

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No.28392 of 2024

Between:

Atmakuru Nirmalamma

..... PETITIONER

AND

The State of Andhra Pradesh,
Dept.of Revenue (Registration & Stamps)
Rep.by its Special Chief Secretary,
Secretariat Building, Velagapudi,
Amaravati and 3 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 10.01.2025

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI****+ WRIT PETITION No.28392 of 2024**

% 10.01.2025

Atmakuru Nirmalamma

....Petitioner

Versus\$ The State of Andhra Pradesh,
Dept.of Revenue (Registration & Stamps)
Rep.by its Special Chief Secretary,
Secretariat Building, Velagapudi,
Amaravati and 3 others

....Respondents

! Counsel for the Petitioner: Sri Mutuala Sobhanadri Naidu

^ Counsel for respondents : Sri Dilip Nayak, AGP

< Gist :

> Head Note:

? Cases Referred:

1. (2016) 1 SCC 444
2. 2003 SCC OnLine Mad 849
3. WP No.38437/2015, erstwhile APHC
Decided on 03.12.2015
4. AIR 2011 MP 205
5. 2012 SCC OnLine AP 195
6. 2008 SCC OnLine Bom 170
7. 2009 SCC OnLine Mad 437
8. (1995) 5 SCC 5
9. (1996) 9 SCC 414
10. (1976) 1 SCC 361
11. (2010) 3 SCC 545
12. 2016 SCC OnLine All 2708

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**WRIT PETITION No. 28392 of 2024****JUDGMENT:**

Heard Sri Mutyala Sobhanadri Naidu, learned counsel for the petitioner and Sri Dilip Nayak.K, AGP for Revenue for the respondents 1 to 3.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner challenging the Order vide Letter No.REV01-REGSOACTS (CHIT)/49/2024-REGN.II, Dated 28.10.2024, informing the petitioner about the dismissal of her Appeal filed under Section 70 of the Chit Funds Act, 1982 as barred by limitation under the provisions of the said Act.

3. M/s.Margadarsi Chit Fund Private Limited, the 4th respondent, filed an arbitration case against 6 persons, including the petitioner, under Section 64 of the Chit Funds Act, 1982, before the Deputy Registrar of Chits, Tenali for recovery of an amount of Rs.17,67,275/- along with interest and costs, which was numbered as D.I.S.(Dispute) No.32/2016. The 4th respondent-M/s. Margadarsi Chit Fund Company was carrying on the chit fund business. One A. Prathyusha is the subscriber of the 4th respondent Chit Fund Company having subscribed to Ticket No.40 in chit group, LT005D TL dated 27.03.2014. The chit amount was valued at Rs.25,00,000/-. The total months were 50 and the monthly installment was Rs.50,000/-. According to the 4th respondent Chit Fund Company, A. Prathyusha participated in the chit auction on 29.03.2014 and became successful bidder having agreed to forego an amount of Rs.10,00,000/- and the bid amount of Rs.15,00,000/- was paid to her on

14.06.2014. The petitioner stood as one of the guarantors to A. Prathyusha vide agreement dated 14.06.2014. According to the 4th respondent, A. Prathyusha, subscriber, paid 18 installments and thereafter committed default from 16.09.2015 onwards, consequently, the Dispute No.32 of 2016 was filed. The petitioner did not appear in spite of the notice and was *set ex parte*. The 3rd respondent-the Deputy Registrar of Chits, Tenali, thereafter passed an award dated 31.10.2017 under Section 69 of the Chit Funds Act, deciding that the 4th respondent Chit Fund Company was entitled to recover an amount of Rs.17,67,275/- with interest @18% per annum on the principal amount of Rs.15,63,040/- from the date of filing the dispute till the date of realization.

