FULL BENCH

Before H. R. Sodhi, Gopal Singh and A. D. Koshal, JJ.

JOGINDER SINGH,—*Petitioner.*

versus

BALKARAN KAUR,—*Respondents.*

Criminal Revision No. 318 of 1968

April 2, 1971

Code of Criminal Procedure (V of 1898)—Section 488(6), Proviso—Ex-parte order of maintenance against the husband—Application for setting aside of—Terminus a quo *for neckoning the period limitation—Whether from the date of the ex-parte order or from the date of knowledge thereof—Setting aside of an ex-parte order of maintenance—Conditions to be satisfied—stated.*

Held, per majority (Gopal Singh and Koshal, JJ. Sodhi, J. Contra.) that under the proviso to sub-section (6) of section 488, Criminal Procedure Code, a husband, against whom an *ex-parte* order has been made fixing maintenance allowance, is entitled to reckon the period of limitation of three months from the date of knowledge of the order for an application made to set aside that order on the ground that he had neither wilfully avoided service nor wilfully neglected to attend the Court and pleads want of the knowledge of the order. (Para 54)

Held, (per Gopal Singh, J.) that there are two parts of the proviso to sub-section (6) of section 488 of the Code. The first part empowers the Magistrate to determine the application *ex-parte*. The second one enables him to set aside the order made for *ex-parte* proceedings. According to the language of the first part of the proviso, the Magistrate has, as a condition precedent for determination of the case *ex-parte,* to give a finding that the husband is not only avoiding to accept service but is also so doing wilfully. In the alternative, if the Magistrate finds that either the husband has been personally served or is wilfully avoiding to accept service and is wilfully neglecting to attend the Court, he can proceed *ex-parte* against him. The word 'wilfully' means deliberately, obstinately, purposely, intentionally or knowingly. The use of word 'wilfully' before the words 'avoiding' and 'neglects' in the proviso points out to the obligation cast on the Magistrate to seek from the material placed before him, his satisfaction that the husband is knowingly avoiding to accept service or is knowingly neglecting to attend the Court. Thus the Magistrate can proceed *ex-parte* against the husband only, if the material on the record compels him to come to the conclusion that the husband knew about the summons sought to be served upon him and in spite of that knowledge, he is deliberately avoiding to accept service or is deliberately neglecting to attend the Court. Unless the condition precedent of one of the two alternatives is satisfied, a Magistrate cannot proceed *ex-parte* against a husband. There must be an unambiguous finding by the Magistrate arrived at as a result of the satisfaction derived from the material on the record that husband was wilfully avoiding service or neglecting to attend the Court. (Paras 25 and 26)

Held, (per Gopal Singh, J.) that the date of the *ex-parte* order can be the *terminus a quo* only for an application to set it aside, if the applicant does not plead want of knowledge or ignorance about the *ex-parte* order. If in his application, the husband pleads ignorance about the service of the summons and alleges that he had not wilfully avoided service nor wilfully neglected to attend the Court and avers that he had no knowledge of the *ex-parte* order, the period of limitation of three months within which such an application can be made, cannot commence from the date of the order as the order for want of its knowledge by the applicant or its communication to him is no order entailing the commencement of the period of limitation. The period of limitation of three months can commence from the date of the *ex-parte* order only; if the applicant can be charged with the knowledge of the order either constructively because of his having been duly served in respect of the proceedings leading to the passing of that order or because of the order having actually been communicated to him. If an applicant pleads in his application that he had no knowledge of the order passed inasmuch as he had not been served with the summons and he did not neglect to appear before the Court, the order cannot be regarded as one, from the date of the passing of which, the period of limitation of three months can run. (Para 31)

Held, (per Gopal Singh, J.) that an *ex-parte* order can be set aside, if the following three conditions are satisfied. (i) The order must have been made with reference to the circumstances contemplated by the first part of the proviso. (ii) There must be shown good cause by the applicant against the circumstances, under which the *ex-parte* order was made by the Magistrate. (iii) That application must be made within three months of the date of the order. (Para 28)

Held, (per Koshal, J.) that the words "any order so made" occurring in the proviso to section 488(6) of the Code clearly mean an order made in accordance with the preceding part of the proviso; so that if an *ex-parte* order is passed *after the Magistrate is satisfied* that the husband or the father, as the case may be, is wilfully avoiding service or wilfully negligent to attend the Court, that order would be an "order so made". What is essential for an *ex-parte* order to be classified as an "order so made" is that there should be a finding by the Magistrate of his satisfaction about the wilful avoidance of service or wilful neglect to attend the Court on the part of the respondent before him, being wilful, an order passed *ex-parte* by him would be an "order so made" notwithstanding the fact that in reality the avoidance of service or the neglect to attend the Court was actually not wilful—a fact which on being proved before the Magistrate would entitle the party aggrieved by the *ex-parte* order to have it set aside. The correctness or falsity of the allegations made by the aggrieved party in his application to have the order set aside has no relevancy to the quality of the order as an "order so made". (Para 66)

Held, (per Koshal, J.) that the expression "the date thereof" occurring in the proviso to sub-section (6) of section 488 of the Code, must be

construed to mean the date on which the husband or the father, as the case may be, acquires knowledge, actual or constructive, of the proceedings against him and the period of limitation for an application to set aside the *ex-parte* order will commence from the date of such knowledge of the order by the applicant. (Para 61)

Held, (per Sodhi, J. Contra.) that the use of the word "thereof" in second part of the proviso to sub-section (6) of section 488 of the Code is not without significance. The language if given its ordinary and plain meaning, can lead to one conclusion alone, namely, that the period of three months is to be reckoned from the date of the order. The words "any order so made" qualify and have reference to the *ex-parte* order passed by the Magistrate. No doubt, the Magistrate must be satisfied before determining the case *ex-parte* that the respondent was wilfully avoiding service or that he wilfully neglected to attend the Court but that is only for the purpose of taking *ex-parte* proceedings. This satisfaction has nothing to do with the question of limitation for setting aside the *ex-parte* order. Hence the *terminus a quo* for reckoning the period of limitation for an application under proviso to section 488(6) of the Code of Criminal Procedure, to get an *ex-parte* order of maintenance set aside is the date of the order and not that when the respondent obtained knowledge of the same. (Paras 9 and 14)

Case referred by Hon'ble Mr. Justice Jindra Lal to a Division Bench for deciding the important question of law,—vide *his order dated 9th December*, 1968. *The Division Bench consisting of Hon'ble Mr. Justice H. R. Sodhi and Hon'ble Mr. Justice A. D. Koshal, further referred the case to the Full Bench,*—vide *their order dated 6th April*, 1970. The Full Bench *consisting of Hon'ble Mr. Justice H. R. Sodhi, Hon'ble Mr. Justice Gopal Singh and Hon'ble Mr. Justice A. D. Koshal finally decided the case on 2nd April*, 1971.

Petition under Section 439, Criminal Procedure Code, for revision of the order of Shri Muni Lal Verma, Sessions Judge, Bhatinda, dated the 28th November, 1967, affirming that of Shri S. R. Goel, Judicial Magistrate Ist Class, Mansa, dated the 3rd April, 1967, dismissing the application.

H. S. Toor, Advocate, for the petitioner.

D. S. Chahal, Advocate, for the respondent.

JUDGMENT

H. R. Sodhi, J.—Criminal Revision 318 of 1968 has been referred to the Full Bench for decision but the main question that we are called upon to determine is as to what is the *terminus a quo* for reckoning the period of limitation for an application to have the *ex-parte* order of maintenance made under section 488, Criminal

Procedure Code, set aside when it is alleged that the respondent against whom the said order was passed was not duly served and that he acquired knowledge of the order only within three months preceding the date of the application made by him in this behalf. The answer indisputably depends on the interpretation of proviso to section 488(6). Chapter XXXVI of the Code confers a statutory right of maintenance upon a wife or a child when the husband or the father, as the case may be, having sufficient means neglects or refuses to maintain them. The enforcement of this right is by means of a summary procedure as stated in the said chapter and section 488(6) appearing therein reads as under :—

> "488(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases :
>
> Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex-parte*. Any order so made may be set aside for good cause shown on application made within three months from the date thereof."

(2) Before attempting to answer the question referred to above, it is necessary to briefly state the circumstances which led to the present reference. Smt. Balkaran Kaur, respondent claiming to be the lawfully wedded wife of Joginder Singh, petitioner before us made an application for maintenance under section 488 of the Code in the year 1963, it being alleged by her that she and the petitioner after marriage lived together for three years but the latter developed illicit connections with other ladies and started maltreating her so much so that he turned her out and refused to maintain her. Summonses for service on the petitioner who was respondent in the application for maintenance were directed to issue and efforts were made to serve him through the process serving agency attached to the civil Courts. It is provided in Chapter 8 of the Rules and Orders of the Punjab High Court, Volume IV, that in criminal cases which are not cognizable by the Police, summonses are to be served through the civil process-serving establishment attached to the Courts. On 15th November, 1963, the process-server made a report to the effect that the petitioner was not staying in the village for a number of

years as he was employed as a Teacher in a Government School on Simla side. There was later another attempt to serve him and the report as made on 2nd December, 1963, was that the petitioner had evaded service by disappearing on coming to know of the arrival of the process server and that summons had been affixed on his residential house. The Magistrate recorded an order on 20th December, 1963, that since the respondent evaded service *ex-parte* proceedings be taken against him. After recording evidence, as was produced by Smt. Balkaran Kaur, the Magistrate directed on 14th January, 1964, that the petitioner should pay Rs. 60 per month as maintenance. The petitioner before us then made an application under section 488(6) of the Code first on 4th March, 1967, which was dismissed for default of appearance and then again another on 14th March, 1967, praying that the *ex-parte* decision taken on 14th January, 1964, be set aside and that maintenance proceedings should be conducted in his presence. This application after notice to the opposite party was dismissed by the trial Magistrate on 3rd April, 1967, on the ground that the same was barred by limitation. It appears that the petitioner through his counsel Shri Bhagwan Singh, Advocate, Rajpura, served some notice to the respondent who sent a reply to her through her counsel Shri Des Raj, Advocate, Mansa. This reply was dated 27th July, 1965, and Shri Bhagwan Singh, learned counsel appearing before the trial Magistrate, did not deny that he had communicated the reply indicating that the respondent had obtained an order granting maintenance to the petitioner. On the basis of the statement made at the bar and the documents shown to the Magistrate, he came to the conclusion that the petitioner must be deemed to have obtained knowledge of the order at least from 30th July, 1965, by which time the letter dated 22nd July, 1965, sent on behalf of the respondent must have reached him. Irrespective of this view of the matter, the trial Court was further of the opinion that the application made more than three months after the date of the *ex-parte* order could not be entertained by him in view of the mandatory bar as contained in proviso to section 488(6) of the Code.

(3) The petitioner took the matter to the Sessions Judge, Bhatinda, who did not rely much on the finding of the Magistrate about the knowledge of the petitioner but upheld the view that the application of 3rd April, 1967, moved by the petitioner for setting aside the *ex-parte* order dated 14th January, 1964, must be dismissed as barred by time. The petitioner, according to the learned Sessions Judge, did not challenge the *ex-parte* order of 14th January,

1964, but only disputed the validity or correctness of the one passed on 3rd April, 1967, dismissing his application for setting aside the *ex-parte* order.

(4) The petitioner then moved this Court under section 439 of the Code, and Jindra Lal, J. was of the opinion that the point of law involved was of a considerable importance and likely to arise in several cases and that it was desirable that the matter be finally settled by a larger Bench.

