

NOTES ON THE LEGISLATIVE SHORTHAND IN SECTION 29(2) OF THE LIMITATION ACT, 1963

By

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The Limitation Act, 1963 contains the general law “for the limitation of suits and other proceedings and for purposes connected therewith”. Apart from this many special or local statutes contain provisions for limitation for institution of proceedings thereunder. To illustrate this one may refer to statutes relating to Land and Tenancy laws, Tax laws, Rent Control Legislations, Election Laws etc. Sometimes even a general statute like the Code of Criminal Procedure may contain special provisions for limitation in particular matters. In *Mukri Gopalan Vs Cheppilat Puthanpurayil Aboobacker*, AIR 1995 SC 2272 the Supreme Court indicated that the provisions of Sub-section (2) of Section 29 of the Limitation Act, 1963 contains the key to determination of the limitation prescribed by these special or local statutes. The provisions of sub-section (2) of Section 29 of the Act has been described as a legislative shorthand by the Supreme Court. Even so the High Courts even the Supreme Court has not been uniform in applying the provisions in various cases. A great deal of confusion and lack of clarity abound in this area of the law because mostly, of inadequate argument and sometimes, of inadequate appreciation. This writing focuses on the conflict and confusion in the law under Section 29(2) of the Limitation Act, 1963 in order to emphasize the need for settlement of the law in future.

2. THE LEGISLATIVE HISTORY

Section 3 of the Limitation Act, 1859 the earliest one was as follows :-

“When, by any law now or hereafter to be in force, a shorter period of limitation than that prescribed by this Act is specially prescribed for institution of a particular suit, such shorter period of limitation shall be applied not with standing this Act.”

Then came the Limitation Act, 1871 and the relevant Section of that Act being Section 6 thereof provided as follows :-

“When by any law not mentioned in the schedule hereto annexed, and now or hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is specially prescribed for any suits, appeals or applications, nothing herein contained shall affect such law.”

The Limitation Act, 1871 was replaced by the Limitation Act, 1877, Section 6 whereof provided thus :-

“When by any special or local law now or hereinafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed.”

The same provision was retained in the Limitation Act, 1908 till the provision was amended in 1922. Lastly the Limitation Act 1963 the current one removed the bifurcation of Section 29(2) into Section 29(2)(a) and Section 29(2)(b) made by the 1922 amendment while enacting almost the current Section 29(2). The current Section 29(2) reads thus :-

“ 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 Section 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. ANALYSIS OF SECTION 29(2)

The provision has aptly been described as a legislative shorthand. The legislative history indicated above shows that the legislature’s search for a provision for determination of the period of limitation prescribed by other laws reached its goal in the provision. Essentially this provision by enacting a legal fiction made the provisions of extension and computation contained in Sections 4 to 24 of the Limitation Act 1963 applicable for determining the period of limitation prescribed by the special or local law. By this legislative device the special or local law is spared the trouble of repeating the provisions of the Sections 4 to 24 of the Limitation Act in the respective special or local law.

Three essential conditions necessary for application of the shorthand are :

- (1) The special or local law must contain a provision for limitation in connection with any suit, appeal or application,
- (2) The period of limitation prescribed by the local or special law must be different from that prescribed in the schedule to the Limitation Act, 1963, and
- (3) The special or local law must not expressly exclude either wholly or to an extent application of Sections 4 to 24 of the Limitation Act, 1963.

These three conditions gave birth to three questions before the courts while deciding different cases. These questions are : What is special or local law ?, What is the meaning of different ?, and what do the words “expressly exclude” mean ?.

3.1. Special law or Local Law

The first of these questions can be and has been answered with comparative ease and clarity. Even a particular provision in a general statute may also contain a special law of limitation. To illustrate one may refer to Kaushlya Rani Vs Gopal Singh, AIR 1964 SC 260 decided on 20.09.1963 by a Three Judge Bench of the Supreme Court and Mangu Ram Vs Municipal Corporation of Delhi AIR 1976 SC 105 decided about twelve years later on 10.10.1975 by a Two Judge Bench of the Supreme Court. Both these cases held that Section 417(4) of the Code of Criminal Procedure 1898 is a special law within Section 29(2) of the Limitation Act. Both these cases were concerned with applicability of Section 5 of the Limitation Act 1908/1963 for extension of period of sixty days Limitation fixed in Section 417(4). The Three Judge Bench held that Section 5 cannot be applied while the two Judge Bench held that Section 5 is available for extension of the time if sufficient cause can be established. The reason for this apparent conflict is the change of law during the twelve years that intervened the two decisions. In the Limitation Act 1908 Section 29(2) (b) made Section 5 inapplicable while in the Limitation Act 1963, Section 29(2) made Sections 4 to 24 (which included Section 5) applicable. In between the above two decisions another Three Judge Bench of the Supreme Court considered Section 417(4) of the Code of Criminal Procedure 1898, held the same to be special law within Section 29(2) of the Limitation Act 1963 and following AIR 1964 SC 260 computed the limitation of the appeal by allowing the time requisite for obtaining the copy by applying the provision of Section 12(2) of the Limitation Act 1963 to the special law in Section

417(4) of the Code of Criminal Procedure 1898. The decision dated 17.10.1969 is *Lala Ram Vs Hari Ram AIR 1970 SC 1093*.

