



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1958 OF 2024
IN
FIRST APPEAL (ST.) NO. 3056 OF 2024

The Assistant Director,
Directorate of Enforcement

.. Applicant/Appellant

Versus

The Branch Manager,
The Goa State Co-op Bank Ltd.

.. Respondent

Adv. Ashish Chavan a/w Yash Palan for the Applicant/ Appellant.

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

RESERVED ON: DECEMBER 09, 2024
PRONOUNCED ON: JANUARY 14, 2025

JUDGMENT:- [Per: B. P. COLABAWALLA, J]

1. The above Appeal is filed under Section 42 of the *Prevention of Money Laundering Act, 2002* [for short the “**PMLA, 2002**”] by the Assistant Director, Directorate of Enforcement, challenging the order dated 4th July 2018 passed by the Appellate Tribunal [constituted under the provisions of the PMLA, 2002], in FPA-PMLA-2178/AHD/2018. By the impugned order, the

Appellate Tribunal allowed the Appeal filed by the Respondent-Bank against the order of the Adjudicating Authority confirming the Provisional Order of the Attachment levied [under Section 5 of the PMLA, 2002] by the Deputy Director, Directorate of Enforcement, Surat.

2. Since there is a delay in filing the Appeal, the above Interim Application is also filed seeking a condonation of delay. Though in the Interim Application, the period of delay is not mentioned, on the basis of the lists of dates and events tendered to this Court on 9th December 2024, the delay mentioned is 132 days.

3. As recorded in our order dated 9th December, 2024, we had noted that the issue involved in the present case is whether the Court has the power to condone the delay beyond the total period of 120 days [sixty days being the prescribed period and a further period of sixty days being the grace period] as stipulated in Section 42 of the PMLA, 2002, read with its proviso. In order to decide the aforesaid issue, it would be apposite to refer to certain admitted facts which are relevant for the present purposes.

4. The present Applicant/Appellant is working as the Assistant Director, Directorate of Enforcement, Surat, Sub-Zonal Office, Surat. The

Joint Director of the Directorate of Enforcement, Ahmedabad Zonal office, Ahmedabad, had filed Original Complaint No. 805 of 2017 [under Section 5(5) of the PMLA, 2002] in respect of Provisional Attachment Order No.4 of 2017 dated 17th July 2017. This provisional attachment was also levied under Section 5(1) of the PMLA, 2002.

5. It is the case of the Appellant that after going through all the documents and evidence, the Adjudication Authority confirmed the Provisional Attachment Order [dated 17th July 2017] vide its order dated 28th December 2017. This confirmation was done under Section 8 of the PMLA, 2002.

6. Being aggrieved by the order of the Adjudicating Authority dated 28th December 2017, the Respondent-Bank, on 15th February 2018, preferred an Appeal before the Appellate Tribunal under Section 26 of the PMLA, 2002. This Appeal filed by the Respondent-Bank was heard on 4th April 2018 and the Judgment was pronounced by the Appellate Tribunal on 4th July 2018. The Appellate Tribunal allowed the Appeal filed by the Respondent- Bank and *inter-alia* set aside the order of the Adjudicating Authority dated 28th December 2017 and the Provisional Attachment Order dated 17th July 2017.

7. Being aggrieved by this decision of the Appellate Tribunal, the Appellant herein initially preferred an Appeal under Section 42 of the PMLA, 2002 before the High Court of Gujarat, Ahmedabad, being First Appeal No. 4151 of 2018. Since there was a delay of approximately five days [beyond the initial period of sixty days] in preferring the Appeal, the Appellant herein also filed an application for condonation of delay. The delay was accordingly condoned by the Gujarat High Court vide its order dated 28th June 2019.

8. Eventually, when the Appeal was being argued before the Gujarat High Court, it was realized that by virtue of the Explanation (ii) of Section 42, the Appeal would lie before the High Court of Bombay. In these circumstances, on 20th September 2023, the Appellant withdrew the Appeal before the Gujarat High Court with liberty to approach the appropriate High Court. Thereafter, the above First Appeal was lodged in this Court on 30th January 2024.

9. It is the case of the Appellant [in the list of dates and events tendered to the Court on 9th December 2024] that there is a delay of 132 days in approaching this Court after the Appellant withdrew its Appeal from the Gujarat High Court. It is in these circumstances that the Appellant has prayed for condonation of delay. From the list of dates, it is clear that the Gujarat High Court was approached on 7th September 2018 challenging the order passed by

the Appellate Tribunal dated 4th July 2018. As per Section 42, the Appeal had to be filed within a period of sixty days from the date of communication of the said order. Since the Appeal was filed after 65 days from the date of the communication of the order passed by the Appellate Tribunal, an application for condonation of delay was also filed before the Gujarat High Court, and which was allowed. Thereafter, once the Appeal was withdrawn from the Gujarat High Court and filed in this Court, there has been further delay of about 132 days in filing the above Appeal.

