especially when it has not been alleged that they are not competent persons to act as Directors or have an interest adverse to the interest of the Amritsar Central Co-operative Bank Limited, Amritsar.

(35) During the course of arguments, we asked the learned Advocate-General, Punjab, as to how much time would be taken for holding elections in the case of co-operative societies where members have been nominated to the Managing Committee or Boards of Directors and he assured us that the elections in such cooperative societies or banks would finish in about three to four months. An affidavit of Ch. Kartar Singh, Minister, Co-operation and Parliamentary Affairs, Punjab, dated 8th August, 1968, has been filed stating that elections to co-operative societies will be held within four to five months and that if in any case, it is not possible to hold elections during the above-mentioned period, reasons will be recorded for not doing so. We accept this affidavit and expect the Government to implement this assurance in its true spirit.

(36) With these observations, we dismiss all the three petitions but leave the parties to bear their own costs as the *vires* of a newly promulgated Ordinance were challenged.

MEHAR SINGH, C.J.—I agree.

K. S. K.

APPELLATE CIVIL

Before R. S. Narula and Sandhawalia, JJ.

UNION OF INDIA,—*Appellant*

versus

MOHAN SINGH CHAUDHRI,—*Respondent*

Regular First Appeal No. 94 of 1958.

August 20, 1968

Payment of Wages Act (IV of 1936)—S. 22—Re-instatement of Employee removed from service—Claim for wages for the intervening period—Authorities under the Act—Whether can adjudicate—Suit for such wages—Whether barred—Provisions of the Act—Whether confined to railway employees working on railway track only.

Held, that where wages are withheld from an employee once removed from service but later reinstated, the same can be treated as either wages deducted or wages regarding which there has been a delay in payment and that in such cases, the Authority under the Payment of Wages Act has jurisdiction to adjudicate upon the claim of the parties. Section 22(d) of the Act operates as a complete bar to the claim of such wages made in suit.

(Paras 20 and 27)

Held, that the meaning attached to the word "railway" is not merely to be restricted to the railway track but is of the widest amplitude as appears from the definition in section 3, sub-section (4) of the Indian Railways Act. The provisions of Payment of Wages Act are not confined to such employees of Railway administration only whose employment involves their engagement specifically upon the railway track. The Act applies to all other employees of the Railway administration

(Paras 22 and 25)

First Appeal from the decree of the Court of Shri Om Parkash Sharma, Senior Sub-Judge, Ferozepore, dated the 23rd day of January, 1958.

H. S. GUJRAL AND BIRINDER SINGH, ADVOCATES, for the Appellant.

D. R. MANCHANDA AND ROOP CHAND, ADVOCATES, for the Respondent.

JUDGMENT

SANDHAWALIA, J.—This is a defendant's first appeal directed against the order of learned Senior Subordinate Judge, Ferozepur, dated the 23rd January, 1958. By the order under appeal, the learned Senior Subordinate Judge had decreed the plaintiff's suit and awarded him a sum of Rs. 7,655 being the arrears of his claim for pay, allowances etc., from 5th May, 1949, to 7th July, 1954, with costs against the defendant-appellant.

(2) The facts leading to the filing of the suit by the plaintiff may now be briefly surveyed. The plaintiff was appointed as a temporary clerk on the 3rd June, 1944, by the order of General Manager, North-Western Railways at Lahore. After the partition of the country, he joined the office of the Divisional Superintendent Eastern Punjab Railways Ferozepur on the 1st of September, 1947. In March 1949, he was charge-sheeted and after enquiry, was removed from service by the order of the Divisional Personnel Officer. It is the case of the plaintiff that this removal was wrongful and wholly

