has not even been referred to in the aforesaid decision because the facts did not warrant the same, considering the exemption given by the Hon'ble Supreme Court on the issue of limitation due to the corona pandemic.

34. The next decision relied upon by Mr. Godbole is a decision of the Tripura High Court at Agartala in the case ***Shikha Rani Das Sarkar Vs. The State of Tripura*** **and others [decided on 15th July 2024]**. This

decision is really not a judgment which lays down any ratio. It is a one-page order which only notes that there is a delay of 310 days in preferring the appeal and on perusal of the application for condonation of delay, it is found that the explanations for the delay are satisfactory and convincing. Hence, the delay for filing the appeal was condoned. This order does not refer to Section 74 of *the 2013 Act* or the provisions of the Limitation Act, 1963. In fact, from this order, it is not even discernible whether this matter was under *1894 Act* or the *2013 Act*. Hence, even this decision is of no assistance to Mr. Godbole.

35. The next decision relied upon by Mr. Godbole is the decision of the Madhya Pradesh High Court in the case of ***Kapil Vs. Union of India (supra)***. This decision of the Madhya Pradesh High Court was rendered taking into consideration the provisions of Section 23 of the Railway Claims Tribunal Act, 1987. What is important to note is that the language of Section 23(3) of the Railways Act, 1987 is materially different from the provisions of Section 74(1) of the *2013 Act* read with its proviso. Section 23 of the Railway Claims Tribunal Act, 1987 deals with appeals to be filed in the High Court from every order [not being an interlocutory order of the Railway Claims Tribunal]. Sub-section (3) of Section 23 stipulates that every appeal under Section 23 shall be preferred within a period of 90 days from the date of the order appeal against. What is interesting to note is that there is no proviso to Section 23(3)

as the one we find in the proviso to Section 74(1). Had the proviso to Section 74(1) not been there on the statute book, we agree with Mr. Godbole that the ratio of the Madhya Pradesh High Court in the case of ***Kapil Vs. Union of India (supra)***, would certainly apply in the present case. However, in light of the proviso to Section 74(1), and which provision is conspicuously absent in Section 23 of the Railway Claims Tribunal Act 1987, we are afraid that the ratio laid down in the said Judgment can be of no assistance to Mr. Godbole.

36. The next decision relied upon by Mr. Godbole was that of the Hon'ble Supreme Court in the case of ***Superintending Engineer/Dehar Power House Circle.... Vs. Excise and Taxation Officer, Sunder Nagar/Assessing Authority (supra).*** In this decision, the Hon'ble Supreme Court was considering a challenge to the impugned Judgment and order dated 19th November 2018 passed by the Himachal Pradesh High Court who refused to condone the delay in a Revision filed under Section 48 read with Section 64(5) of the *Himachal Pradesh Value Added Tax Act, 2005 (**"VAT Act, 2005"**)*. The Himachal Pradesh High Court, whilst construing the provisions of Section 48, came to the conclusion that under the said provision, the Revision had to be filed before the High Court within 90 days and beyond the said period the High Court had no power to condone the delay. Whilst construing the provisions of Section 48 of the *VAT Act, 2005*, the Hon'ble

Supreme Court overturned the decision of the Himachal Pradesh High Court by *inter-alia* holding that the language of Section 48 did not in any way exclude the application of Section 5 of the Limitation Act, 1963. When one reads the provisions of Section 48, it is clear that that the Revision has to be filed before the High Court within 90 days of the communication of the order sought to revised, without stating anything further. This is clear from Section 48(1) of the *VAT Act, 2005* which is reproduced by the Hon'ble Supreme Court in paragraph 3 of its decision. If Section 74(1) of the *2013 Act* did not have the proviso appended to it, which clearly stipulates that the High Court may, if it is satisfied that the Appellant was prevented from sufficient cause from filing an appeal within the initial period of sixty days, allow it to be filed within further period not exceeding sixty days, the ratio of this Judgment would have certainly applied to the facts and circumstances of the present case. However, the distinguishing factor is the proviso appearing below Section 74(1), and which is conspicuously absent in Section 48 of the *VAT Act, 2005*. We, therefore, find that even this decision of the Hon'ble Supreme Court is of no assistance to Mr. Godbole.