3.2. *“Different”*

Next on the meaning of “different” in Section 29(2) the Supreme Court had spoken at least thrice almost within the first ten years of the coming into force of the Limitation Act, 1963. Reference may be made to *Kaushalya Rani (Supra)*, the majority in the Constitution bench decision of *Vidyacharan Shukla Vs Khubchand Baghel, AIR 1964 SC 1099* decided on 20.12.1963 and the three Judge decision in *Hukumdev Narain Yadab Vs Lalit Narain Misra, AIR 1974 SC 480* decided on 21.12.1973. Normally to be different would require both the special or local law and the limitation Act to provide for period of limitation for the identical suit/appeal or application. The settled view is that the period of limitation by the Special or Local law may be different even if there is no corresponding period prescribed in the schedule of the Limitation Act for the suit, appeal or application. The same enunciation of the law on this aspect of Section 29(2) has been followed in *Mukri Gopalan (Supra)* decided on 12.07.1995.

3.3. *“Expressly Excluded”*

The plain meaning of the words express exclusion will be that the special or local law has to make a provision stating clearly and directly that all or any of the group of sections from 4 to 24 of the Limitation Act shall not apply for determination of the period of limitation prescribed by such a law. But the Courts have interpreted the phrase to include exclusion by necessary implication as well. The process of such interpretation began even before the phrase was introduced by the 1922 amendment of the Limitation Act 1908. This exclusion by necessary implication may be posited by the language, nature and scheme of the special Act when it may be a exclusive complete code. This may also be by making a provision similar to one or the other of Section 4 to 24 and failing to make such a provision in some other provisions of the special law. In *Vidyacharan (Supra)* the Constitution Bench of the Supreme Court did not accept a contention of express exclusion in Section 116-A of the Representation of People Act 1951 on the ground of the Act being an exhaustive an exclusive code for limitation for purpose of appeal against orders of Election Tribunal. Sub-section (3) of Section 116-A of the said act prescribed a period of limitation for appeal as thirty days from the date of the Order of the Tribunal but the proviso to the section empowered the High Court to entertain an appeal after the expiry of the said thirty days on showing sufficient cause for failure to meet the thirty days deadline. The Constitution Bench repelled the contention on the ground that Section 29(2) (a) of the Limitation Act 1908 speaks of express exclusion but the proviso did not contain any express exclusion. But most importantly the Constitution Bench also spoke of implied exclusion and held that the proviso does not contain even any necessary implication. It was therefore concluded that Section 12(2) of the Limitation Act that is time requisite for obtaining a copy of the Order appealed from is excludible in determining the period of Limitation for the appeal.

Next in *D.P. Mishra Vs Kamal Narayan Sharma, AIR 1970 SC 1477* decided by a three Judge Bench of the Supreme Court on 13.03.1970 *Vidyacharan (Supra)* was followed and both the provisions of Section 4 & 12 of the Limitation Act 1963 were held applicable in determining the period of limitation for an appeal against the Order of the Election Tribunal. Simple reason was that there was no express exclusion of these provisions of the Limitation Act in any provision of the Representation of People Act, 1951, the special law concerned.

Finally in *Hukumdev Narain Yadab (Supra)* the Supreme Court discarded the Dictionary meaning of the words “expressly excluded” and held thus :-

“As usual the meaning given in the Dictionary has been relied upon, but 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 Section 4 to 24 of the Limitation Act by an express reference, it would none-the-less be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and scheme of the special law exclude their operation.”

The Supreme Court was dealing with applicability of the provision of Section 5 of the Limitation Act, 1963 to condone the delay in filing an Election Petition to the High Court under the Representation of People Act, 1951. On the reasoning as above it was held that Section 5 does not apply. These three decisions relating to the Special Law on Elections also show that despite being a Complete Code and thus excluding the provision of Section 5 by necessary implication for an Election Appeal, Section 4 and 12 are excluded neither expressly nor by necessary implication. Exclusion, thus whether express or by necessary implication may be of a single provision, several provisions or the totality of the provisions of Section 4 to 24 of the Limitation Act.

Under the provisions of Section 58(2) of the Motor Vehicle Act 1939 an application for renewal of a stage carriage permit had to be made “not less than one hundred and twenty days before the date of its expiry.” However, the Regional Transport Authority may entertain an application after the last date specified as above “if the application is made not more than fifteen days after the said last date”. Such a provision was held to “exclude expressly” the application of Section 5 of the Limitation Act, 1963 within of the provisions of Section 29(2) of the Limitation Act, 1963. That was *Md. Ashfaq Vs State Transport Appellate Tribunal* (1976)4 SCC 330 decided on 10.09.1976.

In *Patel Naranbhai Marghabhai Vs Deceased Dhulabhai Galabhai*, (1992)4 SCC 264 the Supreme Court was considering the limitation prescribed by another special Act namely *Bombay Agricultural Debtor Relief Act, 1947*. The provision for appeal prescribed a period of limitation of 60 days but said that in computing the period provisions of Section 4, 5 and 12 of the Limitation Act 1908 shall apply. It was held that the applicability of the other provisions are necessarily excluded.