(5) When the case came before my learned brother A. D. Koshal, J. and myself, we in view of the divergence of judicial opinion, thought it more proper that the case be heard still by a larger Bench so that the law be settled authoritatively at least so far as this Court is concerned. It is in this background that the case came to the Full Bench.

(6) The answer to the question is covered by a judgment of Gurdev Singh, J. in *Hari Singh* v. *Mst. Dhanno*, (1), where the learned Judge held that sub-section (6) of section 488 provides a period of three months of an application to have an *ex-parte* order set aside and that the period of three months is to be reckoned from the date of the order and not from any other date, no matter when the respondent obtained knowledge of the order. This view was reiterated by the learned Judge in *Shmt. Parson Kaur* v. *Bakhshish Singh* (2). It has been further held in this case that section 5 of the Indian Limitation Act, 1963, applies to an application for setting aside an *ex-parte* order made under the proviso to sub-section (6) of section 488 of the Code, and that relief against hardship, if any, arising because of ignorance of the *ex-parte* order, could be granted by condoning the delay if a case for the exercise of discretion for extending the period of limitation is made out supported by a proper affidavit. In other words, it is not necessary for obviating the chances of hardship that plain and ordinary meaning of the words be departed from.

(7) Mr. H. S. Toor, learned counsel for the petitioner, relying on some observations of their Lordships of the Supreme Court in *Raja Harish Chandra-Raj Singh* v. *The Deputy Land Acquisition Officer and another* (3), strenuously urges that it is a basic

(1) 1962 P.L.R. 59.
(2) 1970 Curr. L.J. 172.
(3) A.I.R. 1961 S.C. 1500.

requirement of the rules of natural justice that a person prejudicially affected by an *ex-parte* order must have knowledge of that order before time can be permitted to run against him in the matter of his seeking a remedy to have that order set aside when a period of time is prescribed for such a remedy. Reliance is also placed by the learned counsel on sections 68 to 72 of the Code of Criminal Procedure, dealing with processes to compel appearance, and it is argued that since the petitioner was not served in accordance with the procedure as envisaged in these provisions, there was no service in the eye of law and the *ex-parte* order based on that service was, therefore, *non est*. It is contended that when the service is not proper, no question of the satisfaction of the Magistrate that the respondent was wilfully avoiding service or wilfully neglecting to attend the Court arises with the result that the *ex-parte* order made in such circumstances raises no question of limitation. In other words, the obligation to have an application to set aside the *ex-parte* order made within three months thereof, as stated in the proviso to sub-section (6) of section 488, postulates a condition precedent that the respondent had been duly served in accordance with the procedure prescribed in sections 68 to 72. Our attention has been invited to the report of the process-serving agency as made on 15th November, 1963, wherein the respondent was stated to be in Government service as a Teacher somewhere on Simla side, and the argument advanced is that the only mode of service was to have sent summons in duplicate to the Head of the office in which he was employed.

(8) The view of law canvassed by the learned counsel for our acceptance found favour with a learned single Judge of the Mysore High Court in *The State* v. *Bhimrao and another*, (4). It was observed in that judgment that the words "order so made" as used in the proviso to sub-section (6) of section 488, intended to imply that an *ex-parte* order sought to be set aside was in conformity with the first part thereof and that when such was not the case, the rule prescribing a period of three months from the date of the order so made for getting it set aside would not come into operation. The observations of the Supreme Court in *Raja Harish Chandra-Raj Singh's case* (3), which arose out of arbitration proceedings under the Land Acquisition Act were pressed into service by the Andhra Pradesh High Court in *Zohra Begum alias Aysha Begum* v. *Mohamed Ghouse*

(4) A.I.R. 1963 Mysore 239.

Qadri Qadeeri and another (5) in interpreting the proviso to sub-section (6) of section 488 as well. It was consequently held that the Magistrate could not dismiss the application under section 488 merely because it was presented three months after the date of the order. Our attention has also been drawn to *Hardyal Singh* v. *Swaran Kaur* (6), decided by Jindra Lal, J. on 15th May, 1967. There, an *ex-parte* order granting maintenance was passed by the Magistrate and the aggrieved husband preferred a revision petition before the Sessions Judge 4 months and 22 days after the order of the Magistrate. The period of limitation for filing a revision petition is now fixed at three months under Article 131 of the Limitation Act, 1963, and this period is to commence from the date of the order. It has been stated before the Sessions Judge in the grounds of revision that the petitioner in that case came to know of the order of the Magistrate only four days before the filing of the revision petition. It was a common ground that a summons had been issued to the respondent through registered post and he had refused to accept service. It was claimed that there was no proper service and the order of the Magistrate was, therefore, bad in law. In these circumstances, it was ordered by Jindra Lal, J., that the petitioner would be entitled to benefit of section 5 of the Limitation Act if he could establish that he was not served with a notice of the application under section 488 of the Code and that he came to know of the *ex-parte* order four days before the filing of the revision application. The learned Judge relied in this connection on *Gurnam Singh* v. *Mt. Datto* (7), and *Bhimrao's case* (4) (supra).

(9) I have given my careful thought to the contention of the learned counsel and have not been able to persuade myself to take a view different from that of my brother Gurdev Singh, J. in *Hari Singh's case* (1) (supra). It is a well-settled and cardinal rule of interpretation of statutes that normally the words used in the Act of a Legislature must be given their plain, ordinary and natural meaning unless there is some ambiguity about them. It is the words so used which best indicate the intention of the statute. As stated in Craies on Statute Law, Fifth Edition, at page 64, "where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature". It is not the function

(5) A.I.R. 1966 A.P. 50.
(6) Cr. R. 634 of 1966 decided on 15th May, 1967.
(7) A.I.R. (37) 1950 E.P. 20.

of a Court to add words or subtract therefrom by using its imagination unless it is absolutely necessary to carry out the scheme of the Act, or to prevent a mischief and advance a remedy in accordance with the true intention of the Legislature. The words as used in the proviso to sub-section (6) of section 488 of the Code if given their plain meaning leave no room for doubt that the period of three months is to be computed from the date of the *ex-parte* order and not from that of knowledge of the same. The Legislature was not unaware of the expression "knowledge" and we find from various articles of the Limitation Act of 1963, and similar earlier Acts as well that wherever the Legislature intended *terminus a quo* to be the 'knowledge', it specifically so stated. An *ex-parte* order of maintenance fixes a liability on the respondent and can broadly speaking be said to be like an *ex-parte* decree. We find that to set aside an *ex-parte* decree of a civil Court, the period of limitation provided for in Article 123 is that of 30 days commencing from the date of decree but where summons or notice was not duly served it has been specifically provided that the *terminus a quo* then is the date of knowledge of the decree. Again, revisional power of a Court whether under the Code of Civil Procedure or the Code of Criminal Procedure is exercisable on an application made within 90 days from the date of the decree, order or sentence sought to be revised no matter whether the aggrieved person had or not any knowledge of such decree, order or sentence. The use of the word "thereof" in the second part of the proviso to sub-section (6) of section 488 on which emphasis has been laid, if I may say so with utmost respect, rightly by Gurdev Singh, J., in *Hari Singh's case* (1), is not without significance. The language of this part, if given its ordinary and plain meaning, can lead to one conclusion alone, namely, that the period of three months is to be reckoned from the date of the order. The words "any order so made" qualify and have reference to the *ex-parte* order passed by the Magistrate. No doubt, the Magistrate must be satisfied before determining the case *ex-parte* that the respondent was wilfully avoiding service or that he wilfully neglected to attend the Court but that is only for the purpose of taking *ex-parte* proceedings. This satisfaction has nothing to do with the question of limitation for setting aside the *ex-parte* order. It will be adding words to and attributing an intention not discernible directly or by implication in the words as used in the proviso to say that there is a further provision that the period of three months will be counted from the date of knowledge if the respondent had not been

duly served. In *A. S. Govindan* v. *Mrs. Margaret Jayammal,* (8) and in a later judgment of the Mysore High Court reported as *Hyder Khan* v. *Safoora Bee,* (9), a similar contention that the period of three months could in certain cases start from the date of knowledge was repelled. There is no reference to the earlier judgment of the same High Court in *Hyder Khan's case,* (9), but the view taken by the Madras High Court in *A. S. Govindan's case* and Gurdev Singh, J. in *Hari Singh's case* (1), was adopted.

(10) The judgment of the Supreme Court in *Raja Harish Chandra-Raj Singh's case* (3), on which the learned counsel for the petitioner strongly relies and from the observations made wherein support has been derived in *Zohra Begum's case* (5) can, in my opinion, render no assistance in the interpretation of the proviso. The facts of that case are clearly distinguishable. Their Lordships were dealing with the case of an award given by a Collector under the Land Acquisition Act, 1894. The land of Raja Harish Chandra-Raj Singh, appellant before the Supreme Court had been compulsorily acquired for a public purpose by the State of Uttar Pradesh. After the issue of necessary notifications, possession of the land was taken and Raja Harish Chandra-Raj Singh filed his claim for compensation. Proceeding for determining the amount of compensation started and an award was finally made and filed in the office of the Collector in March, 1951. Section 12(2) of the Land Acquisition Act requires that the Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representative when the award is made. No notice of the award as required by this section was given to Raja Harish Chandra Raj Singh. It appears from the observations of their Lordships that such notice was necessary. It was only on or about January 13, 1953, almost after about two years that the said Raja Harish Chandra Raj Singh learnt about the making of the award. He then filed an application on February 24, 1953, under section 18 that the matter be referred to the Court for determination of the amount because he considered the amount awarded as inadequate. The Collector was of the view that the application made by the respondent was beyond time and he consequently rejected it. Raja Harish Chandra

(8) A.I.R. (37) 1950 Mad. 153.

(9) A.I.R. 1968 Mysore 98.

Raj Singh then filed a writ petition in the High Court of Allahabad and the same was allowed by Mehrotra, J. The State went in appeal and a Division Bench of that Court reversed the judgment of the learned single Judge holding that the application under section 18 was barred by time with the result that the writ petition stood dismissed. Raja Harish Chandra Raj Singh then preferred an appeal to the Supreme Court on a certificate granted by the High Court and it was allowed. Their Lordships considered the various provisions of the Land Acquisition Act in order to appreciate its scheme in relation to the land acquisition proceedings. Section 18 of the said Act provides for making of an application to have a reference made to the civil Court and also prescribes the period of limitation within which such an application has to be made. If a person making an application was present or represented before the Collector at the time when the award was made, the application has to be filed within six weeks from the date of the award. Section 18(2)(b) provides that in other cases, namely, when the applicant was not present or represented at the time of making of the award, such an application is required to be made within six weeks from the receipt of the notice from the Collector under section 12(2) *or within six months from the date of the Collector's award whichever period shall first expire.* I have underlined (in italics in this report) the words which were the subject-matter of the scrutiny and interpretation in the aforesaid case. The legal character of the award made by the Collector was considered and the view taken was that the decision of the Collector in respect of the amount of compensation amounted in law to an offer or tender of the compensation to the owner of the property under acquisition. It was further observed that "if the owner accepts the offer no further proceeding is required to be taken, the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer, section 18 gives him the statutory right of having the question determined by Court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case, it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance." Since the award has been held in law, to be an offer made on behalf of the Government, their Lordships observed that the communication of

the offer to the party concerned was essential, it being the normal requirement under the contract law. It was in this context that the following observations were made :—

> "Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office. It must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate."

