CASE NO.:
Appeal (civil) 4662-4663 of 1999

PETITIONER:
V.M. Salgaocar & Bros.

RESPONDENT:
Board of Trustees of Port of Mormugao & Anr

DATE OF JUDGMENT: 31/03/2005

BENCH:
ASHOK BHAN & A.K. MATHUR

JUDGMENT:
J U D G M E N T

BHAN, J.

These appeals by grant of leave are directed against the common judgment and order of affirmation passed by the High Court of Bombay at Goa in First Appeal No.27 of 1992 and appeal from order No.69 of 1991. The suit filed by the plaintiff-appellant (hereinafter referred to as 'the appellant') was dismissed by the District Judge, South Goa, Mormugao by judgment dated 30th December, 1991 on the ground that the same was not maintainable for want of notice under Section 120 of the Major Port Trust Act, 1963 (hereinafter referred to as 'the Act') and that the suit was barred by limitation. This judgment was challenged in First Appeal No.27 of 1992. Prior to that District Judge vide order dated 30th April, 1991, had come to the conclusion that Section 120 of the Act was applicable to the present case. Against this order the appellant had filed an appeal from order 69 of 1991. The two appeals having arisen from the same suit were heard together and disposed of by the High Court by a common judgment. We propose to do the same.

We would referring to the facts necessary to dispose of the appeals as found by the High Court on which there is no dispute between the counsel for the parties.

Loading operation in relation to iron ore at Mormugao Port was sought to be regulated by the Mormugao Port (Shipment of Ore and Pellets from Mechanised Ore Handling Plant at berth no.9 and related matters) Regulations, 1979. Respondent No.1-The Board of the Trustees of Mormugao (hereinafter referred to as 'the Board') was empowered to divide the storage area into plots of a size sufficient to hold approximately the quantity required to be loaded and to stipulate minimum tonnage turn over for each plot to qualify for allotment of plot. The appellant who is engaged in exporting iron ore were also allotted one such plot. Rates were prescribed per tonne of iron ore, handled through Mechanised Ore Handling Plan (MOPH) and revised from time to time. By a notification dated 26th October, 1983, the Board increased the handling rate to Rs.28.22 per tonne and fixed minimum rental surcharge of Rs.8.80 per tonne. The Board did this to ensure proper utilisation of berth and MOPH as it was found that there was under utilisation of the same by exporters. The justification for imposing the surcharge of Rs.8.80 per tonne was that the Board had to pay Rs.260.30 lakhs to the contractors for dredging a channel and widening the channel, so that all sea going vessels could use berth no.9. It is further the Board's case that Rs.7.16 lakhs towards income tax and Rs.20.00 lakhs towards estimated liability arising out of the contract labour legislation had to be disbursed. As the Board had incurred heavy losses on account of level of utilisation of MOPH between Rs.55.00 lakhs tonnes to 60.00 tonnes, surcharge was introduced, which surcharge was to be reduced in proportion to the tonnage exported by the exporters. This surcharge was subject to rebate for the plot allottee holding the plot for minimum period of one year on the following pattern:-

On achieving a level of turnover
Rebate (Rs. Per tonne)
6.25 times of nominal plot capacity
1.00
6.50 times of nominal plot capacity
2.00
6.75 times of nominal plot capacity
3.00
7.00 times of nominal plot capacity
4.00
7.25 times of nominal plot capacity
5.20
7.50 times of nominal plot capacity
6.40
7.75 times of nominal plot capacity
7.60
8.00 times of nominal plot capacity
8.80

Appellant had challenged the levy of surcharge of Rs.8.80 per tonne being illegal, without jurisdiction null and void as it was not co-related to any service rendered by the Board and that the levy was falling outside the purview of Section 48 of the Act. The High Court rejected the said challenge relying upon a judgment of this Court in M/s. V.S. Dempo & Co. Pvt. Ltd. Vs. Board of Trustees and Another [1994 Suppl. (2) SCC 349]. An exporter had earlier challenged the levy of surcharge with graded system of rebates in a writ petition before the High Court. The writ petition was dismissed and the order of the High Court was upheld in appeal filed by the writ petitioner. In view of the fact that the power to levy surcharge had already been upheld by this Court the counsel for the appellant did not argue this point before us. Appellant's case further is that in the event the validity of levy of surcharge is upheld, the action of the Board for refusing full rebate to the appellant and in collecting surcharge of Rs.7.80 is illegal, arbitrary, unreasonable, contrary to the Act and Rules and Regulations as well as Article 14 of the Constitution on the ground that the surcharge of Rs.7.80 per tonne has been levied without taking into consideration lapses on the part of the Board as well as non-consideration of shortfall in export of the appellant's due to the factors beyond their control. The appellant had also raised dispute relating to the extent of alleged storage plot and the turnover required to be achieved by the appellant during the year to be eligible for full rebate under Notification dated 26th October, 1983. According to the appellant it was entitled to the full rebate on 8,66,192 metric tonnes. The lapses pointed out on the part of the Board were stated to be failure of its obligation by providing barge unloaders to the appellant, commensurate with the appellant's export commitments, insufficient barge allocation, break-down of reclaimer no.2, port and dock workers strike etc. According to the appellant, considering the plot capacity of 1,08,274 tonnes, the turnover of 8,66,192 metric tonnes would entitle the appellant a full rebate at the rate of Rs.8.80 per tonne which comes to Rs.62,46,548.10 paise, instead of Rs.7,09,835/-, which the Board had agreed to pay. As per appellant, it had in fact exported through berth no.9, 10,52,910 tonnes and even if nominal capacity of the plot was taken as 1,50,000 tonnes, the appellant would be entitled for full rebate at the rate of Rs.8.80 per tonne, having turned over its plot of 1,50,000 tonnes. This calculation was based upon the appellant's plea that they must be deemed to have exported through berth no.9, 3,14,000 tonnes, which the appellant was prevented from loading through berth no.9 due to insufficient barge allocations, break-down of reclaimer no.2 and port and dock workers strike, which amounted to 90,000 tonnes, 70,000 tonnes and 1,54,000 tonnes respectively, thus totalling 3,14,000 tonnes. Alternatively, the appellant claim that the Board had committed breach of statutory duty by failing to provide adequate barrage unloading timings as prescribed by the regulations and by refusing to permit them to load its vessels by trans shippers when the