37. The next decision relied upon by Mr. Godbole was that of the Hon'ble Supreme Court in the case of ***Mangu Ram Vs. Municipal Corporation of Delhi (supra)***. In this decision, what the Supreme Court

was considering were the provisions of Section 417 of the Criminal Procedure Code, 1898. The argument pressed before the Supreme Court was that the time limit of sixty days prescribed in sub-section (4) of Section 417 of the Cr.P.C. 1898 [for making an application for special leave to appeal under sub-section (3)], was mandatory and which could not be relieved or relaxed as it excluded the applicability of Section 5 of the Limitation Act, 1963. It was urged that the specific language of Section 417 (4) left no scope for doubt or ambiguity that the High Court was statutorily obliged to reject an application for special leave to appeal made after the expiry of sixty days from the date of the order of acquittal, and any delay in preferring the application for leave to appeal beyond the period of sixty days was barred. Looking at the language of Section 417 of the Cr.P.C. 1898, the Hon'ble Supreme Court in ***Mangu Ram (supra)*** held that Section 5 of the Limitation Act was not ousted. In fact, the Supreme Court came to a clear finding that the time limit of sixty days laid down in sub-section (4) of Section 417 is a special law of limitation and the Hon'ble Supreme Court did not find anything in this special law which expressly excluded the applicability of Section 5. The Hon'ble Supreme Court in fact opined that it was true that the language of sub-section (4) of Section 417 was mandatory and compulsive in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of the order of

acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against the entertainment of the application beyond the period of limitation prescribed by a special or local law, that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. The Hon'ble Supreme Court opined that a mere provision of a period of limitation in howsoever peremptory and imperative language is not sufficient to displace the applicability of Section 5. It was in these circumstances that the Hon'ble Supreme Court held that even beyond the period of sixty days, the High Court had the power to condone the delay by invoking the provisions of Section 5. We fail to see how this decision can be of any assistance to Mr Godbole. Section 417 only provides the initial period of limitation, and which is a period of sixty days from filing an application for special leave to appeal from an order to acquittal. It does not stipulate a further period thereafter within which the application for special leave to appeal may be filed with a condonation. It is looking at the language of Section 417 that the Hon'ble Supreme Court came to a finding that the High Court had the power to condone the delay by invoking Section 5 of the limitation Act, 1963. We must note that this decision has not only been noticed by the Hon'ble Supreme Court thereafter in ***Union of India vs. Popular Construction Company (supra)*** but also in the case of ***Bengal Chemists and Druggists Association (supra)***. In fact, in the case of

Bengal Chemists and Druggists Association (supra), the Hon'ble Supreme Court clearly held that the case of ***Mangu Ram (supra)*** was wholly distinguishable and applied only to the stipulated period of limitation, and beyond which nothing further is stated as to whether the delay may be condoned beyond such period. The relevant portion of the decision in ***Bengal Chemists and Druggists Association (supra)*** in this regard have already been reproduced by us earlier in this judgement. We, therefore, find that the reliance placed on this decision is also wholly misplaced and cannot assist Mr. Godbole in the argument he canvassed before us.

38. The last decision relied upon by Mr. Godbole was in the case of ***Mohd. Abaad Ali and Another (supra)***. In this decision, the Hon'ble Supreme Court was considering the provisions of Section 378 of the Cr.P.C. 1973 which are *pari materia* to the provisions of Section 417 of the Cr.P.C. 1898. It is in this light that the Hon'ble Supreme Court followed the decision in ***Mangu Ram (supra)*** and held that under Section 378(5), the Court had the power to condone the delay beyond the period mentioned therein by invoking the provisions of Section 5 of the Limitation Act, 1963. This decision also is of no assistance to Mr. Godbole because the provisions of Section 378(5) of the Cr.P.C. 1973 are materially different from the provisions set out in Section 74(1) [read with its proviso] of the *2013 Act*.

39. In view of the foregoing discussion, we have no hesitation in holding that beyond the total period of 120 days as stipulated in Section 74(1) [read with its proviso] of the *2013 Act*, this Court has no power to condone the delay. Since, admittedly in the facts of the present case, both the applications [seeking condonation of delay] filed by the Appellant are beyond the total period of 120 days, both the applications seeking a condonation of delay are hereby dismissed. Consequently, so are both the above First Appeals and any other Interim Applications filed therein. However, in the facts and circumstances of the present case, there shall be no order as to costs.

40. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.] **[B. P. COLABAWALLA, J.]**

Laxmi