Between the lines...

VAISH ASSOCIATES ADVOCATES
New Delhi • Mumbai • Bengaluru
Celebrating over 45 years of professional excellence

June, 2019

Key Highlights

I. Supreme Court: Arbitration proceedings once terminated under Section 32 of Arbitration Act cannot be subsequently recalled

The Supreme Court in the case of ***Sai Babu v. M/S Clariya Steels Private Limited*** *(decided on May 1, 2019),* held that once the sole arbitrator terminates the arbitration proceedings under Section 32(2)(c) of Arbitration and Conciliation Act, 1996 (**"Arbitration Act"**), the same cannot be subsequently recalled.

Facts

In an arbitration between Sai Babu (**"Appellant"**) and M/S Clariya Steels Private Limited (**"Respondent"**), the learned arbitrator, by its order dated May 4, 2017, terminated the arbitration proceedings under Section 32(2)(c) of the Arbitration Act. However, an application dated May 5, 2017 was made by the Respondent before the arbitrator to recall the order of termination of arbitration proceedings. Having found merit in the reasons, the arbitrator on May 18, 2017, recalled its earlier order of termination of arbitration proceedings. Further, the said order of recalling the arbitration proceedings was challenged before Karnataka High Court by the Appellant. However, the challenge was dismissed by the Karnataka High Court on June 14, 2017. Aggrieved by the order of Karnataka High Court, the Appellant filed an appeal in the Supreme Court and the following issue came up for determination:

Issue

Whether an arbitrator can recall the arbitration proceedings which were earlier terminated under Section 32(2)(c) of the Arbitration Act?

Relevant Provisions

Section 25 of the Arbitration Act provides that:

"25. Default of a party. —

Unless, otherwise agreed by the parties, where, without showing sufficient cause, —

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of Section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of Section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited;

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it."

Sections 32(2)(c) and 32(3) of the Arbitration Act provides that:

"32. Termination of proceedings. —

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to Section 33 and sub-section (4) of Section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings."

Observations of the Supreme Court

The Supreme Court referred its earlier judgment in case of ***SREI Infrastructure Finance Limited v. Tuff Drilling Private Limited [(2018) 11 SCC 470],*** where the issue involved was whether the arbitral tribunal which had terminated arbitral proceedings under Section 25(a) of the Arbitration Act due to non-filing of claim by the claimant, had any jurisdiction to consider an application for recall of its order terminating the arbitration proceedings upon sufficient cause being shown by the claimant. In the said judgement, the Supreme Court held that the arbitral tribunal had jurisdiction to recall its order of terminating the arbitration proceedings under Section 25 of the Arbitration Act.

The Supreme Court in the aforesaid case further observed that Section 32 of the Arbitration Act deals with the termination of the arbitral proceedings wherein the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible. Moreover, the Supreme Court observed that the eventuality as contemplated under Section 32 of the Arbitration Act will only arise when the claim is not terminated under Section 25(a) of the Arbitration Act and proceeds further. The usage of words "unnecessary" or "impossible" stipulated in Section 32(2)(c) of the Arbitration Act does not cover a situation where proceedings were terminated due to default of the claimant. Section 32(3) of the Arbitration Act also provides that subject to Sections 33 *(Correction and interpretation of award; additional award)* and 34(4) *(resume the arbitral proceedings in order to eliminate the grounds for setting aside the arbitral award)* of the Arbitration Act, the mandate of an arbitral tribunal shall be terminated, once the order of termination under Section 32 of the Arbitration Act has been passed. However, the aforesaid phrase *"mandate of the arbitral tribunal shall terminate"* in Section 32 of the Arbitration Act have not been used in Section 25 of the Arbitration Act and hence it has to be treated with a purpose and object. The Supreme Court noted that the purpose and object of Section 25 of the Arbitration Act could only be achieved when the claimant shows sufficient cause, and accordingly, the proceedings could then be recommenced.

Decision of the Supreme Court

Relying on the distinction made in its earlier judgement between the mandate terminating under Section 32 and proceedings coming to an end under Section 25 of the Arbitration Act, the Supreme Court concluded that no recall application would be covered in cases covered by Section 32(3) of the Arbitration Act. Consequently, the Supreme Court allowed the appeal by setting aside the order of the Karnataka High Court. Further, pursuant to Section 15(2) of the Arbitration Act, upon termination of mandate of the arbitrator, the Supreme Court appointed the sole arbitrator to decide all disputes between the parties.