There was yet another approach made by their Lordships and the observations in regard thereto may be usefully reproduced hereunder:—

> "If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it, it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of the pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or

> constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way."

It was further observed in reference to section 12(2) of the Land Acquisition Act that it was obligatory on the Collector to give immediate notice of the award to the persons interested as were not personally present or represented by their representatives when the award was made. This again, according to their Lordships shows that the Legislature recognised the need for communicating the award to the party concerned. In the light of this scheme of the Act, it has been held by the Supreme Court that—

> "Where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by the reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned."

(11) There is no question of any offer and acceptance in case of an *ex-parte* order of maintenance made by a Magistrate nor is there any analogy between the duties of a Collector in the making an award, communication thereof under the Land Acquisition Act and the functions of a Magistrate who presides over a criminal Court. Both under the Code of Criminal Procedure and the Code of Civil Procedure, there are set rules for effecting service on the parties by recognised processes. When service has been effected in accordance with the procedure so prescribed it is deemed to be good service and proceedings can be taken *ex-parte* in the absence of the person who could not be personally served. The rules of natural justice and fair play or equitable considerations cannot be invoked in such cases. I must confess that I have not been able to appreciate how the observations of their Lordships in *Raja Harish Chandra Raj Singh's case* (3) dealing with the decision of an executive officer like the Collector who acted contrary to law and rules of natural justice in not communicating his offer of compensation to the interested party, can be helpful in the interpretation of proviso to sub-section (6) of section 488

of the Code. Section 488 is based on a different scheme altogether and gives power to a criminal Court to grant maintenance to a wife or child in a summary proceeding. Orders passed under section 488 are subject to the decision of a civil Court in regard to the civil rights of the parties and the intention of the Legislature is to ensure in a speedy manner some maintenance to a deserted wife or a child to enable them to have food, clothing and shelter, whatever be the ultimate adjudication by a civil Court. It is to advance this object and policy of law that a period of three months only is given to the husband or the father to have the *ex-parte* order set aside. There could be cases where the respondent, in order to avoid determination of his liability, tries to prolong the proceedings by avoiding service of notice of the application thereby making a strict compliance with the pre-emptory requirement of evidence being recorded, in the presence of the parties, difficult and sometime impossible. To meet such a situation and keeping in view the object of giving relief to a neglected wife or a child in a speedy manner and also the rule of natural justice requiring that the respondent be not condemned unheard, power is vested in the Magistrate to proceed *ex-parte* if he is satisfied that the former is wilfully avoiding service or neglecting to attend the Court. Once this satisfaction has been recorded by the Magistrate, he has authority to make an *ex-parte* order and the order so made can be set aside only within three months of the making thereof. The Legislature did not intend to give indefinite period of time for setting aside such an order. It can at times be reasonably urged that the satisfaction of a Magistrate in a particular case was not well-founded but his erroneous view regarding service on the respondent cannot lead to the conclusion that the order of maintenance ultimately made is *non est* and inoperative so as to take it out of the operation of the rule of limitation as stated in the proviso. When he has given a finding that the respondent was evading service, the order passed by him cannot be said to be one not in conformity with law. Against his erroneous finding regarding the satisfaction about the evasion of service, the respondent is not without a remedy. He can get rid of the hardship by getting the prescribed period of limitation of three months extended under section 5 of the Indian Limitation Act on a proper application and by establishing that he was prevented from making an application to set aside the *ex-parte* order in time by sufficient cause. The expression "sufficient cause" is of wide amplitude and will include the plea that a person against whom an *ex-parte* order was made had not been duly served and had

no knowledge of the proceedings initiated against him by his wife or child. Whatever might have been the position under the previous Limitation Act of 1908 in the matter of applicability of section 5 to such a case, no doubt is now left under the present Limitation Act of 1963. Section 5 was not under the old law applicable when any special or local law prescribed a period of limitation for any suit, appeal or application, but section 29 has been substituted by a new one. Sub-section (2) of this section provides that provisions contained under sections 4 to 24 (inclusive) of the Limitation Act, 1963, shall apply even when the period of limitation has been fixed by any special or local law unless their application is expressly excluded. There is no definition of "special law" given in the Limitation Act but as observed by their Lordships of the Supreme Court in *Kaushalya Rani* v. *Gopal Singh* (10), approving a Division Bench judgment of this Court reported as *Mst. Koshalya Rani* v. *Gopal Singh*, (11), it means "a law enacted for special cases, in special circumstances, in contradistinction to the general rules of the law laid down, as applicable generally to all cases with which the general law deals". Section 417 of the Code of Criminal Procedure, gives a right of appeal to the State Government against an original or appellate order of acquittal passed by any Court other than a High Court, but the period of limitation for such an appeal, before the Limitation Act of 1963 came into force, was provided for in Article 157 of the Limitation Act of 1908, as amended by Act 26 of 1955 and it was three months. The period of limitation has been reduced by the present Limitation Act, 1963, to 90 days under Article 114 thereof. Sub-section (3) of section 417 gives a right to a private complainant to move the High Court for special leave to appeal from an order of acquittal when the same is passed in a case instituted upon a complaint but such application under sub-section (4) has to be filed within 60 days from the order of acquittal. There is no limitation prescribed by the Limitation Act for such an application. In *Kaushalya Rani's case* (11), a question arose whether a special rule of limitation laid down in section 417 of the Code of Criminal Procedure could be held to be a special law within the meaning of section 29(2) of the Limitation Act. A Division Bench of this Court answered the question in the affirmative. The matter went in appeal to the Supreme Court on a Certificate granted by this Court. It was observed by their Lordships that so far as an

(10) A.I.R. 1964 S.C. 260.
(11) A.I.R. 1963 Pb. 145.

appeal by the private prosecutor is concerned, the Legislature has specially laid down in section 417 itself that "the foundation for such an appeal should be laid within 60 days from the date of the order of acquittal. In that sense, this rule of 60 days bar is a special law, that is to say, a rule of limitation which is specially provided for in the Code of itself, which does not ordinarily provide for a period of limitation for appeals or applications". Some other observations of their Lordships in the same context may also be usefully reproduced hereunder :—

> "The whole Code of Criminal Procedure is indeed a general law regulating the procedure in criminal trials generally, but it may contain provisions specifying a bar of time for particular class of cases which are of a special character. Such a law will be a 'special law' with reference to the law generally governing the subject matter of that kind of relationship. A 'special law', therefore, means a law enacted for special cases, in special circumstances, in contradistinction to the general rules of the law laid down, as applicable generally to all cases with which the general law deals. In that sense, the Code is a general law regulating the procedure for the trial of criminal cases, generally, but if it lays down any bar of time in respect of special cases in special circumstances like those contemplated by section 417(3) and (4), read together, it will be a special law contained within the general law. The limitation Act is a general law laying down the general rules of limitation applicable to all cases dealt with by the Act; but there may be instances of a special law of limitation laid down in other statutes, though not dealing generally with the law of limitation."

(12) In view of what has been said above, it must by *a priori* reasoning be held that the rule of three months' bar as incorporated in the proviso to section 488(6) of the Code of Criminal Procedure, is a special law laying down a period of limitation as distinguished from the general law of limitation as contained in the Limitation Act, 1963, and that section 5 will apply to an application to have the *ex-parte* order of maintenance set aside.

(13) On merits of the present case, the submission of the learned counsel that service was not effected on the petitioner, in accordance with the procedure as laid down in sections 68 to 72 of the Code, is

misconceived. Emphasis has been laid by the learned counsel that service could be effected only through a police officer and not by the process serving agency of civil Courts and that in view of the pronounement of this Court in *Gurnam Singh's case* (7) (supra), the *ex-parte* order was bad in law. It is next contended that the petitioner was in Government service and he could be served only in the manner prescribed in section 72 by sending summons in duplicate to the head of the office. The first part of the argument loses sight of the fact that our High Court has framed rules, as referred to in the earlier part of the judgment, according to which summons are to be served through the process-serving establishment attached to the civil Courts and that it was not necessary that service should have been effected through police agency. No violation of section 68, therefore, took place and the order directing *ex-parte* proceedings cannot be held to be bad in law on that ground. As regards the second argument in this behalf, it will be noticed that there were two reports before the trial Magistrate and they had been made at different times. The latest report was to the effect that the petitioner had disappeared on seeing the process-server and this report was attested by respectables. The Magistrate acted on that report and it cannot, therefore, be argued that the satisfaction of the Magistrate that the petitioner was avoiding service was not well founded.

(14) For the foregoing reasons, it must be held that *terminus a quo* for reckoning the period of limitation for an application under proviso to section 488(6) of the Code of Criminal Procedure, to get an *ex-parte* order of maintenance set aside is the date of the order and not that when the respondent obtained knowledge of the same. The aggrieved party can, of course, in an appropriate case, ask for extension of time on a sufficient cause being shown within the meaning of section 5 of the Indian Limitation Act, 1963, which applies to such an application. In the result, Criminal Revision 318 of 1968 stands dismissed.

GOPAL SINGH, J.—(15) The question referred to the Full Bench is as to whether under the proviso appended to sub-section (6) of Section 488, Criminal Procedure Code, a husband, against whom an *ex parte* order has been made fixing maintenance allowance, is entitled to reckon the period of limitation of three months from the date of the knowledge of the order for an application made to set

aside that order on the ground that he had neither wilfully avoided service nor wilfully neglected to attend the Court and pleads want of the knowledge of the order.

(16) Facts giving rise to the reference of the question are as follows :—

On October 5, 1963, Smt. Balkar Kaur filed application against her husband Joginder Singh under sub-section (1) of Section 488, Criminal Procedure Code claiming maintenance of Rs. 80 per mensem. Summons was issued in that application to the husband on November 8, 1963 for November 22, 1963. The process server, who went to effect service of the summons, made endorsement dated November 15, 1963 on the back of one of the duplicates of the summons to the effect that on whereabouts of the husband being ascertained from the residents of village Bachhoana, in which the husband has a residential house, it was learnt that he did not reside in the village, that he was in Government service and that he was a teacher in a school near Simla. As the summons bearing that endorsement had not been received back by the trial Magistrate on November 22, 1963, the date of hearing fixed in the case, the Magistrate adjourned the case to December 20, 1963, directing for issue of fresh summons for service of the husband. On December 2, 1963, the process server visited the house of the husband again and made a report on the back of a duplicate of the summons stating that on coming to know about the presence of the process server, the husband disappeared and that the other duplicate of the summons was posted on the outer door of the house of the husband.

(17) On December 20, 1963, the Magistrate passed the order saying that the husband had evaded to accept service of the summons issued to him, that one of the duplicates of the summons was pasted on the outer door of his house and that he be proceeded against *ex parte*. The Magistrate further ordered that the wife would produce her *ex-parte* evidence on January 14, 1964. On the last mentioned date, *ex-parte* order was made against the husband. By that order, maintenance allowance of Rs. 60 per mensem was granted to the wife.

