STATE OF M.P. & ANR. A

v.

ANSHUMAN SHUKLA

(Civil Appeal No. 3498 of 2008)

AUGUST 06, 2014 B

[T.S. THAKUR, V. GOPALA GOWDA AND C. NAGAPPAN, JJ.]

Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983: s.19 – Applicability of s.5 of Limitation Act, 1963 to revision filed u/s.19 of the Adhiniyam of 1983 – Held: s.19 does not contain any express rider on the power of the High Court to entertain an application for revision after the expiry of the prescribed period of three months – On the contrary, High Court is conferred with suo moto power, to call for the record of an award at any time – It cannot therefore be said that the legislative intent was to exclude the applicability of s.5 of the Limitation Act to s.19 of the Adhiniyam of 1983 – Delay in filing revision is condonable – Matter remanded to High Court to examine same on merits – Limitation Act, 1963 – s.5. C D E

Allowing the appeals, the Court

HELD: There is no express exclusion of applicability of Section 5 to Section 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 nor any evidence to suggest that the legislative intent was to bar the application of Section 5 of the Limitation Act on Section 19 of the Adhiniyam. [Para 39] [375-F] F

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Nagar Palika Parishad, Morena v. Agrawal Construction Company **2004 (II) MPJR SN 55;** *Nagar Palika Parishad, Morena v. Agrawal Construction Company* **2004 MLJ 374 – Disapproved.**

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A *Nasiruudin and Ors. v. Sita Ram Agarwal* **(2003) 2 SCC 577: 2003 (1) SCR 634;** *Union of India v. Popular Construction Co.* **(2001) 8 SCC 470: 2001 (3) Suppl. SCR 619 – held inapplicable.**

B *Mukri Gopalan v. Cheppilat Puthanpuravil Aboobacker* **(1995) 5 SCC 5: 1995 (2) Suppl. SCR 1;** *Hukumdev Narain Yadav v. Lalit Narain Mishra* **(1974) 2 SCC 133: 1974 (3) SCR 31 – referred to.**

Case Law Reference:

C	**2004 (II) MPJR SN 55**	**Disapproved**	**Para 2**
	2004 MLJ 374	**Disapproved**	**Para 5**
	2003 (1) SCR 634	**held inapplicable**	**Para 6**
	2001 (3) Suppl. SCR 619	**held inapplicable**	**Para 6**
D	**1995 (2) Suppl. SCR 1**	**referred to**	**Para 27**
	1974 (3) SCR 31	**referred to**	**Para 27**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3498 of 2008.

E From the Judgment and Order dated 30.06.2005 passed of the High Court of Madhya Pradesh, Jabalpur Bench in Civil Revision No. 1330 of 2003.

WITH

F C.A. No. 1145 of 2009.

Arjun Garg, Mishra Saurabh for the appellants.

Akshat Shrivastava, Manjeet Kirpal for the respondent.

G The Judgment of the Court was delivered by

V.GOPALA GOWDA, J. 1. Civil Appeal No.3498 of 2008 arises out of order dated 30.6.2005 in C.R.No.1330 of 2003 passed by the Division Bench of the Madhya Pradesh High Court at Jabalpur relying on the judgment and order dated H 13.4.2005 passed by the Full Bench of the Madhya Pradesh

High Court in C.R.No.633 of 2003 etc. The connected Civil Appeal No.1145 of 2009 arises out of judgment and order dated 4.7.2006 passed by the Division Bench of the Madhya Pradesh High Court at Jabalpur in C.R.No.1 of 2006.

2. Civil Appeal No.3498 of 2008 was heard by a Division Bench of this Court, wherein by way of judgment dated 12.05.2008, it was opined that the case of ***Nagar Palika Parishad, Morena v. Agrawal Construction Company***[1] was not correctly decided and, thus, the matter required consideration by a larger bench. It was further opined that the record of the case be placed before the Hon'ble the Chief Justice of India for constituting an appropriate Bench. That is how this matter has come up for consideration before us.