VA View

The Supreme Court relied upon its earlier judgement in case of ***SREI Infrastructure Finance Limited v. Tuff Drilling Private Limited*** (supra) and laid down its importance while basing its decision in the instant case. The Supreme Court made a clear distinction as regards the purpose of order of termination of proceedings under Section 25 of the Arbitration Act *vis-à-vis* Section 32 of the Arbitration Act.

The primary concern here was whether the arbitrator had the jurisdiction to recall the arbitration proceedings terminated under Section 32(2)(c) of the Arbitration Act. The Supreme Court was of the opinion that the eventuality as envisaged under Section 32 of the Arbitration Act would arise only when the claim is not terminated under Section 25(a) of the Arbitration Act. Therefore, once the mandate of the arbitral tribunal is terminated with termination of arbitral proceedings, the arbitrator does not have the authority to recall the proceedings terminated under Section 32 of the Arbitration Act.

II. NCLAT: Resolution plans must ensure continuity of operations of the Corporate Debtor

The National Company Appellate Law Tribunal (**"NCLAT"**), in the case of ***Industrial Services v. Burn Standard Company Limited and Others*** *(decided on May 13, 2019),* held that a resolution plan which shall result in closure of the operations of the corporate debtor is against the scope and intent of the Insolvency and Bankruptcy Code, 2016 (**"Code"**).

Facts

Burn Standard Company Limited (**"Corporate Debtor"**) is a government owned, West Bengal based wagon maker. Due to consistent losses and erosion of net worth, the Corporate Debtor was referred to Board of Industrial and Financial Reconstruction (BIFR) in the year 1994 under Sick Industrial Companies (Special Provisions) Act, 1985 and was declared as a sick company. Upon enactment of the Code, the Corporate Debtor filed an application under Section 10 of the Code to initiate corporate insolvency resolution process (**"CIRP"**) against itself.

In an order dated March 6, 2018, the National Company Law Tribunal (**"NCLT"**), Kolkata approved Corporate Debtor's insolvency resolution plan, which included INR 417 Crores financial package to pay back creditors and suppliers, and a voluntary retirement scheme of all the employees. The resolution plan submitted by the Corporate Debtor showed that the Ministry of Railways proposed to use the entirety of the abovementioned financial package to repay the dues and shut down the company.

The NCLT, Kolkata while approving the resolution plan stated in its order that *"The Resolution Plan in the case in hand is a unique plan which provides no revival of the corporate debtor but to close it by discharging its debts to all stakeholders inclusive of its staff and workmen."*

Aggrieved by the contents of the resolution plan approved by the NCLT, Kolkata, Industrial Services (**"Appellant 1"**), an operational creditor of the Corporate Debtor, whose claim was not accepted by the resolution professional of the Corporate Debtor (**"RP"**), filed an appeal against the NCLT, Kolkata's decision. Further, the Burn Standard Ex-Employee Welfare Association (**"Appellant 2"**) also filed an appeal against the NCLT, Kolkata's order, and stated that a resolution plan cannot be used to close the operations of the Corporate Debtor.

Issues

1. Whether the resolution plan is against the statement of objects and reasons of the Code?
2. Whether the application under Section 10 of the Code was filed by the Corporate Debtor with malicious intent for any purpose other than for the resolution of insolvency, or liquidation of the Corporate Debtor?

Arguments

The Appellant 1 contended that the resolution plan is bad in law, as the provisions of Section 29A of the Code are not fulfilled. It was also stated that the procedure prescribed under the Code was not complied with. For example, no evidence was provided to show that the information memorandum was published, as required under Section 25 of

the Code or operational creditors or their representatives were called in the meeting of the committee of creditors, as required under Section 24 of the Code. Another contention was that the resolution plan provides for no revival of the Corporate Debtor but closure and retrenchment of all the workmen.

On the other hand, the Corporate Debtor submitted that, being an undertaking of the Indian Railways, it cannot be held to be ineligible in terms of Section 29A of the Code. It was submitted that it is not an undischarged insolvent nor a willful defaulter. Further, its account has not been declared as a non-performing asset.