4. The petitioner's case is that the notice was not received and she was unaware of the Dispute proceedings. The 4th respondent filed execution petition before the Principal Junior Civil Judge, Nellore in E.P.No.245 of 2019, and she came to know about the Order / Award in the year 2024 on receipt of summons in execution petition. She then filed Arbitration Original Petition (AOP) before the District Judge, Nellore against the order of the Deputy Registrar, which was returned as not maintainable. The petitioner thereafter filed appeal before the 1st respondent-State of Andhra Pradesh, Department of Revenue (Registration & Stamps), under Section 70 of the Chit Funds Act along with interlocutory application seeking to condone the delay in filing the appeal and also to stay the operation of the order/award of the 3rd respondent-Deputy Registrar. The appeal has been dismissed as not maintainable on the ground of

limitation that the appeal was barred by limitation, having been filed after two months from the date of the order or award.

5. Challenging the said order, the present writ petition has been filed.

6. Learned counsel for the petitioner submitted that the appeal was barred by limitation. It was not filed within two months from the date of the order or award. Consequently, interlocutory application was filed seeking to condone the delay. However, the appellate authority has not considered the application for condonation of delay and dismissed the appeal as barred by limitation. He submitted that the provisions of the Limitation Act applies to an appeal filed under Section 70 of the Chit Funds Act in view of Section 29 (2) of the Indian Limitation Act. Consequently, the appellate authority ought to have considered the cause for delay and ought to have considered the application for condonation of delay on merits.

7. Learned counsel for the petitioner next submitted that as per Rule 59 of the A.P.Chit Funds Rules, 2008, on receipt of the appeal, the appellate authority has to make an enquiry. It has to make an enquiry with reference to the records, examine it, and pass such order on appeal as may be deemed just and reasonable. But the appellate authority has not followed Rule 59 of A.P.Chit Funds Rules and dismissed the appeal only on the ground of limitation and did not make any enquiry or examine the records.

8. Learned counsel for the petitioner placed reliance in ***Baleshwar Dayal Jaiswal v. Bank of India***¹, ***V. Sundararajan v. State of Tamil***

¹ (2016) 1 SCC 444

***Nadu*², and *Mavileti Ratna Kumar v. the State of Telangana, rep.by its Principal Secretary*³.**

9. Learned AGP for Revenue for the respondents 1 to 3 submitted that Section 70 of the A.P.Chit Funds Act provides for a period of limitation of two months for filing the appeal. It does not make applicable the provisions of the Limitation Act. There is no question of the appellate authority entertaining the appeal after the period of limitation. There is also no question in considering any application for condonation of delay as Section 70 of the Chit Funds Act does not provide for condonation of delay and the Limitation Act is not applied.

10. I have considered the submissions so advanced and perused the material on record.

11. In view of the submissions advanced, the only point that arises for consideration is, as to whether the appeal filed under Section 70 of the Chit Funds Act, after expiry of two months from the date of the order and award, is maintainable and the appellate authority has the power to consider the sufficient cause and if shown, to condone the delay and entertain the appeal.

12. Section 70 of the Chit Funds Act, 1982 reads as under:

“70. Appeal against decision of Registrar or nominee.—

Any party aggrieved by any order passed by the Registrar or the nominee or the award of the Registrar or the nominee under section 69, may, within two months from the date of the order or award, appeal to the State Government.”

² 2003 SCC OnLine Mad 849

³ WP No.38437/2015, erstwhile APHC
Decided on 03.12.2015

13. Rule 59 of the A.P.Chit Fund Rules, 2008 (in short 'Rules 2008')

reads as under:

“59. Hearing and disposal of appeal:

(1) On receipt of the appeal, the appellate authority shall as soon as possible examine it and ensure that—

(a) the appeal memorandum is affixed with Court fee stamps of the value specified in rule 58(2);

(b) the person presenting the appeal has the locus standi to do so;

(c) it is made within the specified time limit; and

(d) it conforms to all the provisions of the Act and the Rules.

(2) In the proceedings before the appellate authority, the appellant and the respondent may be represented by an agent holding a power of attorney or by a legal practitioner.

(3) The appellate authority, on the basis of the enquiry conducted and with reference to the records examined, pass such order on appeal as may deem just and reasonable.

(4) Every order of the appellate authority under sub-rule (3) shall be in writing and it shall be communicated to the parties concerned and the Registrar.”