reclaimer of the Board was broken down.

Another challenge put by the appellant was that, the suit against Central Government or the State Government could be filed within 3 years after giving notice under Section 80 of Code of Civil Procedure. The provision of shorter period of limitation of 6 months under Section 120 of the Act to the Board and its officers who are performing duties and functions similar to the Union and the State Government was irrational, unreasonable and unrelated to the object sought to be achieved by the Act and as such, Section 120 of the Act was unconstitutional and violative of the fundamental rights guaranteed by Article 14 of the Constitution. It was further pleaded that in case the Court finds that Section 120 of the Act was valid, letter dated 12th April, 1984 addressed by it to the defendant Board, be treated as notice under Section 120 of the Act. In short, the appellant prayed for a declaration that the minimum rental surcharge levied by Notification dated 26th October, 1983 bearing No.3-GA(8)/83 issued by the Board be declared as illegal, unconstitutional, null and void; to declare the recovery to the tune of Rs.62,46,548.10 paise as illegal being unconstitutional, null and void; and to pay damages/compensation being equivalent to full rebate aggregating to the sum of Rs.62,46,548.10 paise and to declare Section 120 of the Act as unconstitutional, null and void.

Another fact which needs to be mentioned is that the Board had admitted in their letter dated 6th April, 1984 that the appellant was entitled to receive rebate of Rs.7,09,835/- as the appellant had turned over the plot for 6.39 times and were ready and willing to pay over the said amount of Rs.7,09,835/- to the appellant. In view of the admission made by the Board, the appellant sought judgment on admission for the said sum of Rs.7,09,835/- under Order 12, Rule 6 of C.P.C. The Board in its reply to the application under Order 12, Rule 6 stated that the Board had no objection to the passing of a decree for Rs,7,09,835/- in favour of the appellant but objected to the payment of 18% interest on the said amount with effect from 6.4.84. In this view of the matter, by judgment on admission under Order 12, Rule 6 C.P.C. dated 12.8.87 the appellant's claim to the tune of Rs.7,09,835/- was decreed. The question of payment of interest and costs was left to be decided at the time of final disposal of the suit.

The Board in its defence took up the plea that the appellant had achieved turnover of only 6.25 times the nominal capacity of the plot and was entitled to the rebate of only Re.1/- per tonne and that the surcharge of Rs.7.80 per tonne was neither illegal nor unconstitutional. The allegations relating to deemed export claimed by the appellant, was denied. It was pleaded that since no notice under Section 120 of the Act had been given by the appellant to the Board the suit was not maintainable. It was further pleaded that the suit which had been filed beyond the period of 6 months from the date of accrual of cause of action, was barred by limitation permitted under Section 120 of the Act.

On the pleadings of the parties numbers of issues were framed. In view of the finding recorded on issues No.12, 13 and 15 which were answered in favour of the Board, the suit was dismissed. Issues Nos.12, 13 and 15 are as under:-

"12. Whether the suit is not maintainable for want of notice under Section 120 of the Major Port Trusts Act, 1963?

13. Whether the suit is barred by the provisions of Section 120 of the Major Port Trusts Act, 1963?

15. Whether the plaintiff proves that Section 120 of the Major Port Trusts Act is not applicable, to this case and, if it is applicable, it is unconstitutional and illegal?"

By order dated 30th July, 1991, first part of issue No.15 was decided in the negative and the appellant's contention that Section

120 of the Act is not attracted, was rejected and it was held that Section 120 was applicable.