3. As both the appeals are identical, for the sake of convenience, we would refer to the necessary facts of C.A.No.3498 of 2008 which are stated hereunder:

The respondent filed a petition under Section 7 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as "the Act of 1983") raising certain claims about the works contract executed between the parties. The petition was partly allowed by the Madhya Pradesh Arbitration Tribunal vide its award dated 18.6.2003. An amount of Rs.6,05,624/- with interest @12% per annum was awarded from 24.04.1998 till the date of realisation.

4. Being aggrieved, the appellants filed a Civil Revision No.1330 of 2003 before the High Court of Madhya Pradesh under Section 19 of the Act of 1983, along with an application under Section 5 of the Limitation Act, 1963 (hereinafter referred to as the "Limitation Act") to condone the delay in filing the revision.

5. The High Court observed in its order dated 07.05.2004 in the Revision that the view expressed by the Division Bench

1. 2004 (II) MPJR SN 55.

of the High Court in ***Nagar Palika Parishad, Morena v. Agrawal Construction Company***[2] required consideration by a larger Bench on the question of:

> *"Whether Provision of Section 5 of the Limitation Act is applicable to revision filed under Section 19 in the High Court?"*

6. After the reference was made, the matter in ***Nagarpalika Parishad, Morena*** (supra) came up for consideration before a division bench of this Court. While dismissing the petition at the threshold, it was observed in an order dated 27.08.2004[3]:

> *".....In our view there is no infirmity in the impugned judgment. The authority in the case of **Nasiruddin and Ors.** v. **Sita Ram Agarwal** (2003) 2 SCC 577 has been correctly followed. Same view has also been taken by this Court in the case of **Union of India** v. **Popular Construction Co.** (2001) 8 SCC 470.*
>
> *The Special Leave Petition stands dismissed with no order as to costs."*

7. The full bench of the High Court in the order dated 13.04.2005, held that the dismissal of a special leave petition at the threshold stage by the Supreme Court is a binding precedent, and must be followed by the courts below. It was however also observed that no specific time limit can be fixed for exercising the *suo motu* revisional power under Section 19 of the Act of 1983. It was further held that the power has to be exercised within reasonable time which depends upon the nature of the order to be revised and other facts and circumstances of the case. The full bench of the High Court directed to place the revision petition before the appropriate bench for consideration in accordance with law.

2. 2004 MLJ 374.

3. 2004 (II) MPJR SN 374.

8. The Civil Revision No. 1330 of 2003 which was barred by time of 80 days was dismissed by the High Court for the reasons given by the Full Bench in its order dated 13.04.2005. A

9. Being aggrieved by the order of the High Court, the appellants filed a special leave petition before this Court against the dismissal of revision. The Division Bench of this court vide order dated 12.05.2008 was of the opinion that the case of ***Nagar Palika Parishad, Morena*** *(supra)* had been incorrectly dismissed at the threshold and that the same requires consideration by a larger Bench and further directed that the records of the case be placed before the Hon'ble the Chief Justice of India for constituting an appropriate Bench. Thus, the matter came before us for consideration. B C

10. First of all, in order to appreciate rival legal submissions, it would be necessary to consider Section 19 of the Act of 1983, which relates to revision and its limitation, which reads as under :- D

> *"19.* ***High Court's power of revision*** *–(1)- The High Court may suo motu at any time or on an application made to it within three months of the award by an aggrieved party, call for the record of any case in which an award has been made under this Act by issuing a requisition to the Tribunal, and upon receipt of such requisition the Tribunal shall send or cause to be sent to that Court the concerned award and record thereof.* E F
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> *(2) If it appears to the High Court that the Tribunal –*
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> *(a) has exercised a jurisdiction not vested in it by law; or* G
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> *(b) has failed to exercise a jurisdiction so vested; or*
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> *(c) has acted in exercise of its jurisdiction illegally, or with material irregularity; or*

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A *(d) has misconducted itself or the proceedings; or*

(e) has made an award which is invalid or has been improperly procured by any party to the proceedings,

B *the High Court may make such order in the case as it thinks fit.*

(3) The High Court shall in deciding any revision under this section exercise the same powers and
C *follow the same procedure as far as may be, as it does in deciding a revision under Section 115 of the Code of Civil Procedure, 1908(No.5 of 1908).*

(4) The High Court shall cause a copy of its order in revision to be certified to the Tribunal.
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Explanation.-For the purposes of this section, an award shall include an "interim" award."