14. A bare perusal of Section 70 of the Chit Funds Act shows that the appeal is to be filed against the order passed by the Registrar or the nominee, or the award of the Registrar or the nominee under section 69, within two months from the date of the order or award, to the State Government. Section 70 of the Chit Funds Act specifically prescribes the period of limitation within which the appeal is to be filed. However, it does not provide specifically that if there is sufficient cause for not approaching the appellate authority within the prescribed time, the appellate authority on showing sufficient cause is

empowered to condone the delay and entertain the appeal even after expiry of the period of limitation. At the same time, as submitted by the learned counsel for the petitioner, it does not specifically say as well that after expiry of the limitation period, the appeal shall not be entertained.

15. So far as Section 70 of the Chit Funds Act is concerned, this Court is of the view that it does neither provide for nor specifically oust the condonation of delay aspect in filing the appeal. There is also no provision under the Chit Funds Act with respect to the applicability of the Limitation Act on the point of condonation of delay with respect to the appeals under Section 70 of the Chit Funds Act, nor under the Rules, 2008. Rule 59 (1) (c) of the Rules 2008, also emphasizes that, on receipt of appeal, the appellate authority shall examine and ensure that the appeal is made within the specified time limit. What follows from reading of Section 70 and Rule 59 (1) (c) is that the appeal is to be filed within the period of limitation, and there is no power in the appellate authority to consider condonation of delay in filing the appeal.

16. Section 65 of the Chit Funds Act provides for the period of limitation in the case of a dispute referred to the Registrar under Section 64 of the Chit Funds Act. As per sub-section (1) the period of limitation, in the case of a dispute referred to the Registrar under Section 64 of the Chit Funds Act, if it relates to clauses (a) and (b), has been prescribed, notwithstanding anything contained in the Limitation Act, but, subject to the specific provisions of the Chit Funds Act. Under sub-section (2) of Section 65 of the Chit Funds Act, with respect to the period of limitation in the case of any dispute, other than those

referred in sub-section (1), which are required to be referred to the Registrar under Section 64, it is provided that the same shall be regulated by the provisions of the Limitation Act, 1963, as if the dispute were a suit, and the Registrar, a civil Court. Under sub-section (3), the Registrar has been conferred with the power, on being satisfied that there was sufficient cause with respect to both kinds of disputes under sub-sections (1) & (2), to admit the dispute after expiry of limitation, as specified therein.

17. In ***Mavileti Ratna Kumar*** (supra) upon which learned counsel for the petitioner placed reliance, the erstwhile High Court of Andhra Pradesh held that Sections 4 to 29 of the Limitation Act apply to an appeal under Section 70 of the Chit Funds Act. Consequently, Section 5 of the Limitation Act would also be applicable and the appeal could not be rejected merely on the ground that it was beyond the time prescribed, if such an appeal was accompanied by an application disclosing sufficient cause as well as an application seeking condonation of delay under Section 5 of the Limitation Act.

18. Relevant part of the Order in ***Mavileti Ratna Kumar*** (supra) is reproduced as under:

“The questions, which fall for consideration, therefore, are:

(1) Whether the appellate authority under Section 70 of the Chit Funds Act has power to condone the delay?

(2) Whether the petitioner has made out any good and sufficient cause so as to warrant condonation of delay and examination of the appeal on merits?

So far as the first question is concerned, the issue is no more res integra inasmuch as similar questions arising out of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Section 17 of the Debts Recovery Tribunals Act was considered by a

Division Bench of this Court, (to which I am a party) reported in **Sajida Begum v. State Bank of India** [1] and which was also affirmed by the Supreme Court in recent decision in **Baleshwar Dayal Jaiswal v. Bank of India and others** [2]. The said ratio, therefore, squarely applies even in the present case and it has to be held that Sections 4 to 29 of the Limitation Act apply to an appeal under Section 70 of the Chit Funds Act. Consequently, Section 5 of the Limitation Act would also be applicable and the appeal cannot be rejected merely on the ground that it is beyond the time prescribed, if such an appeal is accompanied by an application disclosing sufficient cause as well as an application seeking condonation of delay under Section 5 of the Limitation Act.”