Against this part of the order, the appellant had filed appeal from order which was numbered as 69 of 1991. The second part of issue No.15, 12 and 13 were decided by the impugned judgment delivered on 30th December, 1991, which was the subject matter of challenge in First Appeal 27 of 1991.

Before the High Court following 3 points were canvassed for determination:-

1. When no objection relating to limitation was raised in relation to the part decree passed on admission under Order 12, Rule 6 C.P.C., whether the defendant Board could raise objection relating to limitation in respect of the remaining amount claimed by the appellants and part of the suit could be dismissed on the ground of limitation?
2. Whether Section 120 of the said Act is applicable and if the answer is in the affirmative, whether letter dated 12.4.84 can be treated as notice under Section 120 of the said Act and further whether the suit is barred by limitation thereunder?
3. Whether Section 120 of the said Act is unconstitutional?

The High Court answered all the three questions in favour of the respondent by holding that the respondent did not waive the plea of limitation for the remaining amount of Rs.55,36,710.10 paise. That Section 120 was applicable to the present case. The letter dated 12.04.1984 addressed by the appellant to the respondents could not be considered as a notice under Section 120 of the Act and that Section 120 of the Major Port Trust Act, 1963 was constitutionally valid. The High Court affirmed the judgment of the District Judge regarding the legality and constitutional validity of Section 120 and rejected the contention put forth by the appellant's counsel that by prescribing the limitation of 6 months against the Board and its employees as against the period of 3 years in respect of suits against the Government or Government Officers for an act or order passed in discharge of official capacity was violative of Article 14 of the Constitution. It was held that the suit was barred by time having been filed beyond the period of limitation provided under the Act and the same was also not maintainable for want of service of notice.

During the course of arguments Shri R.F. Nariman, learned senior counsel for the appellant had conceded the first part of point no.2 framed by the High Court to the effect that Section 120 of the Act was applicable to the present case and made his submissions on point no.1, the second part of point no.2 and point no.3 In the written note submitted on behalf of the appellant, the appellant has confined his submissions to point nos.1 and 3 only. Since the second part of point no2 goes to the root of the matter regarding maintainability of the suit and its being barred by limitation we would deal with the same.

Point No.1

Although we have already narrated the factual matrix giving rise to the dispute but it would be necessary to refer to few facts in order to decide point no.1. The respondent port trust commissioned a Mechanised Ore Handling Plan (hereinafter referred to as "MOPH") at berth no.9 at Mormugao and prescribed rates for handling ore at MOPH. On 28.10.1983 the Board issued a notification increasing the rates levying surcharge and prescribing a rebate on the basis of achieving a particular turnover. It is during this period that the issue arose as to the actual plot capacity handed over to the appellant and whether a particular turnover on the plot was achieved. According to the appellant, considering plot capacity of 1,08,274 tonnes, the turnover of 8,66,192 metric tonnes would entitle the appellant to full rebate at the rate of Rs.8.80 per tonne, which would come to Rs.62,46,548.10 paise, instead of Rs.7,09,835/- which the respondent Board had agreed to give. The respondent Board informed the appellant that they had turned around the plot only 6.25 times on the basis of the plot capacity of 1.5 lakh tonnes and were therefore entitled to rebate of Rs.7,09,835/- only. On

12.04.1984 the appellant represented to the port trust and demanded full rebate @ Rs.8.80 per tonne. Port trust by its letter dated 16.06.1984 refused to grant the full rebate as claimed by the appellant.
On 11.09.1986 the appellant filed Civil Suit No.55/1986 for various reliefs referred to in the earlier part of the judgment. Port trust on 14.02.1997 filed its written statement raising the plea of limitation and failure to give statutory notice as per Section 120 and also denying the claim on merits. The appellant made an application under Order 12 Rule 6 for the decree on admission in view of the port trust's letter dated 16.06.1984 referred to above. The appellant had claimed interest @ 18% on the amount due from the date the amount became payable till its actual payment. The port trust in reply to the application under Order 12 Rule 6 admitted the claim of Rs.7,09,835/- but denied its liability to pay any interest on the said amount. The Trial Court on 12.08.1987 passed a decree on admission with regard to the sum of Rs.7,09,835/- leaving the question of interest on the aforesaid amount open which was to be decided at the time of the adjudication of the main suit. The main suit was dismissed by the District Judge as being barred by time and not maintainable for want of notice.
Counsel for the appellant has contended that the port trust in its reply to application under Order 12 Rule 6 while admitting the claim did not raise any objection as to the plea of limitation or statutory notice. That on the passing of the decree on admission under Order 12 Rule 6 on 12.08.1987, the respondent Board was estopped from urging the point of limitation or statutory notice. The said issue would be deemed to have been waived. That statutory notice under Section 120 and issue of limitation being the rights created in favour of the Board could be waived by the Board. Since the decree on admission under Order 12 Rule 6 of the Code of Civil Procedure was passed without any reservation being made to the issuance of statutory notice or limitation, the Board is estopped from raising such a plea at this stage. It is further submitted that the issue of waiver of limitation and statutory notice was raised by the appellant before the High Court and the same has been adjudicated upon by the High Court, the objection now raised by the counsel for the respondents that waiver had not pleaded was untenable. It was submitted that the dismissal of the suit on the ground of being barred by limitation under Section 120 and for want of statutory notice under Section 120 of the Act by the High Court was clearly erroneous.
Per contra, learned counsel for the respondent Board submitted that the High Court has taken the correct view in holding that there was no waiver of limitation by the respondent Board regarding the remaining claim of the appellant. The mere fact that the suit was partly decreed would not preclude the respondent Board from raising the plea of limitation regarding the balance claim put forward by the appellant. It was argued that the Board had not waived the plea of limitation for the remaining claim of Rs.55,36,710.10 paise; that limitation under the Limitation Act cannot be waived and even if a limitation is waived by a party, it cannot give the jurisdiction to the Court to entertain a time barred suit. That the appellant had never pleaded waiver and therefore, the same cannot be urged by the appellant. Merely because the Board had agreed to pay the admitted amount due to the appellant @ Re.1/- per tonne it would not amount to waiver of the plea of limitation giving jurisdiction to the Court to try a time barred suit.
Section 3 of the Limitation Act reads:-
"Section 3 \026 Bar of limitation - (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.
(2) For the purposes of this Act \026
(a) a suit is instituted \026
(i) in an ordinary case, when the plaint is presented to the proper officer;
(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted -

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;
(ii) in the case of a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

The mandate of Section 3 of Limitation Act is that it is the duty of the Court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence. If a suit is ex-facie barred by the Law of Limitation, a Court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation.

This Court in Manindra Land & Building Corporation Ltd. Vs. Bhutnath Banerjee and others reported in AIR 1964 SC 1336 held (para 9):-
"Section 3 of the Limitation Act enjoins a Court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefor by Schedule I irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the Court not to proceed with the application if it is made beyond the period of limitation prescribed. The Court had no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the subordinate Court comes to an erroneous decision, it is open to the Court in revision to interfere with that conclusion as that conclusion led the Court to assume or not to assume the jurisdiction to proceed with the determination of that matter."

A perusal of paragraph 13 of the plaint shows that the lis between the parties is, the refusal of rebate of corresponding levy of surcharge to the extent or Rs.7.80 per metric tonne aggregating to Rs.55,36,710.10 paise for the year April, 1983 to March, 1984. By agreeing to pay Rs.7,09,835/- which the respondent Board was always ready and willing to pay, would not affect the Board's legal contention regarding the claim of Rs.55,36,710.10 paise being not maintainable in the absence of a notice under Section 120 of the Act. Order 12 Rule 6 empowers the Court where an admission of fact is made either in the pleadings or otherwise, whether orally or in writing to make such order or such judgment as it thinks fit either on the application of a party or on its own motion and without waiting for the determination of any other questions between the parties. Therefore, by passing a decree on admission under Order 12 Rule 6 it cannot be said that there was any determination of the question of limitation or maintainability of the suit. Simply because the Board had agreed to pay the sum of Rs.7,09,835/- as committed by them in their letter dated 06.04.1983 would not mean that the Board had given up the determination of the question of limitation or the maintainability of the suit for want of statutory notice.

The appellant had at no stage of proceedings had pleaded waiver of the plea of limitation or of the giving of the notice under Section 120

of the Act. The plaint was filed on 01.09.1986, Board had filed its written statement raising objections of limitations and maintainability of the plaint for want of notice on 18.02.1987. Application for decree on admission was filed on 12.04.1987 and reply to the said application was filed by the Board on 18.07.1987. The decree on admission was passed by the Trial Court for the sum of Rs.7,09,835/- on 12.08.1987. After the framing of issues and after an application was made to try issues no.12 and 13 as preliminary issues on 22.12.1989, an application was filed by the appellant to amend the plaint. On 06.01.1990, a further application was filed by the appellant for further amendment of the plaint. Even though, the plaint was exhaustively amended after the decree on admission, plea of waiver was not taken in the plaint. The point regarding waiver was not argued before the Trial Court at any stage and even in the memo of appeal filed before the High Court ground of waiver was not taken. The question of waiver was taken up for the first time at arguments stage before the High Court. The respondent Board objected to the taking of the said point before the High Court for the first time during the course of arguments. This Court in M/s. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and others [(1979) 2 SCC 409] has held that waiver is a question of fact and it must be properly pleaded and proved. No plea of waiver can be allowed to be raised unless it is pleaded. This Court observed in para 5 as follows:-

