

Rama Vanti *v.* Bal Kaur (Narula, J.)

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the service of such notice of appeal, to his address as given by the appellant in the memorandum of appeal. The posting of such postcard shall be deemed to be sufficient intimation to the party of the date fixed in the case."

Since it is the common case of the parties that the appellant's counsel Shri D. D. Khanna had left the profession by the time the execution first appeal came up for hearing and since it had been ordered by the learned Single Judge that actual date notice of the hearing of her appeal may be served on the appellant, the appeal could not be dismissed in default till such notice was served on her. In these circumstances, we allow this appeal, set aside the order of the dismissal of the appellant's application under Order 41 Rule 19 of the Code of Civil Procedure and readmit Execution First-Appeal No. 358 of 1963, and further direct that the same may be listed for hearing before any Single Bench on August 21, 1967. In the circumstances of the case, there is no order as to costs of this appeal.

S. B. CAPOOR, A.C.J.—I agree.

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R.N.M.

LETTERS PATENT APPEAL

*Before S. B. Kapoor, A.C.J., and R. S. Narula, J.*

THAMBU AND OTHERS,—*Appellants*

*versus*

ADDITIONAL DIRECTOR, CONSOLIDATION OF HOLDINGS, HISSAR

AND OTHERS,—*Respondents*

L.P.A. No. 368 of 1966

September 13, 1967

*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 42—East Punjab Holdings (Consolidation and Prevention of*

*Fragmentation) Rules, 1949—Rule 18 prescribing period of limitation for applications under S. 42—Whether constitutes special or local law as defined in S. 29 of Limitation Act (XXXVI of 1963)—Order passed on a time-barred application under S. 42—Whether a nullity—Constitution of India (1950)—Art. 226—Petition for writ under—Objection as to limitation not taken before the Tribunal—Whether can be taken for the first time in writ petition—Error of law not affecting the merits of controversy—Writ of certiorari—Whether can be claimed.*

*Held*, that there is no mention of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 in the Schedule to the Limitation Act, and no period of limitation for any proceedings under that Act is prescribed by the general law of limitation. The period of limitation prescribed by rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, is not a special period prescribed for any proceedings mentioned in the Schedule to the Limitation Act, but relates to a subject which does not at all find place in the said Schedule. For the purposes of limitation for proceedings under the Consolidation Act, the Limitation Act of 1963 cannot be called the general law to which rule 18 is an exception. The Consolidation Act read with the Rules framed thereunder is a complete Code of the substantive as well as procedural laws on the subject dealt with therein. The provision as to limitation for filing an application under section 42 of the Act is self-contained and is neither controlled nor supplemented by the Limitation Act.

*Held*, that the State Government, under section 42, does not lack inherent jurisdiction in entertaining a time-barred petition. An order passed in a time-barred action is not a nullity and cannot be ignored. Unless such an order is got set aside in appropriate proceedings available at law, the order binds the parties thereto. No one should be permitted to sit on the fence and to take the chance of obtaining an order in his favour in a time-barred proceedings and then invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution for getting rid of that order if it does not suit him because it is contrary to law inasmuch as it was passed in a time-barred application. It has been repeatedly held by the High Courts that grant of relief under Article 226 of the Constitution is discretionary. Amongst other things which are taken into consideration for exercise of the said extraordinary jurisdiction by a High Court, is the conduct of the petitioner. A petitioner who does not raise a legal defence to an action before the Tribunal where the action is brought, should not ordinarily be permitted to raise the said defence for the first time in a writ petition.

*Held*, that no one can claim a writ in the nature of *certiorari ex debito justitiae* merely because an error of law, not affecting the merits of the controversy, exists in the impugned order.

Thambu, etc. v. Additional Director, Consolidation of Holdings, Hissar, etc.  
(Narula, J.)

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*Letter Patent Appeal under Clause X of the Letters Patent against the Judgment, dated 25th May, 1966, of the Hon'ble Mr. Justice P. D. Sharma, passed in C.W. No. 158 of 1965.*

ROOP CHAND, ADVOCATE, for the Appellants.

R. S. AMOL, ADVOCATE, for Respondent No. 3.

Other Respondents—NEMO.