(18) On February 7, 1967, the husband made an application under the proviso to sub-section (6) of Section 488, Criminal Procedure Code for the *ex-parte* order dated January 14, 1964 being set aside. In that application, the husband stated that he came to know

about the *ex-parte* order having been passed against him on January 25, 1967, when he visited the village, that he did not know earlier about the existence of the *ex-parte* order and that he was not present in the village on December 2, 1963, when service by affixation of summons was sought to be effected. It was pleaded in the application that service having not been effected upon the husband as contemplated by proviso to sub-section (6) of Section 488, Criminal Procedure Code, the period of limitation of three months started from the *terminus a quo* of the date of knowledge of the *ex-parte* order and not from the date the order was passed by the Magistrate. That application having been dismissed in default of appearance on behalf of the husband on March 4, 1967, he made another application to set aside the *ex-parte* order on March 14, 1967, repeating the grounds incorporated in the application made earlier. By order dated April 3, 1967, Shri S. R. Goel, Judicial Magistrate, Ist Class, Mansa held that the application was barred by time inasmuch as the period of limitation of three months started from the date of the order and not from the date of its knowledge.

(19) Being dissatisfied with the above order, the husband filed revision petition under Section 435, Criminal Procedure Code, in the Court of Session at Bhatinda. Shri Muni Lal Verma, Sessions Judge, by his order dated November 28, 1967, dismissed the revision petition holding that the period of limitation commenced from the date of the order and not from the date of its knowledge.

(20) Feeling aggrieved of the order of the Sessions Judge, the husband invoked the revisional jurisdiction of the High Court under Section 439, Criminal Procedure Code contending that having not wilfully avoided service or neglected to appear before the trial Magistrate and having not known about the order earlier than January 25, 1967, he was entitled to compute the period of limitation of three months not from the date of the order but from the date of its knowledge. The revision petition came up for hearing before Jindra Lal, J. The counsel for the husband cited before the learned Single Judge *Raja Harish Chandra Raj Singh* v. *The Deputy Land Acquisition Officer and another* (3) *and Zohra Begum alias Aysha Begum* v. *Mohamed Ghouse Qadri and another* (5), in support of the contention that the husband having not committed default as laid down in the proviso, the period of three months started from the date of the knowledge of the order and not from the date on which it was passed. On the other hand, the counsel for the wife relied on *Hari Singh* v. *Mst.*

Dhanno, (1), in support of the view that the period of limitation started from the date of the order and not from the date of its knowledge. The above two cases other than the case of the Supreme Court deal with the question of limitation arising under the proviso to sub-section (6) of Section 488, Criminal Procedure Code. The Supreme Court judgment deals with the question of limitation arising under sub-section (2) of section 18 of the Land Acquisition Act, 1894. The learned Single Judge finding the point involved in the case not free from doubt, referred the question, by his order dated December 9, 1968, to a larger Bench. A Division Bench consisting of Sodhi and Koshal, JJ. heard the reference. Apart from relying on the case of *Hari Singh* v. *Mst. Dhano*, (1), in support of the contention that the period of limitation could start only from the date of the order, the Counsel for the wife reinforced that contention before the Division Bench citing the judgment in *Shmt. Parson Kaur* v. *Bakhshish Singh* (2). Both these cases have been decided by Gurdev Singh, J. In the later case, the learned single Judge considered the effect of the view taken by the Supreme Court in *Raja Harish Chander Raj Singh* v. *The Deputy Land Acquisition Officer and another*, (3), on the plea of limitation arising on the construction of the proviso to sub-section (6) of section 488, Criminal Procedure Code. In the result, he distinguished the judgment of the Supreme Court on the ground that section 18(2) of the Land Acquisition Act providing for the period of limitation of six months from the date of the award had been interpreted by the Supreme Court on the facts of that case as the period of limitation running from the date of the knowledge of the award and that that provision stood in a context different from that of the said proviso. The learned single Judge followed his earlier judgment and held that the *terminus a quo* for the period of limitation was the date of the order and not the date of its knowledge. The Division Bench, by their order dated April 6, 1970, finding the question of law involved not free from difficulty, directed that the question should be determined by a Full Bench.

(21) In order to determine the question, we have to examine the language of proviso to sub-section (6) of section 488, Criminal Procedure Code. Sub-section (6) along with the proviso runs as under:—

> "(6) All evidence under this Chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases:

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte*. Any order so made may be set aside for good cause shown, on application made within three months from the date thereof."

(22) It is provided in sub-section (6) that all the evidence under Chapter XXXVI headed as "Of the maintenance of wife and children" has to be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with in the presence of his pleader. This provision makes it obligatory for the husband to be present in person at the time the evidence is recorded unless his personal appearance has been dispensed with.

(23) There are two parts of the proviso. The first part empowers the Magistrate to determine the application *ex-parte*. The second one enables him to set aside the order made for *ex-parte* proceedings. The underlying idea embodied in sub-section (6) requiring the presence of the husband at the time of recording of evidence is reflected in the first part of the proviso. That part relates to the satisfaction of the Magistrate for the fact that the husband is wilfully avoiding service or is wilfully neglecting to attend the Court. A duty has been cast upon the Magistrate in connection with his satisfaction to find that the husband is avoiding to accept service and to further find that he is so doing wilfully or knowingly or having been served, he is deliberately neglecting to attend the Court. This seems to be necessary to enable the Magistrate to secure the end of personal attendance of the husband for the purpose of the evidence being recorded in his presence or, if his personal attendance in spite of service has been dispensed with, in the presence of his pleader.

(24) First part of the proviso is an exception engrafted to the purview or the main clause of sub-section (6) preceding it. Under the purview, the entire evidence given in the application made by the wife has to be recorded in the presence of her husband or else his pleader. If the first part of the proviso applies and the husband has not appeared, the Magistrate may determine the case *ex-parte*. In order that the Magistrate may proceed *ex-parte* under the first part of the proviso, he must be satisfied that :—

(i) the husband is wilfully avoiding service.

or

(ii) he wilfully neglects to attend the Court.

(25) In other words, the Magistrate must find as a fact that the husband sought to be served is either wilfully avoiding to accept service or has wilfully neglected to appear before him. It is after the Magistrate feels convinced on the basis of the material placed before him that the husband is either wilfully avoiding to accept service or is wilfully neglecting to appear before him that he can proceed *ex-parte* against him. According to the language of the first part of the proviso, the Magistrate has, as a condition precedent for determination of the case *ex-parte*, to give a finding that the husband is not only avoiding to accept service but is also so doing wilfully. In the alternative if the Magistrate finds that either the husband has been personally served or is wilfully avoiding to accept service and is wilfully neglecting to attend the Court, he can proceed *ex parte* against him. It is only after satisfaction in respect of either of the two alternatives that the Magistrate will be entitled to proceed *ex parte* against the husband. The material placed before the Magistrate in the form of report or endorsement about the service of the summons and affidavit or statement of the process-server, if given, should not only show that the husband is keeping himself away from the access or approach of the process-server in order to evade service of the summons but it must also enable him to find that the husband is so doing wilfully. *A fortiori* if the husband is neglecting to attend the Court, the Magistrate must also find that he is so doing wilfully.

(26) The word, 'wilfully' means deliberately, obstinately, purposely, intentionally or knowingly. The use of the word, 'wilfully' before the words, 'avoiding' and 'neglects' points out to the obligation cast on the Magistrate to seek from the material placed before him, his satisfaction that the husband is knowingly avoiding to accept service or is knowingly neglecting to attend the Court. Thus the Magistrate can proceed *ex-parte* against the husband only, if the material on the record compels him to come to the conclusion that the husband knew about the summons sought to be served upon him and in spite of that knowledge, he is deliberately avoiding to accept service or is deliberately neglecting to attend the Court. It is deducible from the use of that word that on the basis of the facts before the Magistrate, the husband could be charged with the knowledge of his having been sought to be served with the summons issued by the Magistrate and it could be held that he was knowingly avoiding to accept service or was knowingly neglecting to appear before the Court. Unless the

condition precedent of one of the two alternatives is satisfied, a Magistrate cannot proceed *ex parte* against a husband. An *ex parte* order could not be warranted by the proviso unless either of the condition precedent is held to have been fulfilled. There must be an unambiguous finding by the Magistrate arrived at as a result of the satisfaction derived from the material on the record that husband was wilfully avoiding service or neglecting to attend the Court. The first part of the proviso, as construed above, admits of no room for doubt that unless the Magistrate is satisfied that the husband has deliberately or knowingly avoided service or neglected to attend the Court, no *ex parte* order could be passed against him.

(27) It is well recognised principle of natural justice that no one should be condemned unheard. The right of being heard implies an obligation on a Court or a tribunal to afford reasonable opportunity to the party sought to be proceeded against by pre-informing him by means of a summons or notice about the proceedings pending and the date of hearing fixed therein. This intimation in advance enables the party proceeded against to acquire knowledge about the nature of proceedings pending against that party, the name of the Court or the tribunal, with which the proceedings are pending, the place of its business and the next date of hearing of the proceedings fixed by it. Unless the party proceeded against is made aware of these essential requisite, he may not be able to appear and to defend himself in the proceedings initiated against him. A summons or a notice is a means to convey information about the proceedings pending against the party opposite to enable him to put up his defence and to contest the proceedings in order to avoid his being unrepresented and being proceeded against *ex parte*. The underlying object or purpose of issuing summons or a notice to enable the person proceeded against to know about the proceedings and defend himself against them will be defeated, if he has not been duly served. There accrues a right to a Court or a tribunal to proceed against a person sought to be served and pass an *ex parte* order, if that person has been duly served and hence can be charged with the knowledge of the proceedings pending against him. Due service of the party opposite is a condition precedent for exercise of powers to proceed *ex parte* against him.

(28) Now, I proceed to examine the languages of the second part of the proviso. The second part provides for a remedy to the party

aggrieved of the *ex parte* order by enabling him to make an application to set aside that order. An *ex parte* order could be set aside, if the following three conditions are satisfied:—

(i) The order must have been made with reference to the circumstances contemplated by the first part of the proviso.

(ii) There must be shown good cause by the applicant against the circumstances, under which the *ex parte* order was made by the Magistrate.

(iii) That application must be made within three months of the date of the order.

(29) As regards condition (i), the expression, 'so made' leaves no doubt that the *ex parte* order must have been made under the alternative circumstance of either the husband having 'wilfully avoided' to accept service or having 'wilfully neglected' to attend the Court. These expressions connote that the order must have been made by the Magistrate after his satisfaction about the existence of facts pertaining to either of the two alternatives but not otherwise. It is against an order so made or made within the ambit of the first part of the proviso that an application to set it aside is contemplated. An order would not be maintainable and could be avoided by the husband, if the order is not made by the Magistrate as laid down in the first part of the proviso. An order made apart from the existence of the circumstances referred to in the first part of the proviso will not be an order falling within its scope and consequently will otherwise be invalid.

(30) According to condition (ii), it is obligatory upon the applicant approaching the Magistrate to have the *ex parte* order set aside to lead evidence to show good cause against the facts and circumstances found by the Magistrate justifying the *ex parte* order. The husband, against whom that order has been made, has to show that he did not wilfully or knowingly avoid service or neglect to attend the Court. In order to have the *ex parte* order set aside, the husband has to satisfy the Magistrate that he never knowingly avoided to accept service of the summons or neglected to attend the Court. Unless, he shows good cause for displacement of the facts found under condition (ii) of the second part of the proviso, the *ex parte* order could not be set aside. In order to succeed in satisfying condition (ii) of the second part of the proviso, he has got to show that he neither

avoided to accept service nor did he do so wilfully or knowingly nor he knowingly neglected to attend the Court depending on the alternative circumstance, on which the order is founded. If the husband making the application raises the pleas pointing to the existence of good cause against the finding given under the first part of the proviso, his application could not be dismissed at its initial stage for the reasons that follow on the preliminary objection that the application had been made after three months from the date of the order, but within three months from the date of knowledge of that order. Ultimately, the application may not succeed for failure to substantiate by evidence the pleas raised to set aside the order of *ex parte* determination of the case, but the decision given by the trial Court in so dismissing that application will be the decision on merits of the pleas raised therein.