10. In these facts, and considering the provisions of Section 42, we inquired from the learned Counsel appearing for the Appellant as to how we would have the power to condone the delay beyond the maximum period of 120 days as stipulated in Section 42 of the PMLA, 2002. In answer to this query, the learned Counsel submitted that the provisions of Section 42 do not preclude the application of Section 5 of the Limitation Act, 1963. In this regard the learned Counsel submitted that Section 29(2) of the Limitation Act, 1963 clearly stipulates that where any special or local law prescribes inter-alia for any appeal, a period of limitation different from the period prescribed by the Schedule of the said Act, for the purpose of determining any period of limitation prescribed for such appeal 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. He submitted that if one reads the language of Section 42 of the PMLA, 2002 there is no express exclusion of Section 5 of the Limitation Act, 1963 and therefore, we would have the power to condone the delay even beyond the period of 120 days as stipulated in Section 42 of the said Act. The learned Counsel also took us through certain other provisions of the PMLA, 2002, namely, the definition of the words “*proceeds of crime*” under Section 2(1)(u) as well as Section 47. The learned Counsel submitted that the PMLA, 2002 is a hybrid statute which has civil as well as criminal consequences and when one reads all these provisions, it becomes clear that Section 5 of the Limitation Act, 1963 is not expressly excluded by the language employed by the legislature in Section 42. To buttress this argument, the learned Counsel appearing for the Appellant strongly relied upon a decision of the Division Bench of this Court in the case of ***Faizal Hasamali Mirza alias Kasib Vs. State of Maharashtra and another [2023 SCC OnLine Bom 1936]***. The learned Counsel submitted that in this decision, a Division Bench of this Court was considering the provisions of Section 21 of the National Investigation Agency Act, 2008 [for short “***NIA Act*”**] and came to the conclusion that even beyond the period stipulated in Section 21 of the *NIA Act*, the Court has the power to condone the delay. He submitted that the provisions of Section 21 of the *NIA Act* are very similar to the provisions of Section 42 of the PMLA, 2002, and therefore, even

we would have the power to condone the delay beyond the total period of 120 days. For all these reasons, the learned Counsel submitted that we ought to condone the delay and allow the above Interim Application.

11. We have heard the learned Counsel appearing for the Appellant. Before we deal with this issue, it would only be apposite to set out the provisions of Section 42 of the PMLA, 2002 as well as Sections 5 and 29 of the Limitation Act, 1963. Section 42 of the PMLA, 2002 reads as under:

“42. Appeal to High Court.—Any person aggrieved by any decision or order of the Appellate Tribunal **may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal** to him on any question of law or fact arising out of such order:

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.

Explanation.—For the purposes of this section, “High Court” means—

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.”

(emphasis supplied)

12. As can be seen from the aforesaid provision, any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal on any question of law or fact arising out of such order. The proviso to Section 42, and which is important for our purposes, 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, may allow it to be filed within a further period **not exceeding** sixty days. What can be discerned from these provisions is 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 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 of the Limitation Act, 1963 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.”

13. 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)

14. 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 insofar as, and to the extent to which, they are not expressly excluded by such special law or local law. After perusing the provisions of Section 42, we 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 42 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 42 of the PMLA, 2002, the legislature would not have inserted the proviso to Section 42 which [after the initial period of sixty days to file an appeal under Section 42 has expired], 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 any person aggrieved by the decision or an order of the Appellate Tribunal, may file an appeal to the High Court within sixty days from the date of the decision or order. If that is all that was said by the 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 42 basically stipulates that the High Court shall, after the initial period of sixty days, have the power to condone the delay 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 42 of the PMLA, 2002. To hold that the High Court can entertain an appeal even beyond the extended period [as stipulated in the proviso to Section 42] would render the words “*not exceeding sixty days*” wholly otiose. No principle of interpretation would justify such a result. We are unable to agree with the learned Counsel that an express exclusion only means that Section 42 ought to expressly mention the exclusion of Section 5. An express exclusion would mean that the language of the statute clearly indicates that the applicability of Section 5 has been excluded. The words used in the proviso to Section 42 “*within a further period not exceeding sixty days*” clearly therefore exclude 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.

