

**NOTES ON THE LEGISLATIVE SHORTHAND IN SECTION 29(2) OF
THE LIMITATION ACT. 1963 – A SEQUEL**

By

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1. THE PREFACE

An article captioned “Notes on the legislative shorthand in Section 29(2) of the Limitation Act, 1963” appeared in the journal section of the All India Reporter at AIR 2006 Journal 65. The said article was also published in 2006(1) GLT journal 1.

The principal argument in the article was that explicit conditions enacted in Section 29(2) of the Limitation Act, 1963 being fulfilled it is immaterial whether suits, appeals or applications under the Special or Local Law are filed before Courts or other bodies or authorities and the relevant provisions of the Limitation Act apply in computing the period of limitation prescribed by the Special or Local Law. The article ended thus :- “The Legislative shorthand in Section 29(2) of the Limitation Act, 1963 serves as sort of bridge between the Limitation Act and Special or local Acts prescribing period 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 smoothened. 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.” But going by two judgments of the Supreme Court delivered respectively on the 3rd of April, 2008 and the 12th of May 2008 the rumble strips on the bridge seem to have become more pronounced. Hence this sequel to the article published in 2006.

The judgments of the Supreme Court delivered respectively on the 3rd of April 2008 and the 12th of May 2008 are being analyzed in this essay.

2. M/s CONSOLIDATED ENGINEERING ENTERPRISES -Vs- PRINCIPAL SECRETARY (IRRIGATION DEPARTMENT) & ORS., 2008 AIR SCW 4182, 2008(6) SCALE 748 DATED THE 3RD April, 2008. The Judgment shall be referred hereinafter as CONSOLIDATED. The Three Judge Bench there delivered two concurring Judgments. The only question falling for determination in that case was whether Section 14 of the Limitation Act is applicable in computing the limitation of an application under Section 34 of the Special Law namely Arbitration and Conciliation Act, 1996 to set aside an Award in addition to the period of limitation prescribed in that section of the special Law. The question arose there on return of the application under Section 34 of the Special Law by one District Judge and filed before the District Judge having jurisdiction. In the Judgment on behalf of two Judges the ratio of *Commissioner of Sales Tax, U.P. -Vs- Parson Tools and Plants, AIR 1975 S.C. 1039* has been stated thus :- “It is evident that essentially what weighed with the Court in holding that Section 14 of the Limitation Act was not applicable was that the Appellate Authority and Revisional Authority were not Courts”. What remained only an implication as regards Limitation Act not being applicable to Authorities other than Courts has been made explicit in the Judgment of the third Judge by way of additional reasoning to support the non applicability of Section 14 of the Limitation Act 1963 to the application under Section 34 of the Arbitration and Conciliation Act 1996. The following sentences make this position very explicit.

A. “The object of Section 29(2) is to ensure that the principles contained in Section 4 to 24 of Limitation Act apply to suits, appeals and applications filed in Courts under Special or Local Law.....”

B. “Consequently Section 3 and Section 29(2) of Limitation Act will not apply to proceedings before Tribunal.....”

C. “This Court upheld the view that Limitation Act did not apply to Tribunals.....”

It is remarkable that having regard to the point at issue and the facts as indicated above it was hardly necessary for the Supreme Court to go into the question whether for applicability of Section 29(2) of the Limitation Act the “suit, appeal or application” mentioned there is required to be filed before a Court. Obviously any observations on the said question will be obiter. However obiter dictum of the Supreme Court may also be binding on the Courts inferior to the Supreme Court. To that extent it has become necessary to look closely at the observations quoted above. It appears that the said observations were made in the context of reliance placed on *Commissioner of Sales Tax, U.P. -Vs- Parson Tools and Plants, AIR 1975 S.C. 1039* by the appellant. There the Supreme Court first held that “the appellate authority and the Judge (Revisions), Sales Tax exercising jurisdiction under the Sales Tax Act “are merely administrative tribunals and not Courts. Section 14 of Limitation Act, therefore, does not, in terms apply to proceedings before such Tribunals.” The difference between saying that Section 14 of the Limitation does not apply to Tribunals and saying that the Limitation Act does not apply to Tribunals is too obvious to need further comments. There is no statement in PARSON TOOLS (Supra) holding that the Limitation Act does not apply to Tribunals. It is clear that such a holding cannot even be implied or inferred from the holding indicated above. It is also necessary to remember that a Judgment is only on authority for what it actually decides and not for what can be inferred or deducted from it.

PARSON TOOLS (Supra) quotes the following from the dissenting Judgment of the High Court : “The Judge (Revision) Sales Tax..... does not act as a court but only as a revenue tribunal and hence the provisions of the Indian Limitation Act cannot apply to proceedings before him. If the Limitation Act does not apply then neither Section 29(2) nor Section 14(2) of the Limitation Act will apply to proceedings before him.”