11. Following submissions were made by the learned
E counsel for the parties in support of their claim.

12. Learned counsel on behalf of the appellants contended that the High Court failed to consider that the revision petition has been preferred under Section 19 of the Act of 1983 and the delay of 80 days should have been condoned by it.
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13. It was further contended by the learned counsel on behalf of the appellants that the High Court should have considered that provision of Section 5 of the Limitation Act, would be applicable while entertaining a revision petition under
G Section 19 of the Act of 1983. There was also failure on the part of the High Court for having not exercised the *suo motu* revisionary powers under the Act in the circumstances of the case.

14. It was further contended that the judgments referred in
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the Full Bench order before the High Court are not applicable in the circumstance of the case. A

15. Regarding Section 19 of the Act of 1983, it was contended by the learned counsel that the proviso to Section 19 was added only in the year 2005 though the issue is concerned with the pre-amendment provision, when such proviso, specifically conferring power to condone delay was not there. B

16. It was also contended that the question - whether the Arbitral Tribunal constituted under the Act is a "Court" or not, need not be decided as Section 19(3) of the Act of 1983 provides that while exercising the power of revision, the High Court will exercise the same powers and will follow the same procedures as it does in deciding a revision under Section 115 of the Civil Procedure Code. C D

17. It was further contended by the learned counsel appearing on behalf of the appellants that the order in the case of ***Nagarpalika Parishad, Morena*** (supra) does not lay down the correct legal position. The order was passed *sub-silentio* and is *per incurium* as it neither considers the aforesaid legal issues and submissions nor does it take into account the relevant legal provisions and the Scheme of the Act or various case laws on the point. The judgments relied on by this Court in the case of ***Nagarpalika Parishad, Morena*** (supra) are not applicable to the issues arising here and are distinguishable on facts. E F

18. On the other side, in the counter affidavit filed by the respondents in the connected C.A. No. 1145 of 2009, it is stated that the appellants have been trying to mislead this Hon'ble Court by stating that the Application was preferred under Section 5 of the Limitation Act. However, by a bare perusal of the application for the condonation of delay, it can be seen that the application was preferred under the amended provisions of Section 19 of the Act. The benefit of the amended G H

A Section 19 of the Act could not be given to the appellants as the provisions were not made with retrospective effect. The amendment came into effect on 29.08.2005, much after the expiry period to prefer an application under Section 19 of the Act. The High Court has very rightly held that the Revision was B time barred. Since no such provision existed on the date of filing of application for condonation of delay, the appellants were not entitled to get the delay condoned.

19. We have heard the learned counsel for the parties and with reference to the above factual and rival legal contentions C urged on behalf of the parties the following points would arise for our consideration:

(1) Whether the provisions of Limitation Act are applicable to the provisions of Madhya Pradesh D Madhyastham Adhikaran Adhiniyam, 1983?

(2) What Order?

Answer to Point No.1

E 20. The Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 came into force with effect from 01.03.1985. It was enacted to provide for the establishment of a Tribunal to arbitrate on disputes to which the State Government or a Public Undertaking (wholly or substantially owned or controlled by the F State Government), is a party and for matters incidental thereto or connected therewith.

21. The Arbitral Tribunal is constituted in terms of Section 3 of the Act of 1983, for resolving all disputes and differences pertaining to works contract or arising out of or connected with G execution, discharge or satisfaction of any such works contract.

