IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Appeal (D.B.) (Filing) No. 26650 of 2025

Amar Yasar, son of Md. Feroz Khan, aged about 32 years, resident of Qazi Mohalla, Sherghati Police Station, Sherghati, District Gaya, Bihar, Present address Shamsher Nagar Imambara Police Station, Bhuli, District Dhanbad, Jharkhand.

.....**Appellant**

Versus

The State of Jharkhand through A.T.S. .....**Respondents**

CORAM: Hon'ble Mr. Justice Rongon Mukhopadhyay
Hon'ble Mr. Justice Deepak Roshan

For the Appellant : Md. Mokhtar Khan, Advocate
For the Respondent : Ms. Priya Shrestha, Spl. P.P.

08/10.03.2026 Heard learned counsel for the parties.

2. Criminal Appeal (D.B.) (Filing) No. 26650 of 2025 is directed against the order dated 17.07.2025, arising out of ATS P.S. Case No.06/2025, registered for the offences under Sections 461(2)/113(i)(a)(iii)/152 of B.N.S. and under Sections 16/18/18B/20 of UA(P) Act and Sections 25(1-b)a/26(2)/35 of the Arms Act, whereby the learned Trial Court has been pleased to extend the period of investigation of 60 days on petition filed by the I.O., which as per the petitioner, is in violation of provision of Section 187(2) of the B.N.S.S. Act.

3. After filing of the present appeal, an objection has been raised by the Registry that the Criminal Appeals (D.B.) has been filed after expiry of maximum statutory period of 90 days as provided under Section 21(5) of the National Investigation Agency Act, 2008 (for short "the NIA Act, 2008").

4. Under the aforesaid facts and circumstances and in view of Sections 21(1) and 21(4) of NIA Act, the matter of maintainability was referred to this Bench.

5. Pursuant thereto, the instant appeal has been listed under the heading 'For Orders' with the said objection that the case is barred by limitation since the same has been filed after maximum statutory period of 90 days.

6. Md. Mokhtar Khan, learned counsel appearing for the appellant vehemently argued the matter and submits that Section 21(5) of the NIA Act, 2008 is not applicable; rather, Section 5 of the Limitation Act

will be applicable. He further submits that Section 21(5) of the NIA Act, 2008 cannot be said to be mandatory in nature rather; it is directory/ obligatory, in view of the fact that in the first proviso of Section 21(5), the word 'may' has been inserted which confers power upon the appellate court i.e. the High Court to condone the delay beyond the period of 90 days.

7. He further referred to the decision of Delhi High Court in *Farhan Shaikh VS State (NIA)* reported in 2019 SCC Online Delhi 9108 and also the decision of Jammu & Kashmir High Court rendered in the *Case of Chief Investigating Officer, Jammu VS Addl. Sessions Judge, District Court, Jammu ; [Cr. A (D) No. 46 of 2022 dated 13-12 2022]*.

Mr. Khan vehemently contended that both the High Courts have taken a view that Section-21 of NIA Act does not exclude the Limitation Act and further held that the word 'may' has been inserted which confers power upon the appellate court i.e. the High Court to condone the delay beyond the period of 90 days and accordingly in the 2nd proviso to Section 21(5) of the Act, *"Shall"* should be read as *"May"*.

Accordingly, the defects pointed out by the Registry should be ignored and the same is baseless.

8. In reply to the same, learned Special P.P. representing the NIA submits that the issue with regard to maintainability and also the contention raised by the Ld. Counsel for the Petitioner that Section 21 of the NIA Act, 2008, does not exclude the Limitation Act and the words *'shall'* may be read as *'may'* has been considered by the co-ordinate Bench of this Court in the case of *Vimal Kumar Paswan @ Vimal Paswan Vs. the State of Jharkhand*[1], wherein the Division Bench of this Court has dealt the entire issue in details and also the judgments/Orders passed by various High Courts including the judgment/order of Delhi High Court in *Farhan Shaikh VS State (NIA)* and of Jammu & Kashmir High Court rendered in the *Case of Chief Investigating Officer, Jammu VS Addl. Sessions Judge, District Court, Jammu* and came to the conclusion that the office note raising the objection of maintainability of the Appeal was correct and the objection was sustained, in view of

[1] Cr. App. (D.B.) No. 1961 of 2023, decided on 09.01.2024

the fact that Appeal was filed after maximum statutory period of 90 days.