19. In **Baleshwar Dayal Jaiswal** (supra) the Hon’ble Apex Court considered the question as to whether the appellate Tribunal under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short ‘SARFAESI Act’) has the power to condone the delay in filing an appeal under Section 18 (2) of that Act. The said question was also examined by the different High Courts, taking view contrary to each other. Madhya Pradesh High Court in **Seth Banshidhar Kedia Rice Mills (P) Ltd. v. SBI**⁴ held that the delay in filing appeal cannot be condoned by the Tribunal. The Andhra Pradesh High Court in **Sajida Begum v. SBI**⁵, the Bombay High Court in **UCO Bank v. Kanji Manji Kothari and Co.**⁶ and Madras High Court in **Ponnusamy v. Debts Recovery Tribunal**⁷ had taken contrary view that the delay can be condoned by the Tribunal. The Hon’ble Apex Court on consideration of the provisions of Section 20 (3) of the Recovery

⁴ AIR 2011 MP 205

⁵ 2012 SCC OnLine AP 195

⁶ 2008 SCC OnLine Bom 170

⁷ 2009 SCC OnLine Mad 437

of Debts Due to Banks and Financial Institutions Act, 1993 (in short 'RDDB Act') to the disposal of the appeal by the Appellate Tribunal under Section 18 (2) of SARFAESI Act, observed that the appellate tribunal under the SARFAESI Act has to dispose of the appeal in accordance with the provisions of RDDB Act. The provisions of RDDB Act stand incorporated in SARFAESI Act for disposal of the appeal and once it was so, the appellate tribunal under the SARFAESI Act can entertain the appeal beyond the prescribed period on being satisfied by condoning the delay in filing such appeal.

20. In ***Baleshwar Dayal Jaiswal*** (supra), it was also observed that the proviso to Section 20(3) of the RDDB Act was applicable by virtue of Section 18(2) of the SARFAESI Act. The Hon'ble Apex Court further observed that unless the scheme of the statute expressly excludes the power of condonation, there is no reason to deny such power to an Appellate Tribunal when the statutory scheme so warrants. Principle of legislation by incorporation is well known and has been applied, the Hon'ble Apex Court held that the Appellate Tribunal under the SARFAESI Act had the power to condone the delay in filing an appeal before it by virtue of Section 18(2) of the SARFAESI Act and the proviso to Section 20(3) of the RDDB Act. It was held that the RDDB Act and SARFAESI Act were complementary to each other.

21. Paragraph No.7 of ***Baleshwar Dayal Jaiswal*** (supra) reads as under:

“7. The first point for consideration is the applicability of proviso to Section 20(3) of the RDDB Act to the disposal of an appeal by the Appellate Tribunal under Section 18(2) of the SARFAESI Act. A bare perusal of the said

Section 18(2) makes it clear that the Appellate Tribunal under the SARFAESI Act has to dispose of an appeal in accordance with the provisions of the RDDB Act. In this respect, the provisions of the RDDB Act stand incorporated in the SARFAESI Act for disposal of an appeal. Once it is so, we are unable to discern any reason as to why the SARFAESI Appellate Tribunal cannot entertain an appeal beyond the prescribed period even on being satisfied that there is sufficient cause for not filing such appeal within that period. Even if power of condonation of delay by virtue of Section 29(2) of the Limitation Act were held not to be applicable, the proviso to Section 20(3) of the RDDB Act is applicable by virtue of Section 18(2) of the SARFAESI Act. This interpretation is clearly borne out from the provisions of the two statutes and also advances the cause of justice. Unless the scheme of the statute expressly excludes the power of condonation, there is no reason to deny such power to an Appellate Tribunal when the statutory scheme so warrants. Principle of legislation by incorporation is well known and has been applied, inter alia, in *Ram Kirpal Bhagat v. State of Bihar* [(1969) 3 SCC 471 : 1970 SCC (Cri) 154] , *Bolani Ores Ltd. v. State of Orissa* [(1974) 2 SCC 777] , *Mahindra and Mahindra Ltd. v. Union of India* [(1979) 2 SCC 529] and *Onkarlal Nandlal v. State of Rajasthan* [(1985) 4 SCC 404 : 1986 SCC (Tax) 34] relied upon on behalf of the appellants. We have thus no hesitation in holding that the Appellate Tribunal under the SARFAESI Act has the power to condone the delay in filing an appeal before it by virtue of Section 18(2) of the SARFAESI Act and the proviso to Section 20(3) of the RDDB Act.”