22. Section 7 of the Act provides for reference to Tribunal. Such reference may be made irrespective of whether the agreement contains an arbitration clause or not. Section 7-A

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of the Act provides for the particulars on the basis whereof the reference petition is to be filed. A

23. Section 19 of the Act confers the power of revision on the High Court. It provides that the aggrieved party may make an application for revision before the High Court within three months of the date of the award. This Section was amended in 2005, to confer the power on the High Court to condone the delay. Since this dispute pertains prior to 2005, thus, the provision of the unamended Act shall apply in the present case. B

24. The Limitation Act, 1963 is the general legislation on the law of limitation. C

25. Section 5 of the Limitation Act provides that an appeal may be admitted after the limitation period has expired, if the appellant satisfies the court that there was sufficient cause for delay. D

26. Section 29 of the Limitation Act is the saving section. Sub-section (2) reads as follows:

> *"(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."* E F

Sub section (2) thus, provides that Sections 4 to 24 of the Limitation Act shall be applicable to any Act which prescribes a special period of limitation, unless they are expressly excluded by that special law. G

27. This Court in the case of ***Mukri Gopalan v. Cheppilat*** H

A ***Puthanpuravil Aboobacker***[4] examined the question of whether the Limitation Act will apply to the Kerala Buildings (Lease and Rent) Control Act, 1965. While holding that the appellate authority under the Kerala Act acts as a Court, it was held that since the Act prescribes a period of limitation, which
B is different from the period of limitation prescribed under the Limitation Act, and there is no express exclusion of Sections 4 to 24 of the Limitation Act, in the above (Lease & Rent) Control Act, thus, those Sections shall be applicable to the Kerala Act.

C While examining the provisions of Section 29(2) of the Limitation Act, it was observed:

"8. A mere look at the aforesaid provision shows for its applicability to the facts of a given case and for importing
D *the machinery of the provisions containing Sections 4 to 24 of the Limitation Act the following two requirements have to be satisfied by the authority invoking the said provision:*

E *(i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.*

(ii) The said prescription of period of limitation under such special or local law should be different from the period
F *prescribed by the schedule to the Limitation Act."*

28. It was further held that if the two above conditions are satisfied, then the following implications would follow:

"9. If the aforesaid two requirements are satisfied
G *the consequences contemplated by Section 29(2) would automatically follow. These consequences are as under:*

(i) In such a case Section 3 of the Limitation Act would

H 4. (1995) 5 SCC 5.

apply as if the period prescribed by the special or local law was the period prescribed by the schedule.

(ii) For determining any period of limitation prescribed by such special or local law for a suit, appeal or application all the provisions containing Sections 4 to 24(inclusive) would apply insofar as and to the extent to which they are not expressly excluded by such special or local law."

[emphasis laid by this Court]

29. Further, in the case of ***Hukumdev Narain Yadav v. Lalit Narain Mishra***[5], a three judge Bench of this court, while examining whether the Limitation Act would be applicable to the provisions of Representation of People Act, observed as under:

"17. ....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 Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless 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."

30. According to ***Hukumdev Narain Yadav*** (supra), even if there exists no express exclusion in the special law, the court reserves the right to examine the provisions of the special law,

5. *(1974) 2 SCC 133.*

A and arrived at a conclusion as to whether the legislative intent was to exclude the operation of the Limitation Act.

31. Section 19 of the Act of 1983 prescribes a period of limitation of three months. This limitation period finds no mention in the schedule to the Limitation Act. Further, Section 19 does not expressly exclude the application of Sections 4 to 24 of the Limitation Act, 1963.

32. We now turn our attention to the case of ***Nasiruddin and Ors.*** (supra), on which reliance was placed by this court C in the case of ***Nagarpalika Parishad, Morena*** (supra), while dismissing the Special Leave Petition. The issue in that case was whether the deposit of rent under section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 by a tenant is an application for the purpose of Section 5 of D the Limitation Act.