9. For brevity, paras-81 to 91 of the said judgment i.e. *Vimal Kumar Paswan (supra)* is extract herein below:

> *"**81.** We are now proceeding to examine the judgment rendered by the different Courts, i.e., the Bombay High Court, Kerala High Court, Calcutta High Court and Delhi High Court, as to whether which judgment has got persuasive value for the purpose of issue involved herein.*
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> ***82.** We, after going through the judgments passed by the Kerala High Court, Calcutta High Court, Bombay High Court and Delhi High Court, have found that the Bombay High Court and Delhi High Court had considered that if the appeal will not be allowed to file beyond the period of 90 days, it will lead to travesty of justice and ultimately, it will be in the teeth of Article 21 of the Constitution of India.*
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> ***83.** But, we are in respectful disagreement with the said view on the basis of the reason that if the statutory mandate has provided a provision to file an appeal within the maximum period of 90 days, then the appeal is to be filed within the maximum period of 90 days and in these circumstances, if a person is in custody in course of investigation or in custody after the judgment of conviction, then the appeal if required to be filed within the maximum period 90 days that will lead to achieve the very object and intent of Article 21 of the Constitution of India. It is for the reason that if there is any perversity in the judgment of conviction or any order which is adversely affecting the individual concerned, then the same is to be filed immediately within the specific period.*
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> ***84.** If Section 5 of the Limitation Act which has been held to be applicable by the judgment passed by the Bombay High Court and Delhi High Court, will be allowed to prevail then the appeal can be filed even beyond the period of inordinate delay by showing sufficient cause to condone the delay by applying the provision of Section 5 of the Limitation Act, 1963 which will eventually lead to violation of core of Article 21 of the constitution of India.*
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> ***85.** The judgment rendered by the Kerala High Court, according to our considered view, will have the persuasive value due to the following reasons:-*
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> > *(i) If The principle to condone the delay under Section 21(5) is based upon the sufficient cause, then in such circumstances, if a person has been convicted under the Scheduled Offence, then he will file an appeal even after inordinate delay by giving justification of sufficient cause for condoning the delay, then what will happen to the very object and intent for the purpose for which, the Act has been enacted.*
> >
> > *(ii) Further, when the individual claiming the fundamental right of liberty as enshrined under Article 21 of the Constitution of India, if not filed an appeal, within the maximum period of 90 days then in such circumstance the said individual cannot be allowed to take plea of the violation of the spirit of Article 21 of the Constitution, for the reason that when the statute itself taken into consideration the fact that the appeal is to be filed within the maximum period of 90 days so that the issue be decided by the appellate court, will be said to be consideration of Article 21 of the Constitution of India and if the appeal will be filed beyond the period of 90 days, how can such individual be allowed to take the plea of violation of Article 21 of the Constitution of India.*
> >
> > *(iii) It is, thus, evident that the twin test in order to achieve the object of the Act on the one hand and to secure the principle of Article 21 of the Constitution of India, will be said to be fulfilled only when the act will be read in entirety and the same will be said to be achieved its intent, if the due adherence is to be given to the statutory provision.*
> >
> > *(iv) The period of 90 days which has been provided to file an appeal is for the purpose of providing an opportunity to the aggrieved to prefer an appeal so that an opportunity be available at an early date to look into the perversity if available in the impugned order or judgment or sentence or the order rejecting the prayer for bail, so as to achieve the*
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> ***86.** This Court, therefore, is of the view that the provision as contained under Section 21(5) of the Act, 2008 mandating to file an appeal within the maximum*

period of 90 days, will be said to achieve the very purpose of Article 21 of the Constitution of India for the sufferers.