(31) According to condition (iii) of second part of the proviso, an application made to set aside the *ex parte* order has, as its language on appearance purports to show, to be made within three months of the date of the order. It is the underlying principle of the third condition pertaining to the starting point of limitation of three months around which the controversy in course of arguments of the case centred. The date of the order could be the *terminus a quo* only, if the applicant does not plead want of knowledge or ignorance about the *ex parte* order but pleads only that he had not otherwise avoided service nor neglected to attend the Court. If in his application, the husband pleads ignorance about the service of the summons and alleges that he had not wilfully avoided service nor wilfully neglected to attend the Court and avers that he had no knowledge of the *ex parte* order, the period of limitation of three months, within which such an application could be made, could not commence from the date of the order as the order for want of its knowledge by the applicant or its communication to him is no order entailing the commencement of the period of limitation. The period of limitation of three months could commence from the date of the *ex parte* order only, if the applicant could be charged with the knowledge of the order either constructively because of his having been duly served in respect of the proceedings leading to the passing of that order or because of the order having actually been communicated to him. If an applicant pleads in his application that he had no knowledge of the order passed inasmuch as he had not been served with the summons and he did not neglect to appear before the Court, the order could not be

regarded as one, from the date of the passing of which, the period of limitation of three months could run. If the validity of the order is impugned on the ground of want of knowledge of the order, limitation could not commence from the date of the order. The question of running of limitation from the date of the order does not arise unless the applicant can be charged with its knowledge. The period of limitation of three months will commence from the date of the *ex parte* order only in cases in which defect or irregularity in service is pleaded without pleading ignorance about the order.

(32) In the absence of proof of deliberate avoidance to accept service or in the absence of proof of deliberate negligence to attend the Court, the *ex parte* order could not be held to be an order made under the first part of the proviso. If ignorance of order is pleaded, the period of limitation could not start from the date of the order. Supposing, a husband, against whom an *ex parte* order has been made, was not served at all and the Magistrate inadvertently or by mistake took the view that he had been served and he determined the case *ex-parte*. In case of such an illustration, the husband having no knowledge either about the existence of the order or about the date, on which it was passed, could not make an application to set it aside till the date he came to know about it. It is for no fault of his that the *ex parte* order was made against him. The making of the order by a Court implies its making in favour of one party and against the other. If a party, against whom an *ex parte* order has been made, was neither present in person before the Court nor was represented by his counsel or attorney inasmuch as he was not aware of the proceedings, the period of three months could not commence from the date the order was signed by the Court, but should start from the date the party aggrieved of the order was made aware of its existence by a notice issued by the Court to him or else from the date he otherwise came to know about the order having been passed against him. It is the knowledge of the existence of the order acquired by that party either on communication from the Court or in spite of such communication that enables that party to seek his remedy to have that order set aside. The order is avoidable at the instance of such a party. For computing the period of limitation, the order has to be deemed to have been passed on the date, for which he can be charged with its knowledge and not earlier. Earlier than that date, there did not exist any order for him. If the period of limitation reckoned technically or mechanically from the date of the order itself, has, by the date, he acquires knowledge of the order, run out, his

right to seek his remedy would be lost and the remedy provided would be rendered illusory. The proviso, has, in the context of the language employed *vis-a-vis* the underlying idea of the remedy provided, to be interpreted so as to preserve that remedy or the right to have the order adverse to him set aside and to protect him from being rendered remediless. In such a case, there would entail the preposterous consequence of the order becoming binding on him without any opportunity having been afforded to him to defend himself against that order. Miscarriage of justice will be the result to follow unless the rigour of the letter of law is softened by placing a just and reasonable construction on the proviso in the premises of its underlying object of existence of his right to seek his remedy to have the undefended and adverse order set aside.

(33) Let me take up another illustration. If the applicant under section 488(1), Criminal Procedure Code in collusion with the process server, with whose aid service of the summons issued in the name of the husband is sought to be effected, procures a fictitious endorsement of wilful avoidance or refusal of service on the part of the husband and as a consequence of such collusive endorsement, an *ex parte* order is made and the husband comes to know about the order after the efflux of the period of three months from the date of the order, the *ex parte* order will become unavoidable and conclusive against the husband if it could be set aside only within three months of its date. The service effected upon the husband being collusive and hence sham or no service at all and the husband knowing nothing about the proceedings pending against him and the making of the order therein, the period of limitation could not start running from the date when the order was made. If the husband acquires the knowledge of the order on a date after the expiry of period of three months from the date of the order and did not know about it earlier for no fault of his, the object of the remedy provided in second part of the proviso enabling him to make an application to set aside the order will be frustrated and the remedy rendered nugatory.

(34) A person aggrieved of an *ex parte* order would, qua the trial Court, be bound by it, if he had been served with a summons or notice of the proceedings culminating in the passing of that order and defaulted to appear or represent in those proceedings. The order would be binding on him unless set aside by the court of appeal or in revision. In proceedings for fixation of maintenance allowance commenced by an applicant under section 488(1), Criminal Procedure Code, in which the husband has not been served at all or not

served as contemplated by the provisions of law pertaining to the service of summonses as incorporated in Sections 68 to 74 of the Code, the *ex parte* order could be got set aside. No period of limitation could run from the date of an order, if the husband had no notice of the proceedings, in which it was passed and the order had not been communicated to him. Without the knowledge of the husband being linked with the existence of the order, the order could not furnish cause of action to have it set aside.

(35) If a husband has been served as laid down in the first part of the proviso to sub-section (6) of section 488 and does not appear on the date of hearing indicated in the summons issued by the Magistrate and the Magistrate proceeds *ex parte*, even if later on he does not know whether order was made by the Magistrate on the date of hearing as given in the summons or on a subsequent date, to which the case was adjourned, the order will be binding on him as by service of the summons he had been afforded opportunity to appear in the proceedings and to offer his defence. He had thus constructive knowledge of the order by virtue of his having been informed of the date of hearing, on which the Magistrate decided to proceed *ex parte* against him. If the husband or his counsel appears in Court on the date, on which the order is pronounced, he would have the actual knowledge of the order. In such cases, the period of limitation will run from the date of the order. But, if the order is made on a date, for which the husband was not provided any opportunity to appear and to attend the Court and the order is nonetheless made against him, the starting point of limitation for the application to set it aside could not be the date, when it was signed by the Court but would be the date, for which the husband is by communication from the Court informed about the order, for which he can be charged with the knowledge of the order.

(36) The provision referring to the service of the defendant in a civil suit and the power of the Court to proceed *ex parte* if the defendant does not appear on the date of hearing, finds place in Rule 6 of Order IX of the Civil Procedure Code. This provision corresponds to the proviso under consideration. That provision runs as follows:—

> "(1) When the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—
>
> (a) if it is proved that the summons was duly served, the Court may proceed *ex parte* ;

(b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant".

(37) Under Rule 6(1)(a), Court can proceed *ex-parte*, if the Court finds that the summons was duly served. But, if due service of the summons has not been proved, the Court has to make another attempt to effect service upon the defendant. In case of service under Rule 6(1)(a), it is not necessary for the Court to find that the defendant had been wilfully or knowingly avoiding to accept service of the summons or bad wilfully or knowingly neglected to attend the Court. The period of limitation to make an application to set aside an *ex-parte* order passed under Rule 6(1)(a) is provided in article 123 of the Schedule appended to the Limitation Act, 1963. It runs as follows:—

Description of application	Period of limitation	Time from which period begins to run
To Set aside a decree passed *ex-parte* or to rehear an appeal decreed or heard *ex-parte*	Thirty days	The date of the decree or where the summons or notice was not duly served when the applicant had knowledge of the decree

(38) According to the language employed in the above article, the period of limitation to make such an application is 30 days from the date of the decree or where the summons was not duly served, when the applicant had knowledge of the decree. The period of limitation runs from the date of the decree, when summons has been duly served upon the defendant. Although after the expression, 'date of decree' given in column 3 of article 123, the words, 'when the summons is duly served' do not occur, their existence after the expression, 'the date of decree' has to be assumed as is amply clear from the following words, namely, 'or where the summons was not duly served, when the applicant had knowledge of the decree'. In other words, under Article 123, the period of limitation is to start from the date of the decree only, if the summons has been duly served. But, when the summons has not been duly served, the period of limitation will start not from the date of the decree, but from the date of its knowledge. Although the language used in the

second part of the proviso appended to sub-section (6) of Section 488, Criminal Procedure Code is not couched in the words of this article, yet in its import and resultant effect, the idea underlying it is the same. First part of the proviso says that an *ex parte* order could be made after the Magistrate is satisfied that there is wilful avoidance of service on the part of the husband or in spite of his service, there is wilful neglect on his part to attend the Court. If the Magistrate comes to the conclusion on the basis of the material placed before him that the husband is knowingly avoiding to accept service or is knowingly neglecting to attend the Court, an *ex parte* order could be made. In other words an *ex parte* order could follow only, if the Magistrate finds that there is due service upon the respondent as contemplated by the first part of the proviso and it is only in case of due service as given in that part of the proviso that an application could be made within three months from the date of the order so passed, otherwise the period of limitation would run from the date of the knowledge of the order passed. Although the converse that if there has not been effected due service and the husband has no knowledge of the order is not so specifically mentioned in the second part of the proviso, but it has to be so read and in that eventuality, the order could be set aside from the date of its knowledge and not from the date the order was passed. A natural question on the reading of the second part of the proviso that arises is that if the order does not fall under its first part, will the period of limitation start from the date of the order? The reply is inherently present in the expression, 'the order so made'. That expression shows that the period of limitation of three months will run only from the date of the order when the order made is covered by the ambit of the first part of the proviso and not otherwise. If the order pertaining to the determination of the case *ex parte* could not fall within the compass of the first part of the proviso and the husband pleads ignorance about the existence of that order, the only date, from which the period of limitation can commence is the date of knowledge of the order and not the date of the order itself.

(39) In the entire range of case law cited at the Bar, the basic authority is the judgment of the Supreme Court in *Raja Harish Chandra Raj Singh appellant* v. *The Deputy Land Acquisition officer and another respondents* (3) settling the principle of law involved in the present case. The question that arose in that case was as to whether the period of limitation of six months to make an application for reference to Court should start from the date of the award

or from the date of the knowledge of the award, if the person interested in the award had no notice of the date on which the award was made by the Collector. Proviso to sub-section (2) of Section 18 of the Land Acquisition Act, 1894, which deals with the question of limitation for an application to be made to the Collector requiring him to refer the matter, *inter alia*, for determination of compensation to the civil Court, runs as follows:—

> "Provided that every such application shall be made—
> (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
>
> (b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

(40) In that case, the appellant filed his claim for determination of the amount of compensation. The award was made, signed and filed by the Collector on March 25, 1951. No notice of this award was, however, given to the appellant as required by Section 12(2) and it was only on or about January 13, 1953 that the appellant came to know about the making of the award. The appellant filed an application on February 24, 1953 under Section 18 requiring that the matter be referred for the determination of compensation by Court as according to the appellant, the compensation amount determined in the proceedings before the Collector was inadequate. When considering the question whether the period of limitation should run from the date of the award or from the date of the knowledge thereof, their Lordships of the Supreme Court observed as follows :—

> ".....it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered, the making of the award cannot consist merely in the

physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party, whose rights are affected by it, it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party, even if the said party is not actually present on the date of its pronouncement. Similarly, if without notice of the date of its pronouncement, an award is pronounced and a party is not present, the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice, the expression, 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, "therefore, it would be unreasonable to construe the words 'from the date of the Collector's award' used in the proviso to section 18 in a literal or mechanical way."