"We shall first deal with the question of waiver since that can be disposed of in a few words. The High Court held that even if there was an assurance given by respondent 4 on behalf of the State Government and such assurance was binding on the State Government on the principle of promissory estoppel, the appellant had waived its right under it by accepting the concessional rates of sales tax set out in the letter of respondent 5 dated January 20, 1970. We do not think this view taken by the High Court can be sustained. In the first place, it is elementary that waiver is a question of fact and it must be properly pleaded and proved. No plea of waiver can be allowed to be raised unless it is pleaded and the factual foundation for it is laid in the pleadings. Here it was common ground that the plea of waiver was not taken by the State Government in the affidavit filed on its behalf in reply to the writ petition, nor was it indicated even vaguely in such affidavit. It was raised for the first time at the hearing of the writ petition. That was clearly impermissible without an amendment of the affidavit in reply or a supplementary affidavit raising such plea. If waiver were properly pleaded in the affidavit in reply, the appellant would have had an opportunity of placing on record facts showing why and in what circumstances the appellant came to address the letter dated June 25, 1970 and establishing that on these facts there was no waiver by the appellant of its right to exemption under the assurance given by respondent 4. But in the absence of such pleading in the affidavit in reply, this opportunity was denied to the appellant. It was, therefore, not right for the High Court to have allowed the plea of waiver to be raised against the appellant and that plea should have been rejected in limine."

In the present case, plea of waiver had neither been taken in the original plaint nor in the amended plaint which was amended subsequent to the passing of the decree on admission for the sum of Rs.7,09,835/- nor even in the grounds of appeal before the High Court. Question of waiver is not a pure question of law which could be permitted to be raised by the appellant at any stage of the proceedings. The High Court was right in observing that the plea of limitation put up by the Board has to be examined on its own merit. We do not find any merit in the submission of the learned senior counsel appearing for the appellant that the suit having been partly decreed on admission, could not subsequently be dismissed on the ground of limitation for the remaining amount.

Second part of Point No.2

Shri R.F. Nariman, learned senior counsel appearing for the appellant conceded before us the first part of the point no.2 that Section 120 of the Act is applicable in the present case. He addressed on the second part of question no.2, "whether the letter dated 12.04.1984 can be treated as notice under Section 120 of the said Act and further whether the suit is barred by limitation thereunder."

Section 120 of the Act reads as under:-

"Section 120 \026 Limitation of proceedings in respect of things done under the Act \026 No suit or other proceeding shall be commenced against a Board or any member or employee thereof for anything done, or purporting to have been done, in pursuance of this Act until the expiration of one month after notice in writing has been given to the Board or him stating the cause of action, or after six months after the accrual of the cause of action."

The Major Port Trust Act, 1963 is a special Act and Section 120 of the said Act provides limitation of proceedings in respect to the things done under the Act. A perusal of this Section shows there are two requirements in the Section and both the requirements have to be read conjunctively and not alternatively. The suit has to be filed within six months of the accrual of the cause of action and it has to be preceded by one month notice. Admittedly, in the present case formal notice under Section 120 had not been issued. It was contended by the learned senior counsel that requirement of Section 120 of the Act would be satisfied if the plaintiff before filing the suit complies with one of the two requirements herein. This submission has been made on the basis that the word 'or' occurs between giving of the notice in writing and the filing of the suit after six months of the accrual of the cause of action. The Andhra Pradesh High Court in The Shipping Corporation of India Ltd. Vs. The Union of India and another [(1976) A.P. 261] has taken the view that the two requirements of the said Section have to be read conjunctively and not alternatively. That not only the suit has to be filed after the accrual of cause of action it has to be preceded by one month's notice given in the prescribed manner. The word 'or' employed between the two clauses in the Section if read alternatively would defeat the very object and intention of the said provision and would lead to absurdity. We respectfully agree with the view expressed in the aforesaid judgment and endorse the same.

Even on facts we find that the letter dated 12.04.1984 cannot be treated as a notice under Section 120 of the Act. The respondent Board by its letter dated 06.04.1984 had informed the appellant that the appellant has become eligible to receive the rebate of Rs.7,09,835/- @ Re.1/- per tonne for having turned over the plot allotted to it 6.39 times during the financial year 1983-84. In reply thereto, the appellant by their letter 12.04.1984 set out various arguments to justify the ground for full rebate and requested for the refund of the entire sum of Rs.62,46,584.10 paise. In reply thereto, the respondent Board by its letter dated 16.06.1984 declined the request of the appellant contained in its letter dated 12.04.1984. The appellant in para 30 of its plaint has stated that the illegal levy/refusal of rebate was made on 16.06.1984. Thus the cause of action arose to the appellant for the first time on 16.06.1984 and, therefore, the letter dated 12.04.1984 by no stretch of imagination can be said to be a notice under Section 120 of the Act, which requires the cause of action to be set out in the said statutory notice. In the plaint there is no averment to the effect that the appellant had given the notice under Section 120. Appellant in paragraph 31 has taken the stand that the appellant was not prevented by Section 120 and 121 of the Act from filing the suit. If that be the case, then the letter dated 12.04.1984 cannot be treated as a notice under Section 120 of the Act. Requirement of giving of notice under Section 120 is mandatory and a pre condition to the filing of the suit, and since the suit was filed without giving the

notice the same was not maintainable. The cause of action arose to the appellant on 16.06.1984 and the present suit was filed on 11.09.1986 which is much beyond the period of six months provided for filing the suit. The suit is thus held to be not maintainable in the present form as well as barred by limitation.