87. *This Court, on the basis of the discussion made hereinabove, is in due agreement with the view taken by the Kerala High Court and the Calcutta High Court.*

88. *Further, the judgment passed by the Bombay High Court and Delhi High Court, is according to the considered view of this Court and with all due respects to the concerned High Courts, is of the view that the aforesaid judgments are not being considered to have the persuasive value due to the reason, upon which, the judgments passed by the Kerala High Court and Calcutta High Court have been accepted to have the persuasive value as per the reason referred hereinabove.*

89. *It also requires to refer herein that in course of hearing, it has been informed at Bar that the judgment passed by the Delhi High Court has been kept in abeyance by the Hon'ble Apex Court.*

90. *We, on scrutiny of the same, have found that the judgment passed by the Delhi High Court has been kept in abeyance by the Hon'ble Apex Court vide order dated 02-12-2019 passed in Special Leave Petition (Criminal) Diary No(s). 41439/2019.*

91. *Accordingly, and based upon the discussion made hereinabove, this Court is of the view that office note raising the objection of maintainability of the instant appeal in view of the fact that the appeal has been filed after expiry of maximum statutory period of 90 days, is hereby sustained."*

10. In reply to the aforesaid contention of the learned Special P.P. that this Court has already decided the issue against the litigant with regard to statutory period, learned counsel for the appellant again referred the judgment passed by Delhi High Court and Jammu & Kashmir High Court in *Farhan Shaikh Vs. State (NIA)*[2] and in the case of *Chief Investigating Officer, Jammu Vs. Addl. Sessions Judge, District Court, Jammu* [3].

11. At this stage, it is pertinent to mention that these judgments were already discussed in detail by the Co-ordinate Bench of this Court in the case of *Vimal Kumar Paswan @ Vimal Paswan (supra).*

12. When Mr. Khan representing the Petitioner was confronted by this Court that the judgment/order referred by him has already been discussed in detailed in the case of *Vimal Kumar Paswan @ Vimal Paswan (supra);* he then referred to an order passed by the Hon'ble Apex Court in the case of *Sushila Devi & Anr. Vs. Union of India through NIA & Ors.*[4]*,* wherein the Hon'ble Apex Court gave liberty to the High Court to decide the case on merit in accordance with law, notwithstanding the delay that had occasioned in filing the appeals and case was posted for hearing on 24.03.2026.

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[2] 2019 SCC OnLine Del. 9198

[3] Crl. A. (D) No. 46/2022 dated 13.12.2022

[4] Writ Petition(s) (Criminal) No.(s) 114 of 2024 dated 11.12.2025

13. For brevity the interim order passed by the Hon'ble Apex Court in the above referred case is extracted herein below:

> *"UPON hearing the counsel the Court made the following*
>
> *O R D E R*
>
> *Crl.A. No. 20/2022 :*
>
> *The High Court is at liberty to decide the appeal)(s) if any already pending, on merits and in accordance with law notwithstanding the delay that has occassioned in filing the appeal(s).*
>
> *List the appeal on 24.03.2026.*
>
> *W.P.(Crl.) No.114/2024,, SLP(Crl) No. 5229/2024, SLP(Crl) No. 5245/2024:*
>
> *List the matters on 24.03.2026.*
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> *SLP(Crl) No. 1742/2024 and and Diary No(s). 51829/2025:*
>
> *We request the High Court(s) to dispose of the appeal(s) on merits, notwithstanding the delay in filing these appeal(s) and the earlier orders(s) of dismissal, on appropriate applications being filed by the parties*
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> *List the matters on 24.03.2026.*
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> *SLP(Crl) No. 3968-3974/2025:*
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> *We have heard Sh. R. Basant, the learned Senior counsel appearing for the petitioner and Sh. Raj Thakre, learned Additional Solicitor General appearing for the respondent.*
>
> *We take note of the submissions made by the learned Senior counsel appearing for the petitioner that notwithstanding the earlier directions issued by this Court on 20.05.2025, the trial has not progressed sufficiently. Accordingly, we issue a specific direction to the Trial Court to expedite the hearing and if possible, to conduct day-to-day hearings, particularly when the petitioner is languishing under incarceration for more than 8½ years. The report will have to be filed before this Court on or before 15.03.2026 with respect to the progress made in the trial.*
>
> *We further direct the trial Court to complete the examination of the protected witnesses.*
>
> *List the matters on 24.03.2026."*