Observations of the NCLAT

The NCLAT observed that during the resolution process, and thereafter, the resolution applicant is required to ensure that the company remains as a going concern, but contrary to the provisions of the Code, closure of the Corporate Debtor has been proposed and approved by the NCLT, Kolkata.

The NCLAT referred to the decision of the Supreme Court in the case of ***Swiss Ribbons Private Limited v. Union of India and Others*** *(decided on January 25, 2019),* where it was stated that the primary intention of the legislature in enacting the Code was to ensure revival of the corporate debtor by protecting the corporate debtor from its own management and from a corporate's death by liquidation. It was also held that the preamble of the Code shows that the Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. The Supreme Court opined that the fact that the preamble of the Code does not even mention 'liquidation', it can be stated that liquidation is only available as a last resort, in the event no suitable resolution plans are received. Therefore, the Supreme Court stated that the Code is a beneficial legislation which puts the corporate debtor back on its feet, and is not a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests.

The NCLAT also referred to its decision in ***Y. Shivram Prasad v. S. Dhanapal and Others*** *(decided on February 27, 2019)* where it held that steps should be taken for resolution at different stages including the liquidation stage to keep the company as a going concern in the interest of the employees, and that liquidation should only happen as a last resort.

In view of the abovementioned precedents, the NCLAT observed that, the resolution plan goes against the object of the Code and the application under Section 10 of the Code was filed with intent of closure of the Corporate Debtor for a purpose other than for the resolution of insolvency. Therefore, the part of the resolution plan which relates to closure of the Corporate Debtor is against the scope and intent of the Code and is in violation of Section 30(2)(e) of the Code, which states that the resolution plan should not contravene any law in force.

Decision of the NCLAT

The NCLAT, set aside the part of the resolution plan that stated that the Corporate Debtor would be closed, but upheld the rest of the resolution plan. Further, it stated that consequential orders, including the order of closure of

the Corporate Debtor and the order of retrenchment issued to the employees of the Corporate Debtor are also to be set aside. The NCLT, Kolkata was directed to make necessary correction in the resolution plan by asking the Corporate Debtor to delete the portion of the resolution plan requiring the closure of the Corporate Debtor. If the Corporate Debtor refuses to do so, the plan approved will be treated to be set aside by the NCLAT and the NCLT, Kolkata will proceed asking the RP to call for fresh expressions of interest and resolution plans and proceed in accordance with law.

VA View

In the instant case, in order to reaffirm the central theme of the Code, which is to ensure revival of the corporate debtor, the NCLAT held that the resolution plan shall ensure that the Corporate Debtor shall remain a going concern. In an earlier case of ***K. Sashidhar v. Indian Overseas Bank and Others*** *(decided on February 5, 2019),* the Supreme Court had held that the NCLT and NCLAT should not question the commercial wisdom of the committee of creditors, but should only examine the resolution plan through the lens of Section 30(2) of the Code, which provides for requirements of a resolution plan. In the present case, the 'commercial wisdom' of the banks favored the resolution plan submitted, however the NCLAT overrode the same, as the proposed resolution plan did not fulfil the requirements under the Code.

The *ratio decidendi* of this case, that the resolution plans must ensure that the company continues to operate as a going concern is important and it can be said that with this judgement, the NCLAT is nailing its colours to the mast. Therefore, resolution plans must provide for the continuation of the corporate debtor as a going concern and the aspiration of the Code, is to ensure revival, not repayment.

III. NCLT Chennai: Creditors having vested interest in corporate debtor should not be a part of the committee of creditors

*All provisions cited in this case analysis, unless specified otherwise, refer to the provisions of the Insolvency and Bankruptcy Code, 2016 (**"Code"**).*

The National Company Law Tribunal (**"NCLT"**), Chennai in the case of ***M/s. Asset Reconstruction Company (India) Limited v. Mr. Gopal Krishna Raju and Others*** *(decided on March 5, 2019)*, on the basis of a business arrangement between the corporate debtor and certain unsecured creditors, laid down that such creditors would be disqualified from participating in the committee of creditors.