With reference to point no.3 formulated for determination regarding the constitutional validity of Section 120 of the Act, it has been contended by Shri R.F. Nariman, learned senior counsel appearing for the appellant that the shorter period of limitation of 6 months prescribed under the Act is unconstitutional and violative of Article 14 and 19 of the Constitution of India as it singles out cases under the Act without intelligible differentia. It has no nexus with the objective sought to be achieved under Section 120 of the Act. It was pointed out that in respect of suits against Government and public officers under other laws, longer period of limitation has been prescribed and there is no reason whatsoever to prescribe shorter period of limitation under the Act. Elaborating this submission further learned senior counsel pointed out that under the Indian Limitation Act, 1963 there are three divisions of the schedule to the Act. The first division concerns itself with suits where the minimum period in the column of limitation is one year going up to 30 years. In the second division which deals with appeals much shorter period of limitation is provided ranging from 30 days to 90 days. Similarly, in the third division relating to filing of applications again a very short period of limitation is prescribed ranging from 10 days to 90 days. Article 134 to 137 providing for longer periods of limitation are an exception to the rule. Section 5 of the Limitation Act allows for condonation of delay in filing the appeals or applications but not suit. According to him, it is so because the longer period of limitation is provided for filing the suit and since short period is given for filing of the appeals and applications, provision has been made for condoning the delay on sufficient cause being shown to mitigate the hardship caused to the litigants. That Section 120 which provides for short period of limitation of six months for filing the suit without prescribing for the condonation of delay to mitigate the hardship of the litigants is arbitrary, excessive, disproportionate and unreasonable restriction on the appellant's rights under Article 14 and 19(1)(f) of the Constitution of India. That the High Court wrongly felt bound by two decisions cited before it. The first being of the Bombay High Court in Municipal Corporation of Greater Mumbai Vs. Hasham Ismail Mamsa (AIR 1972 Bom. 350) and the other of this Court in the Trustees of the Port of Bombay Vs. The Premier Automobiles Ltd. & another reported in 1974 (4) SCC 710. So far as Municipal Corporation of Greater Mumbai's case (supra) is concerned it was contended that this was not a decision on the point at all in as much as the counsel for the plaintiff had not pressed the point regarding constitutional validity of the provision though the same had been raised. In so far as the Trustees of the Port of Bombay's case (supra) it was pointed out that the constitutional validity of Section 87 of the Bombay Port Trust Act had not been challenged at all. That the observations made in the aforesaid cases are in the nature of obiter dicta and therefore connot be treated as a precedent in the present case.

Before the Bombay High Court in Municipal Corporation of Greater Mumbai's case (supra) the challenge had been laid to Section 527 of the Bombay Municipal Corporation Act on the ground that the same was illegal and ultra vires as it violated the fundamental rights guaranteed to plaintiff under Article 14 and 19(1)(f) of the Constitution of India. The learned counsel appearing for the plaintiff did not press the challenge to the constitutional validity of Section 527 but the Division Bench found that there was no merit in the contention raised by the plaintiff to the constitutional validity of Section 527 and observed that merely because a statute not dealing with limitation in general prescribed a special period of limitation different from the one in the Indian Limitation Act, it does not follow that the provision prescribing the special period of limitation violates Article 14 of the Constitution, much less Article 19(1)(f) thereof. It was observed in paragraph 9:-

" xxx
Mr. Adik for the plaintiff did not press the constitutional point raised in the above paragraph of the plaint and obviously for good reasons. It is obvious that there is no substance in that contention. Merely because a statute not dealing with limitation in general prescribes a special period of limitation different from the one in the Limitation Act, it does not follow that the provision prescribing the special period of limitation violates Article 14 of the Constitution, much less Article 19(1)(f) thereof."

No doubt the learned counsel appearing for the plaintiffs in that case had given up his challenge to the constitutional validity of Section 527 of the Bombay Municipal Act, but all the same the High Court recorded its reasons for upholding the validity of the Section by recording valid reasons which in our view are correct. We agree with the observations made by the Division Bench in the said case that merely because a statute not dealing with the limitation in general prescribed period of limitation different from the one in the Indian Limitation Act, 1963 it does not follow that the provisions prescribing the said period of limitation violates Article 14 or 19(1)(f) of the Constitution of India. In respect to the judgment of this court in Trustees of the Port of Bombay's case (supra) it is urged by the learned senior counsel appearing for the appellant that the constitutional validity of Section 87 of the Bombay Port Trust Act, 1879 was not under challenge and therefore the said decision cannot be a precedent for examining the constitutional validity of Section 120 of the present Act. Section 87 reads as under:-
"Section 87. No suit or other proceeding shall be commenced against any person for any thing done, or purporting to have been done, in pursuance of this Act, without giving to such person one month's previous notice in writing of the intended suit or other proceeding and of the cause thereof, nor after six months from the accrual of the cause of such suit or other proceeding..."