### ORDER

NARULA, J.—Leaving out all the factual details, the adoption of which course does not appear to be unjustified in this case, the brief relevant facts which led to the filing of the writ petition against the dismissal of which by a learned Single Judge of this Court, the present appeal under clause 10 of the Letters Patent has been filed, are these: By the impugned orders, dated May 1, and July 25, 1964 (collectively marked Annexure 'A' to the writ petition), the Additional Director, Consolidation of Holdings, Punjab, Hissar, allowed the application of Mange and Risal Singh (respondents Nos. 2 and 3) under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) (hereinafter called the Act), and made certain changes in the repartition of village Petwar, tehsil Hansi, district Hissar. As stated in paragraph 2 of the written statement of the Additional Director, Consolidation of Holdings, Punjab, Hissar, in reply to the writ petition, repartition of the village was published on March 9, 1954, under sub-section (1) of section 21 and the same was confirmed on April 17, 1954, under section 21(2) of the Act. The Additional Director has also stated that the record of the village was finally consigned to the record room on August 3, 1954. The above-said orders under section 42 of the Act were called in question in the writ petition which was dismissed by the judgment under appeal.

Mr. Roop Chand, the learned counsel for the appellants, has confined his arguments before us in this appeal to only one out of the three points which appear to have been urged by him in support of the writ petition before the learned Single Judge. The submission of the learned Counsel is that the jurisdiction of the Additional Director to entertain and accept the application of respondents Nos. 2 and 3 under section 42 of the Act after the expiry of about ten years of the orders sought to be varied, was barred by rule 18 of the East

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Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, as subsequently amended. The said rule reads as follows:—

“*Limitation for application under section 42.*—An application under section 42 shall be made within six months of the date of the order against which it is filed:

Provided that in computing the period of limitation, the time spent in obtaining certified copies of the orders and the grounds of appeal, if any, filed under sub-section (3) or sub-section (4) of section 21, required to accompany the application shall be excluded:

Provided further, that an application may be admitted after the period of limitation prescribed therefor if the applicant satisfies the authority competent to take action under section 42 that he had sufficient cause for not making the application within such period.”

The appellants were admittedly present before the Additional Director at the time of the hearing of the petition under section 42 of the Act. The impugned orders did not show that any of the appellants ever raised any objection before the Additional Director about the application of the contesting respondents being barred by time. Nor has it been alleged either in the writ petition or in the grounds of this appeal that any bar of limitation was pleaded by any of the appellants at that stage.

Following the law laid down by a Division Bench of this Court in *Bhagat Singh v. Additional Director, Consolidation of Holdings, Punjab, Jullundur, and others* (1), the learned Single Judge declined to interfere on the ground of limitation. In that case it has been held by the Bench that where a petition under section 42 is filed after the prescribed period of limitation, the question of limitation cannot be raised before the High Court for the first time, if it was not raised before the authority hearing the application under section 42. Counsel for the appellants has contended that *Bhagat Singh's case* (supra) was not correctly decided. In fact another Bench of

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(1) I.L.R. (1966) 2 Punj. 664=1966 P.L.R. 496.

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this Court (Shamsher Bahadur, J., and myself) went into the above-said question again in *Sewa Singh v. State of Punjab and others* (2). It was held in that case that when a competent authority passes an order on a petition under section 42 without noticing it to be barred by time, it cannot be said that the authority assumes jurisdiction which does not vest in it. According to the judgment of the Division Bench in *Sewa Singh's case* (supra), the Director is under no duty to find out whether the petition under section 42 is barred by time unless the matter is brought to his notice. An order entertaining and accepting a petition under section 42 of the Act without noticing the bar of limitation and without the said bar being pointed out to the authority hearing the petition was held in the above-said case to be not bad for lack of inherent jurisdiction. The judgment of the earlier Division Bench in *Bhagat Singh's case* (supra) was specifically approved and it was unequivocally held that the failure to raise an objection about limitation before the departmental authorities by a party which could have done so, would be a bar to a *certiorari* petition made to quash such an order. Mr. Roop Chand has sought to question the correctness of the decision of this Court in *Sewa Singh's case* also. His argument is that the application under section 42 of the Act having been filed in 1964, when the Limitation Act (36 of 1963) had already come into force, it was the statutory duty of the Additional Director to dismiss the petition as barred by time on account of the operation of section 3 of the Limitation Act read with sub-section (2) of section 29 of that Act. The said sections are in the following terms:—

“3. (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act,—

(a) a suit is instituted,—

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(2) I.L.R. (1967) 2 Punj. and Hry. 89.