14. Learned counsel for the appellant further referred to the order passed by the Hon'ble Apex Court in the case of *Jiyaurrehman Vs. State of Uttarakhand*[5] wherein the issue was with respect to challenging the validity of the 2nd proviso to Section 21(5) of the NIA Act, 2008, the relevant part of which is extracted herein below:

> *"UPON hearing the counsel the Court made the following*
>
> *O R D E R*
>
> *In the matters filed challenging the validity of the 2nd proviso to Section 21(5) of the NIA Act, 2008, an interim order has already been passed by this Court. Taking note of the above, we request the High Court to decide the matter(s) pending before it on merit, notwithstanding the delay that has occasioned in filing the appeal(s).*
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> *We request the High Court to conclude the hearing within a period of three months from the date of receipt of a copy of this order.*
>
> *We further clarify that our earlier direction issued to all the High Courts not to dismiss the appeals/petitions on the ground of delay, cannot be understood to mean that the matter cannot be decided on merits.*
>
> *The Special Leave Petitions are disposed of in the above terms.*
>
> *Pending application(s), if any, shall also stand disposed of."*

15. Thus, we see that on the one hand, both the Apex Court's orders have not decided the issue as to whether Section 21 of the NIT Act, 2008, excludes different Sections of Limitation Act or not and as to whether

[5] Special Leave to Appeal (Crl.) No(s). 18725 of 2025 dated 12.12.2025

the word *'shall'* be read as *'may'*; and on the other hand the 1st Order was an interim order & in the 2nd order, the validity of Section 21(5) was under challenge; and no issue was decided. Needless to say that we are sitting in appeal, and not under Art.226 of the Constitution, therefore we cannot decide the validity of any Section of either of the Act i.e. NIA Act or Limitation Act.

16. At this stage, it is pertinent to mention here that though in the case of *Vimal Kumar Paswan @ Vimal Paswan (supra),* a Co-ordinate Bench of this Court has already held that any appeal filed beyond the maximum period of 90 days is not maintainable, yet, in order to further deliberate the issue we deem it proper to refer few more judgments of Hon'ble Apex Court in order to demonstrate that when a statutory period of limitation is prescribed under the Act and even within the extended maximum period, the delay could be condoned by the Statutes itself, no Court shall condone the delay beyond the maximum period of limitation.

17. In this regard, it is necessary to refer the judgment passed in the case of *National Spot Exchange Limited Vs. Anil Kohli, Resolution Professional for Dunar Foods Ltd.*[6] *w*herein the Hon'ble Apex Court from paras-14 to 16 has dealt this issue in detail by holding that Courts have no jurisdiction and/or authority to carve out any exception. If the Courts carve out an exception, it would amount to legislate which would in turn might be inserting the provision to the statute, which is not permissible.

The Hon'ble Apex Court has further held that if the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice. The Hon'ble Apex Court has further gone by holding that what cannot be done directly considering the statutory provisions cannot be permitted to be done indirectly, while exercising the powers under Article 142 of the Constitution. Sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably failed to establish a legal right.

[6] (2022) 11 SCC 761

The Hon'ble Apex Court in unequivocal term has held that an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution, the Supreme Court ordinarily would not pass an order which would be in contravention of a statutory provision.

