
Before S.S. Saron, J.

BABU RAM,—*Petitioner*

Versus

NARESH KUMAR,—*Respondent*

C.R.No. 3993 of 2005

20th September, 2005

Limitation Act, 1963—S. 5—East Punjab Urban Rent Restriction Act, 1949—Ss. 13-A, 18-A & 18-B—Landlord due to retire from service seeking right to recover immediate possession of the premises—Despite service of summons tenant failing to file application for leave to contest within the stipulated period—Rent Controller granting permission to contest the petition without recording any reason for condoning the delay in filing the application—Provisions of the Act do not provide for condonation of delay in filing an application for seeking leave to contest an application u/s 13-A for eviction—Whether provisions of S.5 of 1963 Act would be applicable for condoning the delay—Held, no—Procedure provided in provisions of Ss. 13-A and 18-A is a complete Code by itself and the same does not admit the application of any provision of 1963 Act mentioned in S. 29(2) thereof—Rent Controller has no jurisdiction to condone the delay in filing an application to obtain leave to contest the application u/s 13-A for eviction—Application filed by tenant being barred by time, the Rent Controller is obliged to pass an order of eviction in the manner envisaged u/s 13-A—Petition allowed, order granting the leave to contest the petition set aside.

Held, that the provisions of the Limitation Act in respect of an application for condoning the delay to file an application for leave to contest an application filed under section 13-A(2) of the Act which is required to be filed within 15 days of the receipt of summons are not applicable. The position as pleaded by the petitioner is that the tenant-respondent did not file an application for seeking leave to contest the petition filed under section 13-A of the Act within the period of 15 days from the date of service of summons. The respondent, however, subsequently on 7th February, 2005 submitted an application for condoning the delay and for grant of leave to defend the case.

The application being barred by time, the Rent Controller had no jurisdiction to grant the leave to contest the petition and thereby impliedly condone the delay under section 5 of the Limitation Act. The said provision is inapplicable to the procedure provided in respect of right to recover immediate possession of 'residential' or 'scheduled building' in terms of Section 13-A of the Act. The provisions of the Limitation Act having been held to be inapplicable in the matter of procedure provided for seeking recovery of immediate possession of 'residential' or 'scheduled building' in terms of Section 13-A of the Act, the application for leave to contest was not liable to be granted. The application seeking leave to contest the petition under section 13-A of the Act not having been filed within time as has been stipulated in the statute itself as a condition precedent for the Rent Controller to proceed further to enquire the merits in defence, the Rent Controller is obliged under the constraining influence of compulsion statutorily cast upon it to pass an order of eviction in the manner envisaged under section 13-A of the Act.

(Para 10)

B. S. Jaswal, Advocate, *for the petitioner.*

None *for the respondent.*

JUDGMENT

S. S. SARON, J.

(1) This revision petition has been filed against the order dated 14th June, 2005 passed by learned Rent Controller, Chandigarh, whereby leave to contest the petition filed by the tenant-respondent under Section 13-A of the East Punjab Urban Rent Restriction Act 1949 (Act—for short) has been granted. The landlord-petitioner assails the said order granting leave to contest.

(2) The petitioner filed an application under Section 13-A of the Act on 29th September, 2004 seeking right to recover immediate possession of the premises in dispute on the ground that he is to retire from service of the Post and Telegraph Department on 30th June, 2005. Notice was issued and duly served on the respondent on 30th September, 2004 for 8th November, 2004. In the summons that were issued, it was mentioned that the tenant-respondent is required to get the leave to contest within a period of 15 days from the date of service

of summons. The counsel for the respondent signed the power of attorney on 31st October, 2004. However, since the report of the process server was not received, therefore again summons were issued and served on the tenant-respondent on 18th December, 2004 for appearance on 22nd December, 2004, but despite service of summons, the respondent did not file any application for leave to contest within a period of 15 days from the date of service of summons. Thereafter, the respondent moved an application on 7th February, 2005 for condoning the delay and for permission to grant leave to defend the case. It was stated in the application for condoning the delay as follows :—

1. That the applicant/respondent merely engaged the undersigned the counsel to appear on his behalf and as per his advise, the undersigned appeared but the respondent was reluctant to sign on the papers at the first instance and moreover, at present, the counsel for the respondent is not in possession of any document duly signed by the respondent that is why, the application for leave to defend the present petition could not be filed within time.
2. That today itself, the respondent did not contact his counsel but even then, as per the power of attorney given to the applicant, the undersigned have filed the present application. The respondent is very much in possession and is living with entire family there somehow or the other why he has not contacted his counsel, it is best known to him.”