22. This Court on consideration of ***Baleshwar Dayal Jaiswal*** (supra) finds that so far as SARFAESI Act and RDDB Act are concerned, there is a specific proviso under Section 20 (3) in RDDB Act, which specifically provided that the appellate tribunal may entertain appeal after expiry of the period of 30 days if it was satisfied that there was sufficient cause in not filing appeal within that period. The said provision was held applicable to the appellate tribunal

under SARFAESI Act by virtue of Section 18 (2) of the SARFAESI Act, which provided that save as otherwise provided in the SARFAESI Act the appellate tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the RDDB Act and the Rules made thereunder. The SARFAESI Act did not exclude the applicability of Section 5 of the Limitation Act to the appeals filed under SARFAESI Act and so, 'otherwise' was not provided in the SARFAESI Act i.e., otherwise to Section 20 (3) proviso of RDDB Act, which provision stood applied to SARFAESI Act, by legislation by incorporation.

23. The Hon'ble Apex Court considered the judgment of the Andhra Pradesh High Court in ***Sajida Begum*** (supra) and held that the view taken by the High Court based on applicability of Section 29 (2) of the Limitation Act had no absolute application, as the statute, i.e., SARFAESI Act and RDDB Act, impliedly excluded the applicability of the provisions of the Limitation Act to the extent a different scheme was adopted. It was observed further that if no provision of the Limitation Act was expressly adopted, it might have been possible to hold by virtue of Section 29 (2) of the Limitation Act that the power of condonation of delay was available. It was observed that exclusion of power of condonation of delay could also be implied.

24. On the point if the Appellate Tribunal under SARFAESI Act was not a Court and therefore Section 29 (2) of the Limitation Act was attracted or not, the Hon'ble Apex Court observed that the Andhra Pradesh High Court in ***Sajida Begum*** (supra) relied on Sections 22 and 24 of the RDDB Act and observed that Section 22 vests the powers of civil Court in the Tribunal only for purposes

mentioned therein, and deems the Tribunals to be Courts for specified purposes. It was further observed that those provisions may not be conclusive of the question of the Tribunal being Court for Section 29 (2) of the Limitation Act, without further examining the scheme of the statutes in question. However, the Hon'ble Apex Court was of the view that it was not necessary to decide the question whether the Tribunal under the banking statutes is Court for purposes of Section 29 (2) of the Limitation Act. The Hon'ble Apex Court, however, clearly held that the power of condonation of delay was expressly applicable by virtue of Section 18 (2) of the SARFAESI Act read with proviso to Section 20 (3) of the RDDB Act, and to that extent, the provisions of the Limitation Act having been expressly incorporated under the special statutes. Section 29 (2) of the Limitation Act stood impliedly excluded and to that extent the Hon'ble Apex Court differed with the view taken by the Andhra Pradesh High Court as well as Madras and Bombay High Courts. The Hon'ble Apex Court was in agreement with the principle that even though Section 5 of the Limitation Act may be impliedly inapplicable, principle of Section 14 of the Limitation Act could be held to be applicable even if Section 29 (2) of the Limitation Act did not apply.

25. So, the power to condone delay by the Appellate Tribunal under SARFAESI Act was traced to the statutory provisions of SARFAESI Act and RDDB Act itself and not by virtue of Section 29 (2) of the Limitation Act. Even Section 14 of the Limitation Act was not held applicable, but only the principle underlying Section 14 of the Limitation Act were held applicable.