- (iii) in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator;
- (b) any claim by way of a set-off or a counter-claim, shall be treated as a separate suit and shall be deemed to have been instituted—
- (i) in the case of a set-off, on the same date as the suit in which the set-off is pleaded;
- (ii) in the case of a counter-claim, on the date on which the counter-claim is made in Court;
- (c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that Court.”

“29. (1) \* \* \* \* \*

- (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) \* \* \* \* \*

(4) \* \* \* \* \*

Counsel has referred to the Full Bench judgment of the Lahore High Court in the *Punjab Co-operative Bank, Ltd., Lahore v. The Official Liquidators, the Punjab Cotton Press Co., Ltd., (in liquidation) and others* (3), and to the judgment of the Supreme Court in the *Union of India and another v. Ram Kanwar and others* (4), and has argued that whenever a special period of limitation is fixed by any special

(3) I.L.R. (1941) 22 Lahore 191.

(4) A.I.R. 1962 S.C. 247.

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or local law which is different from the periods specified in the first Schedule to the Limitation Act, section 3 of the Act would apply to the same with the only modification that the period of limitation which the Court or Tribunal shall take into account, shall be the period mentioned in the special or local Act. There is no quarrel with that proposition of law. *Prima facie* it appears to us that the only variation made by the Limitation Act in the case of special or local laws is in respect of "the period of limitation" and not as to the description of the suit, appeal or application. All that sub-section (2) of section 29 appears to us to mean is that if in the second column of the Schedule to the Limitation Act, the period given is different, from the period mentioned in the special or local law, the latter shall prevail for the purposes of section 3 of the Limitation Act. We derive strength for this view from the use of the expressions "period of limitation" and "the period prescribed by the Schedule" in the matter of the difference referred to in sub-section (2) of section 29. Mr. Roop Chand also referred to the judgment of their Lordships of the Supreme Court in *Kaushalya Rani v. Gopal Singh* (5), wherein it was held that the period of limitation laid down by sub-section (4) of section 417 of the Code of Criminal Procedure for a petition for special leave to appeal against acquittal, would over-ride the period mentioned in Article 157 of the first Schedule to the Limitation Act, 1908. Their Lordships held in that case as below:--

"Once it is held that the special rule of limitation laid down in sub-section (4) of section 417 of the Code is a "special law" of limitation, governing appeals by private prosecutors, there is no difficulty in coming to the conclusion that section 5 of the Limitation Act is wholly out of the way, in view of section 29 (2) (b) of the Limitation Act.

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Hence, it may be said that there is no limitation prescribed by the Limitation Act for an appeal against an order of acquittal at the instance of a private prosecutor. Thus, there is a difference between the Limitation Act and the rule

laid down in section 417(4) of the Code in respect of limitation affecting such an application. Section 29(2) is supplemental in its character in so far as it provides for the application of section 3 to such cases as would not come within its purview but for this provision. And for the purposes of determining any period of limitation prescribed by any special law, it has made the provisions of the Limitation Act, referred in clause (a) of sub-section (2) of section 29 applicable to such cases to the extent to which they are not expressly excluded by such special or local law, and clause (b) of that sub-section expressly lays it down that the remaining provisions of the Limitation Act shall not apply to cases governed by any special or local law. In our opinion, therefore, the provisions of the Code supplemented by the provisions of section 29(2) of the Limitation Act, make it clear that section 5 of the Limitation Act would not apply to an application for special leave to appeal under section 417(3) of the Code."

