

March 2021 | Vol. 51

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SUPREME COURT ENDS 'EXTENSION OF LIMITATION'



SUO MOTO WRIT (CIVIL) NO. 3 OF 2020

IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION

It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is 'Vigilantibus Non Dormientibus Jura Subveniunt' which means that the law will assist only those who are vigilant about their rights and not those who sleep over them

Article 141,142 & Limitation Act ,1963

- The COVID-19 pandemic has forced unprecedented measures on the movement of people across the country, thereby also bringing the functioning of courts and tribunals to a grinding halt. Considering the scenario, where courts have become physically inaccessible, the Supreme Court of India on March 23, 2020, took *suo-moto* cognizance of a petition for an extension of limitation and passed an order extending the limitation prescribed either under the general law or special laws, whether condonable or not, for filing any petitions, applications, suits, appeals, and all other proceedings in all courts and tribunals from March 15, 2020, until the passing of further orders.
- This extraordinary order was passed by the Hon'ble Supreme Court in the exercise of its powers under Articles 142 & 141 of the Constitution of India.
- Article 142 of the Constitution, confers on the Hon'ble Supreme Court a plenipotentiary power to pass any order so as to do complete justice in any cause or matter pending before it.
- Further, the phrase 'complete justice' is quintessential, as the existence of the same shows the amplitude and the all-pervasive nature of the power vested on the Hon'ble Court to ensure that 'complete justice is done and this has to be viewed in contradistinction to the word 'justice'.
- This order of the Hon'ble Court has come after its order dated 20th March 2020, in the case of **Union of India vs. P. D. Sunny & Ors**, wherein the Hon'ble Court granted a stay on the orders of the Hon'ble High Court of Allahabad and High Court of Kerala precluding recovery of tax & dues.
- Though on various occasions Hon'ble Supreme Court has extended the statutory time limit (**e.g. Directorate of Enforcement vs Ashok Kumar Jain AIR 1998 SC 631**), however, it was the very first time when the Hon'ble Court had passed such a blanket order extending the limitation period regarding all proceedings whether under state law/central law or general law/special law.
- Such order was not only necessary to safeguard the interest of the parties entangled in a suit/appeal/proceeding, but also, to protect courts/tribunals from the flood of applications that parties would have filed seeking condonation of delay in their respective cases on account of the outbreak of Covid-19 irrespective of the fact that whether or not such application can be made under the law concerning their case.
- This view gets reinforced by the perusal of Section 29(2) of the Limitation Act, 1963. The bare perusal of the section is 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.”

- The provisions of section 29(2) of the Limitation Act create a statutory presumption of express inclusion of the provisions of section 4 to 24 of the Limitation Act into the provisions of the Special or Local law.
- Such a statutory presumption cannot be displaced or rebutted by a mere assumption.
- ***In view of the law laid down by the Supreme Court, such a statutory presumption can be displaced, rebutted, or refuted by inference of express exclusion, in the absence of a clear and specific statutory provision, only in case it is evident or is established that the provisions of section 4 to 24 of the Limitation Act when read into or as part of the special or local law cannot exist or stand together in the same statute on account of apparent conflict and contradictions.***
- In light of the above discussion, it becomes essential to peruse the following provisions of the Limitation Act, 1963, through which, in different cases, petitioners would have taken support to justify their application for condonation of delay:

5. Extension of prescribed period in certain cases

“Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.— The fact that the appellant or the applicant was misled by any order, practice, or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

Chronology of Orders

23.03.2020

- Ordered that a period of limitation in all **petitions/applications/suits/appeals/all other proceedings** within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State) proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further orders.

06.05.2020

- All periods of limitation prescribed under the *Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881* shall be extended with effect from 15.03.2020 till further orders.
- In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.

10.07.2020

- While observing that Section 29A of the Arbitration Act *does not provide for 'limitation', but rather fixes a time period for passing an arbitral award, the Supreme Court directed that Orders dated 23.03.2020 and 06.05.2020 shall also apply to the time limit prescribed under Section 29A of the Arbitration Act.*
- A similar observation was made for Section 23(4) of the Arbitration Act *which provides for a time period of 6 months for completion of pleadings in an arbitration proceeding.*
- Thus, vide Order dated 10.07.2020, the time limits prescribed under Section 29A and 23(4) of the Arbitration Act were also extended by the Supreme Court in terms of its previous Orders dated 23.03.2020 and 06.05.2020.
- The Supreme Court has also extended the time period prescribed under Section 12A of the Commercial Courts Act, 2015, *which provided for completing the process of compulsory pre-litigation mediation and settlement within three months, with a provision for extension of further two months with the consent of the parties.*
- With respect to this provision, the Court has also granted an extension for a period of 45 days to be calculated from the day when the lockdown is lifted.

Current Scenario

- In a case, **Sagufa Ahmed & Ors. V. Upper Assam Plywood Products Pvt. Ltd. & Ors** the Three-Judge Bench of the Hon'ble Supreme Court headed by Chief Justice S.A. Bobde has clarified *the implication of the Court's March 23, 2020 order on an application filed for condonation of delay and stated that claims cannot be made to benefit from the order passed by the Court on March 23, 2020 (extending period of limitation), for also enlarging the period up to which delay can be condoned.*
- In December 2020, a two-judge bench of the SC had said that the suo moto extension of limitation was still in force.
- AG Suggests Exclusion Of 15.03.2020 To 14.03.2021 From Limitation Period, Thereafter the Supreme Court on 04.03.2021 reserved orders on the lifting of the extension of the limitation period for filing of cases granted by the Court in March last year on account of the COVID-19 pandemic and the national lockdown.
- The Supreme Court as on 08.03.2021 passed an order ending the extension of limitation while stating that, *'Though we have not seen the end of the pandemic, there is a considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode.'*
- In computing, the period of limitation for any suit, appeal, application, or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as of 15.03.2020, if any, shall become available with effect from 15.03.2021
- A bench comprising Chief Justice of India SA Bobde, Justices L Nageswara Rao, and S Ravindra Bhat disposed of the impugned suo moto case with the following directions:
 - ***In computing, the period of limitation for any suit, appeal, application, or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as of 15.03.2020, if any, shall become available with effect from 15.03.2021***
 - ***In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021.***
 - ***In the event, the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.***

- ***The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015, and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.***
- ***The Government of India shall amend the guidelines for containment zones, to state -"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as time-bound applications, including for legal purposes, and educational and job-related requirements".***

Impact of the Order

The pervasive effect of this order can be understood, if we pursue Section 15(1) of the Limitation Act, 1963, which reads as under:

15. Exclusion of time in certain other cases

"(1) In computing the period of limitation of any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded."

That's why, it is apparent that the relief under the Order extends to all proceedings including proceedings initiated under Special laws, viz. Income Tax Act, 1961; GST Act, 2017; Companies Act 2013; Customs Act, 1962, etc.

QUESTIONS ?

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