Along with the application for condonation of delay, an application was also filed for grant of leave to defend the case which is to the following effect :—

- “1 That the above noted case is pending before this Hon’ble Court and is now fixed for today for filing the reply.
2. That the averments mentioned in the petition suit are not genuine one as the ground taken by the plaintiff to get the house vacated from the possession of the respondent is false one as he is not going to retire as mentioned in the said petition.

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3. That even the rate of rent is also disputed and the possession is with the respondent, consisting of two rooms along with kitchen and bathroom.
 4. That the defendant in his earlier suit pending in the Court of Civil Judge (Sr. Div.) Chandigarh mentioned that he is going to be evicted unlawfully and the present plaintiff filed their written statement where the dispute arose regarding the rate of rent and the said Hon'ble Court restrained the present plaintiff not to evict the defendant from the demised premises. Keeping in view the said order, the present plaintiff has filed the present petition under section 13-A of the Rent Act by giving false facts."

The learned Rent Controller,—*vide* his impugned order observed that the respondent had filed application for leave to defend on the ground that the petition under Section 13-A of the Act had been filed on false facts and the averments of the petitioner were not genuine. Besides, rate of rent was also disputed. It was also observed that the counsel for the respondent had stated that there were triable issues and, therefore, leave to defend, might be granted. Consequently, it was observed that as the points mentioned above can be decided only after the perusal of evidence of both the parties, therefore the respondent is granted permission to contest the petition.

(3) Despite the issuance of notice to the respondent, no one has put in appearance. Accordingly, he is proceeded against *ex parte*.

(4) Learned counsel for the petitioner has contended that the learned Rent Controller has recorded no reasons for condoning the delay in filing the application seeking leave to defend the petition. In any case, it is contended that the provisions of the Act being statutory in nature, the application for condonation of delay in filing the petition is not maintainable. Even otherwise, it is contended that the application for leave to defend does not disclose sufficient reasons to grant the relief. Therefore, the learned Rent Controller was liable to accept the application under Section 13-A of the Act and order the ejection of the respondent. It is contended that leave to defend cannot be granted on mere bald and vague assertions made by the counsel for the tenant-respondent which, even otherwise are not supported by an affidavit.

(5) I have given my thoughtful consideration to the contentions of the learned counsel for the petitioner.

(6) It is appropriate to note that Section 13-A of the Act has been inserted by amending Act No. 2 of 1985 with effect from 15th November, 1985. The said provision is a special provision for certain specified landlords. The provisions of Section 13-A of the Act may be noticed :—

“13-A. Right to recover immediate possession of residential or scheduled building to accrue to certain persons.—Where a specified landlord at any time, within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, supplies to the Controller along with a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside to recover possession of his residential building or scheduled building, as the case may be, for his own occupation, there shall accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract whether expressed or implied, custom or usage to the contrary a right to recover immediately the possession of such residential building or scheduled building or any part or parts of such building if it is let out in part or parts :

Provided that in case of death of the specified landlord, the widow or widower of such specified landlord and in the case of death of such widow or widower, a child or a grand child or a widowed daughter-in-law who was dependent upon such specified landlord at the time of his death shall be entitled to make an application under this Section to the Controller,—

(a) in the case of death of such specified landlord, before the commencement of the East Punjab Urban Rent

Restriction (Amendment) Act, 1985, within one year of such commencement ;

- (b) in the case of death of such specified landlord, after such commencement, but before the date of his retirement, within one year of the date of his death ;
- (c) in the case of death of such specified landlord, after such commencement and the date of his retirement, within one year of the date of such retirement ;

and on the date of such application the right to recover the possession of the residential building or scheduled building, as the case may be, which belonged to such specified landlord at the time of his death shall accrue to the applicant :

Provided further that nothing in this section shall be so construed as conferring a right, on any person to recover possession of more than one residential or scheduled building inclusive of any part or parts thereof if it is let out in part or parts :

Provided further that the Controller may give the tenant a reasonable period for putting the specified landlord, or as the case may be, the widow, widower, child, grand child or wowed daughter-in-law in possession of the residential building or scheduled building, as the case may be, and may extend such time so as not to exceed three months in the aggregate.