Facts

M/s. Anandram Developers Private Limited (**"Corporate Debtor"**) had taken a loan from two financial institutions namely Indian Overseas Bank and Oriental Bank of Commerce. The loans were assigned by the said banks to M/s. Asset Reconstruction Company (India) Limited (**"Applicant"**).

On June 6, 2018, corporate insolvency resolution process (**"CIRP"**) was initiated against the Corporate Debtor and Mr. Gopal Krishna Raju was appointed as the interim resolution professional (**"Respondent 1"**). Respondent 1 sent out a public announcement and called for claims, following which the Applicant filed a claim as a financial creditor. On receipt of the claims, Respondent 1 constituted the committee of creditors (**"CoC"**) and sent out a notice for convening the first CoC meeting. From the notice, the Applicant discovered that M/s. Jayapushpam Investments and Trading Private Limited (**"Respondent 2"**), M/s. JDA Consultancy Private Limited (**"Respondent 3"**) (Respondent 2 and Respondent 3 are collectively referred to as **"Claimants"**), and M/s. Anand Cine Services Private Limited had also submitted their claims as financial creditors. M/s. Anand Cine Services Private Limited was categorized by Respondent 1 as related party under Section 5(24)(a) and hence, was not allowed any right of representation, participation or voting in the CoC, as stated in proviso to Section 21(2).

Following this, the Applicant sent an e-mail to the Respondent 1 asking for the details of claims submitted by Claimants, which the Respondent 1 made available to the Applicant only after the first CoC meeting was convened. The Applicant, on perusal of the claims, found that the claims of the Claimants were based on alleged assignment of debts of unsecured loans by parties who fall under the category of "related party" under Section 5 and hence, even the Claimants must have been prohibited from participating or voting in the CoC as under proviso to Section 21(2). Respondent 1, however, admitted the claims of the Claimants and included them in the CoC.

Based on this knowledge, the Applicant filed a petition in the NCLT, Chennai which passed an order directing the Respondent 1 to resolve the issue raised by the Applicant within 3 weeks. Ignoring this, the Respondent 1 conducted two CoC meetings and in the third meeting, the Respondent 1 circulated an information memorandum which showed debt due from related parties as NIL, which was contrary to the Respondent 1's decision of categorizing M/s. Anand Cine Services Private Limited as related party. Aggrieved by the conduct of the Respondent 1, the Applicant filed the present application before the NCLT, Chennai.

Issue

Whether the Claimants are related parties of the Corporate Debtor as under proviso to Section 21(2) read with Section 5(24)?

Relevant provisions

For ease of reference, Section 5(24)(a) and Section 21(2) of the Code involving related party are reproduced below:

"5. Definitions. –

In this Part, unless context otherwise requires,-

(24) "related party" in relation to a corporate debtor, means-

(a) a director or a partner of the corporate debtor or a relative of a director or partner of the corporate debtor;"

"21. Committee of creditors. –

(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors...."

Arguments

The Applicant submitted that the Claimants were camouflaged as financial creditors based on documents which were created for the purpose of such claims. It was argued that the Claimants were related parties to the Corporate Debtor. The basis for this was twofold. First being that the original unsecured creditors (assignors) would be hit by the related party transactions (being suspended directors and shareholders of the Corporate Debtor) and therefore the Claimants being assignees cannot have a better title. Second being that the Claimants were a part of a project under which land belonging to the Claimants was being developed by the Corporate Debtor. A joint development agreement (**"JDA"**) was executed between the parties whereby post the development, certain plots would be allotted to the Claimants. It was argued that the assignment agreements were entered into between the related party individuals and interested parties in order to secure the recoverability of the amounts in the hands of the interested parties, since they also owned a share of the property. Hence, the Claimants were in the position to influence the decision making in their capacity as business partners in developing the property who have a bearing on the activities of the Corporate Debtor. In view of the same, they are liable to be declared as related parties.