18. For brevity paras-14 to 20 of the judgment passed in the case of *National Spot Exchange Limited (supra)* is extracted herein below:

> ***14.*** *It is true that in a given case there may arise a situation where the applicant/appellant may not be in a position to file the appeal even within a statutory period of limitation prescribed under the Act and even within the extended maximum period of appeal which could be condoned owing to genuineness viz. illness, accident, etc. However, under the statute, Parliament has not carved out any exception of such a situation. Therefore, in a given case, it may cause hardship, however, unless Parliament has carved out any exception by a provision of law, the period of limitation has to be given effect to. Such powers are only with Parliament and the legislature. The courts have no jurisdiction and/or authority to carve out any exception. If the courts carve out an exception, it would amount to legislate which would in turn might be inserting the provision to the statute, which is not permissible.*
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> ***15.*** *In Rohitash Kumar [Rohitash Kumar v. Om Prakash Sharma, (2013) 11 SCC 451 : (2013) 3 SCC (L&S) 368] , this Court observed and held as under : (SCC pp. 459-60, paras 23-26)*
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> > *"23. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigour. It is a well-settled principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice. (Vide : CIT v. Keshab Chandra Mandal [CIT v. Keshab Chandra Mandal, 1950 SCC 205] ; and D.D. Joshi v. Union of India [D.D. Joshi v. Union of India, (1983) 2 SCC 235 : 1983 SCC (L&S) 321]).*
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> > *24. In Bengal Immunity Co. Ltd. v. State of Bihar [Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC 661] it was observed by a Constitution Bench of this Court that, if there is any hardship, it is for the legislature to amend the law, and that the Court cannot be called upon to discard the cardinal rule of interpretation for the purpose of mitigating such hardship. If the language of an Act is sufficiently clear, the Court has to give effect to it, however inequitable or unjust the result may be. The words, "dura lex sed lex" which mean "the law is hard but it is the law" may be used to sum up the situation. Therefore, even if a statutory provision causes hardship to some people, it is not for the Court to amend the law. A legal enactment must be interpreted in its plain and literal sense, as that is the first principle of interpretation.*
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> > *25. In Mysore SEB v. Bangalore Woollen, Cotton & Silk Mills Ltd. [Mysore SEB v. Bangalore Woollen, Cotton & Silk Mills Ltd., AIR 1963 SC 1128] , a Constitution Bench of this Court held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. In Martin Burn Ltd. v. Corpn. of Calcutta [Martin Burn Ltd. v. Corpn. of Calcutta, AIR 1966 SC 529] , this Court, while dealing with the same issue observed as under : (Martin Burn Ltd. case [Martin Burn Ltd. v. Corpn. of Calcutta, AIR 1966 SC 529] , AIR p. 535, para 14)*
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> > *'14. A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not.'*
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> > *(See also : CIT v. Vegetable Products Ltd. [CIT v. Vegetable Products Ltd., (1973) 1 SCC 442 : 1973 SCC (Tax) 282] ; and Tata Power Co. Ltd. v. Reliance Energy Ltd. [Tata Power Co. Ltd. v. Reliance Energy Ltd., (2009) 16 SCC 659]).*
> >
> > *26. Therefore, it is evident that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to*

every word of the provision, if the language used therein, is unequivocal."

15.1. *In Mishri Lal [BSNL v. Mishri Lal, (2011) 14 SCC 739 : (2014) 1 SCC (L&S) 387] , it is observed that the law prevails over equity if there is a conflict. It is observed further that equity can only supplement the law and not supplant it.*

15.2. *In Raghunath Rai Bareja [Raghunath Rai Bareja v. Punjab National Bank, (2007) 2 SCC 230] , in paras 30 to 37, this Court observed and held as under : (SCC pp. 242-43)*

"30. Thus, in Madamanchi Ramappa v. Muthaluru Bojjappa [Madamanchi Ramappa v. Muthaluru Bojjappa, AIR 1963 SC 1633] (vide para 12) this Court observed : (AIR p. 1637)

'12. ... [W]hat is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law.'

31. In Council for Indian School Certificate Examination v. Isha Mittal [Council for Indian School Certificate Examination v. Isha Mittal, (2000) 7 SCC 521] (vide para 4) this Court observed : (SCC p. 522)

'4. ... Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law.'