Explanation.— For the purposes of this section, the expression “retirement” means termination of service of a specified landlord otherwise than by resignation.”

Section 2(hh) of the Act defines specified landlord. The said definition is as follows :—

“specified landlord” means a person who is entitled to receive rent in respect of a building in his own account and who is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of a State.”

Section 18-A of the Act provides for special procedure for disposal of application under Section 13-A or Section 13-B of the Act. Section 13-B relates to right to recover immediate possession which is available to NRIs and is not relevant for the purpose of the present petition. Section 18-A of the Act read as under :—

“18-A. Special procedure for disposal of applications

under section 13-A or section 13-B—(1) Every application under Section 13-A or section 13-B shall be dealt with in accordance with the procedure specified in this section.

- (2) After an application under Section 13-A or 13-B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II.
- (3) (a) the summons issued under sub-section (2) shall be served on the tenant as far as may be in accordance with the provisions of Order V of the First Schedule of the Code of Civil Procedure, 1908. The Controller shall in addition direct that a copy of the summons be also simultaneously sent by registered post acknowledgement due addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and that another copy of the summons be affixed at some conspicuous part of the building in respect whereof the application under Section 13-A or section 13-B has been made.
- (b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent has refused to take delivery of the registered article and an endorsement is made by a process server to the effect that a copy of the summons has been affixed as directed by the Controller on a conspicuous part of building and the Controller after such enquiry as he deems fit, is satisfied about the correctness of the endorsement, he may declare that there has been a valid service of the summons on the tenant.

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- (4) The tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the residential building or scheduled building and/or non-residential building, as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed daughter-in-law of such specified landlord or the owner, who is a non-resident Indian in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant.
 - (5) The Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord or, as the case may be, the widow, widower, child, grand child or widowed daughter-in-law of such specified landlord or the owner, who is a non-resident Indian from obtaining an order for the recovery of possession of the residential building or scheduled building and/or non-residential building, as the case may be, under Section 13-A or Section 13-B.
 - (6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing on a date not later than one month from the date on which the leave granted to the tenant to contest and shall hear the application from day to day till the hearing is concluded and application decided.
 - (7) Notwithstanding anything contained in this Act, the Controller shall while holding an inquiry in a proceeding to which this section applies including the recording of evidence, follow the practice and procedure of a Court of Small Causes.

- (8) No appeal or second appeal shall lie against an order for the recovery of possession of any residential building or scheduled building and/or non-residential building, as the case may be, made by the Controller in accordance with the procedure specified in this Section :

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

- (9) Save as otherwise provided in this section, the procedure for the disposal of an application for eviction under Section 13-A or Section 13-B shall be the same as the procedure for the disposal of applications by the Controller.”

Section 18-B of the Act reads as under :—

“18-B. Section 18-A to have over-riding effect.—Section 18-A or any rule made for the purpose thereof shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force.”

Sub-section (2) of Section 18-A of the Act provides for issuance of service of summons on the tenant in the form specified in Schedule II. The said form in Schedule II is as follows :—

SCHEDULE II

[See sub-section (2) of Section 18-A]

Form of summons in a case where recovery of possession of Residential building or schedule building is prayed for under Section 13-A or Section 13-B of the East Punjab Urban Rent Restriction Act, 1949.

(Name, description and place of residence of the tenant)

Whereas Shri _____ has filed an application (a copy of which is annexed) for your eviction from _____ (here insert the particulars of the residential building or scheduled building and/or non-residential building under Section 13-A of Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 ;

Now, therefore, you are hereby summoned to appeal before the Controller within fifteen days of the service thereof and to obtain the leave of the Controller to contest the application for eviction under Section 13-A or Section 13-B of the said Act, in default whereof, the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said residential building or scheduled building and/or non-residential building.