Their Lordships further observed :—

".....whether the rights of a person are prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the said order, must mean either actual or constructive communication of the said order to the party concerned."

(41) The above judgment being the authoritative pronouncement of the Supreme Court clinches the question of law involved in the present case. Even though, the judgment of the Supreme Court does not specifically deal with proviso to sub-section (6) of Section 488 of the Code of Criminal Procedure, the principle settled by their Lordships in construing the proviso to sub-section (2) of Section 18 of the Land Acquisition Act, is equally applicable to the proviso to sub-section (6) of section 488 of the Code of Criminal Procedure.

(42) Now, I come to the decisions placed before us by both the parties discussing the question of starting point of limitation as referred to in proviso to sub-section (6) of section 488 of the Code of Criminal Procedure.

(43) In *Hari Singh* v. *Mst. Dhanno*, (1), while controverting the argument of the counsel appearing on behalf of the husband that the period of limitation of three months for making an application to set aside an *ex parte* order under the proviso to sub-section (6) of section 488 of the Code started, in the absence of service of the husband, from the date of knowledge of the order and not from the date of the order itself, the learned single Judge observed as follows :—

> "Mr. Gandhi has also attempted to assail the original order of the Magistrate granting maintenance to the wife *ex-parte* on some of the grounds which are not even contained in the application of Hari Singh presented to the Magistrate for setting aside the *ex parte* order, and has contended that the *ex parte* order cannot be sustained on any valid ground. It is, however, not necessary to go into the merits of that order. because, as observed by the learned Additional Sessions Judge, the merits could be gone into only if the application made by Hari Singh for setting aside the *ex parte* order under sub-section (6) of section 488 of the Criminal Procedure Code was within time. In the present case, the *ex-parte* order was passed on 27th June, 1960, and the application for setting it aside was made as late as 7th November, 1960, i.e., nearly four and a half months from the date of the order. Sub-section (6) of section 488 of the Criminal Procedure Code prescribes a period of three months for such an application, and there is no power in the Court under section 488 of the Criminal Procedure Code or any other provision of the Criminal Procedure Code to extend this time."
>
> "Shri Y. P. Gandhi then contended that the period of three months prescribed under sub-section (6) of section 488 of the Criminal Procedure Code has to be reckoned not from the date of the order, which is sought to be set aside but from the date on which the petitioner, who is aggrieved by this order, comes to know of it. This argument is untenable....."

(44) After reproducing the language of the proviso, the learned single Judge took the following view :—

> "The word 'thereof' ..... leaves no manner of doubt that the period of three months has to be reckoned from the date of the *ex parte* order which is sought to be set aside and not from any other date. This is irrespective of the date on which the petitioner obtains the knowledge of the order. If the legislature intended that the period of three months for making an application for setting aside an *ex parte* order should be reckoned from the date of knowledge, it could not have failed to state so. On a reference to the various provisions of the Indian Limitation Act, we find that wherever the legislature considered that the date of knowledge should be that *terminus a quo* it has specifically said so. If the argument of the learned counsel is accepted, it would amount to incorporating in the relevant provision, the words, 'or from the date on which he comes to know of this order'. Where the language is clear and unambiguous, it has to be given effect to irrespective of the hardship it may entail on the parties concerned."

(45) The judgment was given by the Supreme Court on March 30, 1961. The case of *Hari Singh* v. *Mst. Dhanno* (1), was decided by the learned single Judge on August 11, 1961. It appears that the judgment of the Supreme Court was not brought to his notice.

(46) Proviso to sub-section (6) of section 488 of the Code of Criminal Procedure came up for consideration in *The State* v. *Bhimrao and another* (4). *Tukol* J., held as follows:—

> "It would be manifest from the wording of this proviso that before the Magistrate proceeds to hear a petition under section 488 in the absence of the respondent, he must be satisfied that either the respondent was wilfully avoiding service or had wilfully neglected to attend the Court. In other words, the wording of the proviso is so cautious that even if the person is served and had neglected to attend, it would not be still open to the Magistrate to proceed *ex-parte* unless he is satisfied that there is wilful negligence in attending the Court. So the proviso requires a subjective satisfaction on the part of the Magistrate that either the respondent is avoiding the summons wilfully or that

> he is wilfully neglecting to attend the Court. It is only thereafter that the Magistrate can proceed to hear and determine the case *ex parte* ..... The period of three months is with reference to the date of 'any order so made'. The words, 'order so made' must necessarily imply an order passed in conformity with the first part of the proviso. If the order itself is not in conformity with the first part of the proviso, the second part of the proviso prescribing a period of three months from the date of the order so made will not come into operation."

This ratio does not deal with the question involved in the present case.

(47) The next authority cited is *Zohra Begum* v. *Mohammad Ghouse Qadri Qadeeri and another* (5). Following the Supreme Court judgment in *Raja Harish Chandra Raj Singh* v. *The Deputy Land Acquisition Officer* (3) and adopting its ratio, Jaganmohan Reddy J., held that a maintenance order passed in favour of wife without notice to husband was vitiated and that under proviso to sub-section (6) of section 488 of the Code of Criminal Procedure, the period of limitation for setting aside such an *ex parte* order would commence from the date of knowledge of the order by the party aggrieved of it and not from the date when the order was passed by the Magistrate.

(48) Another judgment, to which our attention was invited, is the case entitled as *Hyder Khan* v. *Safoora Bee* (9). In that case, the application to set aside the *ex parte* order passed under the proviso was made more than three months after the date of the order. It was contended on behalf of the applicant that he had no knowledge of the order and that he had made the application within three months of the date he became aware of the order. His contention that the period of limitation should not start from the date of the order, but from the date of its knowledge did not prevail either with the Magistrate or with the Sessions Judge. In revision before the High Court, Honniah J., while considering the question of the starting point of limitation involved in the case held as follows:—

> "The period of three months specified in the proviso to sub-section (6) of section 488 Criminal Procedure Code, is to run from the date of the order and not from the date of knowledge of the order."

(49) While so holding, the learned single Judge relied on the case *of Hari Singh* v. *Mst. Dhanno* (1), referred to above. Although the judgment in the above Mysore case was given on November 15, 1966, the case of the Supreme Court in *Raja Harish Chandra Raj Singh* v. *The Deputy Land Acquisition Officer* (3), was not brought to the notice of the learned single Judge. In the light of *ratio decidendum* settled by their Lordships of the Supreme Court in *Raja Harish Chandra Raj Singh* v. *The Deputy Land Acquisition Officer* (3), this decision of the Mysore High Court could not be held to have laid down the law correctly.

(50) The question as to whether the period of limitation of three months for making an application to set aside an *ex-parte* order by husband started from the date of the order or from the date of the knowledge of the order again came up for consideration before Gurdev Singh J., in *Shmt. Parson Kaur* v. *Bakhshish Singh* (2). In that case, the *ex parte* order for grant of maintenance allowance to the wife was made against the husband on October 1, 1966. The wife made application for recovery of the arrears of maintenance allowance, which had fallen due. After service of notice upon the husband, he made application to the Magistrate on July 22, 1967 for setting aside the *ex parte* order of maintenance. In that application, *inter alia*, he pleaded that he had not been duly served in the proceedings of the application filed by the wife for fixation of maintenance allowance and that it was only a month prior to the making of the application to set aside the *ex parte* order that he came to know that the order had been made against him. The Magistrate made an order in the application of the husband that a preliminary enquiry be held into the date on which the husband acquired knowledge of the *ex parte* order passed against him. Aggrieved by that order, the wife filed a revision petition under section 435, Criminal Procedure Code seeking to set aside the order made by the Magistrate contending that the period of limitation ran from the date of the order and not from the date of its knowledge. As the learned Sessions Judge took the view that the period of three months for an application to set aside an *ex parte* order started from the date of the order itself, and not from the date of its knowledge, he made reference to the High Court recommending that the order of the Magistrate be set aside. It was urged on behalf of the husband that the application to set aside the *ex parte* order had been on the pleas that the order had been made without proper service of the summons in the application made by the wife for fixation of maintenance

allowance and that he had no knowledge of the order passed and consequently the period of limitation of three months for making the application did not commence from the date of the order, but it did from the date of its knowledge. Apart from the Supreme Court judgment in *Raja Harish Chandra Raj Singh* v. *The Deputy Land Acquisition Officer* (3), having been cited there was also commended to the consideration of the learned single Judge his own earlier case in *Hari Singh* v. *Mst. Dhanno* (1), *Zohra Begum* v. *Mohammed Ghouse Qadri Qadeeri* (5), and some other decided cases. In his judgment the learned single Judge reproduced the following passage from the judgment of the Supreme Court:—

> "In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector under section 12. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, *inter alia*, in respect of the amount of compensation which should be paid to the person interested in the property acquired, but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer, no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer, section 18 gives him the statutory right of having the question determined by Court, and it is the amount of compensation, which the Court may determine that would bind both the owner and the Collector * * * * * * It is because of this nature of the award that award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance. * * * * Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property, then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the

Collector or delivered by him in his office, it must involve the consideration of the question as to when it was known to the party concerned, either actually or constructively. If that be the true position, then the literal and mechanical construction of the words, 'the date of the award' occurring in the relevant section would not be appropriate."

(51) On the basis of the above observations, the learned single Judge observed as follows :—

"..... it is abundantly clear that the construction placed by their Lordships of the Supreme Court on the expression, 'the date of the award' is based upon the peculiar nature of the award made by the Collector under the Land Acquisition Act and, in my opinion, these observations cannot be taken as a charter for laying down that in every case where a period of limitation according to the statute has to commence from the date of the order; it should be taken as implied that where the parties are not present when the order is passed or the order is not communicated to them by the Court or the authority passing it, the date of its knowledge would be the *terminus a quo* of that period of limitation."

(52) He drew distinction between the provision of section 18(2)(b) of the Land Acquisition Act and the proviso appended to sub-section (6) of section 488, Criminal Procedure Code. He further observed:—

"The concluding words of this proviso are clear and admit of no ambiguity. It is a well settled canon of interpretation that where the language of a statute is clear, the duty of the Court is to give effect to it irrespective of the hardship that it may entail to individuals. Since the application to which this proviso refers, is for setting aside an *ex parte* order, it is obvious that the order in question is not passed in the presence of the party concerned, but in his absence. The legislature while enacting this proviso was aware of the fact that the person, against whom an *ex-parte* order of maintenance is passed, would not be aware of it for sometime and even during three months, prescribed for an application to set it aside, he may not obtain the knowledge of that order. If in that situation the legislature merely provided that the application for setting aside an *ex-parte* order, is to be made within three months from the date of

the order and did not proceed further to add 'or from the date of the knowledge of such an order' it is obvious that the legislature did so intentionally and deliberately. In fact it appears to me that it was for valid reasons that the date of knowledge was not prescribed as *terminus a quo* for computing the period of three months within which an application to set aside such an *ex-parte* order is required to be made."