15. We must note that we have taken this precise view in the case of ***Municipal Corporation of Greater Mumbai Vs. Anusaya Sitaram Devrukhkar and Others [Interim Application No.13254 of 2024 in First Appeal (ST) No.24058 of 2024 decided on 7th January 2025]***. In this decision, what this Court considered were the provisions of Section 74(1) of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* [for Short “**the 2013 Act**”]. Section 74 of the 2013 Act also stipulated that the Requiring Body, or

any person aggrieved by the award passed by the Reference Authority under Section 69 of the 2013 Act, may file an appeal to the High Court within sixty days from the date of the Award. The proviso to Section 74(1) stipulated 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. For the sake of convenience, Section 74 (1) the 2013 Act and its proviso are reproduced hereunder:-

“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**.

16. As can be seen from this provision, it is almost identical to the provisions of Section 42 of the PMLA, 2002. This Court, in the case of ***Municipal Corporation of Greater Mumbai (supra)***, after reviewing the law laid down by the Supreme Court in ***(i) Union of India Vs. Popular Construction Company [(2001) 1 SCC 470]***; ***(ii) Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission***

and others [(2010) 5 SCC 2023]; (iii) Oil and Natural Gas Corporation Ltd. Vs. Gujrat Energy Transmission Corporation Ltd. and others [(2017) 5 SCC 42]; and (iv) Bengal Chemist and Druggists Association Vs. Kalyan Chowdhary [(2018) 3 SCC 41], came to the conclusion that beyond the stipulated period of 120 days, this Court would have no power to condone the delay. We are clearly of the view that the decision rendered by this Court in ***Municipal Corporation of Greater Mumbai (supra)*** would apply with full force to the facts of the present case. We, therefore, have no hesitation in holding that after the total period of 120 days as stipulated in Section 42 of the PMLA, 2002, read with its proviso, the High Court would have no power to condone the delay in preferring the Appeal.

17. Before concluding, it would only be fair to refer to the decision of another Division Bench of this Court rendered in the case of ***Faizal Hasamali Mirza alias Kasib Vs. State of Maharashtra and another (supra)***. We have carefully gone through the aforesaid decision. In this decision, another Division Bench of this Court was considering the provisions of Section 21 of the *NIA Act*. Section 21 of the *NIA Act* reads as under:-

“21. Appeals. – (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgement, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Provided further that no appeal shall be entertained after the expiry of period of ninety days.”

(emphasis supplied)

18. Whilst construing this provision, the Division Bench of this Court held that the word “**shall**” appearing in the proviso to Section 21(5) should be read as “**may**” and hence would be directory in nature. We fail to understand how this decision can be of any assistance to the Appellant. The decision of the Division Bench of this Court in the case of ***Faizal Hasamali Mirza alias Kasib Vs. State of Maharashtra and another (supra)***, came to this finding taking into consideration that an appeal filed by the accused under Section 21 of the *NIA Act* would be a part of the right to life and liberty as

enshrined in Article 21 of the Constitution of India. It is in these facts that the Division Bench in the case of ***Faizal Hasamali Mirza alias Kasib Vs. State of Maharashtra and another (supra)*** came to the conclusion that the word “***shall***” in the proviso to Section 21(5) has to be read as “***may***” and hence directory in nature. What is important to note is that in this decision, the Division Bench has not come to the conclusion that although the provisions of Section 5 of the Limitation Act, 1963 are excluded by the language of Section 21 of the *NIA Act*, yet the Court has the power to condone the delay. As can be seen from the provisions reproduced by us above, the language used in Section 21 of the *NIA Act* and that in Section 42 of the PMLA 2002 are materially different. In these circumstances, we have no hesitation in holding that the reliance placed by the learned Counsel on the decision of the Division Bench of this Court in the case of ***Faizal Hasamali Mirza alias Kasib Vs. State of Maharashtra and another (supra)*** is wholly misconceived and misplaced.

19. There is one other facet – and this would need comment only to underline the extent of the delay. The Appellant was already five days late in approaching the Gujarat High Court, and this delay had been condoned. After the Gujarat High Court ruled that the jurisdictional High Court is the Bombay High Court, the Appellant took another 132 days to approach this Court. In

short, the Appellant had already been condoned for a delay of five days in preferring an appeal. That the Appellant was found to have approached the wrong forum would not reset the clock for computing limitation from scratch. The Appellant ought to have approached this Court within 55 days of the outcome at the Gujarat High Court, and evidently, the Appellant was late by a long distance of time.

20. In view of the foregoing discussion, we have no hesitation in holding that beyond the total period of 120 days as stipulated in Section 42 [read with its proviso] of the PMLA, 2002, this Court has no power to condone the delay. Since admittedly, in the facts of the present case, the application seeking a condonation of delay is beyond the total period of 120 days, the above Application seeking condonation of delay is hereby dismissed. Consequently, so is the above First Appeal. However, in the facts and circumstances of the present case, there shall be no order as to costs.

21. 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.]

Page 16 of 16
JANUARY 14, 2025

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