Leave to appear and contest the application may be obtained on an application to the Controller supported by an affidavit as is referred to in sub-section (5) of the Section 18-A of the said Act.

Given under my hand and the seal this.....day of.....19

Controller.”

A perusal of the afore noticed provisions evidently show that for a specified landlord i.e. a person who is entitled to receive rent in respect of a building in his own account and who is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of a State, a summary procedure for getting possession of their tenanted premises has been provided. In fact, the aforementioned provisions of the Act are by themselves a complete code providing for filing of application for seeking immediate possession of premises by a 'specified landlord' and the procedure for their disposal. There is no provision provided therein for condonation of delay in filing an application for seeking leave to contest an application for eviction filed under Section 13 A of the Act. The question, however, that has been raised by the learned counsel for the petitioner and requires to be considered is whether the tenant could file an application beyond the period of fifteen days provided for in the summons and seek condonation of delay of the same. As is already noticed, Schedule II which contains the form for issuance of summons requires the tenant to appear before the Rent Controller within fifteen days of the service thereof and to obtain leave of the Controller to contest the application filed for eviction under Section 13-A and in default whereof, the applicant is entitled at any time after the expiry of the said period of fifteen days to obtain an order of his eviction from the tenanted

premises, to which the Act applies. The question whether the provisions of Section 5 of the Limitation Act 1963 would be applicable for condoning the delay in approaching the Court was considered by a Division Bench of this Court in **Ashwani Kumar Gupta versus Shri Siri Pal Jain (1)**. After referring to the provisions of Section 13-A of the Haryana Urban (Control of Rent and Eviction) Act 1973 (Haryana Act - for short) which is paramateria to Section 13-A and Section 18-A of the Act as also the form for issuance of summons, it was held that Section 13-A of the Haryana Act is a code unto itself and it constitutes special provisions not only viz-a-viz other provisions of the Haryana Act but also any other law for the time being in force. As such, it was observed that this naturally displaces the applicability of any other law which is inconsistent with the provisions of Section 13-A read with the prescribed form for issuance of summons under Section 13-A(2) of the Haryana Act. Therefore, neither the tenant can invoke the provisions of Limitation Act, 1963 nor can the Controller use Section 5 thereof for condoning the delay in filing of an application under Section 13-A(4) of the Haryana Act. As a logical corollary, it was observed that it must be held that the Rent Controller does not have the discretion and jurisdiction to condone the delay in filing an application to obtain leave of the Controller to contest the application for eviction or to extend the period specified in the form and if at all the Legislature wanted to make provisions of Limitation Act applicable or confer some element of discretion upon the Rent Controller nothing prevented it from incorporating an express provisions to that effect. In the absence of such provision, it was observed by their Lordships of the Division Bench that they did not find any rhyme or reason to import the applicability of provisions of Limitation Act or implied vestige on discretion with the Rent Controller to condone the delay in filing the application or to extend the period of 15 days.

(7) The view in Ashwani Kumar Gupta's case (*supra*) of the Division Bench was, however, held to be *per incuriam* by a learned Single Judge of this Court in **S. Manohar Singh versus S. Arithamman Singh Dhillon (2)**. Reference was made to the decision of the Hon'ble Supreme Court in the case of **Mukri Gopalan versus Cheppilat Puthanpurayil Aboobacker (3)**. Besides, a