26. The case of ***Sajida Begum*** (supra) was under SARFAESI Act and the RDDB Act. ***Sajida Begum*** (supra) is not on Chit Funds Act. ***Baleshwar Dayal Jaiswal*** (supra) is also not on Chit Funds Act. The judgment in ***Mavileti Ratna Kumar*** (supra), is placing reliance in ***Sajida Begum*** (supra) observing that the controversy is similar and also observing that the same was confirmed by the Hon'ble Apex Court in ***Baleshwar Dayal Jaiswal*** (supra). On such a view being taken, applying the same in ***Mavileti Ratna Kumar*** (supra), the Hon'ble Apex Court held that Sections 4 to 29 of the Limitation Act shall apply to an appeal under Section 70 of the Chit Funds Act.

27. I am of the view that there being a specific provision permitting the appellate authority to condone the delay in filing appeal under the SARFAESI Act read with RDDB Act, it was held that the appellate tribunal has the power to condone delay in filing appeal. It was not so held by virtue of Section 29 (2) of Limitation Act in ***Baleshwar Dayal Jaiswal*** (supra). In ***Sajida Begum*** (supra) on the reasonings, (i) Section 18 (2) of SARFAESI Act and Section 20 (3) of RDDB Act; and (ii) Section 29 (2) of Limitation Act, the appellate Tribunal was held to have the power to condone the delay in filing appeal. Though, ***Sajida Begum*** (supra) was upheld by the Hon'ble Apex Court, but on the first reasoning and not on the second. It was clearly observed that the applicability of Section 29 (2) of the Limitation Act stood impliedly excluded and the view taken in ***Sajida Begum*** (supra) was differed by the Hon'ble Apex Court.

28. Under the Chit Funds Act, there is no such provision as existed under the SARFAESI Act and RDDB Act on the point of condonation of delay in filing

appeal by the appellate tribunal, either specifically or by legislation by reference. Applying the principle of law as laid down in ***Baleshwar Dayal Jaiswal*** (supra) that Section 29 (2) of the Limitation Act shall have no absolute application, if the statute in question impliedly excluded applicability of the provisions of the Limitation Act to the extent a different scheme is adopted, to the present case, under the Chit Funds Act, a different scheme has been adopted. Under Section 65, with respect to the disputes, there is provision for the period of limitation and for condonation of delay. Under sub-section (1) and (2), the power has been given to the Registrar to condone the delay on being satisfied on sufficient cause. But, any specific power has not been conferred to the appellate authority under Section 70 of the Chit Funds Act or any other provision to condone the delay in filing appeal. Consequently, the exclusion of power of condonation of delay, with respect to the appeals under Section 70 of the Chit Funds Act, is implied. If no provision of the Limitation Act was expressly adopted, it might have been possible to hold by virtue of Section 29 (2) of the Limitation Act, subject to fulfillment of its conditions, that the power of condonation of delay in filing appeal was available to the appellate authority. The legislative intent is very clear from the Chit Funds Act, that where the legislature intended to apply provision of the Limitation Act, i.e., the disputes under Section 65 of Chit Funds Act, it applied, and where it did not, as under Section 70, it did not provide for that.

29. So far as the applicability of Section 29(2) of the Limitation Act, to appeal under Section 70 of the Chit Funds Act, 1982, for condonation of delay

in filing the appeal before the appellate Tribunal is concerned, the same deserves consideration, independently, on the touchstone of Section 29(2) of the Limitation Act.

30. Section 29 of the Limitation Act 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.”

31. In ***Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker***⁸ it was held that for applicability of Section 29 (2) of the Limitation Act two requirements have to be satisfied. First requirement is that there must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application. Second requirement is that the said prescription of period of limitation under such special or local law should be

⁸ (1995) 5 SCC 5

different from the period prescribed by the Schedule to the Limitation Act. Learned counsel for the petitioner submitted that the aforesaid two requirements are satisfied inasmuch as the period of limitation for filing the appeal is provided under Section 70 of the Chit Funds Act, and there is no such period prescribed under the Limitation Act. Consequently, both the requirements are prescribed as in the case of no period of limitation prescribed under the Limitation Act, it shall be taken that the period prescribed under the Chit Funds Act is different from the period prescribed by the Schedule to the Limitation Act.