Respondent 2 pleaded that the Claimants were not related parties under Section 5(24). It argued that the stand of the Applicant was based on the deeds of assignment between the suspended directors and the Claimants. The assignment took place in 2017, that is, prior to commencement of CIRP. The assignment was not challenged by the Applicant and what was challenged was the consequence of the assignment. In response to the argument that the Claimants fall under the purview of related parties, Respondent 2 referred to the case of ***Swiss Ribbons Private Limited v. Union of India*** *(decided on January 25, 2019),* wherein it was held by the Supreme Court that a person who can be directly connected as related party to the corporate debtor itself can only be termed as related party and not others. Thus, they stated that the assignees to the loan cannot be held as related party as they are not directly connected to the Corporate Debtor. They further referred to a National Company Law Appellate Tribunal judgement in the case of ***Edelweiss Asset Reconstruction Company Limited v. Synergies Dooray Automotive Limited*** *(decided on December 14, 2018)* and pointed out that assignee of a related party cannot be held as a related party and hence, they have the right to participate, represent and vote in the committee of creditors. The arguments of Respondent 3 too were on similar lines.

Observations of the NCLT, Chennai

NCLT, Chennai after review of the deeds of assignment came to the conclusion that the elements of partnership between the suspended directors of the Corporate Debtor and the Claimants were clearly established in view of the JDA. The deeds of assignment were akin to assignments cum partnership deeds, which point out towards the JDA between the Claimants and the Corporate Debtor. Therefore, the relationship between the assignors, being the suspended directors/ertswhile shareholders of the Corporate Debtor, and the assignees, being the Claimants, is of a partnership for the purpose of the joint ownership and development of the land. Thus, the Claimants were in a position to influence the decision making in their capacity as business partners as owners of the property, who have a say in the activities of the Corporate Debtor, which falls within the purview of the definition of "related party" given under Section 5(24)(a). Further, the consideration for the assignors under the deeds of assignment was allotment of equity shares in the capital of the Respondent 2 which would clearly make Respondent 2 a related party to the Corporate Debtor.

Decision of the NCLT, Chennai

The Claimants were held to be related parties of the Corporate Debtor and were barred from participating in the CoC.

VA View

Section 5(24) and proviso to Section 21(2) were enacted to ensure that the corporate insolvency resolution process is not influenced by any party, who stands in an interested position as regards the corporate debtor. The decision of the NCLT, Chennai in this judgment, supports the intent of the legislature to keep the CoC independent. In the instant case, the NCLT, Chennai investigated into the past relationship of the assignor (related party) and the assignee (financial creditor) to conclude that the assignees were in a position to influence the decision making in their capacity as business partners of the Corporate Debtor and hence were considered as related parties to the Corporate Debtor. However, the application of Section 5(24)(a) seems to be erroneous. Neither were the Claimants, directors or partners of the Corporate Debtor, nor were they relatives of a director or partner of the Corporate Debtor. Sub-section (h) of Section 5(24) which states that *"any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act"* would have been an appropriate provision to determine the disqualification of the Claimants as related parties of the Corporate Debtor in this instance.

IV. Supreme Court: Limitation Act shall be applicable to suits, appeals and applications filed in courts, but does not extend to statutory authorities or tribunals

The Supreme Court, in the case of ***Ganesan v. The Commissioner, The Tamil Nadu Hindu Religious and Charitable Endowments Board and Others*** *(decided on May 3, 2019),* held that Limitation Act, 1963 (**"Limitation Act"**) is applicable in case of suits, appeals and applications filed in courts, but is not applicable to suits, appeals or applications filed before any statutory authority or tribunals.

Facts

Mr. Ganesan (**"Appellant"**), to claim his ambalam right, had filed an application under Section 63 *(Joint Commissioner or Deputy Commissioner to decide certain disputes and matters)* of the Hindu Religious and Charitable Endowments Act, 1959 (**"Endowments Act"**) before the Joint Commissioner of the Hindu Religious & Charitable Endowments Board (**"Board"**). The Joint Commissioner after holding an enquiry, on December 21, 2010, passed an order stating that the Appellant is entitled to the ambalam right, and should also receive first respect as ambalam in the Tirupathartalu village.

Mr. P.R. Ramanathan (**"Respondent 3"**) filed an appeal under Section 69 *(Appeal to the Commissioner)* of the Endowments Act before the Commissioner of the Board (**"Respondent 1"**) against the order of the Joint Commissioner. He also filed a writ petition in the Madras High Court seeking a direction to decide his statutory appeal filed before the Respondent 1. The Madras High Court by an order dated March 7, 2013, directed the Respondent 1 to dispose of the appeal within 4 months from the date of order.