(1) (1998-3) PLR 170

(2) (2003-1) PLR 231

(3) AIR 1995 S.C. 2272

reference was also made to the Division Bench judgment in Ashwani Kumar Gupta's case (*supra*). It was observed that the Division Bench had held that Section 5 of the Limitation Act was not applicable to the proceedings under the Act and for that reliance had been placed on the majority view of the Full Bench judgment in **Jokhim Fernandez versus Amina Kunhi Umma** (4) and also upon the decision in the case of **The Officer on Special Duty (Land Acquisition) and another versus Shah Mani Lal Chandulal etc.** (5) wherein it was held that the Land Acquisition Collector is not a Court and, therefore, the provisions of Section 29(2) of the Limitation Act, 1963 cannot be applied in view of the specific limitation prescribed in proviso to Section 18(2) of the Land Acquisition Act. It was noticed that in the said judgment of the Hon'ble Supreme Court the majority view of the Kerala High Court in Jokhim Fernandez's case (*supra*) was quoted with approval. However, neither the Supreme Court's judgment in Mukri Gopalan's (*supra*) nor the provisions of Section 29(2) of the Limitation Act were brought to the notice of the Division Bench in S.Manohar Singh's case (*supra*) and accordingly it was held that the said judgment of the Division Bench is law per incuriam. Accordingly, it was held that the provisions of Section 5 of the Limitation Act, 1963, would apply to proceedings under the Act in view of the judgment in Mukri Gopalan's case (*supra*). Besides, also the fact that Mukri Gopalan's case had approved the minority view of the Kerala High Court in Jokhim Fernandez's case (*supra*) whereas the Division Bench of this court in Ashwani Kumar Gupta's case (*supra*) have approved the majority view of the said Full Bench of the Kerala High Court. However, after the pronouncement of the judgment in S.Manohar Singh's case, the Hon'ble Supreme Court has considered the judgment in Mukri Gopalan's case in the context of the provisions of the Maharashtra Rent Control Act, 1999 (Maharashtra Rent Act— for short) in the case of **Parkash H. Jain versus Marie Friends (Ms.)** (6). The appellant in the said case was allegedly allowed under a deed executed on 10th July, 1999 by the respondent therein, to use the disputed property as a licensee for a

(4) AIR 1974 Kerala 162

(5) J.T. 1996 (2) S.C. 278

(6) (2003) 8 S.C.C. 431

certain period. On 9th May, 2001, the respondent in the said case filed an application under Section 24 read with Section 42 of the Maharashtra Rent Act before the Competent Authority (Rent Act) for eviction of the said appellant on the ground of expiry of leave/licence period and user of the property for purposes not permitted under the licence. Summons to the appellant were served on 19th May, 2001 and the appellant entered appearance on 29th May, 2001. However, not on that date but on 10th August, 2001 the said appellant filed an application for leave to defend the proceedings. That application was accompanied by an application for condonation of delay. The competent authority by its order dated 20th September, 2001 allowed the application for condonation of delay. Thereafter, on 17th January, 2002, it considered and allowed the application for leave to defend the eviction proceedings. A learned single Judge of the Hon'ble Bombay High Court, however, held that there was no provision under the Maharashtra Act or any other law empowering the competent authority to condone the delay in filing of such an application and both the orders of the competent authority were set aside. Before the Hon'ble Supreme Court, it was contended on behalf of the appellant therein that the competent authority was one having all the trappings of a Court and, therefore, a "Court" in the eye of law. Consequently, it possessed inherent powers to condone the delay as was available to any other Court under the CPC, particularly when Sections 42 and 43 of the Maharashtra Act were indicative of the applicability of the provisions of the CPC. It was also contended that appearance within 30 days was sufficient compliance of Section 43(4)(a) of the Maharashtra Act and it was not necessary to file within that period also the application for leave to defend. After consideration of the matter, it was held by the Hon'ble Supreme Court that the questions of the nature raised had to be considered not only on the nature and character of the authority, whether it is a Court or not but also on the nature of powers conferred on such authority or Court, the scheme underlying the provisions of the Act concerned and the nature of powers, the extent thereof or the limitations, if any contained therein with particular reference to the intention of the legislature as well, found expressed therein. It was held that there is no such thing as any inherent power of Court to

condone the delay in filing proceedings before a Court/authority concerned unless the law warrants and permits it, since it has tendency to affect the rights accrued to one or the other party under the statute concerned. After referring to the Maharashtra Rent Act it was observed that Chapter VIII thereof itself has a caption, "Summary disposal of certain applications". Besides, it was noticed that Section 39 reads that the provisions of Chapter VIII or any other rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force. Therefore, it was observed that there was hardly any scope to have recourse to other provisions in the very Act or any other law when particularly there are specific and clear provisions of stipulation in Chapter VIII itself as to how a particular situation has to be handled and what are the powers of the authorities constituted for the purpose of Chapter VIII of the Maharashtra Rent Act. A reference was made to provisions of Section 43(4) of the Maharashtra Rent Act. The said provisions is para materia with the provisions of Section 13-A and Section 18-A of the Act in the case in hand and it was held by the Hon'ble Supreme Court as follows :—