Despite the above the Supreme Court did not say anything on Section 29(2) of the Limitation Act nor upheld the reason that by reason of the Sales Tax authorities not being courts, the Limitation Act did not apply to proceedings before them. The Supreme Court only held that Section 14 of the Limitation Act, in terms, did not apply to the proceedings before such tribunals which is not the same thing as saying that the Limitation Act did not apply. The Supreme Court then proceeded to consider the view of the majority in the Allahabad Judgment holding that the period of Limitation for the revision prescribed in Sales Tax Act can be extended by computing the same by applying the principle underlying Section 14(2) of the Limitation Act. The Supreme Court on this aspect held that “the stark features of the scheme and language of the above provision, unmistakably show that the Legislature has deliberately excluded the application of the principles underlying Section 5 and 14 of the Limitation Act.” The echo of the interpretation of the phrase “expressly excluded” in Section 29(2) of the Limitation Act, 1963 in HUKUM DEV NARAYAN YADAB -VS- LALIT NARAYAN MISHRA, AIR 1974 SC 480 is difficult to miss in the second holding in PARSON TOOLS (Supra). Thus though Section 29(2) of the Limitation Act, 1963 has not been anywhere mentioned by the Supreme Court infact the law in that Section has been used to decide the second point of PARSON TOOLS (Supra) where the authorities involved were not courts.

Two decisive Judgments of the Supreme Court on Section 29(2) of the Limitation Act, 1963 namely MUKRI GOPALAN, AIR 1995 S.C. 2272 and COMMISSIONER OF SALES TAX, U.P. -VS- M/S MADANLAL DAN & ORS., AIR 1977 S.C. 523 were not cited before the Three Judge Bench in this case. MUKRI GOPALAN (Supra) was referred to in the Judgment delivered on the 12th of May 2008 and as such will be considered later. MADANLAL DAN (Supra) deals with the same Sales Tax Statute as in PARSON TOOLS (Supra) and is also a Three Judge decision hence binding on the Three Judge Bench here-. It deals directly with Section 29(2) of the Limitation Act and despite the authorities involved there being not courts applied Section 12(2) of the Limitation Act, 1963 via Section 29(2) in computing the period of limitation for the appeal under the Special Act. Thus the observations quoted above may only be partially correct and cannot be read as a precedent on Section 29(2) of the Limitation Act. They are unnecessary for the decision of the case and are on the wrong side of the binding precedent in MADANLAL DAN (Supra).

3. **STATE OF M.P. & ANR. -Vs- ANSHUMAN SHUKLA, 2008 AIR SCW 3760, Dated 12th May, 2008.** -This Judgment shall be referred hereinafter as ANSHUMAN. Applicability of Section 5 of the Limitation Act, 1963 to an application for revision to the High Court under Section 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (M.P. Act for short) fell for decision by the Supreme Court in ANSHUMAN. Section 19 of the M.P. Act extant at the relevant time provided that the High Court may, *Suo Motu* at anytime or on an application for revision made to it within three months of the award by an aggrieved party, call for the records of any case in which an award has been made by the Tribunal. The State of M.P. filed a revision under the said provision. It was barred by 80 days. The High Court relying on a Division Bench Judgment NAGAR PALIKA PARISHAD, MORENA, reported in 2004(2) MPJR 374 on the question of applicability of Section 5

of the Limitation Act, 1963 held that the delay cannot be condoned as Section 5 of the Limitation Act, 1963 does not apply. In the light of MUKRI GOPALAN (1995)5 SCC 5, AIR 1995 S.C. 2272 a reference to a Full Bench was made . In the meantime NAGARPALIKA PARISHAD, MORENA (Supra) was affirmed by the Supreme Court and still later even by a Constitution Bench of the Supreme Court. Thus NAGARPALIKA PARISHAD, MORENA (Supra) became a binding precedent . ANSHUMAN SHUKLA (Supra) prima facie found the Constitution Bench decision to be incorrect and a reference was made to a Larger Bench.

The Judgment considered in great detail the distinctions between Tribunals and Courts. However for purposes of this writing the following quotes from the judgment require close examination.

- (A) “It is trite law that the provisions of the Limitation Act, 1963 shall apply to a Court. It has no application in regard to a Tribunal or persona designata.”
- (B) “There cannot, therefore, be any doubt whatsoever that if the Arbitral Tribunal in question is a court and not a persona designata, subsection (2) of Section 29, Section 5 of the Limitation Act would apply.”
- (C) “If the Tribunal is a court, fortiori sub-section (2) of Section 29 would apply.”

A perusal of the above three quotes leaves no doubt that the Judgment says that unless the “suit, appeal or application” is filed before a court Section 29(2) of the Limitation Act, 1963 would not be applicable. The submission of the counsel for the appellant State was that the Arbitration Tribunal under the M.P. Act being a court in view by the provisions of Section 29(2) of the Limitation Act the High Court committed a serious error in opining that it did not have any power to condone the delay of 80 days in filing the revision petition under Section 19 of the M.P. Act . Because of the aforesaid