In *Union of India Vs Popular Construction Co.* (2001)8 SCC 470 the question was whether Section 5 of the Limitation Act 1963 can be applied to extend the period of limitation for setting aside an award under Section 34 of the Arbitration and Conciliation Act, 1996. The proviso to Section 34(3) of the 1996 Act enabled the Court to entertain an application within a further period of thirty days on showing sufficient cause but not thereafter. This together with the other provisions of the Act was held to amount to express exclusion of the provision of Section 5 of the Limitation Act, 1963.

In the year 2004 came two more decisions of the Supreme Court dealing with the “express exclusion” phrase in Section 29(2). They are *Gopal Sardar Vs Karuna Sardar*, AIR 2004 SC 3068 decided on 09.03.2004 and *Fairgrowth Investments Ltd. Vs Custodian* (2004) 11 SCC 472 also in 2005 AIR SCW 3076 decided on 14./10.2004. In both these cases applicability of Section 5 of the Limitation Act, 1963 to a Special Law again fell for determination. In the first case question was whether time for applying to exercise the right of preemption under

Section 8 of the West Bengal Land Reform Act 1955 can be extended under Section 5 of the Limitation Act, 1963. It was held :

“When in the same statute in respect of various other provisions relating to filing of appeals and revisions, specific provisions are made as to give benefit of Section 5 of the Limitation Act and such provision is not made under Section 8 of the Act, it obviously and necessarily follows that the legislature consciously excluded the application of section 5 of the Limitation Act.”

In *Fairgrowth (Supra)* the Special Law considered was Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. It was held that Section 5 of the Limitation Act cannot be applied to condone the delay in filing the objection under Section 4(2) of the Act because the Act by making provision for condonation in Section 10(3) consciously excluded application of Section 5 of the Limitation Act in filing objection under Section 4(2). Besides the provisions of Section 13 of the Act also contains such necessary implication of exclusion. This case also lays down in para 24 of the Judgment that the question of exclusion of the provisions of the Limitation Act has to be considered separately for different provisions of the special or local law and not as a whole.

From the above survey it appears that *Hukum Dev Narain Yadab (Supra)* charted the course of law in this regard. The current concept of the phrase “expressly excluded” is that it is the nature, object and scheme of the special or local law apart from its provisions which will determine the applicability or otherwise of the general principles of limitation enacted in Section 4 to 24 of the Limitation Act, 1963 in determining the period of limitation prescribed by such special or local law.

To end the Section it may be stated that the concept of the Special or Local Act being a complete Code as indicated in *Hukum Dev Narain Yadab (Supra)* has a history dating back to 1865. The Limitation Act 1859 was in force. Section 3 of the Act has already been quoted. In a suit for rent under a Special Rent Act question of applicability of Section 14 of the Limitation Act 1859 arose. A Full Bench of the Calcutta High Court in *John Poulson Vs Madhusudhan Pal (1865) 2 WR Act XR21* answered the question in the negative on the ground that the special law that is the Rent Act being a complete code no extension of time is permissible under Section 14 of the Limitation Act 1859. Then in 1912 a Full Bench of Allahabad High Court decided *Dropadi Vs Hiralal (1912) 34 All 496* holding that Section 12 of the Limitation Act 1908 is applicable in an appeal against an Order under Section 37 of Provincial Insolvency Act, 1907 because the said Act is not a complete Code. The Full Bench answered the question having regard to the language of the unamended form of Section 29(2) of the 1908 Act which was Section 6 of the 1877 Act already quoted. The opinion of the Full Bench is this :

“Where the Special or Local Act is not a complete Code the general provisions of the Indian Limitation Act cannot be said to affect or alter the period prescribed by a Special Act but only the manner in which the period is to be calculated.”

4. THE FOURTH CONDITION

From the text of Section 29(2) of the Limitation Act, 1963 quoted earlier it is not possible to extract a fourth condition in addition to the three already discussed. But there is no dearth of case law reading a fourth condition for applicability of Section 29(2). The Section itself does not say anything about the forum created by the special or local law. But some how some decisions of the High Courts in effect say that unless the suit, appeal or applications under the special or local law are filed before Courts Section 29(2) cannot apply nor can the provision of the Limitation Act. It will be interesting to examine this aspect.

4.1. *The High Courts*

It has already been stated that only by the 1922 amendment Section 29(2) of the Limitation Act 1908 attained almost the present form. Barring the bifurcation into 29(2) (a) and 29(2) (b) abolished in current Limitation Act, Section 29(2) of the two Acts are almost same. A Division Bench of the Patna High Court led by Justice Fazal Ali decided *Mohan Lal Hardeo Das Vs Commissioner of Income Tax*, AIR 1930 Patna 14 on 19.07.1929. Question there was whether the time of one month prescribed by the special law that is Section 66(2) of the Income Tax Act, 1922 for making an application to the Commissioner of Income Tax is extendable by excluding time requisite for copy under Section 12 of the Limitation Act 1908. The Division Bench relied on AIR 1929 Lahore 170 and AIR 1928 Rangon 152 both identical cases under the same special law that is Section 66(2) of Income Tax Act 1922 and held that in view of the provisions of Section 29(2) time requisite for copy is excludible. The important thing to be noted here is that these cases dealt with applications not to any Court but to Income Tax Authority or Tribunal.