It is true that the constitutional validity of Section 87 of the Act which is equivalent to Section 120 of the present Act and similar in terms was not directly in issue. Yet this Court examined the question of shorter period of limitation prescribed under Section 87 of the Bombay Port Trust Act, 1879. With reference to the relatively longer period of limitation provided under the Indian Limitation Act for filing of the suit and after examining the said issue the Court came to the conclusion that shorter period of limitation provided under Section 87 of the Bombay Port Trust Act, 1879 was valid. It was observed in para 38:-
"38. If the person entitled to the goods defaults in removing them within one month of the Board coming into custody, special powers of disposal by public auction are given by Section 64A. The Act charges the port authorities with a wealth of functions and duties and necessarily legal proceedings follow upon the defects, defaults and other consequences of abuse of power. Even so, a public body undertaking work of the sort which a port carries out will be exposed to an explosive amount of litigation and the Board as well as its officers will be burdened by suits and prosecutions on top of the pressure of handling goods worth crores daily, public bodies and officers will suffer irremediably in such vulnerable circumstances unless actions are brought when evidence is fresh and before delinquency fades; and so it makes sense to provide, as in many other cases of public institutions and servants, a reasonably short period of time within which the legal

proceedings should be started. This is nothing unusual in the jurisprudence of India or England and is constitutionally sound. Section 87 is illumined by the protective purpose which will be ill served if the shield of a short limitation operates in cases of misfeasance and malfeasance, but not non-feasance. The object, stripped of legalese and viewed through the glasses of simple sense, is that remedial process against official action showing up as wrong doing or non-doing which inflicts injury on a citizen should not be delayed too long to obliterate the probative material for honest defence. The dichotomy between act and omission, however, logical or legal, has no relevance in this context. So the intendment of the statute certainly takes in its broad embrace all official action, positive and negative, which is the operative cause of the grievance. Although the Act in the present case uses only the expression 'act' and omits 'neglect' or 'default' or 'omission', the meaning does not suffer and if other statutes have used all these words it is more the draftsman's anxiety to avoid taking risks in Court, not an addition to the semantic scope of the word 'act'. Of course, this is the compulsion of the statutory context and it may well be that other enactments, dealing with different subject-matter, may exclude from an 'act' an 'omission'. This possibility is reduced a great deal by the definition of 'act' in the various General Clauses Acts, as including 'illegal omissions'."

The question of considering the rationale of Section 87 of Bombay Port Trust squarely arose in the said case as the contention was raised by the Additional Solicitor General therein that if the argument of the respondent in the said case was accepted, it would amount to misreading the purpose of Section 87 of the Bombay Port Trust Act and similar provision in many statues calculated to protect public officers and institutions on a special basis. (see paragraph 7 of the judgment). The Major Port Trusts Act, 1963 charges the port authorities with a well thought out duties and functions in respect of providing port facilities and equipment and providing services for receiving, landing and shipping of goods or passengers from and upon sea going vessels. As a result of these multifarious functions, major ports and their officers are faced and burdened with an explosive amount of litigation. The object of Section 120 is two fold, i.e. provision of giving one month's notice setting out the cause of action is to give the port authorities an opportunity to consider the merits of the case of the aggrieved party land make amends when possible to save litigation. To ensure that legal action against port authorities and its officers is initiated expeditiously when evidence is fresh land does not obliterate the probative material for honest defence.

The classification has a reasonable nexus to the object, it seeks to achieve. The submission made on behalf of the appellant that though a suit may be filed within six months, the trial of the suit could take place long after this and that the evidence would never be fresh at that stage is fallacious in as much as once the suit is filed against a party, the party is put on notice and will, therefore, gather the relevant documentary evidence when fresh and preserve such evidence for the trial whenever the same would take place.

The submission of Shri R.F. Nariman, learned senior counsel appearing for the appellant that in Indian Limitation Act, 1963 no provision for condonation of delay for institution of a suit has been made because a relatively longer periods of limitation has been provided as compared to limitation provided for appeals and other applications and, therefore, providing relatively shorter period of six months for filing the suit under the provisions of Section 120 of the Major Port Trusts Act, 1963 without a provision for condonation of delay, would make the

section arbitrary, excessive, disproportionate and unreasonable restriction on the appellant's right under Article 14 and 19(1)(g) of the Constitution of India cannot be accepted. The statute of limitation is founded on public policy that an unlimited and perpetual threat of litigation leads to disorder and confusion and creates insecurity and uncertainty. Therefore the legislature has sought to balance the public interest in providing limitation on the one hand and at the same time not to unreasonably restrict the right of a party to initiate proceedings on the other. Once a suit is filed the object of limitation as a statute repose is satisfied in as much as the opponent party knows what he has to defend. The Major Port Trusts Act, 1963 is a special Act. It is a settled legal proposition that the provision of the Special Act shall prevail over with the general Act. Section 29 of the Indian Limitation Act, 1963 relates to savings. For proper appreciation of legal position Section 29(2) of the Limitation Act is reproduced below:-

"Section 29(2) \026 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."