32. Similarly, in P.M. Latha v. State of Kerala [P.M. Latha v. State of Kerala, (2003) 3 SCC 541 : 2003 SCC (L&S) 339] (vide para 13) this Court observed : (SCC p. 546)

'13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law.'

33. In Laxminarayan R. Bhattad v. State of Maharashtra [Laxminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413] (vide para 73) this Court observed : (SCC p. 436)

'73. It is now well settled that when there is a conflict between law and equity the former shall prevail.'

34. Similarly, in Nasiruddin v. Sita Ram Agarwal [Nasiruddin v. Sita Ram Agarwal, (2003) 2 SCC 577] (vide para 35) this Court observed : (SCC p. 588)

'35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.'

35. Similarly, in E. Palanisamy v. Palanisamy [E. Palanisamy v. Palanisamy, (2003) 1 SCC 123] (vide para 5) this Court observed : (SCC p. 127)

'5. Equitable considerations have no place where the statute contained express provisions.'

36. In India House v. Kishan N. Lalwani [India House v. Kishan N. Lalwani, (2003) 9 SCC 393] (vide para 7) this Court held that : (SCC p. 398)

'7. ... The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations.'

37. In the present case, while equity is in favour of the respondent Bank, the law is in favour of the appellant, since we are of the opinion that the impugned order [Punjab National Bank v. Bareja Kripping Fasteners, 2005 SCC OnLine P&H 552] of the High Court is clearly in violation of Section 31 of the RDB Act, and moreover the claim is time-barred in view of Article 136 of the Limitation Act read with Section 24 of the RDB Act. We cannot but comment that it is the Bank itself which is to blame because after its first execution petition was dismissed on 23-8-1990 it should have immediately thereafter filed a second execution petition, but instead it filed the second execution petition only in 1994 which was dismissed on 18-8-1994. Thereafter, again the Bank waited for 5 years and it was only on 1-4-1999 (sic 11-1-1999) that it filed its third execution petition. We fail to understand why the Bank waited from 1990 to 1994 and again from 1994 to 1999 in filing its execution petitions. Hence, it is the Bank which is responsible for not getting the decree executed well in time."

(emphasis in original)

In the case before this Court, the claim made by the Bank was found to be time-barred and to that this Court observed that while the equity is in favour of the Bank, the law is not in favour of the borrower, however, since the claim is time-barred, as the execution petition was barred by the limitation, this Court set aside as such the execution petition.

15.3. *In Popat Bahiru Govardhane [Popat Bahiru Govardhane v. LAO, (2013) 10 SCC 765 : (2014) 1 SCC (Civ) 149] , this Court has observed and held that it is a settled legal position that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. It is*

further observed that the statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it by giving full effect to the same.

16. *It is also required to be noted that even Shri Maninder Singh, learned Senior Counsel appearing on behalf of the appellant has, as such, fairly conceded that considering Section 61(2) of the IB Code, the Appellate Tribunal has jurisdiction or power to condone the delay not exceeding 15 days from the completion of 30 days, the statutory period of limitation. However, he has requested and prayed to condone the delay in exercise of powers under Article 142 of the Constitution of India, in the facts and circumstances of the case and submitted that the amount involved is a very huge amount and that the appellant is a public body. We are afraid what cannot be done directly considering the statutory provisions cannot be permitted to be done indirectly, while exercising the powers under Article 142 of the Constitution of India.*

17. *At this stage, decision of this Court in ONGC Ltd. [ONGC Ltd. v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47 : AIR 2017 SC 1352] is required to be referred to. Before this Court, the question was with respect to delay beyond 120 days in preferring the appeal under Section 125 of the Electricity Act and the question arose whether the delay beyond 120 days in preferring the appeal is condonable or not. After considering various earlier decisions of this Court on the point and considering the language used in Section 125(2) of the Electricity Act which provided that delay beyond 120 days is not condonable, this Court has observed and held that it is not condonable and it cannot be condoned, even taking recourse to Article 142 of the Constitution.*

18. *While observing and holding so in para 15, this Court in ONGC Ltd. [ONGC Ltd. v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47 : AIR 2017 SC 1352] has observed and held as under : (SCC p. 51)*

"15. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in Supreme Court Bar Assn. v. Union of India [Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409] has ruled that there is no conflict of opinion in A.R. Antulay case [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] or in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] with the principle set down in Prem Chand Garg v. Excise Commr. [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] . As the pronouncement in Chhattisgarh SEB v. Central Electricity Regulatory Commission [Chhattisgarh SEB v. Central Electricity Regulatory Commission, (2010) 5 SCC 23] lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution."