A very convincing argument against existence of any fourth condition centering round the forum for the institution of suits appeals or applications under the special or local law can be read in *Imperial Bucket Co. Vs Smt. Bhagawati Basak*, AIR 1954 Cal 520 rendered by a Division Bench of the Calcutta High Court. That was a Judgment rendered when Limitation Act 1908 was in force. The preamble to that Act described the Act as a consolidating Act dealing with “the law of limitation of suits, appeals and certain applications to Courts”. The long title of the Limitation Act 1963 made a significant change in that and described the Act thus :

“An Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith”.

The Division Bench rebuffed the argument based on the preamble to the effect that since the appeal there was to a *persona designata* and not to a court Section 29(2) would not apply holding that preamble cannot rule when the meaning of the words “suit or appeal” is clear. They mean any suit or appeal be it filed before a court or a *persona designata*. It further held that “the rules of construction referred to above do not justify the court in adding to the words “suit, appeal a application” the words “to court”. The words “suit, appeal or application” must be read in their plain sense as inclusive of any suit or appeal or application prescribed by a special or local law.

The Division Bench in the above view felt it not necessary to decide the question whether the appellate authority constituted under Section 32 of the Special Act there is a court or a *persona designata*.

The Special Law involved in the above Calcutta case was West Bengal Premises Rent Control (Temporary Provisions) Act 1948. A Full Bench of the Kerala High Court, however by a majority held that the period of limitation for an appeal under a similar Rent Control Act cannot be extended by applying Section 5 of the Limitation Act 1963 because the Appellate Authority there is not a Court but a *persona Designata*. The decision later came to be cited before the Supreme Court. The Supreme Court approved the minority Judgment of that case reported in AIR 1974 Kerala 162, *Jokkim Fernandez Vs Amina Kunhi Umma*. Excerpts from para 3 &4 of the minority Judgment read thus :

“3..... These general principles of limitation and the period of limitation are applicable to proceedings in Court in general. But rights, remedies and periods of limitation are provided for and prescribed under various special or local laws also. It is not possible to provide in the Limitation Act for periods of limitation for all types of actions under special law and a repetition of all the general provisions for determining the period of limitation prescribed under special or Local laws will make

them cumbersome. Therefore the Legislature has enacted in the Limitation Act itself a provision by which the general provisions are made applicable for the purpose of determining the period of limitation prescribed by special laws.....”

“4. Tribunals are very often given powers which are vested in a Court under the Code of Civil Procedure..... In the same manner when the provisions of Section 5 of are made applicable to proceeding under special laws what is done is that the deciding authorities under the Special laws are given the power of the Court under Section 5 of the Limitation Act to condone delay. These deciding authorities may or may not be Courts. (underlining supplied)

For the applicability of Section 4 to 24 of the Limitation Act, 1963 by force of Section 29(2) thereof forum under the Special Law where the proceedings thereunder are instituted is, thus held to be immaterial. For this view the minority Judgment derived additional assurance from the Objects and Reasons for the Limitation Act 1963 which read thus :

“ Clause 28, Sub-clause (2) amends Section 29(2) of the existing Act to provide that the principles contained in clause 4 to 23 apply uniformly to all special or local laws in the absence of any or all of those provisions in any given case.”

The Gujrat High Court has uniformly held the view that the forum under the special law is immaterial if the other conditions under Section 29(2) are fulfilled. The essence of this view may be quoted from AIR 1982 Gujrat 298, Mahesh Harilal Khamar Vs B.N. Narasimhan thus :-

“Once the applicability of Section 5 arises in the context of the operation of Section 29(2) of the Limitation Act to any Special or Local Law, the principles of Section 4 to 24 get attracted by necessary implication by the very force of Section 29(2). Under these circumstances when a Statutory Authority having quasi judicial functions enforces the given period of limitation under a special or local law as the case may be, by the combined operation of section 29(2) read with Section 4 to 24 of the Limitation Act, Section 5 of the Limitation Act clearly gets attracted to such proceedings before the Statutory Authority exercising quasi judicial powers under the concerned special or local statute”. (Underlining supplied).

In that case the question was whether the 30 days limitation for appeal under Section 27(5) of the Gujrat Agricultural Produce Markets Act, 1964 to the Director of Agricultural Marketing and Rural Finance from an Order of the Market Committee can be extended by condonation under Section 5 of the Limitation Act, 1963. The question evoked the above response from the Court. The most important aspect of the response is that the appeal was not to any Court but to the Director.