32. This Court is of the view that for applicability of the Limitation Act even by virtue of Section 29 (2) of the Limitation Act, the first and foremost question would be whether the authority is Court or not, unless it falls under the expression 'court', the Limitation Act cannot be made applicable even by virtue of Section 29 (2) for the obvious reason that once the Limitation Act does not apply, the applicability of any of its provisions including Section 29 (2) would not arise.

33. In ***Officer on Special Duty (Land Acquisition) v. Shah Manilal Chandulal⁹*** the question was, whether the Land Acquisition Officer/Collector acts as a Court, within the meaning of Section 18 of the Land Acquisition Act, 1894. On consideration of the 'court', as defined under Section 3 (d) and the 'collector' in clause 3 (c), it was held that there was a clear distinction between the 'collector' and the 'court'. Reference was made to ***Sushila Devi v.***

⁹ (1996) 9 SCC 414

Ramanandan Prasad¹⁰ in which the question was whether the Collector to whom application under Section 3 of the Kosi Area (Restoration of Lands to Raiyats) Act 30 of 1951 was made, was a Court under Section 5 of the Limitation Act. The Act 30 of 1951 by operation of Section 15 made certain provisions of the Code of Civil Procedure applicable when it conducted certain proceedings before the Collector. It was held that the Collector is not a Court when he conducts the proceedings under the Act. Therefore, Section 5 of the Limitation Act does not apply.

34. It is apt to refer paragraphs 11 and 13 of **Shah Manilal Chandulal** (supra) as under:

“11. The question emerges: whether the LAO/Collector acts as a court? Section 3(d) defines ‘Court’ to mean the principal civil court of original jurisdiction or a principal judicial officer within any special local limits appointed thereunder to perform the functions of the court under the Act. ‘Collector’ has been defined in clause 3(c) to mean the Collector of district and includes a Deputy Commissioner etc. appointed by the appropriate Government to perform the functions of the Collector under the Act. He is variously called the Collector/LAO. It would thus be clear that the Act made a distinction between the Collector and the court. The Collector/LAO performs the statutory functions under the Act including the one making the award under Section 11 and referring a written application made under Section 18(1) of the Act to the court and complies with Sections 19 and 20 of the Act. The dichotomy of the Collector and the court cannot be lost sight of.

13. In *Sushila Devi v. Ramanandan Prasad* [(1976) 1 SCC 361], the question arose whether the Collector to whom application under Section 3 of the Kosi Area (Restoration of Lands to Raiyats) Act 30 of 1951 is made, is a court under Section 5 of the Limitation Act? The said Act by operation of

¹⁰ (1976) 1 SCC 361

Section 15 of that Act makes certain provisions of the CPC applicable when it conducts certain proceedings before it. This Court had held that Collector is not a court when he conducts the proceedings under the Act. Therefore, Section 5 of the Limitation Act does not apply. In *Mohd. Ashfaq v. State Transport Appellate Tribunal* [(1976) 4 SCC 330 : AIR 1976 SC 2161] , under Section 58 of the Motor Vehicles Act (4 of 1939) and under sub-section (2) proviso and sub-section (3), application for renewal of the permit would be made and power is given to the RTA to condone the delay if the application is made after the expiry but within 15 days of the period. The question arose: whether Section 5 of the Limitation Act would apply by operation of sub-section (2) of Section 29 of the Limitation Act? This Court had held that since the limitation of 15 days was prescribed, if the application is not made within that limitation, the RTA is not a court under Section 5 and it has no power to condone the delay.”