- "12. The provisions of Chapter VIII stand apart, distinctly and divorced from the rest of the Act, except to the extent indicated therein itself and for that matter has been given an overriding effect over any other provisions in the very Act or any other law for the time being in force, through for enforcement of other remedies or even similar remedies under the provisions other than Chapter VIII, altogether different procedure has been provided for. It is unnecessary to once again refer to the special procedure provided for in Chapter VIII, but the various provisions under Chapter VIII unmistakably indicate that the competent authority constituted thereunder is not "Court" and the mere fact that such authority is deemed to be Court only for limited and specific purposes, cannot make it a Court for all or any other purpose and at any rate for the purpose of either making the provisions of the

Limitation Act, 1963 attracted to proceedings before such competent authority or clothe such authority with any power to be exercised under the Limitation Act. It is by now well settled by innumerable judgements of various Courts including this Court that when a statute enacts that anything shall be deemed to be some other thing the only meaning possible is that whereas the said thing is not in reality that something, the legislative enactment requires it to be treated as if it is so. Similarly, though full effect must be given to the legal fiction, it should not be extended beyond the purpose for which the fiction has been created and all the more, when the deeming clause itself confines, as in the present case, the creation of fiction for only a limited purpose as indicated therein. Consequently, under the very scheme of provisions enacted in Chapter VIII of the Act and the avowed legislative purpose obviously made known patently by those very provisions, the competent authority can by no means be said to be "Court" for any and every purpose and that too for availing of or exercising powers under the Limitation Act, 1963.

13. The competent authority constituted under and for the purposes of the provisions contained in Chapter VIII of the Act is merely and at best a statutory created for a definite purpose and to exercise, no doubt powers in a quasi-judicial manner but its powers are strictly circumscribed by the very statutory provisions which conferred upon it those powers and the same could be exercised in the manner provided therefor and subject to such conditions and limitation stipulated by the very provision of law under which the competent authority itself has been created. Clause (a) of sub-section (4) of Section 43 mandates that the tenant or licensee on whom the summons is duly served should contest the prayer for eviction by filing, within thirty days of services of summons on him, an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain the leave of the competent authority to contest the application for eviction as provided therefor. The

legislature further proceeds to also provide statutorily the consequences as well laying down that in default of his appearance pursuant to the summons or obtaining such leave, by filing an application for the purpose within the stipulated period, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground so stated by him in his application for eviction. It is only when leave has been sought for and obtained in the manner stipulated in the statute that a hearing is envisaged to be commenced and completed once again within the stipulated time. The net result of an application/affidavit with grounds of defence and leave to contest not having been filed within the time as has been stipulated in the statute itself as a condition precedent for the competent authority to proceed further to enquire into the merits of the defence, the competent authority is obliged, under the constraining influence of the compulsion statutorily cast upon it, to pass orders of eviction in the manner envisaged in clause (a) of subsection (4) of Section 43 of the Act. The order of the learned Single Judge of the High Court under challenge in this appeal is well merited and does not call for any interference in our hands." (Emphasis added).