There are five Division Bench Judgments from the Gujrat High Court affirming the same enunciation of the law. They are (1) Mahijibhai Jwanbhai Vaghri Vs M.C. Shah, Spl. Land Acquisition Officer, ILR (1968), Guj 348; (2) AIR 1985 Guj 115, Mohan Vasta Vs State of Gujrat; (3) Bhikhubhai and others Vs State of Gujrat, AIR 1989 Guj 8; (4) Gopalbhai Becharbhai Vs State of Gujrat AIR 1989 Guj 56 and (5) Iswarbhai Motibhai Bhatt Vs State of Gujrat, AIR 1990 Guj 64.

In all these cases the Gujrat High Court was dealing with the applicability of Section 5 of the Limitation Act to an application filed before the collector under Section 18 of the Land Acquisition Act 1894 for making a reference to Court. When the same question arose before the Bombay High Court a Division Bench of the High Court in AIR 1983 Bombay 342 thought that in view of certain Supreme Court decision, to be analyzed and considered hereinafter, ILR(1968) Guj 348 no longer lays down the correct law since the collector is not a Court. The validity of the

holding by the Division Bench of the Bombay High Court was considered by a Full Bench in AIR 1994 Bombay 317 and the Full Bench held that Section 5 would be applicable but not because of the reasons as held by the High Courts of Gujrat, Calcutta, Kerala (minority) but because the collector is a Court. Section 29(2) was mentioned almost by the way and not analyzed and appreciated.

From the above samples of decisions from some of the High Courts appear a conflict of views on Section 29(2) as regards the existence or absence of a fourth condition of its applicability dependent on the forum where the proceedings under the Special Law are to be instituted. It is crystal clear that the provisions of Section 29(2) do not support existence of such a condition. Why then this divergence of view? Probable reasons may be as follows : (1) Mis-appreciation of the true ratio of three Supreme Court Judgments (2) Failure to notice and appreciate the significant changes made in the Limitation Act 1908, and Limitation Act 1963 and (3) Failure to appreciate the purpose of Section 29(2) as indicated in the Objects and Reasons contained in clause 28 of the Bill already quoted. A significant portion of the mis-appreciation and failure will naturally be attributable to inadequate argument by the lawyers.

On reason No.2 above it is expedient to juxtapose the Long Title and the preamble of Limitation Act 1908 and the Long Title of the Limitation Act 1963. It is noteworthy that the preamble of the Limitation Act 1908 has been deleted in the Limitation Act 1963. The two are juxtaposed thus :-“ An Act to consolidate and amend the law for limitation of suits and for other purpose : Whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to courts : and whereas it is also expedient it is hereby enacted as follows”. (*underlining supplied*). “ An Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith.” (*underlining supplied*)

The words “other proceedings and for purposes connected therewith” in the Limitation Act 1963 surely point to the direction of the provisions of Section 29(2) speaking of the procedure for determination of the period of limitation prescribed by the Special or Local law.

Nothing more can be added on Reason No.3 than what has been elaborated in the minority Judgment of the Kerala High Court excerpt whereof has been quoted earlier. With this one may now turn to cases from the Supreme Court.

5. THE SUPREME COURT

The Bombay High Court’s view which is the representative of the view positing the fourth condition considered above is based primarily on AIR 1977 SC 282, the Kerala State Electricity Board Vs T.P. Kunhaliumma, a Three Judge decision of the Supreme Court. This Judgment also mentioned two other Judgments of the Supreme Court namely AIR 1969 SC 1335 Town Municipal Council, Athani Vs Presiding Officer, Labour Court, a Two Judge decision of the Supreme Court and AIR 1970 SC 209 Nityananda M. Joshi Vs Life Insurance Corporation of India, a Three Judge decision of the Supreme Court.

A common feature of all these three cases is that none of them even remotely mentioned Section 29(2) of the Limitation Act, far less discuss the same. Therefore apart from anything else they cannot be given the status of a binding precedent on the interpretation of Section 29(2) of the Limitation Act. These cases do not declare any law on Section 29(2) to be binding within Article 141 of the Constitution of India. In the face of this stark feature of these three cases it is surprising that some High Courts led by Bombay High Court based their decisions on applicability or otherwise of Section 5 or other section within the group of Sections from 4 to 24 on these three cases jointly or severally.

Detailed reasons have been narrated in AIR 1982 Guj 298 as to why AIR 1977 S.C 282 and AIR 1969 SC 1335 cannot rule the interpretation of Section 29(2) of the Limitation Act, 1963. Supplementary to those reasons it may be stated that the learned counsels arguing the cases mentioned at the beginning of this para did not make any submissions based on Section 29(2) apparently for a very good reason. Section 33 C (2) of the Industrial Disputes Act 1947 was amended in 1976 and 1982. By the 1976 amendment at the end of the original section the words "Within a period of not exceeding three months" were added. By the 1982 amendment a proviso was added. The proviso reads thus -

" Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

Athani Municipality (Supra) was decided on 20.03.1969. Nitynanda Joshi (Supra) was decided on 25.04.1969. Both Judgments thus were concerned with the unamended Section 33 C (2) whereunder no limitation is provided for an application to the Labour Court dealt with by the two cases. Indeed, Athani (supra) at the end of para 12 says as much. Section 29(2) cannot apply to these applications since the special law did not at all prescribe a period of limitation. Similarly Section 16(3) of the Indian Telegraph Act 1885 an application whereunder is the subject matter of The Kerala State Electricity Board (supra) prescribed no period of limitation and as such Section 29(2) of the Limitation Act is not attracted. All these three Supreme Court cases dealt with only applicability or otherwise of Article 137 of the Limitation Act, 1963. All three of them were pressed into service before the Supreme Court in Mukri Gopalan (supra) and the Supreme Court rebuffed the contention that for application of Section 29(2) the Forum constituted by the Special Law must be Courts in the following words :-

" We are not concerned with applicability of any of the Articles of the schedule for governing the period of limitation as prescribed by S.18 of the Rent Control Act. That period of limitation is prescribed not by Art. 137 or any other Article under the schedule but by S.18 itself which is part and parcel of special or local law. So far as that period of limitation is concerned S.29(2) is the only section which can apply. For interpreting S.29(2) the decision rendered by this court in connection with applicability of any of the Articles to the Schedule to the Limitation Act would be totally irrelevant. (underlining supplied).

In that case the special Act concerned was Kerala Buildings (Lease and rent Control) Act, 1965. This is the Supreme Court case which approved the minority Judgment in AIR 1974 Kerala 162 excerpts whereof have already been quoted in para 4.1. Another sidelight of this Supreme Court case of some interest is that the Judgment of the Two Judge Bench was by Justice S.B. Majmudar who as a Judge of the Gujrat High Court wrote the Judgment in AIR 1982 Guj. 298 excerpts where of have been quoted and who also constituted the Division Bench in AIR 1985 Guj 115 referred to earlier. Another excerpt from the Judgment appears very apposite for more than one reason. The excerpt is this :-

"It has to be kept in view that Section 29(2) gets attracted for computing the period of limitation for any suit, appeal or application to be filed before authorities under special or local law, if the conditions laid down in the said provision are satisfied and once they get satisfied the provisions contained in Section 4 to 24 shall apply to such proceedings meaning thereby the procedural scheme contemplated by these sections of the Limitation Act would get telescoped into such provisions of Special or Local law. It amounts to a legislative shorthand. (underlining supplied).

Part of the Title of this writing has thus been borrowed from the above extract of Mukri Gopalan (Supra). There are two Three Judge decisions of the Supreme Court relevant for the present purpose. Interestingly both the Judgments dealt with Special law in Section 10 of the U.P. Sales Tax Act, 1948. In Commissioner of Sales Tax, U.P. Vs Parson Tools and Plants, AIR 1975 SC 1039 the question was applicability of Section 14(2) of the Limitation Act to an application before the revisional authority under Section 10(3B) of the Act. The Three Judge Bench answered the question in the negative. In Commissioner of Sales Tax, UP Vs M/s Madanlal Dan & Ors. AIR 1977 SC 523 another Three Judge Bench answered the question there as to whether time requisite for copy under Section 12(2) of the Limitation Act is excludible in computing the limitation prescribed under Section 10 (3B) in the affirmative. There is no dispute in either case that the Revisional Authority under UP Sales Tax Act is not a Court. Both these cases were considered in Mukri Gopalan (supra). AIR 1975 SC 1039 was held to be a decision on the scheme and language of the Section 10 (3B) which excluded the operation of Section 14(2) of the Limitation Act. That is the Court unwittingly utilized the expanded meaning of the expression "expressly excluded" in Section 29(2). On the other hand AIR 1977 SC 523 found no express exclusion of the provision of Section 12(2) and therefore held it applicable in computing the period of limitation under Section 10(3B) of the UP Sales Tax Act. On top of it in AIR 1975 SC 1039 the provisions of Section 29(2) passed sub-silently. The argument that later decision is per incuriam because of failure to notice the former decision also cut no ice in Mukri Gopalan (supra). Thus AIR 1975 S.C 1039 is not an authority for the proposition that for application of Section 29(2) the forum created by the special law has to be a court. AIR 1977 SC 523 is a direct authority for the proposition that forum created by the Special Law is not relevant. There is no fourth condition of applicability of Section 29(2) centering round the question whether the forum created by the Special Law is a Court, a Tribunal or a Persona Designata.

6. THE DISCORDANCE FROM THE SUPREME COURT

The incipient conflict between the two Three Judge decisions of the Supreme Court referred to in para 5 has been explained in Mukri Gopalan (Supra). But there are three other Judgments, all Two Judge Decisions, of the Supreme Court holding the view that unless the forum created by the Special Law is a Court Section 5 of the Limitation Act cannot be applied. These Judgments are in conflict with the Three Judge decision in AIR 1977 SC 523 as also with Mukri Gopalan (supra). These three cases may now be examined.