It appears to us that whereas the general law prescribing period of limitation for an appeal against acquittal was covered by Limitation Act, the period for preferring such an appeal by special leave not having been mentioned in the first Schedule to the Limitation Act, section 29(2) (b) of that Act was invoked so as to make section 3 of the Limitation Act applicable, but exclude all other provisions thereof including section 5 from their operation on the application for special leave. Though limitation for an appeal against acquittal under section 417 of the Code of Criminal Procedure is prescribed by the Limitation Act, there is no mention of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948), in the Schedule to the Limitation Act, and no period of limitation for any proceedings under that Act is prescribed by the general law of limitation. The period of limitation prescribed by rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, is not a special period prescribed for any proceedings mentioned in the Schedule to the Limitation Act, but relates to a subject which does not at all find place in the said Schedule. For the purposes of limitation for proceedings under the Consolidation Act, the Limitation Act of 1963 cannot be called the general law to which rule 18 is an exception. The Consolidation Act read with the Rules framed thereunder is a complete Code of the substantive as well as procedural laws on the subject dealt with



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therein. The provision as to limitation for filing an application under section 42 of the Act is self-contained and is neither controlled nor supplemented by the Limitation Act. In this view of the matter, the ratio of the judgment of their Lordships of the Supreme Court in *Kaushalya Rani's case* (supra) does not appear to help the appellants.

Assuming that the view taken by me about the application of section 3 of the Limitation Act to proceedings under the Consolidation Act by operation of sub-section (2) of section 29 of the 1963 Act is in any manner fallacious, I would still think that though this aspect of the case does not appear to have been placed before any of the previous two Division Benches which dealt with this question (*Bhagat Singh's case* and *Sewa Singh's case*), the law laid down in those two cases should still hold good. This is so because an order by which relief is granted in a time-barred action is at best erroneous in law, and no one can claim a writ in the nature of *certiorari ex debito justitiae* merely because of an error of law, not affecting the merits of the controversy, being found in the impugned orders. This aspect of the case has already been discussed in detail in the Division Bench judgment of this Court in *Sewa Singh's case*. A Tribunal does not lack inherent jurisdiction in entertaining a time-barred petition. An order passed in a time-barred action is not a nullity and cannot be ignored. Unless such an order is got set aside in appropriate proceedings available at law, the order binds the parties thereto. No one should, in my opinion, be permitted to sit on the fence and to take the chance of obtaining an order in his favour in a time-barred proceeding and then invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution for getting rid of that order if it does not suit him because it is contrary to law inasmuch as it was passed in a time-barred application. It has been repeatedly held by the High Courts that grant of relief under Article 226 of the Constitution is discretionary. Amongst other things which are taken into consideration for exercise of the said extraordinary jurisdiction by a High Court, is the conduct of the petitioner. I feel that a petitioner who does not raise a legal defence to an action before the Tribunal where the action is brought, should not ordinarily be permitted to raise the said defence for the first time in a writ petition. In this view of the matter, I am unable to find any justification for differing from the view already authoritatively pronounced by this Court on this subject in *Bhagat Singh's*

case and *Sewa Singh's case*, by which view we are even otherwise bound while sitting in a Division Bench. In fact the application under section 42 was given on September 7, 1966 (*vide* paragraph 4 of the written statement of respondent No. 1), and the Limitation Act, 1963 (on which alone counsel has relied for this argument), was enforced from 1st January, 1964. The argument has, therefore, no application to the facts of this case.

Moreover, the judgments of the Division Benches in *Bhagat Singh's case* as well as *Sewa Singh's case* have already been approved by a Full Bench of this Court in *S. Gurdial Singh and others v. The State of Punjab and others* (6). In that case the question of limitation had been raised before the Director. Condonation of delay in presenting the time-barred petition under section 42 of the Consolidation Act was sought before him. The delay was condoned by the Director on the ground that the petitioner was in the Army and could not pursue his case. After referring to the judgments in the cases of *Bhagat Singh* and *Sewa Singh* and some other cases, the Full Bench held that before the Additional Director could have extended the time, he had to come to a conclusion that during the entire period of three years the petitioner was incapable of moving the authority or there was any other good reason for his not doing so earlier. It was on that ground that the plea relating to rule 18 of the Consolidation Rules was allowed to prevail in the writ petition (C.W. 915 of 1966). The precise question relating to the propriety of permitting the question of limitation being raised for the first time in writ proceedings was not before the Full Bench.

No other point was argued before us in this case. The appeal, therefore, fails and is dismissed with costs.

S. B. CAPOOR, A.C.J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

*Before R. S. Narula, J.*

JOGINDER PAL,—*Petitioner*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 76 of 1967

October 9, 1967

*Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 24—Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rules 90 and 92—Acquired evacuee property auctioned and entire purchase money*