Subsequently, Respondent 3 on April 30, 2013, filed an application for condonation of delay of 266 days in filing the appeal before the Respondent 1 due to ill health of the Respondent 3 for over 7 months due to which he was unable to travel to Chennai to discuss with his counsel. The Appellant filed a counter affidavit pleading that Section 5 *(Extension of prescribed period in certain cases)* of the Limitation Act, is not applicable to the present appeal. The Respondent 1, by an order, condoned the delay of 266 days. The Appellant filed a writ petition against this order allowing condonation of delay.

A Single judge of the Madras High Court held that Section 5 of the Limitation Act fully applies to the present case and that there was sufficient cause for condonation of delay, and held the order of the Respondent 1 to be valid and correct. On an appeal to the division bench of the Madras High Court, it was held that the Endowments Act does not prevent the application of the provisions of the Limitation Act and hence, the order of the Respondent 1 was valid. Aggrieved by this decision, an appeal was filed by the Appellant before the Supreme Court.

Issues

1. Whether the Respondent 1 was a "Court" while hearing appeal under Section 69 of the Endowments Act?

2. Whether Section 29(2) of the Limitation Act is with respect to suits, appeals or applications filed before Court(s) or does it apply to suits, appeals and applications filed before statutory authorities and tribunals also?

3. Whether the Respondent 1, while hearing an appeal under Section 69 of Endowments Act had the authority to condone any delay?

4. Whether the statutory scheme of the Endowments Act indicates that Section 5 of the Limitation Act is applicable to proceedings before authorities mentioned under the Limitation Act?

Arguments

The Appellant's main contention was that the Respondent 1 had no authority to decide an application filed under Section 5 of the Limitation Act. He argued that the Endowments Act has clearly and distinctly defined the term "Court" under Section 6(7) and the term "Commissioner" under Section 6(6), which shows the intent of the legislature that a "Commissioner" is not a "Court" and hence, Section 5 of the Limitation Act was not applicable. He also stated that Section 115 of Endowments Act specifically provided that only Section 12(2) of the Limitation Act shall be applicable, which means that all other provisions were expressly excluded.

The Respondent 1 countered the arguments of the Appellant by saying that even though the terms "Court" and "Commissioner" have been defined separately in the Endowments Act and that a "Commissioner" is not a "Court", as per the definition, a "Commissioner" shall be a "Court" for the purpose of Section 5 of the Limitation Act. The Respondent 1 also stated that Section 110 of Endowments Act, which provides for procedure for hearing of appeals, is similar to the procedure provided for trial of suits or hearing of appeals under the Code of Civil Procedure, 1908. He thus stated that a Respondent 1 has all the powers of a Court. The Respondent 1 also relied on Section 29(2) of the Limitation Act and submitted that Section 5 of the Limitation Act has not been specifically excluded and thus, was fully applicable.

Observations of the Supreme Court

Issue 1: The Supreme Court looked at the definition of "Commissioner" and "Court" given under Section 6(6) and Section 6(7) of the Endowments Act. The Supreme Court also looked into the provisions under Section 8 of the Endowments Act, which provides for authorities under the Endowments Act, and Section 9 which provides for appointment of a Commissioner. The Supreme Court observed that the definition of "Court" as provided under Section 6(7) of the Endowments Act refers to a civil court that is established in a state. The Endowments Act clearly provides that a "Commissioner" is an authority who shall be appointed by the government and is empowered to perform certain functions under the Endowments Act, which includes hearing of appeals under Section 69 of the Endowment Act. Section 70 of the Endowments Act, clearly provides that any person who is aggrieved by the order of a Commissioner can file a suit with the Court. Thus, the Supreme Court observed that where an appeal against order of Commissioner lies with the Court, the Commissioner cannot be treated as Court under the Endowments Act. The Supreme Court also relied on its earlier judgment in case of ***The Commissioner of Sales Tax,***

U.P. Lucknow v. M/s Parsons Tools and Plants, Kanpur [(1975) 4 SCC 22], where it was held that "Appellate Authorities" and "Judges (Revisions)" Sales tax, do not fall under definition of "Courts" and hence Section 14 of the Limitation Act was not applicable. Thus, the Supreme Court held that Respondent 1 is not a Court while hearing appeal under Section 69 of the Endowments Act.