Smt. Sushila Devi Vs Ramanandan Prasad and others AIR 1976 SC 177; (1976) 1 SCC 361 was decided by a Two Judge Bench on 26.11.1975. Question was applicability of Section 5 of the Limitation Act 1963 to an application to the Collector under Section 3 of the Kosi Area (Restoration of Lands to Raiyats) Act, 1951 shorn of the maze of facts and events the central circumstance was that the High Court in the Writ Petition filed before it in the case held that –“ in any case after coming into force of the new Limitation Act, 1963 the petitioner (first respondent) had a right to ask the Court to condone the delay in depositing the same under Section 5 of that Act.” Indeed there was such an application to the Block Development Officer exercising the powers of the Collector in the case. The Supreme Court, because of inadequacy of arguments of the learned counsels, disposed of the above holding of the High Court in these words :-

“ We do not see how Section 5 could be invoked in connection with the application made on October 17, 1965 by the first respondent The Collector to whom the application was made was not a Court.....”

It is unfortunate that the implied reference by the High Court to Section 29(2) of the Limitation Act, 1963 contained in the extract quoted above was missed by the Supreme Court. The Supreme Court therefore did not consider the question in the light of Section 29(2) of the Limitation Act, 1963. Moreover, the Special Law there in Section 3 does not prescribe any period of limitation and as such even the first condition of applicability of Section 29(2) of the Limitation Act, 1963 is non-existent. Indeed the Supreme Court further observed in the case as follows :-

“Also the kind of application that was made had no time limit prescribed for it, and no question of extending the time could therefore arise”.

Thus the case cannot be a precedent for interpretation of Section 29(2) of the Limitation Act, 1963.

Next Sakuru Vs Tanaji, AIR 1985 SC 1279; (1985) SCC 590 was decided by a Two Judge Bench on 10.07.1985. Question there was again the applicability of Section 5 of the Limitation Act, 1963 to an appeal before the Collector under Section 90 of the Andhra Pradesh (Telengana Area) Tenancy and Agricultural Lands Act, 1950. The Supreme Court practically decided the question by speaking thus :-

“It is well settled that by the decision of this Court in Town Municipal Council Vs Presiding Officer, Labour Court, Nityananda M. Joshi Vs Life Insurance Corporation of India and Sushila Devi Vs Ramanandan Prasad, that the provisions of the Limitation Act, 1963 apply only to proceedings in Courts and not to appeals or application before bodies other than Courts.....”

There is no analysis and discussions of the three cases mentioned in the above quote in order to find the real point decided there. These three cases have already been discussed in this writing. Mukri Gopalan (supra) has dealt with the first two. The Judgment does not notice Section 29(2) of the Limitation Act, 1963. It takes no notice either of AIR 1977 SC 523, a binding Three Judge decision. The Judgment qualifies eminently to be described as a decision per incuriam and as such cannot be a precedent on the interpretation of Section 29(2) of the Limitation Act, 1963.

The last of these three cases is Officer on Special Duty (Land Acquisition) and another Vs Shah Manilal Chandulal and others (1996) 9 SCC 414 decided by a Two Judge Bench on 09.02.1996. Question again is whether Section 5 of the Limitation Act, 1963 can be applied to extend the period of limitation prescribed in Section 18 of the Land Acquisition Act, 1894 for an application to the Collector for making a reference to the Court. The case before the Supreme Court arose from the Judgment dated 13.03.1992 of the Gujarat High Court in C.A. No. 229 of 1990. The Judgment of the Supreme Court started with two errors on facts in 4 and 5 and those errors seem to have cast its shadow in the ultimate conclusion. In these two paragraphs the Supreme Court mentioned Section 18(3) of the Land Acquisition (Maharashtra Extension and Amendment) Act, 1964 and also said that the Gujarat High Court “has taken a consistent view that by operation of Sub-section (3) as the Collector is designated to be a Court subordinate to the High Court under Section 115, Civil Procedure Code (for short CPC), Section 5 of the Limitation Act (26 of 1963) stands attracted.”

The gravity of the errors in these two paragraphs becomes explicit from the following quote extracted from the Editor’s note at page 415 of the Journal SCC.

“It is not clear how the Maharashtra Act could apply in Gujarat. To a query in this regard to Hon’ble Mr. Justice K. Ramaswamy the following clarification was received :

“..... The reference in question was made by the counsel for the respondent and was not controverted by the counsel for the other side. The Court accordingly relied on and quoted sub-section (3) of Section 18

of the Land Acquisition (Maharashtra Extension and Amendment) Act 38 of 1964 and applied the same.”

The Editor adds further thus :-

“In the decision of the High Court dated 13.03.1992 there is no reference whatsoever to Maharashtra Act. The High Court has not stated anything with regard to applicability or otherwise of the Maharashtra Act to Gujrat.....”