19. *In Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh) [Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh), (2004) 2 SCC 130] , in paras 36 and 37, it is observed as under : (SCC p. 144)*

"36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.

37. As early as in 1911, Farwell, LJ. in Latham v. R. Johnson & Nephew Ltd. [Latham v. R. Johnson & Nephew Ltd., (1913) 1 KB 398 : (1911-12) All ER Rep 117 (CA)] observed : (KB p. 408 : All ER p. 123E)

'We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment : sentiment is a dangerous will o' the wisp to take as a guide in the search for legal principles.' "

20. *Thus, considering the statutory provisions which provide that delay beyond 15 days in preferring the appeal is uncondonable, the same cannot be condoned even in exercise of powers under Article 142 of the Constitution.*

19. Long before, in the judgment rendered in the case of *Fairgrowth Investments Ltd. Vs. Custodian*[7]*,* the Hon'ble Apex Court has held that the words which are unequivocal and unqualified and there is no scope of reading in a power of Court to dispense with the time-limit on the basis of any principle of interpretation of statutory provision, the Court should refrain from the same. In the said case, the provision prescribing a time-limit of filing a petition for objection under Section 4(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, was in question.

20. For brevity paras-9 to 13 are quoted herein below:

*"**9.** We are of the view that the provision prescribing a time-limit for filing a petition for objection under Section 4(2) of the Act is mandatory in the sense that the period prescribed cannot be extended by the court under any inherent jurisdiction of the Special Court. Prescribed periods for initiating or taking steps in legal proceedings are intended to be abided by, subject to any power expressly conferred on the court to condone any delay. Thus the Limitation Act, 1963 provides for different periods of limitation within which suits, appeals and applications may be instituted or filed or made as the case may be. It also provides for exclusion of time from the prescribed periods in certain cases, lays down bases for computing the period of limitation prescribed and expressly provides for extension of time under Section 5 in respect of certain proceedings. If the periods prescribed were not mandatory, it was not necessary to provide for exclusion or extension of time in certain circumstances nor would the method of computation of time have any meaning.*

10. *Section 4(2) of the Act plainly read simply requires a person objecting to a notification issued under sub-section (2) of Section 3 to file a petition raising such objections within 30 days of the issuance of such notification. The words are unequivocal and unqualified and there is no scope for reading in a power of court to dispense with the time-limit on the basis of any principle of interpretation of statutory provisions. In R. Rudraiah v. State of Karnataka [(1998) 3 SCC 23] it was contended on behalf of the appellants that Section 48-A of the Karnataka Land Reforms Act, 1961 which provided for the making of an application within a particular period should be construed liberally in favour of tenants so that the period was to be read as extendable. The submission was rejected on the ground that the language of Section 48-A was unambiguous and could not be interpreted differently only on the ground of hardship to the tenants.*

11. *The mere fact that the Special Court may have been imbued with the same status of a High Court would not alter the situation. We are of the view that it was not necessary for Section 4(2) of the Act to use additional peremptory language such as "but not thereafter" or "shall" to mandate that an objection had to be made within 30 days. The mere use of the word "may" in Section 4(2) of the Act does not indicate that the period prescribed under the section is merely directory. The word "may" merely enables or empowers the objector to file an objection. The language in Section 4(2) of the Act may be compared with Sections 4 and 6 of the Limitation Act, 1963. Section 4 of the Limitation Act provides:*

"4. Expiry of prescribed period when court is closed.—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens."