(53) If we scrutinize the language of sections 11, 12 and 18 of the Land Acquisition Act pertaining to the holding of enquiry by the Collector and making of award by him and the reference by the aggrieved interested persons to Court as referred to earlier, no doubt is left that in case of interested persons not served and represented before the Collector, the period of limitation would run from the date of knowledge of the award and not from the date of the award itself. The Collector has to hold enquiry under section 11 of the Act in order to determine the area of land acquired, the amount of compensation payable to each interested person and the apportionment of the amount of compensation so determined to the various claimants. Like Court, the Collector has to fix a date of hearing to conduct the enquiry into these questions to be determined by him. He has power to summon and compel the appearance of witnesses and order production of documents in the same manner as a civil Court has. Under section 12 of the Act, his award is final subject to the exception laid down in section 18, namely an aggrieved interested person may make an application to the Collector requiring that the matter be referred by him for determination of the Court. Otherwise, the award of the Collector is final and conclusive evidence as between the Collector and the persons interested. Under section 12(2), after the award has been made by the Collector, he has to give notice of his award to such of the persons interested as were not present personally or by their representatives when the award was made. The Collector acts as a quasi-judicial tribunal. In case, an interested person had not appeared in the case or was not represented by his attorney or counsel, the Collector has to give notice of the award to that person. If a person interested does not accept the award, he has further remedy to make application to the Collector requiring him to make reference of the matter in dispute to the Court provided that the application has been made within six weeks from the date of the award to the Collector, if the person making it was present or represented before him at the time when the award was made, or in other cases it has been made within

six weeks of the receipt of the notice from the Collector issued by him under section 12(2) of the Act or if the interested person seeking to have the matter referred to the Court was neither present in person before the Collector nor was represented before him at the time when the award was made, nor any notice had been issued to him under sub-section (20) of section 12, the period of limitation for making an application for reference of the matter in dispute to the Court provided is six months from the date of the award. In other words, the period of limitation of six months running from the date of the award has been provided in the eventuality of an interested person being not aware of the date of the award and having not either appeared in person or having not been otherwise represented before the Collector. The question of start of the period of limitation of six months will not arise in a case in which the award has been accepted by an interested person. It is only in cases, where award has been accepted as final and conclusive between the Collector and that person interested that the award can be regarded as offer from the Collector resulting in binding contract, but in cases, in which application has been made by an interested person dissatisfied with the award seeking to have it at par as for that purpose undoubtedly they are. The period of limitation has been held by the Supreme Court, in case of an *ex-parte* award without interested person having been served with a notice about the award having been made against him, to start from the date of the knowledge of the award. The *terminus a quo* in case of want of knowledge of the award made against an interested person having been held to be the date of the knowledge of the award and not the date of the award, the same principle would apply for commencement of the period of limitation from the date of knowledge of the order and not from the date of the order passed for want of service as provided in the first part of the proviso to sub-section (6) of Section 488 and pleaded on behalf of husband in his application to have the *ex parte* order made against him set aside. The principle of law settled by their Lordships of the Supreme Court is equally applicable to the present case in the light of the observations made by their Lordships as reproduced above in earlier part of the judgment. There does not appear to be any distinguishing feature between the above two cases of this Court decided by the learned Single Judge and the one giving rise to the judgment of the Supreme Court in so far as the application of the *ratio decidendum* determined by their Lordships in that case is concerned. The decisions in *Hari Singh* v. *Mst. Dhanno* (1) and *Smt. Parson Kaur* v. *Bakhshish Singh* (2), do not lay down the law correctly and hence are overruled.

(54) For the foregoing reasons, the question is answered in the affirmative and it is held that under the proviso to sub-section (6) of section 488, Criminal Procedure Code, a husband, against whom an *ex-parte* order has been made fixing maintenance allowance, is entitled to reckon the period of limitation of three months from the date of knowledge of the order for an application made to set aside that order on the ground that he had neither wilfully avoided service nor wilfully neglected to attend the Court and pleads want of the knowledge of the order.

In the result, the revision petition is allowed, the judgments of the trial Magistrate and the Sessions Judge are set aside and the case is remanded to the trial Magistrate to decide the application made by the husband by taking into consideration the above view that the applicant is entitled to reckon the period of limitation of three months for his application from the date of the knowledge of the ***ex-parte*** order sought to be set aside.

(55) KOSHAL J.—I have had the advantage of going through the judgments prepared by my learned brethren Sodhi and Gopal Singh, JJ., I agree with the conclusion arrived at by my learned brother Gopal Singh, J., but, I regret to say, not with all the reasons given by him in support of it. I am, therefore, adding a short judgment of my own.

(56) As pointed out by Sodhi, J., it is a cardinal rule of interpretation of statutes that the words used in a legislative enactment must be given their plain, ordinary and natural meaning unless they are ambiguous. But then the rule is subject at least to one exception which by now appears to be well recognised. That exception, in my opinion, is embodied in the judgment of their Lordships of the Supreme Court in *Raja Harish Chandra Raj Singh* v. *The Deputy Land Acquisition Officer and another* (3), and is to the effect that when a decision affects the rights of a person and limitation is directed by the statute to run from the date of that decision, such date must, by necessary implication, be construed to be the date on which that person gained knowledge of the decision, either actually or constructively. I am further clear in my mind that this exception governs the interpretation not only of the words "from the date thereof" occurring in the proviso to sub-section(6) of section 488 of the Code of Criminal Procedure (hereinafter referred to as the Code) but that of all statutes similarly worded.

(57) A perusal of the judgment in *Raja Harish Chandra Raj Singh's case* (3), would show that one of the reasons why the expression "the date of the award" occurring in clause (b) of the proviso to sub-section (2) of section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was interpreted by their Lordships to mean the date on which the award was communicated to the party concerned, was that in law an award of the Collector was no more than an offer made on behalf of the Government. However, a wholly independent and entirely different reason adopted by their Lordships for holding that to be the true interpretation of the expression was based on the essential requirements of fairplay and natural justice a reason which had nothing at all to do with the character of the award as an offer made by the Government. This is fully made out by the observations of their Lordships which have been quoted *in extenso* by both my learned brethren and which I need not repeat here except for the following:—

> "There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force."

In other words, a decision adversely affecting a party does not come into force before that party acquires knowledge thereof, either actual or constructive, and this rule is of universal application, notwithstanding that fact that the legislature is fully aware of the implications flowing from the use of the word "knowledge" in statutes prescribing limitation, as is clear from the language employed in article 123 of the Limitation Act. That this is the true scope of the decision of their Lordships of the Supreme Court in *Raja Harish Chandra Raj Singh's case* (3), is apparent from the relevant provisions of section 18 of the Act which would bear repetition here:

> "18. (1) Any person interested, who has not accepted the award may, by written application to the Collector, require

that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

Clause (a) of the proviso to sub-section (2) applies only to a case where the person affected by the award was present either personally or through his counsel or agent before the Collector when the award was made. In other words, the clause covers the case of a party having actual knowledge of the award. Clause (b) on the other hand, deals with two types of cases; firstly, the case of a party who has actually been in receipt of a notice of the award from the Collector, i.e., a party who has actual knowledge of the award, and, secondly, of a party who was neither present nor represented before the Collector when he made the award nor was given any notice of the award by the Collector. In other words, the second part of clause (b) covers mainly those cases in which the affected party did not gain any knowledge of the award, actual or constructive from the Collector. When enacting sub-section (2) of section 18, the legislature was thus dealing with persons having knowledge of the award by reason of information given to them as parties by the Collector and also with those not having such knowledge. And yet the expression "the date of the Collector's award" used by it was interpreted by their Lordships of the Supreme Court as meaning the date on which the affected party received knowledge of the Collector's award. The awareness of the legislature about the significance of the knowledge of a party about

a decision affecting it must thus be held not to be a relevant consideration in the matter of interpretation of a statute of limitation. The correctness of this proposition was clearly maintained by their Lordships in unmistakable terms while approving the judgment of the Madras High Court in *O.A.O.A.M. Muthiah Chettiar* v. *The Commissioner of Income-tax, Madras* (12), which interprets section 33-A (2) of the Indian Income-tax Act, 1922. That section prescribes the limitation for an application by an assessee for the revision of the specified class of orders and says that such an application should be made within one year from the date of the order. Now section 33(1) of that Act specifically lays down that the limitation of sixty days therein prescribed is to be calculated from the date on which the order in question is communicated to the assessee. In spite of this provision indicating unmistakably that the legislature while enacting the two sections was fully aware of the implications of knowledge of an order adversely affecting an assessee, Rajamannar, C.J., and Panchapakesa, J., interpreted the provision regarding limitation in section 33-A(2) to mean that the *terminus a quo* must be the date when the order was communicated to the effected party. They observed :

> "If a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore, must be presumed to have had knowledge of the order."

This is what their Lordships of the Supreme Court had to say in regard to these observations :

> "In other words the Madras High Court has taken the view that the omission to use the words 'from the date of communication' in section 33-A(2) does not mean that limitation can start to run against a party even before the party either knew or should have known about the said order. In our opinion this conclusion is obviously right."

(58) Another case noticed by their Lordships of the Supreme Court was *Annamalai Chetti* v. *Col. J. G. Cloete* (13), wherein the

(12) A.I.R. 1951 Mad. 204.
(13) I.L.R. 6 Mad. 189.

question was about the interpretation to be placed on section 25 of the Madras Boundary Act, XXVIII of 1860, which limited the time within which a suit might be brought to set aside the order of the Settlement Officer to two months from the date of the relevant award. The Madras High Court observed:

> "If there was any decision at all in the sense of the Act, it could not date earlier than the date of the communication of it to the parties; otherwise they might be barred of their right of appeal without any knowledge of the decision having been passed."

These observations and a similar interpretation placed by the same High Court on the provisions regarding limitation contained in sections 73(1) and 77(1) of the Indian Registration Act in *Swaminathan* v. *Lakshmanan Chettiar* (14), were approved by their Lordships of the Supreme Court in these terms:

> "These decisions show that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned."

(59) The decision in *Raja Harish Chandra Raj Singh's case* (3) was followed by their Lordships in State of Punjab v. Mst. Qaisar *Jehan Begum and another* (15), wherein stress was again laid on the requirements of fairplay and natural justice as forming the basis of the interpretation placed on clause (b) of the proviso to sub-section (2) of section 18 of the Act.

(60) I find myself unable to subscribe to the proposition that the scheme of section 488 of the Code is essentially different from that of section 18 of the Act or that it is so different that the ratio of *Raja Harish Chandra Raj Singh's case* (3) has no application to the interpretation of the provision regarding limitation occurring in the proviso to sub-section (6) of the former. Although the provisions of section 488 of the Code are intended to provide a speedy remedy to an aggrieved wife or child whose husband or father,

(14) I.L.R. 53 Mad. 491.
(15) A.I.R. 1963 S.C. 1604.

as the case may be, refused to maintain or neglect her or him, the proceedings are quasi-criminal in nature entailing serious consequences in the event of a breach of an order of maintenance ultimately made thereunder and emphasis has been laid by those provisions themselves on the personal presence of the respondent to the proceedings in the Court of the Magistrate before any evidence in the case is recorded. The Magistrate is certainly authorised to dispense with such presence but then he must do so by a specific order and in that case too, the evidence has to be recorded in the presence of the pleader of the respondent. This is the effect of sub-section (6) of section 488 of the Code to which of course is added the proviso with the interpretation of the latter part of which we are here concerned. That proviso enables the Magistrate to proceed *ex-parte* only if he is satisfied that the respondent is wilfully evading service or wilfully neglects to attend the Court. It would thus appear that the knowledge of the proceedings against such respondent is made an essential pre-requisite to the proceedings. If this were not so, there would be great chances of an unwary husband or father being taken unawares and having to face a *fait accompli* in the shape of a final order of maintenance even without having known till then that any proceedings under section 488 of the Code had been instituted against him. If he does not comply with such an order, his liberty may be in jeopardy as is clear from the provisions of sub-section (3) of section 488 which lay down that for every breach of the order the Magistrate may "issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant to imprisonment for a term which may extend to one month * * *". It follows that the requirements of fair-play and natural justice come into operation with greater force in the matter of interpretation of sub-section (6) of section 488 of the Code than that of clause (b) of the proviso to sub-section (2) of section 18 of the Act.