illegal. He challenged this order of dismissal through a civil suit in the Court of the Subordinate Judge, Ferozepur, which was decreed in his favour on the 27th of February, 1953. The main ground on which this suit was allowed was that the appointment of the plaintiff had been made by the General Manager and he could not have been dismissed by the Divisional Personnel Officer who is lower in rank than the General Manager. The railway authorities, who were the defendants in the suit above-said, then preferred an appeal against that judgment in the Court of the Senior Subordinate Judge. This appeal was, however, dismissed on the 12th October, 1953. Pursuant to the dismissal of the appeal, the plaintiff was reinstated on the 8th of July, 1954. However, a month thereafter a fresh enquiry was ordered against his conduct and during its pendency on the 24th February, 1956, he was placed under suspension. This enquiry was held by the Divisional Personnel Officer *ex parte* and after serving the show-cause notice, an order for the removal of the plaintiff from service was passed by him on the 30th May, 1956. The plaintiff then filed an appeal against this order of removal before the Divisional Superintendent, Northern Railways, at Ferozepur, mainly contending that in view of the decision of the Civil Court, he could not have been dismissed by the Divisional Personnel Officer. However, this appeal was dismissed on the 19th September, 1956. The plaintiff then filed a writ petition in the High Court under Articles 226 and 227 of the Constitution of India which was allowed on the 17th May, 1957, and it was held that the dismissal of the plaintiff on 30th of May, 1956, was illegal and of no effect and he should be deemed to continue in service. The plaintiff's case in the trial Court was that in spite of the above pronouncements by the Civil Courts, full effect had not been given to the decree that the plaintiff continued to be in service of the defendant-appellant. He prayed that though he had been reinstated, full arrears of pay, allowances, bonus etc. had not yet been paid to him and hence the claim was made in the suit.

(3) It may also be mentioned that the plaintiff filed an application under the Payment of Wages Act on the 8th June, 1956, but the same was dismissed on the 18th December, 1956. Against this order of dismissal, an appeal was taken but that also failed,—*vide* the order dated the 14th June, 1957.

(4) The suit of the plaintiff in the trial Court was resisted on the ground of limitation, want of jurisdiction, the bar of Order 2,

rule 2, Code of Civil Procedure, and the bar under section 22, sub-clause (d) of the Payment of Wages Act. The trial Court framed the following five issues on the pleadings of the parties:—

(1) Whether the suit of the plaintiff is barred under section 22 of the Payment of Wages Act. (O.P.D.)
(2) Whether the suit of the plaintiff is barred under Order 2, rule 2, C.P.C. (O.P.D.)
(3) Whether the suit of the plaintiff is barred by limitation. (O.P.D.)
(4) Whether the Civil Court has no jurisdiction to hear the suit. (O.P.D.)
(5) What amount is the plaintiff entitled to. (O.P.D.)

(5) The trial Court decided Issues 1 to 4 in the favour of the plaintiff and against the defendant and consequently also decided Issue No. 5 in the favour of the plaintiff and held that he was entitled to Rs. 7,655 as arrears of pay, allowances, periodical increments etc. and decreed the suit in those terms.

(6) Mr H. S. Gujral, the learned counsel for the appellant has firstly assailed the finding of the trial Court on issue No. 3 before us. His contention is that the present suit had been filed on the 10th of October, 1956, and the *terminus a quo* for determining the period of limitation is the said date of the filing of the suit. Adding thereto the statutory period of two months for a notice under section 80, C.P.C. Mr. Gujral contends that the claim of the plaintiff-respondent prior to the 10th of August, 1953, is thus clearly barred by time. For this submission reliance has been placed by the learned counsel on the observations of the Supreme Court in *Madhav Laxman Vaikunthe* v. *State of Mysore* (1). According to him it is implied in those observations that the point of time from which the period of limitation is to be calculated should be three years prior to the date of the institution of the suit.

(7) Mr. Roop Chand in reply to the above submission has placed reliance on *Union of India* v. *Maharaj* (2). In this case the authority relied upon by Mr. Gujral, namely, *Madav Laxman Vaikunthe's case*, has been fully considered and interpreted. The learned Judges

(1) A.I.R. 1962 S.C. 8.
(2) R.F.A. 8-D of 1964 decided on 6th September, 1966.

after exhaustively dealing with the case law on the point have held as follows :—

> "The plaintiff was reinstated in service,—*vide* letter, dated the 8th/16th of November, 1957, and so the period of three years, as given in article 102 of the First Schedule to the Limitation Act, is to be computed from the date of this letter. The suit was instituted on the 7th of March, 1960, that is, within three years of the date of the above letter. Thus the entire claim of the plaintiff was within limitation."