submission the Supreme Court found it necessary to determine whether the Tribunal was a court. On reaching the conclusion that it is a court the observations quoted above followed. Section 29(2) of the Limitation Act was quoted in the Judgment. Both HUKUMDEB NARAYAN YADAB, AIR 1974 S.C. 480 and MUKRI GOPALAN (1995)5 SCC 5 were quoted in the Judgment. The excerpts from these two Judgments of the Supreme Court do not support the three observations positing an additional condition for applicability of Section 29(2) of the Limitation Act as regards the forum of the suit, appeal or application” prescribed by the Special or Local Law. In MUKRI GOPALAN (Supra) the Supreme Court had to consider the correctness or otherwise of the Full Bench decision of the Kerala High Court in AIR 1974 Ker 162 (FB). The majority of the Full Bench decided that the appellate Authority involved there is a persona designata and not a court and therefore Section 5 of the Limitation Act, in terms, being applicable only to court is not applicable. The minority considered the object and reasons of the Limitation Act 1963, considered the purpose behind the provisions of the Section 29(2) of the Limitation Act and held that the deciding authorities under the Special or Local Law mentioned in Section 29(2) of the Limitation Act may or may not be Courts. Because of these facts and circumstances of the case the Supreme Court had first to unravel the court and persona designata tangle. But the real holding in the Judgment is the interpretation of Section 29(2) of the Limitation Act spread over paragraphs 9 to 22 of the Judgment. It upheld the minority Judgment in AIR 1974 Ker 162 (FB). It also spoke of the correctness among others of AIR 1983 Mad 45 where occurs the following:

“ The Indian Limitation Act is not applicable to specified courts or tribunals alone. Moreover the new Indian Limitation Act was alive to the changed circumstances and causes due to developed litigation and advancement in the litigious field of life. That is evident from the change in the preamble to the new Limitation Act, 1963, which refers to not only suits, but also other proceeding, whereas the old Act contained the words “for other purposes”. The term “other

proceedings: will, in our opinion, include and embrace proceedings under the special and the local laws. If the intention of the Parliament was to restrict the Limitation Act only to civil Courts, it would have certainly defined the "Court" in the Limitation Act. The Parliament has brought out changes in the preamble and also to Sections 5, 12, 14, 29 etc".

MUKRI GOPALAN (Supra) besides dealing with the Court/Tribunal /Persona designata tangle also contains a detailed analysis and interpretation of Section 29(2) of the Limitation Act. ANSHUMAN did not advert to this aspect of MUKRI GOPALAN (Supra). MURKI GOPALAN (Supra) dubbed the interpretation in TOWN MUNICIPAL COUNCIL,. ATHANI, AIR 1969 SC 1335, NITYANAND JOSHI, AIR 1970 S.C. 209 and KERALA STATE ELECTRICITY BOARD, AIR 1977 S.C. 282 as regards Article 137 of the Limitation being applicable to Courts only irrelevant in interpreting Section 29(2) of the Limitation Act. MUKRI GOPALAN (Supra) considered both PARSON TOOLS (Supra) and MADAN LAL DAN (Supra). The conclusion in ANSHUMAN that Section 5 of the Limitation Act is applicable to a revision petition under Section 19 of the M.P. Act before its amendment is easily reached by applying Section 29(2) of the Limitation Act as interpreted in HUKUM DEV NARAYAN YDAB (Supra) and MUKRI GOPALAN (Supra).

4. THE CONCLUDING COMMENTS

In the Article of 2006 indicated in the preface to which this is a Sequel the argument that for application of Section 29(2) of the Limitation Act the suit, the appeal or the application provided for by the Special Law or the Local Law need not be filed in a Court has been sought to be rested on AIR 1930 Patna 14, AIR 1954 Calcutta 520, AIR 1982 Guj. 298, MADANLAL DAN, AIR 1977 S.C. 523 and MUKRI GOPALAN, AIR 1995 S.C. 2272. That article also contains brief reference to L.S. SYNTHETICS, (2004) 11 SCC 456 and FAIR GROWTH, (2004) 11 SCC 472. Depending on the facts of the case and the contentions urged by the counsels, Judges of the High Court and

the Supreme Court often have to cover wide ground to reach a conclusion. Every observations made in covering the ground need not be read as precedents. Observations considered in this Sequel, in view of the discussions in the preceding paragraphs may be considered similarly. It is necessary to emphasize once more that some of the wide observations may even apparent errors like non existence of a provision for limitation in concerned Special Act there contained in L.S. SYNTHETICS (Supra), a Three Judge decision had been modified by reading those in the context of the facts there by a Bench of Two Judges in FAIR GROWTH (Supra). Incidentally like the two decisions considered in this Sequel even L.S. SYNTHETICS (Supra) contains the wide observations that provisions of the Limitation Act, 1963 “are not applicable to the proceedings before bodies other than courts, such as quasi-judicial tribunal or even executive authority”. It would have been interesting if FAIR GROWTH (Supra) would have adverted to this aspect of L.S. SYNTHETICS (Supra) as well.

It may be apposite to end this Writing by recalling the following from (2004)6 SCC 186 “Observations of Courts are neither to be read as Euclid’s theorems nor as provisions of a Statute and that too taken out of their context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark on lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments.”

ANSHUMAN has been referred to a Larger Bench. In the circumstances the Sequel is ended with the hope that there will be an exhaustive argument on Section 29(2) by counsels and a decisive interpretation by the Supreme Court on the “Legislative Short Hand” contained in Section 29(2) of the Limitation Act, 1963.