

5. The aforesaid appeal is seen presented before the Registry on 23.04.2018. The appeal when scrutinised on 25.04.2018 was found to be defective and so on the same day the Applicant was informed of the defects with a direction to cure them within a period of seven days. The period of seven days' expired on 02.05.2018. However, the appeal was presented after curing the defects only on 07.05.2018. According to the Section there is a delay of five days' and hence the matter has been put up before me under sub-rule (2) to rule 26 of the Rules for appropriate orders.

6. Sub-section (2) to section 61 of the Code says that every appeal under sub-section (1) shall be filed within 30 days before the Appellate Tribunal. The free certified copy of the impugned order is seen issued on 22.03.2018. In para-2 of the Appeal memorandum it is alleged that the certified copy of the impugned order was received by the counsel for the Applicant on 23.03.2018. If this averment is accepted and limitation is computed from 24.03.2018, then the period of 30 days would expire on 22.04.2018. However, as no proof to substantiate the allegation that the copy was received only on 23.03.2018 has been produced, the Office has rightly computed the period of limitation from 23.03.2018 and when so computed, the period of 30 days for filing the appeal would expire on 21.04.2018.

7. The Appeal herein has been presented under rule 22 on 23.04.2018 and therefore, the Appeal is obviously beyond the period of 30 days and so the noting by the Office that the Appeal has been filed within the period of limitation and that there is no delay is incorrect. The defect ought to have been pointed out and the Applicant directed to file an application for condonation of delay. As this defect was never raised by the Office, the Applicant at this point of time is not being directed to file application for condonation especially in the light of the averment that the copy of the impugned order was received on 23.03.2018 and this aspect is also being placed for consideration before the Hon'ble Appellate Tribunal.

8. The initial presentation of the appeal on 23.04.2018 as well as the subsequent presentation after curing the defects on 07.05.2018 are apparently after the expiry of 30 days for filing the appeal. The proviso to sub-section (2) to section 61 of the Code states that the period of 30 days for filing an appeal can be extended by a period of 15 days. However, this power can be exercised only by the Hon'ble Appellate

Tribunal. The time granted under sub-rule (2) to rule 26 for compliance can be extended by the Registrar under sub-rule (3) to rule 26, provided it is within the period of 30 days stipulated under the Code for filing an appeal, as the Rules cannot override the provisions of the Act. In the instant case, as the time taken is beyond the period of 30 days, the matter be placed before the Hon'ble Appellate Tribunal for appropriate orders. Point answered accordingly.

9. **Point No.(ii):** - M.A. No.101/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 10.05.2018.

(C.S. Sudha)
Registrar