Reliance was further placed on another Division Bench's authority of this Court reported in *The State of Punjab* v. *Ram Singh Brar* (3). In this judgment also *Madav Laxman's case* has been discussed and placing reliance on the earlier authority, the Division Bench has again expressed itself in the following terms:—

> "The matter has been set at rest by the decision of the Supreme Court in *Shri Madav Laxman Vaikunthe's case,* as well as by the decision of this Court in *Union of India* v. *Maharaj,* wherein it has been held that a suit for arrears of salary would be governed by article 102 and *terminus a quo* would be the date on which the officer, who had been compulsorily retired, is reinstated."

(8) Mr Gujral's reply to the respondent is that the two Division Bench authorities of this Court above-mentioned have erred in the enunciation of the law. We fail to agree, and see no reason whatsoever to differ from the above two cases which are binding on us. In the present case the earlier suit of the plaintiff-respondent challenging his dismissal was decreed on the 27th of February, 1953, by the Subordinate Judge at Ferozepur. The present appellant had challenged that decision in appeal and the said appeal was dismissed by the Senior Subordinate Judge on the 12th of October, 1953. Thereafter in pursuance of this decision the plaintiff-respondent was reinstead on the 8th of July, 1954. It is thus patent that the claim of the plaintiff-respondent was clearly within time on the date of the filing of the suit if the *terminus a quo* is taken as the date of his re-instatement or even earlier as that of the decisinon of the appeal of the appellant by the Senior Subordinate Judge. The contention of Mr. Gujral on this issue, therefore, must be repelled and we uphold the finding of the trial Court on this issue.

(3) 1967 P.L.R. 430.

(9) The next contention of Mr. Gujral is against the finding given on issue No. 2. He contends that the suit of the plaintiff-respondent was clearly barred under the provisions of Order 2 rule 2 of the Civil Procedure Code. This submission is hardly tenable. It is by now settled law that a suit for arrears of pay and allowance is competent after the order of removel has been set aside and the employee has been reinstated. Reliance was rightly placed for this view of the law on behalf of the respondent on *The State of Bihar* v. *Abdul Majid* (4). The facts and the observations in the said case are in clear support of this view. We, therefore, affirm the finding of the trial Court on issue No. 2.

(10) The last and the crucial attack of the learned counsel for the appellant is regarding the finding of the trial Court on Issue No. 1. The argument of Mr. Gujral is two-fold. Firstly, it is submitted that the Payment of Wages Act, 1936, is clearly applicable in the case of the respondent and that section 22(d) operates as a complete bar to the claim made in the suit. The provisions of section 22(d) are as follows:—

> "No court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed could have been recovered by an application under Section 15."

(11) Mr. Roop Chand in reply on behalf of the respondent, however, contends that section 22 of the Payment of Wages Act has no application in the case because a *bona fide* dispute had arisen between the parties as to how the intervening period for the claim so made by the respondent was to be treated. Whilst the Railway authorities wanted to treat this period as leave without pay, the respondent claimed to be on duty for the said period and thus entitled to his salary. The contention on behalf of the respondent, therefore, is that the dispute between the parties did not fall within the scope of section 15 of the Payment of Wages Act which only provides for the recovery of wages either wrongfully deducted or wrongfully delayed. Thus, it is submitted that the Authority under the Payment of Wages Act had no jurisdiction whatsoever to adjudicate upon the kind of dispute which had arisen between the parties and hence the amount could not be recovered under the provisions of the said Act. These two rival contentions, therefore, fall for determination in this case.

(4) A.I.R. 1954 S.C. 245.

(12) Mr. Gujral at the very outset has placed strong reliance for the proposition which he canvassed on *Risal Singh* v. *Union of India and another* (5). I will advert to this decision in the latter part of this judgment and first examine the decisions of the other High Courts on which reliance has been placed. Mr. Gujral cites *Bhagwat Rai* v. *Union of India and another* (6), which is a Division Bench authority of the said Court. In this case the employees making the claim was fitter-coolie in the Bengal Nagpur Railway, who had been suspended by the Railway authorities. He was subsequently reinstated and after his reinstatement he instituted a suit for the recovery of Rs. 137-3-3 on account of the wages for the period of suspension. An objection was raised on behalf of the railway authorities that the civil Court had no jurisdiction as the wages could have been recovered under section 15 of the Payment of Wages Act. This objection was upheld and the suit was dismissed The matter was then taken in revision to the High Court and because of the importance of the point involved, was referred to a Division Bench. Three contentions were raised on behalf of the employee, namely, (i) that the sum claimed could not be recovered by an application under section 15 of the Payment of Wages Act, (ii) that the application under section 15 of the Payment of Wages Act is an additional remedy to the ordinary remedy of a suit and not a remedy which has been substituted by law for the ordinary remedy of the suit, and lastly (iii) that on the date of the suit because six months had already elapsed from the day of the alleged deductions, so no application could be made under section 15 of the Payment of Wages Act.