33. While examining the nature of the deposit by tenant, it was held:

E *"46. ...the deposit by the tenant within 15 days is not an application within the meaning of Section 5 of the Limitation Act, 1963. Since the deposit does not require any application, therefore, the provisions of Section 5 cannot be extended where the default takes place in complying with an order under Sub-section (4) of Section* F *13 of the Act."*

34. Further, explaining as to why Section 5 of the Limitation Act is not applicable, the Court observed:

G *"The provisions of Section 5 of the Limitation Act must be construed having regard to Section 3 thereof. For filing an application after the expiry of the period prescribed under the Limitation Act or any special statute a cause of action must arise. Compliance of an order passed by a Court of Law in terms of a statutory provision does not*

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give rise to a cause of action. On failure to comply with an order passed by a Court of Law instant consequences are provided for under the statute. The Court can condone the default only when the statute confers such a power on the Court and not otherwise. In that view of the matter we have no other option but to hold that Section 5 of the Limitation Act, 1963 has no application in the instant case."

[emphasis laid by this Court]

It is evident on a plain reading of the judgment in that case, that the reason why Section 5 of the Limitation Act was said to be inapplicable to the Rajasthan Act, Section 13(4), was because of the nature of the specific provision in question. It was held that Section 5 of the Limitation Act is not applicable to Section 13(4), as the deposit of rent by the tenant cannot be said to be an application for the purpose of Section 5 of the Limitation Act. This case cannot be said to be relevant to the facts of the present case, as Section 5 of the Limitation Act has got application for the purpose of Section 19 of the Act of 1983, and the cause of action accrued to the appellant when the Tribunal passed the award.

35. We now direct our attention to the second case i.e. ***Union of India v. Popular Construction*** (supra)on which reliance was placed by this Court while dismissing the Special Leave Petition in the case of ***Nagarpalika Parishad, Morena*** (supra). The issue therein was whether Sections 4 to 24 of the Limitation Act would be applicable to Section 34 of the Arbitration Act, 1996.

36. The wording of Section 34(3) of the Arbitration Act, 1996, reads thus:

"34. (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33,

A *from the date on which that request had been disposed of by the arbitral tribunal:*

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the
B *application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."*

[emphasis laid by this Court]

C While examining the provision of Section 34, the Court in ***Popular Construction*** case (supra) observed as under:

"8. Had the proviso to Section 34 merely provided for a period within which the Court could exercise its discretion,
D *that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5."*

E [emphasis laid by this Court]

While holding that Section 5 is not applicable to Section 34(3), it was held that the presence of the words "but not thereafter" operate as an express exclusion to Section 5 of the
F Limitation Act.

"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the
G *meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso,*
H *would render the phrase 'but not thereafter' wholly otiose.*

No principle of interpretation would justify such a result." A

(Emphasis laid down by the Court)

37. Section 19 of the Act of 1983, does not contain any express rider on the power of the High Court to entertain an application for revision after the expiry of the prescribed period B of three months. On the contrary, the High Court is conferred with *suo moto power*, to call for the record of an award at any time. It cannot, therefore, be said that the legislative intent was to exclude the applicability of Section 5 of the Limitation Act to Section 19 of the Act of 1983. C

38. In our opinion, it is unnecessary to delve into the question of whether the Arbitral Tribunal constituted under the Act is a Court or not for answering the issue in the present case, as the delay in filing the revision has occurred before the High D Court, and not the Arbitral Tribunal.

Answer to Point No.2

39. In light of the reasons recorded above, we are of the opinion that the case of ***Nagar Palika Parishad, Morena*** E (supra) was decided erroneously. Section 5 of the Limitation Act is applicable to Section 19 of the Act of 1983. No express exclusion has been incorporated therein, and there is neither any evidence to suggest that the legislative intent was to bar the application of Section 5 of the Limitation Act on Section F 19 of the Act of 1983. The cases which were relied upon to dismiss the Special Leave Petition, namely ***Nasiruddin*** (supra) and ***Popular Construction*** (supra) can be distinguished both in terms of the facts as well as the law applicable, and thus, have no bearing on the facts of the present case. G

40. For the reasons stated supra, we answer the points framed by us in the affirmative in favour of the appellants. The impugned judgments and orders are set aside and both the appeals are allowed. The delay in filing revision petitions is H

A condoned and the cases are remanded to the High Court to examine the same on merits. We request the High Court to dispose of the cases as expeditiously as possible.

Devika Gujral Appeals allowed.