(8) In **Gopal Sardar versus Karuna Sardar (7)** in a case relating to the West Bengal Land Reforms Act, 1955, it was held that Section 5 of the Limitation Act is inapplicable as the procedure was in the nature of a suit. It was held that the words "application" and "suit" have been defined in Section 2(b) and Section 2(l) of the Limitation Act. "Application", it was held, includes a petition but "suit" does not include an appeal or an application. Section 8 of the West Bengal Land Reforms Act provides for pre-emption and is a statutory right. It was held that the said Act is a self contained code, which provides to enforce the right of pre-emption, forum is provided, procedure is prescribed, remedies including appeals and revisions are provided, penalties are indicated for non-compliance with the order and powers

are given for restoration of the land. Further period of limitation, it was observed, is also specifically prescribed to make an application under Section 8 of the West Bengal Land Reforms Act and for preferring appeals or revisions under the provisions of the said Act. It was observed that in the second proviso to Section 14-II, Section 14-O(1), Section 19(2) and Rule 26 of the Rules framed under the West Bengal Land Reforms Act either Section 5 of the Limitation Act or its principles had been expressly and specifically incorporated. In contrast, although Section 8 of the West Bengal Land Reforms Act prescribes the period of limitation for applying to enforce pre-emption rights, it did not speak of application of Section 5 of the Limitation Act or its principles. Therefore, it was held that it necessarily follows that the legislature did not intend to give benefit of Section 5 of the Limitation Act having regard to the nature of right of pre-emption.

(9) The applicability of the provisions of the Act, therefore, is to be judged not from the terms of the Limitation Act but by adverting to the provisions of the Act relating to filing of a petition under Section 13-A of the Act for seeking immediate possession of a 'residential' or 'scheduled building' for which a right accrues to certain persons. It is to be seen by adverting to the provisions and where the procedure provided therein is a complete code in itself, it does not then admit the application of the provisions of the Limitation Act mentioned in Section 29(2) thereof. A reference to the provisions of Sections 13-A and 18-A of the Act would show that the procedure provided regarding right to recover immediate possession of 'residential' or 'scheduled building', is a complete code by itself and the same does not admit the application of any provision of the Limitation Act mentioned in Section 29(2) thereof. It is also appropriate to note that in terms of Section 18-B of the Act, it is provided that Section 18-A or any rule made for the purpose thereof, shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force. This also would exclude the applicability of the Limitation Act. The procedure prescribed for seeking recovery of immediate possession of 'residential' or 'scheduled building' in terms of Section 13-A of the Act, would not admit the applicability of the provisions of the Limitation Act. In fact, in Ashwani Kumar Gupta's case (*supra*) also, it was held that the procedure provided under Section 13-A of the Haryana Act is a code unto itself and it constitutes special provisions not only *viz-a-viz* other

provisions of the Haryana Act but also any other law which is inconsistent with the provisions of Section 13-A and Section 18-A of the Act. As such, the tenant cannot invoke the provisions of the Limitation Act for seeking condonation of delay in filing the application. Besides, the Rent Controller cannot condone the delay in filing an application for seeking leave to contest an application for eviction under Section 13-A of the Act.

(10) The position, therefore, is that the provisions of the Limitation Act in respect of an application for condoning the delay to file an application for leave to contest an application filed under Section 13-A(2) of the Act which is required to be filed within 15 days of the receipt of summons, are not applicable. The position as pleaded by the petitioner is that the tenant-respondent did not file an application for seeking leave to contest the petition filed under Section 13-A of the Act within the period of 15 days from the date of service of summons. The respondent, however, subsequently on 7th February, 2005 submitted an application for condoning the delay and for grant of leave to defend the case. The application being barred by time, the Rent Controller had no jurisdiction to grant the leave to contest the petition and thereby impliedly condone the delay under Section 5 of the Limitation Act. The said provision is inapplicable to the procedure provided in respect of right to recover immediate possession of 'residential' or 'scheduled building' in terms of Section 13-A of the Act. The provisions of the Limitation Act having been held to be inapplicable in the matter of procedure provided for seeking recovery of immediate possession of 'residential' or 'scheduled building' in terms of Section 13-A of the Act, the application for leave to contest was not liable to be granted. The application seeking leave to contest the petition under Section 13-A of the Act not having been filed within time as has been stipulated in the statute itself as a condition precedent for the Rent Controller to proceed further to enquire the merits in defence, the Rent Controller is obliged under the constraining influence of compulsion statutorily cast upon it to pass an order of eviction in the manner envisaged under Section 13-A of the Act.

(11) Consequently, this Civil Revision Petition is allowed and the impugned order dated 14th June, 2005 is set aside.