(13) The learned Judges of the Division Bench considered all these three contentions and after referring to the case law on the point repelled all the three contentions raised and came to the following finding :—

> "We respectfully agree with this view and hold that the sums claimed by the applicant could have been recovered by an application under section 15, Payment of Wages Act. The learned counsel for the applicant next contended that the jurisdiction of Civil Court is not excluded as the remedy under the Payment of Wages Act is an additional remedy and was not available on the date of the suit. We do not agree. Section 22(d) excludes the jurisdiction of a Civil

(5) 1958 P.L.R. 227.
(6) A.I.R. 1953 Nagpur, 136.

Court to entertain a claim which could have been recovered by an application under section 15 of the Act. This exclusion is absolute and does not depend on the choice of the claimant. The jurisdiction of the Civil Court is not revived by his omission to make an application under section 15 within the time allowed by law."

(14) It is noticeable that in this authority, a reference was made to *Simpalax Manufacturing Co. Ltd* vs. *Alla-ud-Din* (7), and the learned Judges expressly dissented from the view taken therein. The next case relied upon by the learned counsel for the appellant is reported as *The Modern Mills Ltd.* v. *V. R, Mangalvedhekar* (8), decided by Chagla, C.J. and Bhagwati, J. In this case an employee who had left the employment of the Modern Mills, made an application for the bonus which had been declared subsequently. This application was declined by the Mills which contended that the employee was not entitled to any bonus. The employee thereon applied to the Authority under the Payment of Wages Act and the claim was resisted by the employers on the ground that such a claim was not admitted and that the employee was not entitled to any bonus at all. The Authority under the Payment of Wages Act, however, held that the employee was entitled to be paid the bonus and made an award accordingly. This order of the Authority was challenged by way of *certiorari* in the High Court. A Single Judge of the Bombay High Court dismissed the petition and an appeal from the said judgment was taken before the Division Bench. After exhaustively considering the matter on principle, the learned Judges have held as follows,—*vide* head-note (a) of the report :—

"Where an employer refused to pay an ex-employee the bonus to which he is entitled in pursuance of an award of an Industrial Court under the Bombay Industrial Relation Act, it is open to the authority under the Payment of Wages Act to construe the award in order to determine under section 15 whether the refusal was an authorized deduction or not. If after interpreting the award the authority decides that the claim of the employee was made within time as fixed by the award and orders the employer to pay the bonus, he acts within his jurisdiction and a writ of *certiorari* to quash the order cannot be issued against him."

(7) A.I.R. 1945 Lahore 195.
(8) A.I.R. 1950 Bom. 342.

(16) The next case relied on by Mr. Gujral is also a Division Bench judgment of the Bombay High Court *A. R. Sarin* v. *B. C. Patil and another* (9). On examination of the facts of the said case, we are, however, of the opinion that this authority relates to an altogether different set of facts and is not of much aid for determination of the point at issue.

(17) Mr. Roop Chand in reply on behalf of the respondent has placed reliance on *Simpalax Manufacturing* Co., Ltd. v. *Alla-ud-Din* (7) which is a Single Bench authority of the said High Court. It is, however, noticeable that in the said case, the claim was regarding a sum of money due in lieu of notice after dismissal from the employment. This was thus clearly a claim of damages and could hardly fall within the ambit of section 15 of the Payment of Wages Act and this case is thus clearly distinguishable. *Kishan Chand* v. *Divisional Superintendent Lahore Division North Western Railway* (10) was also cited by the learned counsel but clearly the facts of that case are entirely different. In that case, an employee had been promoted and he had got an increment of Rs. 10 whilst he was working in that grade. He was thereafter reverted to his original job and he contended that his reversion and reduction were *ultra vires* the Payment of Wages Act. On this ground he claimed a sum of Rs. 210 as compensation, computing the deduction at Rs. 35 p.m. for a period of six months. The Commissioner, appointed under the Payment of Wages Act, dismissed the application of the employee. A revision was taken against the said order and Mahajan, J. has observed as follows therein:—

> "The Act furnishes a summary remedy for wages earned in an office and not paid but it does not provide a remedy for investigation of querries which concern the office itself, in other words whether a man should be retained in one job or should be reverted to another job. Cases of unjustifiable reversion in my view cannot be decided by the authority appointed under the Payment of Wages Act exercising jurisdiction under section 15(3).