In this writing at para 4 “the consistent view of the Gujrat High Court” has been noted by citing five Division Bench Judgments of the Gujrat High Court. None of these cases turned on the Maharashtra Act. There is no mention of the Maharashtra Act either in any of those cases. The Gujrat judgments proceeded on application of Section 29(2) of the Limitation Act, 1963. The Supreme Court Judgment because of the factual errors it started with decided the case solely on the question whether Collector is a Court or not. Once the answer is that the Collector is not a Court applicability of Section 5 had to be negated because no use of Section 29(2) was made. The Judgment mentioned Mohd Ashfaq (supra) but failed to notice the real reason why Section 5 was held in applicable there. The real reason as to why Section 5 of the Limitation Act, 1963 was held in applicable to an application under Section 58 of the Motor Vehicle Act 1939 to the Regional Transport Authority is not because the RTA is not a Court but because Section 58(3) is held to have “expressly excluded” the application of Section 5 of the Limitation Act, 1963 within the meaning of Section 29(2) of the Limitation Act 1963. Para 8 of the Judgment in Md. Ashfaq at page 337 of (1976) 4 SCC makes this much very clear. The Judgment relies on Sushila Devi(supra) and mentions Nityananda Joshi (supra) already considered. The Judgment relies on the majority in Jokkim Fernandez (supra) without noticing that Mukri Gopalan (supra) has discarded the majority view. The Supreme Court in the case also relied on AIR 1983 Bombay 342. However the Full Bench of the Bombay High Court in AIR 1994 Bombay 317 has overruled the said decision. These cases have already been considered in the writing. Finally the Judgment failed to apply the ratio in AIR 1977 SC 523 a binding Three Judge decision. The Judgment is a full blown Judgement per incuriam as it failed to appreciate and apply the law in Section 29(2) of the Limitation Act as enunciated in the Three Judge decision of 1977 and the Two Judge decision of 1995. It is apparent on the clarification quoted earlier that the counsels on both the sides did not argue the case adequately.

7. THE SIDEWIND

In this section a few areas of law having an indirect connection with Section 29(2) of the Limitation Act are being considered. Some special laws prescribe a period of limitation for a proceeding starting point being the date of the Order etc. Two examples will suffice. Section 18(2) of the Land Acquisition Act 1894 in the proviso fixes the residuary period of limitation as six months from the date of the Collector's award. Section 126 (2) of the Code of Criminal Procedure 1973 in the proviso prescribes a period of limitation to set aside an exparte Order of maintenance as three months from the date of the exparte order. There are also statutes clearly fixing the starting point as the date of communication of the Order. Looking at the difficulty of the party affected by the Order, Courts have evolved the principle that knowledge of the Order either actual or constructive is an essential element of the starting point. As far as Land Acquisition Act is concerned AIR 1961 SC 1500 later affirmed by a Three Judge decision in AIR 1963 SC 1604 says as much. The dates of these decisions would show that section 5 of the Limitation Act 1908 could not have been applied because of Section 29(2) (b) of the Limitation Act 1908.

But now from the discussion so far it appears that Section 5 could be applied because of change of law. Absence of knowledge of the Order could be a sufficient cause to extend the period by in effect shifting the starting point to the date

of knowledge. But it appears many High Courts are sticking with AIR 1961 SC 1500 and has applied the ruling to change the words “date thereof” in Section 126(2) Cr. P.C. to “date of knowledge thereof”. Thus assuming a casus omissus in the Section and supplying it by interpretation. This can only be done, if at all, only in an exceptional case to make a provision clear and workable. In the light of AIR 1964 SC 260 there can be no question that the proviso to Section 126(2) Cr.P.C is a special law prescribing a different period of limitation. Instead of treading the hazardous bylane of a casus omissus the road through Section 5 read with Section 29(2) of the Limitation Act, in interpreting the limitation in Section 126(2), seems a better way of relieving the difficulty of the party affected by an exparte Order. The Supreme Court in D. Saibaba Vs Bar Council of India, (2003)6 SCC 186 decided on 6.5.2003 in interpreting the limitation prescribed by section 48-AA of the Advocates Act 1961 again applied AIR 1961 SC 1500. Alternative approach through Section 5/29 (2) of the Limitation Act, 1963 probably could have served to achieve the object without straining the language of the provision.

8. THE CONCLUDING COMMENTS

The endeavor has been to highlight a line of interpretation of the legislative shorthand in Section 29(2) of the Limitation Act from 1930 Patna through 1954 Calcutta, 1968 Guj., 1974 Kerala, 1977 Supreme Court, 1982 Guj; 1990 Guj to 1995 Supreme Court: Perhaps because of the scope of the appeal before the Supreme Court even in Mukri Gopalan (1995 SC) the statement of law has not been as direct and clear as in Calcutta, Kerala (Minority) and Gujrat. Even in the latest (06/09.2004) Three Judge Supreme Court decision in L.S. Synthetics Ltd. Vs Fairgrowth Financial Services Ltd. and another (2004) 11 SCC 456 wide observations like “The provisions of the said Act are not applicable to the proceedings before bodies other than Courts, such as a quasi-judicial tribunal or even an executive authority” are apt to confuse unless understood in the setting in which the observation has been made. Indeed, still later the two Judge Bench in (2004)11 472 decided on 14.10.2004 has to explain some of the observations there putting them in proper perspective.

The legislative shorthand in Section 29(2) of the Limitation Act, 1963 serves as a sort of bridge between the Limitation Act and Special or Local Acts prescribing periods of limitation. The resultant rumble strips on the bridge flowing from the Judgments of the High Courts nay even of the Supreme Court as well as discussed above need to be smoothed. This writing is ended with the hope that a Larger Bench of the Supreme Court will, on an appropriate occasion, make this bridge stronger, brighter and smoother.