35. In ***Bhagwan Das v. State of Uttar Pradesh***¹¹ it was held that as the Collector is not a civil Court and as the provisions of the Limitation Act have not been made applicable to the proceedings before the Collector under the Act, and as there is no provision in the Act enabling the Land Acquisition Collector to extend the time for making an application for reference, the Collector cannot entertain any application for extension, nor extend the time for seeking reference, even if there are genuine and *bona fide* grounds for condoning the delay. Paragraph-16 of ***Bhagwan Das*** (supra) is as under:

“16. As the Collector is not a civil court and as the provisions of Section 5 of the Limitation Act, 1963 have not been made applicable to proceedings before the Collector under the Act, and as there is no provision in the Act enabling the Land Acquisition Collector to extend the time for making an application for reference, the Collector cannot entertain any application for extension, nor extend the time for seeking reference, even if there are genuine

¹¹ (2010) 3 SCC 545

and bona fide grounds for condoning delay. This view was reiterated in *SAIL v. SUTNI Sangam* [(2009) 16 SCC 1] . Therefore, the observation of the High Court that an application for condonation of delay could have been made by the person interested, is incorrect.”

36. In ***Dhani Ram v. State of U.P.***¹² one of the questions for consideration before the Allahabad High Court was, whether the provisions of the Limitation Act are applicable in proceedings before the Collector under Section 18 of the Land Acquisition Act and the Collector can condone the delay under Section 5 of the Limitation Act in filing an application seeking reference if “sufficient cause” is shown. Reference was made to the judgment of the Hon’ble Apex Court in ***Bhagwan Das*** (supra) and it was held that the orders of Collector in making a reference or refuse to make a reference to the Court under Section 18 of the Limitation Act were merely acts of a statutory authority in exercise of statutory functions. The Collector is not a Court.

37. In the present case also, the appeal lies to the State. In exercise of appellate powers, the State Government shall have to follow the procedure under the Chit Funds Act read with Rules with respect to the appeals, but that does not make the State Government as a Court or Civil Court for the purposes of the Limitation Act. Consequently, I am of the considered view that the appeal under Section 70 of the Chit Funds Act before the State Government is not before the Court so as to attract the applicability of the Limitation Act of its own or by virtue of Section 29 (2) of the Limitation Act. As considered supra, the Chit Funds Act or/and the Rules do not make application of the provisions

¹² 2016 SCC OnLine All 2708

of Section 5 of the Limitation Act. Neither the provisions of the Limitation Act are applicable under Section 70 of the Chit Funds Act nor it specifically provides the power for condonation of delay under Section 70 of the Chit Funds Act by the appellate authority. The Limitation Act does not apply to the proceeding under Section 70 of the Chit Funds Act. Therefore, the plea of the petitioner for condonation of delay in making the appeal, was not liable to be accepted.

38. Following ***Baleshwar Dayal Jaiswal*** (supra) for the discussion made, I hold that Section 29(2) of the Limitation Act is not applicable to the Chit Funds Act, to condone the delay in filing the appeal by the appellate authority, under Section 70 of the Chit Fund Act. The appellate authority therefore has no power neither under the Chit Funds Act read with its Rules nor by virtue of Section 29(2) of the Limitation Act to condone the delay in filing the appeal under Section 70 of the Chit Funds Act.

39. In ***V. Sundarajan*** (supra), upon which, learned counsel for the petitioner placed reliance, it was held that as per sub rule 3 of rule 59 of the Chit Fund Rules, 1984 (for short, the Rules, 1984), the appeal has to be disposed of in accordance with the procedure prescribed in Rules 58 and 59 of the Rules. The said provisions were not complied with in that case. Consequently, the High Court of Madras allowed the writ petition and remitted the matter for fresh disposal in accordance with Rule 59 of the Rules. The said judgment is not applicable. In ***V. Sundararajan*** (supra), the appeal was filed in time. That is not a case of delay in filing the appeal and consequently the question of the condonation of delay by the appellate Tribunal was not

involved. So far as the proposition of law in ***V. Sundararajan*** (supra) that the appeal is to be decided in accordance with the provisions under Rules 58 and 59 of the Rules, there may not any dispute but the same would apply to an appeal filed in time.

40. Thus, considered, I do not find any illegality in the impugned order, dismissing the appeal under Section 70 as barred by limitation.

41. In the result, the writ petition lacks merit and is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Date: 10.01.2025
Dsr

Note:
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