(18) Reliance was then placed on *Trivedi Anantray Jatashankar* v. *Haria, Manager of Shah Spinning and Weaving Mills, Anjar* (11). It is noticeable that this case was decided primarily on the authority

(9) A.I.R. 1951 Bom. 423.
(10) A.I.R. 1948 Lahore 202.
(11) A.I.R. 1955 Kutch 8.

of *Simpalax Manufacturing Co. Ltd.* vs. *Alla-ud-Din* (7), on which reliance had been placed and similarly in *A. C. Arumugham and others* vs. *Manager, Jawahar Mills Ltd. Salem Junction* (12) the observation in favour of the respondent are again based on *Trivedi Anantray Jatashankar's case* (supra) and *Simpalax Manufacturing's* case.

(19) Mr. Roop Chand placing reliance upon the words "where contrary to the provisions of this Act" in sub-section (2) of section 15 of the Payment of Wages Act, 1936, has submitted that the jurisdiction under the said Act arises only when any of the provisions of the said Act are contravened and not otherwise. He has drawn our attention to section 3 which fixes the responsibility for the payment of wages and section 4 which relates to the fixation of wage-periods. He also refers to section 5 which lays down the time of the payment of wages and lastly to section 7 which relates to the deductions which may be made from the wages of an employee. From the provisions of these sections, Mr. Roop Chand wishes us to infer that it is only when any of the directions in the said sections are contravened that the jurisdiction under the Act would arise. He contends that in this case there is no violation of the above-said provisions and as such the Authority under the Payment of Wages Act had no jurisdiction whatsoever to adjudicate upon the claim of the respondent. He has also urged that the cases decided to the contrary including *Risal Singh* vs. *Union of India and another* (5) are wrongly decided.

(20) We have carefully considered the authorities cited at the bar both for and against the proposition. The point at issue has been considered in *Risal Singh's case* (supra). By the said judgment, a revision petition by one Risal Singh had been decided. Risal Singh had been employed as Inspector in the Watch and Wards Department of the Eastern Punjab Railway and after having been reduced to the rank of a Sub-Inspector, he was removed from service. He instituted a suit for a declaration that his reduction in rank and removal were illegal which was decreed in his favour. In pursuance of the said decree, Risal Singh was restored to office as an Assistant Inspector, Watch and Wards, but the authorities held that the period of his absence from the date of his removal from service to the date of his resumption of duty should be treated as leave without pay. Risal Singh then made a claim before the Authority under section 15 of

(12) A.I.R. 1956 Mad. 79.

the Payment of Wages Act. The Railway authorities resisted the claim, apart from others, on the ground that the claim of Risal Singh did not fall within the ambit of section 15 of the Act because the liability to pay the wages had been wholly disputed by the employers and such disputes could not be adjudicated upon under the Payment of Wages Act but were only justiciable by an ordinary Civil Court. This objection was upheld and the Authority dismissed the claim of Risal Singh. A revision was taken against this order and Falshaw, J. (as he then was) in an elaborate judgment has considered a considerable body of the case law on the point and thereafter set aside the order under revision. It may be noticed that both *Simpalax Manufacturing Co. Ltd.* vs. *Alla-ud-Din* (7) *and Kishan Chand* vs. *Divisional Superintendent Lahore Division North Western Railway* (10) were discussed in this judgment. The learned Judge held that *Simpalax Manufacturing Company's case* (supra) was clearly distinguishable as that was obviously a case of damages and amount claimed in lieu of notice could not possibly be described as delayed wages. Similarly it was held that *Kishan Chand's* case (supra) was also not relevant to the point at issue. We are wholly in agreement with the view of the law expressed in *Risal Singh's case* (supra) and hold that where wages are withheld from an employee once removed from service but later reinstated, the same can be treated as either wages deducted or wages regarding which there has been a delay in payment and that in such cases, the Authority under the Payment of Wages Act has jurisdiction to adjudicate upon the claim of the parties.