(61) Applying the principle laid down in *Raja Harish Chandra Raj Singh's case* (3), to the interpretation of the expression "the date thereof" occurring in the proviso to sub-section (6) of section 488 of the Code, I would hold that they must be construed to mean the date on which the husband or the father, as the case may be, acquires knowledges, actual or constructive, of the proceedings against him. This was also the view taken by Jaganmohan Reddy,

J., in *Zohra Begum alias Aysha Begum* v. *Mohammed Ghouse Qadri Qadeeri and another* (5).

(62) That a party aggrieved by an *ex-parte* order passed under section 488 of the Code may be entitled to apply for the extension of the period of limitation under section 5 of the Limitation Act, 1963 does not appear to me to be a relevant consideration for the purpose of interpreting the proviso to sub-section (6) of that section. Prior to the enforcement of the Limitation Act, 1963, the Indian Limitation Act, 1922, held the field and in view of the provisions of section 29 of the latter, section 5 thereof could not be invoked in favour of a party aggrieved by an order made under a special or local law. Before the year 1963, therefore, the only acceptable interpretation which could be placed on the phrase "the date thereof" occurring in the proviso to sub-section (6) of section 488 of the Code was that the *terminus a quo* was the date of the acquisition of knowledge, actual or constructive, of the adverse order by a party affected thereby. The language of that proviso remains unchanged in spite of the fact that a new Limitation Act was brought on the statute book in the year 1963, section 29 of which makes section 5 thereof applicable to suits, appeals and applications envisaged by special or local laws. Can that language be said to have acquired a changed meaning because of the enforcement of the new Act ? The answer must clearly be in the negative.

(63) And then section 5 of the Limitation Act gives a discretion to the Court concerned in the matter of granting the extension of time. The aggrieved party cannot claim such extension as of right. That section cannot thus be said to operate to the same advantage of an aggrieved party as the interpretation placed on the phrase in question by having recourse to the principles of natural justice laid down in the two Supreme Court authorities cited above, affords him.

(64) And again, the Act is undoubtedly a special law and apparently the provisions of section 5 of the Limitation Act would govern any of its provisions which prescribe a period of limitation different from that prescribed by the Limitation Act. If that be so (although I would not like to express any final opinion in this behalf, no argument having been addressed to us on the point) any person challenging an award made under section 18 would be entitled to take advantage of the provisions of section 5 of the Limitation Act, so that the distinction sought to be drawn between the

provisions of section 18 of the Act and of section 488(6) of the Code on the ground that in so far as the latter is concerned, any hardship caused to a party by lack of the knowledge of the impugned order could be obliviated by having recourse to the provisions of section 18 of the Act, appears to be really non-existent.

(65) In view of the above discussion it must further be held that in so far as the interpretation of the words "the date thereof" occurring in the proviso to section 488(6) of the Code is concerned, *A. S. Govindan* v. *Mrs. Margaret Jayammal* (8), *Hari Singh* v. *Mst. Dhanno* (1), *Hyder Khan* v. *Safoora Bee*, (9) and *Shrimati Parson Kaur v. Bakhshish Singh* (2), do not lay down the law correctly, run as they do counter to the principles enunciated in *Raja Harish Chandra Raj Singh's case* (3), which does not appear to have been brought to the notice of the learned Judges who decided *Hari Singh* v. *Mst. Dhanno* (1) and *Hyder Khan v. Safoora Bee* (9) (supra), as pointed by Gopal Singh, J., *A. S. Govindan's case* (8) (supra), was of course decided long before *Raja Harish Chandra Raj Singh's case* (3) was decided. In *Shrimati Parson Kaur's case* (2) (supra) reference to *Raja Harish Chandra Raj Singh's case* (3) was made by Gurdev Singh, J., but the relevant observations of their Lordships, which I have quoted above, appear to have escaped his notice.

(66) I shall now take up consideration of the contention that an order passed *ex-parte* is *non est* if it is passed without due service on the respondent to the proceedings of notice thereof. In my opinion, this contention is without substance. The words "any order so made" occurring in the proviso to section 488(6) of the Code clearly mean an order made in accordance with the preceding part of the proviso; so that if an *ex parte* order is passed *after the Magistrate is satisfied* that the husband or the father, as the case may be, is wilfully avoiding service or wilfully negligent to attend the Court, that order would be an "order so made". What is essential for an *ex parte* order to be classified as an "order so made" is that there should be a finding by the Magistrate of his satisfaction about the wilful avoidance of service or wilful neglect to attend the Court on the part of the respondent to the proceedings. It is not further necessary that that finding should be correct, so that even if such a finding is passed on insufficient or spurious material, the order would nevertheless be an "order so made" and it is primarily such an order which the latter part of the proviso enables an aggrieved party to get rid of. Such an order would be valid till set aside on good cause shown.

The argument that if a respondent to the proceedings before the Magistrate makes an application to have an *ex parte* order set aside on the ground—

(a) that he was not aware of those proceedings; or

(b) that the service of notice on him was really fictitious; or

(c) that although he had avoided service, he had not done so wilfully; or

(d) that although he had neglected to attend the Court, he had not done so wilfully;

he is not asking the Magistrate to set aside an "order so made", is not acceptable to me. The contents of the application have nothing to do with the determination of the question as to whether the *ex parte* order which it seeks to set aside is or is not an "order so made". As pointed out above, once the Magistrate has given a finding about his satisfaction of the avoidance of service or neglect to attend the Court on the part of the respondent before him being wilful, an order passed *ex-parte* by him would be an "order so made" notwithstanding the fact that in reality the avoidance of service or the neglect to attend the Court was actually not wilful—a fact which on being proved before the Magistrate would entitle the party aggrieved by the *ex-parte* order to have it set aside. The correctness or falsity of the allegations made by the aggrieved party in his application to have the order set aside has no relevancy to the quality of the order as an "order so made".

(67) On this point I find myself in complete agreement with the view expressed by Gurdev Singh, J., in *Smt. Parson Kaur's case* (2) (supra). In repelling a contention similar to the one with which I am now dealing, he observed :

"The application for setting aside an *ex parte* order under the proviso to sub-section (6) of section 488 of the Code or Criminal Procedure, will succeed if sufficient cause is shown. The non-service, or service not effected in accordance with law may furnish a ground for setting aside the *ex-parte* order but these matters do not, in any way, affect the period of limitation prescribed under that proviso for

an application to set aside an *ex-parte* order. The commencement of limitation would not depend upon the merits of the *ex-parte* order."

(68) Gurdev Singh, J., dissented from the contrary view expressed by T. K. Tukol, J., in *The State* v. *Bhimrao and another* (4), to the effect—

"If there is no valid service, then the *ex-parte* order awarding maintenance to the respondent will not be valid. * * * * *. The period of three months is with reference to the date of 'any order so made'. The words 'order so made' must necessarily imply an order passed in conformity with the first part of the proviso. If the order itself is not in conformity with the first part of the proviso, the second part of the proviso prescribing a period of three months from the date of the order so made will not come into operation."

In my opinion also, this is not a correct view of the law, although no exception can be taken to another ground on which Tukol, J., proceeded. In the case before him, there was no finding by the Magistrate that he (the Magistrate) was satisfied that the respondent was wilfully avoiding service or wilfully neglecting to attend the Court and the *ex-parte* order passed in the absence of such a finding was struck down being bad in law, and, if I may say so with respect, rightly. In a case where the Magistrate has not given a finding such as is envisaged by the proviso, an *ex-parte* order made by him cannot be said to be an "order so made" which, as already shown, is an order passed after the Magistrate records his satisfaction in terms of the earlier part of the proviso.

(69) On the contention under consideration, the view expressed by Tukol, J., and quoted above was also dissented from by Venkataraman, J., in *Meenakshi Ammal* v. *Somasundara Nadar* (16), with the following observations:—

"It seems to me that while the fact that the procedure prescribed for service of summons in Sections 68 to 71, Criminal P.C., has not been followed on the prior occasion,

(16) A.I.R. 1970 Mad. 242.

may be a good ground for allowing the application to set aside the *ex-parte* order, the mere non-observance of the proper procedure would not make the *ex-parte* order invalid and entirely liable to be ignored so as to say that the bar of limitation of three months would not apply at all."

(70) According to what I have already said, these observations are based on a correct interpretation of the expression "order so made".

(71) Reliance was placed before us for the wife on *Gurnam Singh* v. *Mt. Datto* (7), *Parambot Thayunni Ralakrishna Menon* v. *Govind Krishnan (minor) and another* (17) *and Pahilajrai* v. *Jethi Bai* (18). In all these cases *ex-parte* orders were set aside in revision on the ground that the service effected on the respondent to the proceedings before the Magistrate acting under section 488 of the Code was faulty. None of these authorities lays down the proposition that an *ex-parte* order following faulty service is no order in the eye of law or that the period of limitation for setting such an order aside will be any different from that mentioned in the proviso to section 488(6) of the Code. On the other hand, in all these cases the *ex-parte* orders appear to have been set aside on merits a situation which is covered by the concluding part of the proviso. No assistance is, therefore, available from any of these authorities to the wife's case.

(72) In view of the opinion expressed by me above that the expression "the date thereof" occurring in the proviso to sub-section (6) of section 488 of the Code means the date on which the husband or the father, as the case may be, acquires knowledge, actual or constructive, of the proceedings against him, I would accept the petition and remand the case to the Magistrate for deciding the application made by the husband for having the *ex-parte* order set aside. Of course, it would be for the Magistrate to find, on the evidence produced before him by the parties, the point of time when the husband acquired knowledge of the said proceedings. If he comes to the conclusion that the application filed by the husband was made more than three months after the date on which he (the husband) acquired knowledge, actual or constructive, of the proceedings against him, application would be liable to dismissal on account of the bar of

(17) A.I.R. 1959 Mad. 165.
(18) A.I.R. 1959 Patna 433.

limitation enacted in the proviso. If on the other hand the Magistrate comes to a contrary conclusion, he would have to decide the application on merits about which (including the issue as to whether the service effected on the husband was fictitious or faulty and the effect thereof on the question of the knowledge of the husband with regard to the proceedings before the Magistrate) I need not express my opinion.

ORDER OF THE COURT

In accordance with the opinion of the majority, the revision petition is allowed, the judgments of the trial Magistrate and the Sessions Judge are set aside and the case is remanded to the trial Magistrate to decide, in conformity with law, the application of the petitioner to have the *ex-parte* order set aside, keeping in view that the period of limitation as referred to in the proviso to sub-section (6) of section 488 of the Code of Criminal Procedure, is to be reckoned from the date, on which the husband acquired knowledge, actual or constructive, of the said order.

K.S.K.

1849 ILR—Govt. Press, Chd.