

CASE NO.:
Appeal (civil) 5891 of 2005

PETITIONER:
C. Mackertich & Co. & Anr

RESPONDENT:
The Custodian & Ors

DATE OF JUDGMENT: 09/04/2008

BENCH:
B.N. AGRAWAL & G.S. SINGHVI

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO.5891 OF 2005
With Civil Appeal No.5892 of 2005

Heard learned counsel for the parties and perused the impugned order.

The Custodian filed a petition before the Special Court (Trial of Offences Relating to Transactions in Securities) at Bombay, giving rise to Miscellaneous Petition No.73 of 1998, which has been allowed by the impugned order. In the said petition, it has been mentioned that provisions of the Limitation Act shall have no application to the said petition. In the written statement filed on behalf of the appellants, it was asserted that the aforesaid petition filed by the Custodian was barred by limitation and fit to be dismissed. It appears that no issue was framed by the Special Court on the plea of limitation. In our view, in view of the pleadings of the parties, the Special Court should have framed an issue on the question of limitation as well and decided the same along with other issues and the same having not been done, the impugned order cannot be allowed to be maintained.
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Accordingly, the civil appeals are allowed, impugned order is set aside and the matter is remanded to the Special Court to decide the petition afresh on all the points, including the question of limitation. It may be clarified that we should not be misunderstood to have expressed any opinion one way or the other in relation to the applicability or otherwise of the provisions of the Limitation Act and the same will be also decided by the Special Court.