(21) Mr. Roop Chand has also raised an ingenious argument based on the provisions of sub-section (4) of section 1 of the Payment of Wages Act, 1936, which is in the following terms:—

> "It applies in the first instance to the payment of wages to persons employed in any factory and to persons employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a subcontractor, by a person fulfilling a contract with a railway administration."

(22) Relying on the words "upon any railway" used in the above sub-section, he contends that the provisions of Payment of Wages Act are applicable to such employees of Railway administration whose employment involves their engagement specifically upon the railway track only and not other employees of the Railway

administration. He, therefore, contends that as the respondent was only a clerk employed by the Railway and had nothing particular to do with the work on the railway tracks, he would not come within the ambit of section 1(4) and as such Payment of Wages Act would not be applicable to him. That being so, it is argued that that Act would not apply and the bar of section 22(d) would hence not be attracted.

(23) The contention is obviously erroneous. In sub-clause (v), clause (g) of section 2 of Payment of Wages Act, railway administration has been defined as follows:—

> "railway administration has the meaning assigned to it in clause (6) of section 3 of the Indian Railways Act, 1890 (9 of 1890)."

(24) It is thus clear that the word "railway" has to be construed in the sense of the meaning attributed to it in the Indian Railways Act. We may, therefore, turn to the definition of the same in section 3 of the Indian Railways Act, 1890. Sub-section (4) of section 3 is in the following terms:—

> "railway" means a railway, or any portion of a railway for the public carriage of passengers, animals or goods, and includes—
>
> * * * * * *
>
> (c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, and other works constructed for the purposes of, or in connection with a railway."

(25) It is thus clear from this definition that the meaning attached to the word "railway" is not merely to be restricted to the railway track, but is of the widest amplitude as appears from the definition in section 3, sub-section (4) of the Indian Railway Act. Even otherwise, it may be noticed that the employees in *Risal Singh's case* (supra) and *Bhagwat Rai's case* (supra) were railway employees to whom the provisions of Payment of Wages Act were held to be applicable. There is no merit in this contention of Mr. Roop Chand and the same is rejected.

(26) The second part of Mr. Gujral's argument in this context is that the plaintiff-respondent had in fact made an application under section 15 of the Payment of Wages Act to the Authority thereunder on the 8th June, 1956. From the appellate judgment, it appears that

five issues were framed therein and Issue No. 1 was "Whether the application is within time, if not, whether there are sufficient reasons for condoning the delay occasioned in making the application ?" Issue No. 1 was decided against the respondent and the application was dismissed on the 18th December, 1956. However, the copy of that judgment has not been brought on the record. An appeal was taken against the said order and the same was also dismissed on the 14th June, 1957, and a copy of the appellate judgment forms part of the record and has been exhibited as P. 13. The observations of the Authority as quoted in the appellate judgment are to the following effect:—

> "In view of the findings recorded above, I have decided not to discuss other issues that had been settled between the parties.... In view of finding given under issue No. 1, the application fails and the same is hereby dismissed."

(27) It thus follows that the respondent had himself invoked the jurisdiction of the Authority under the Payment of Wages Act for a claim which is identical with that in the present suit and the said claim was declined not on the ground of any lack of jurisdiction of the Authority under the Payment of Wages Act, but expressly after consideration on the ground that the same was time-barred and further that there was no sufficient reason for condoning the delay in making the claim. There is thus merit in Mr. Gujral's contention that not only could the recovery have been made by an application under section 15, but such an application had in fact been made and rejected. As such, he submits that the provisions of section 22(d)' cannot but be attracted to the case of the respondent. In the present case, therefore, it is clear that the claim of the respondent could have been recovered by an application under section 15 of the Payment of Wages Act. As such, the suit in a civil Court for the said claim would be clearly barred. We would, therefore, reverse the finding of the trial Court on this issue and hold that the suit of the plaintiff is barred under section 22 of the Payment of Wages Act.

(28) In view of our above decision regarding Issue No. 1, this appeals succeeds and is allowed. The judgment and decree of the learned Senior Subordinate Judge, dated the 23rd January, 1958, are, therefore, set aside. However, in the circumstances of this case, we will make no order as to costs.

R. S. NARULA, J.—I agree.

R.N.M.