Sub-Section 2 of Section 29 envisages special or local laws which can provide a period of limitation for suits as well as for appeals and applications, different from the period prescribed by the schedule of Limitation Act where provisions contained in Sections 4 to 24 can be expressly excluded by such special or local laws. There are many special or local laws which provide for a short period of limitation for filing of appeals as well as applications and where the provisions of Section 5 are expressly excluded or curtailed. Under the Arbitration and Conciliation Act, 1996, Section 34 prescribes time limit within which an application for setting aside of an award must be made and although the Court is given the power to extend the time on sufficient cause being shown, the said power to extend the time is restricted but a period of 30 days only and not thereafter.

It was then submitted by learned senior counsel for the appellant that whereas Section 120 of the Major Port Trusts Act prescribes a limitation for six months plus one month of statutory notice for suits filed against the Port Trust and its employees for anything done or purporting to have been done in pursuance of the Act, no limitation is prescribed for suits which are filed by the Port Trust under Section 131 of the same Act without a rational basis. We do not find any merit in this submission. It is well settled that although limitation being intended for quieting title and in that sense looks at the problems from the point of view of the defendant with a view to provide him security against the stale claims, addresses itself at the same time also to the position of the plaintiff. The legislature in its wisdom can make separate provision within which a suit must be filed by the individual from that within which a suit can be filed by a statutory body. In Nav Ratanmal Vs. State of Rajasthan (AIR 1961 Supreme Court 1704 a similar argument was raised and negatived by this Court. In that case the Court was examining as to whether there was a rational basis for treating the Government differently as regards period within which the suit could be filed by the Government on the one hand and the private individual on the other. It was held that there were sufficient grounds for differentiating between the claims of an individual and the claims of the Government and the actual period of limitation which should be allowed for filing the suit by any party was a matter of legislative policy and cannot be brought within the scope or purview under Article 14 or any other Article of the Constitution. It was observed:-

"xxxx. It is with this background that the question of the special provision contained in Article 149 of the Act has to be viewed. First, we have the fact that in the case of the Government if a claim becomes barred by limitation, the loss falls on the public, i.e., on the community in general and to the benefit of the private individual who derives advantage by the lapse of time. This itself would appear to indicate a sufficient ground for differentiating between the claims of an individual and the claims of the community at large. Next, it may be mentioned that in the case of governmental machinery, it is a known fact that it does not move as quickly as in the case of individuals. Apart from the delay occurring in the proper officers ascertaining that a cause of action has accrued, Government being an impersonal body, before a claim is launched there has to be inter-departmental correspondence, consultations, sanctions obtained according to the rules. These necessarily take time and it is because of these features which are sometimes characterised as red-tape that there is delay in the functioning of Government offices."

With reference to the contention of Shri R.F. Nariman, learned senior counsel appearing for the appellant that there is no reasons for prescribing a shorter period of limitation for action against the Board while suits against the Government can be filed within normal period of limitation, it may be stated that the Government cannot be equated with statutory body like the Major Port Trust. The Government is a vast organisation having comparatively larger manpower and in the litigation against the Government subject matter of disputes is under several different acts, such as Excise Act, Customs Act, Income Tax Act, Railways Act, Land Acquisition Act etc. Many of these Acts also contain provisions similar to, if not identical with the provisions of Section 120 of the Major Port Trusts Act, 1963. Therefore, the contention between a major port and Government as a whole is totally fallacious.

A provision of the Act providing for a shorter period of limitation cannot be declared to be unconstitutional simply because in some of the Statutes a longer period of limitation has been prescribed for the redressal of the litigants grievances. The legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those covered by the legislature are left out would not render the legislation of any law being discriminatory and violative of the fundamental rights guaranteed under Article 14 and 19(1)(g) of the Constitution.

In the end Mr. Nariman submitted that the Indian Ports Act, 1908 was still applicable to various ports including Panjim Port in Goa. In the case of exporters like the appellant using the port of Panjim, if the same controversy was to arise there being no provision such as Section 120 of the Major Port Trusts Act, 1963 in the Indian Ports Act, 1908 the period of limitation available to such exporters would be three years, that there was no intelligible differentia with the objects sought and achieved in proceeding such as the provision as Section 120. It may be stated that nowhere in the pleadings, is there an averment regarding the port of Panjim and in any case the very fact that the port of Panjim is not a major port and is not governed by the Major Port Trusts Act, 1963 and is not enjoined to perform duties which a major port is enjoined to perform is enough of an intelligible differentia which has a rational nexus with the objects sought to be achieved.

For the aforesaid reasons, we do not find any merit in these appeals and the appeals are dismissed leaving the parties to bear their own costs.