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High Courts do not have the power to condone the delay in filing an appeal beyond the period stipulated under Section 42 of the Prevention of Money Laundering Act, 2002

A Division Bench of the Bombay High Court (“**Bombay HC**”) has, in *The Assistant Director, Directorate of Enforcement vs. The Branch Manager, The Goa State Co-op Bank Limited*¹ held that the proviso to Section 42 of the Prevention of Money Laundering Act, 2002 (“**PMLA**”) expressly excludes the applicability of Section 5 of the Limitation Act, 1963 (“**Limitation Act**”) such that a High Court cannot condone the delay in filing an appeal beyond the stipulated period of 120 (one hundred and twenty) days under Section 42 of the PMLA.

Brief facts

The Assistant Director, Directorate of Enforcement, Surat (“**Appellant**”) filed a complaint under Section 5(5) of the PMLA before the Adjudicating Authority (“**AA**”) in respect of a provisional attachment order dated July 17, 2017 (“**PAO**”) passed under Section 5(1) of the PMLA attaching the property of the Goa State Co-op Bank Limited (“**Respondent**”). By its order dated December 28, 2018, the AA confirmed the PAO under Section 8 of the PMLA (“**AA Order**”). Being aggrieved by the AA Order, the Respondent preferred an appeal before the Appellate Tribunal under Section 26 of the PMLA. By an order dated July 4, 2018, the Appellate Tribunal allowed the appeal and set aside the PAO as well as the AA Order (“**AT Order**”).

Thereafter, the Appellant challenged the AT Order under Section 42 of the PMLA before the Gujarat High Court (“**Gujarat HC**”) and filed an application seeking condonation of delay of 5 (five) days in filing the appeal. While the delay was condoned by the Gujarat HC, it was realised that by virtue of the explanation (ii) of Section 42 of PMLA, the appeal would lie before the Bombay HC. Accordingly, the appeal filed before the Gujarat HC was withdrawn, and a first appeal was filed by the Appellant before the Bombay HC after a delay of 132 (one hundred and thirty-two) days from the date of withdrawal. In these circumstances, the Appellant filed the present interim application seeking condonation of delay of 132 (one hundred and thirty-two) days (“**Interim Application**”).

Before the Bombay HC, the Appellant *inter alia* contended that: (a) the High Court would have the power to condone the delay even beyond the period of 120 (one hundred and twenty) days prescribed under the PMLA since the provisions of Section 42 of the PMLA do not preclude or expressly exclude the application of Section 5 of the Limitation Act; and (b) as per Section 29 (2) of the Limitation Act, where any special or local law *inter alia* prescribes a period of limitation different from the period prescribed by the Schedule of the Limitation Act, the provisions contained in Sections 4 to 24 of the Limitation Act will apply only when the same are not expressly excluded by such special or local

¹ 2025 SCC OnLine Bom 77

law; (c) In *Faizal Hasamali Mirza alias Kasib vs. State of Maharashtra & Anr*² (“**Faizal Mirza**”), the Bombay HC considered the provisions of Section 21 of the National Investigation Agency Act, 2008 (“**NIA Act**”) which are similar to the provisions of Section 42 of the PMLA and held that the court has the power to condone the delay beyond the period stipulated therein.

Issue

Whether the High Court has the power to condone the delay in filing an appeal beyond the period prescribed under section 42 of the PMLA?

Findings and analysis

The Bombay HC dismissed the Appellant’s Interim Application and *inter alia* held as follows:

1. under Section 42 of the PMLA, an appeal is required to be filed within a period of 60 (sixty) days (initial period). However, pursuant to the proviso to Section 42 of the PMLA, the High Court may, upon sufficient cause being shown, condone the delay for a further period not exceeding 60 (sixty) days (extended period). To hold that the High Court can entertain an appeal even beyond the extended period stipulated in the proviso to Section 42 would render the words ‘*not exceeding sixty days*’ otiose.
2. Section 42 of the PMLA need not expressly exclude Section 5 of the Limitation Act to render it inapplicable to Section 42 of the PMLA. It would suffice if the language of the statute clearly indicates that Section 5 of the Limitation Act has been excluded. The words “*within a further period not exceeding sixty days*” used in the proviso to Section 42 of the PMLA expressly excludes the applicability of Section 5 of the Limitation Act to an appeal filed thereunder.
3. In *Faizal Mirza*, the court came to the finding that it has the power to condone the delay beyond the stipulated period since an appeal filed by an accused under Section 21 of the NIA Act would be a part of the right to life and liberty as enshrined in Article 21 of the Constitution of India. Accordingly, the word ‘shall’ in Section 21(5) is required to be read as ‘may’ and is directory in nature. Thus, the language of Section 21 of the NIA Act and Section 42 of the PMLA are materially different.

Conclusion

This judgment holds that High Courts do not have the power to condone the delay in filing an appeal beyond the stipulated period of 120 (one hundred and twenty) days prescribed under Section 42 of the PMLA. This judgment also clarifies that the extension provision prescribed in Section 5 of the Limitation Act (including for any appeals) would not apply to appeals under Section 42 of the PMLA since the language of Section 42 of the PMLA itself clearly reflects the legislature’s intent to restrict any extension of the limitation period. Consequently, parties seeking to challenge an order under Section 42 of the PMLA must mandatorily comply within the statutory period envisaged therein.

² 2023 SCC OnLine Bom 1936

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