[7] (2004) 11 SCC 472

Certain sub-sections of Section 6 of the Limitation Act also provide for the period within which a minor or insane or an idiot may institute suits. It cannot be contended that the word "may" in these sections indicates that the prescribed periods were merely directory. This Court in Mangu Ram v. Municipal Corpn. of Delhi [(1976) 1 SCC 392 : 1976 SCC (Cri) 10] described statutory provisions of periods of limitation as "mandatory and compulsive" and also said: (SCC p. 397, para 7)

"It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 (of the Limitation Act) in order that the application may be entertained despite such bar."

***12.** If the power to condone delay were implicit in every statutory provision providing for a period of limitation in respect of proceedings before courts, Section 29(2) of the Limitation Act, 1963 would be rendered redundant. We will discuss the scope and applicability of Section 29(2) in greater detail subsequently.*

***13.** It is not for the courts to determine whether the period of 30 days is too short to take into account the various misfortunes that may be faced by notified persons who wish to file objections under Section 4(2) of the Act nor can the section be held to be directory because of such alleged inadequacy of time. As was held by the Privy Council in Nagendra Nath Dey v. Suresh Chandra Dey [AIR 1932 PC 165 : 59 IA 283] : (AIR p. 167)*

"The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is, Their Lordships think, the only safe guide."

(See also Antonysami v. Arulanandam Pillai [(2001) 9 SCC 658] , SCC at p. 666.)"

21. In yet another case of *Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur & Ors.*[8], the Hon'ble Apex Court in para-8 has held as under:

***"8 [Ed. : Para 8 corrected vide Official Corrigendum No. F.3/Ed.B.J./52/2009 dated 22-5-2009.] .** The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."*

22. Thus, we see that the Hon'ble Apex Court in all the three above referred judgments have mainly held that the Courts/ Tribunals being creatures of statutes are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statutes. The

[8] (2008) 3 SCC 70

period up to which the prayer for condonation can be accepted is the statutory provision.

23. Now coming to this Act, we see that Section 21(5) has two proviso. In the first proviso, the High Court can entertain an appeal after the expiry of period of 30 days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of 30 days. Further, second proviso is negative covenant wherein the statutes says that no appeal shall be entertained after the expiry of period of 90 days.

24. For brevity Section 21 is extracted herein below:

> *"**21. Appeals.-**(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.*
>
> *(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.*
>
> *(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.*
>
> *(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.*
>
> *(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:*
>
> *Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:*
>
> *Provided further that no appeal shall be entertained after the expiry of period of ninety days."*

25. We have already discussed earlier that the law with regards to condonation of delay, where the Statute provides a maximum period of limitation, is no more *res-integra* that the Courts/ Tribunals cannot read out the law what has already been provided by the statutes.

26. At this juncture, it is also pertinent to reiterate that we are not sitting in original jurisdiction under Article 226 of the Constitution, wherein the vires of Section 21(5) of the NIA Act, 2008, is under challenge; rather, we are sitting in appeal, therefore, reading out any statutes is beyond our jurisdiction and as held by the Hon'ble Apex Court in catena of decisions; few of which have been cited herein above; we do not have any hesitation in holding that any appeal under Section 21 of the NIA Act, 2008, can be filed up to a maximum period of 90 days. As a matter of fact, this provision is *pari materia* with the erstwhile provision of Central Excise Act, 1944 wherein also there was period of condonation of delay for 60 days to the Court and a further period of 30 days was given to the Court to condone the delay, however, beyond

90 days it has been held in the case of *Singh Enterprises (supra)* that Courts cannot entertain any appeal.

27. Accordingly, we are not having any hesitation in dismissing the appeal being not maintainable as the same has been filed beyond the maximum period of limitation and we sustain the objection given by the Registry that the Appeal is barred by limitation. However, there shall be no order to cost.

28. Pending I.A.(s), if any, stand closed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

March 10, 2026
Kunal/
~~NAFR~~/AFR
Uploaded on 10.03.2026