Issue 2 and 3: The Supreme Court answered the two questions jointly by relying on the provisions of the Limitation Act as well as various other judgements. The Supreme Court looked at two sets of cases wherein in the first set of cases, it was held that provisions of the Limitation Act, shall only apply to suits, appeals and applications made in Court unless there is a specific provision for the same in special or local law, and in the second set of cases it was held that provisions of the Limitation Act, shall also apply to suits, appeals and applications filed in tribunals or statutory authorities. The Supreme Court also referred to the judgments which held that provisions of the Limitation Act are only applicable to suits, appeals or applications filed in Court and not before other authorities, however, Section 14 of the Limitation Act shall apply. After referring to and interpreting all earlier judgements, the Supreme Court in the present case observed that Section 29(2) of the Limitation Act is with respect to different period of limitations for suits, appeals and applications filed in a Court and cannot be applied to suits, appeals and applications filed under any special or local law before any statutory authority or tribunal. Hence, the Respondent 1 cannot, by applying Section 5 of the Limitation Act, condone a delay while hearing appeal under Section 69 of the Endowments Act.

Issue 4: The Supreme Court observed that any special or local law may either expressly include or exclude the applicability of sections under the Limitation Act. The Supreme Court looked into the provisions of the Endowments Act, including Section 110 which provides for procedure and powers for inquiries, Section 115 which deals with limitation and Section 69 *(supra)*. After such perusal, the Supreme Court held that it was never the intention of the legislature to expressly include the application of Section 5 of the Limitation Act in case of condonation of delay in filing appeal under Section 69 of the Endowments Act.

Decision of the Supreme Court

After answering the above questions, the Supreme Court laid down the following principles:

1. The suits, appeals and applications referred to in the Limitation Act are suits, appeals and applications which are to be filed in a Court and are not the suits, appeals and applications which are to be filed before a statutory authority like Respondent 1 under the Endowments Act.

2. Operation of Section 29(2) of the Limitation Act is confined to the suits, appeals and applications referred to in a special or local law to be filed in Court and not before statutory authorities like Respondent 1 under Endowments Act.

3. However, special or local law by statutory scheme can make applicable any provision of the Limitation Act or exclude applicability of any provision of Limitation Act, which can be decided only after looking into the scheme of particular, special or local law.

Relying on the aforesaid principles, the Supreme Court set aside the judgement of the Madras High Court and also the order of the Respondent 1.

VA View

The Supreme Court has, by this decision, finally given clarity to an issue over which there were various contradictory judgements. However, this decision shall have certain implications adversely affecting *bona fide* applicants seeking benefit of the Limitation Act. In other words, restricting the application of Limitation Act to just suits or appeals or applications filed in Courts shall affect those who seek to take benefit of provisions under Limitation Act while filing any appeal or application under any special or local law before any statutory authority or tribunal. Even if any person was unable to file any application or appeal in any tribunal due to a genuine, *bona fide* reason, they cannot take benefit of Section 5 of the Limitation Act. This judgment, while clearing the air on the application of the Limitation Act before any tribunal or statutory authority, has left a void on the litigant's remedy to seek condonation in case of statutes where the Limitation Act's application has not been specifically extended by an explicit legislation.

Contributors:

Mr. Arpit Sinhal, Ms. Batul Barodawala, Mr. Mahim Sharma, Mr. Drushan Engineer and Mr. Atul Kumar Singh

Contact Details :

www.vaishlaw.com

NEW DELHI
1st, 9th & 11th Floor
Mohan Dev Bldg. 13 Tolstoy Marg
New Delhi - 110001, India
Phone: +91-11-4249 2525
Fax: +91-11-23320484
delhi@vaishlaw.com

MUMBAI
106, Peninsula Centre
Dr. S. S. Rao Road, Parel
Mumbai - 400012, India
Phone: +91-22-4213 4101
Fax: +91-22-4213 4102
mumbai@vaishlaw.com

BENGALURU
105-106, Raheja Chambers,
#12, Museum Road,
Bengaluru 560001, India
Phone: +91-80-40903588 /89
Fax: +91-80-40903584
bangalore@vaishlaw.com