

tenant of the transferees and if he can show that the transferees are big landowners, then alone he can have the benefit of section 18. It is not disputed that the transferees are not big landowners and the transfers in their favour are sought to be ignored by recourse to section 6, but that does not bring into play section 18, because the fundamental requirement both under sections 6 and 18 is lacking, namely that the petitioner is the tenant of Munshi Ram, who admittedly was a big landowner.

(12) It is unfortunate that this distinction was lost sight of when Civil Writ No. 456 of 1961 was clubbed with the other writs where admittedly the tenants were the tenants of the big landowners prior to the transfers which had to be ignored by reason of section 6. In this view of the matter, no fault can, therefore, be found with the decision of the Financial Commissioner and the observations in *Ganpat's case* do not apply to Civil Writ No. 456 of 1961. This is clear from the judgment itself and I have quoted *in extenso* from the relevant parts thereof to demonstrate what in fact was decided therein.

(13) For the reasons recorded above, we dismiss this petition, but make no order as to costs.

NARULA, J.—I agree and have nothing to add.

PATTAR, J.—I agree.

K. S. K.

FULL BENCH

Before R. S. Narula, Bal Raj Tuli, and Muni Lal Verma, JJ.

MAHANT BIKRAM DASS,—Appellant.

versus

THE FINANCIAL COMMISSIONER,—Respondent.

Letter Patent Appeal No. 65 of 1971.

March 19, 1974.

Limitation Act (IX of 1908)—Article 151—Limitation Act (XXXVI of 1963)—Article 117—Letters Patent of Punjab High Court—Clause X—Punjab High Court Rules and Orders, Volume V, Chapter 1-A(a)—Rule 4—Letters Patent Appeal filed beyond time—Power to condone delay and extend time—Whether confined to the Bench admitting it—Jurisdiction of the

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Bench hearing the appeal to extend time—Whether taken away by rule 4—Delay in preferring Letters Patent Appeal—Whether impliedly condoned by the Motion Bench admitting it—Appeal liable to be rejected on some ground under Order 41 rule 3, Code of Civil Procedure—Whether can be dismissed on the same ground after admission—Memorandum of appeal drawn up in accordance with Order 41 rule 1—Whether can be rejected for non-compliance with any rule of procedure framed by the High Court—Letters Patent Appeal not accompanied by the requisite three spare copies of the paper-book—Whether competent in law—Such appeal originally filed within time but re-filed along with spare books beyond time—Whether can be dismissed as barred by time—Appeal though filed within time but returned for removing a defect within a specified time—Appeal re-filed after the expiry of the time so specified but within 40 days therefrom and the Deputy Registrar entertaining it—Time specified in the first instance—Whether deemed to have been extended.

Held, that during the period prior to January, 1964, when Limitation Act, 1908 was in force, Article 151 of the Act gave way to rule 4 of Chapter 1-A(a) of the Punjab High Court Rules and Orders, Volume V, framed under the rule making power of the High Court under Clause 27 of the Letters Patent and enjoyed the status of a special law. The period of limitation for appeal under Clause X of the Letters Patent was then 30 days from the date of the judgment appealed against. However, when Limitation Act, 1963 came into force on January 1, 1964, article 117 replaced Article 151 of the Limitation Act, 1908. Article 117 provides 30 days for Letters Patent Appeal. If Letters Patent Appeal was filed out of time when Limitation Act, 1908 was applicable it was the admitting Bench alone who could grant extension of time. If such an appeal is filed after coming into force of Limitation Act, 1963, i.e., on or after January 1, 1964, the admitting Bench can tentatively consider the question of condoning the delay, but it would ultimately be the Bench hearing the appeal which will finally, after hearing all the parties concerned, consider the sufficiency of cause for filing the appeal beyond limitation and may or may not condone the delay under section 5 of the Act.

(Paras 4 and 5)

Held, that whether the case requiring condonation of delay for preferring a Letter Patent Appeal is under rule 4 of Chapter 1-A(a) of the Punjab High Court Rules and Orders, Volume V or under section 5 of either of the two Limitation Acts, the Bench condoning the delay has to record that the delay was due to a sufficient and good cause. The pointed attention of the Bench must be drawn to the fact that the appeal as filed was barred by time and Condonation of delay was desired or required. The Bench will then apply its mind to the causes pleaded for condoning the

delay and if it comes to the conclusion that the delay was due to a sufficient and good cause, the delay may be condoned, but the mere admission of the appeal without the attention of the Bench being invited to the fact that it was barred by time, will not have the effect of condoning the delay. It will be open to the respondent or respondents to raise the plea of limitation and the Bench hearing the appeal will record its decision on that application.

(Para 7)

Held, that although the objection as to the drawing up of the memorandum of appeal in accordance with rule 1 of Order XLI of Code of Civil Procedure should be taken at the initial stage, yet there is nothing in the Order or any other provision of the Code or the rules framed by the High Court which bars the exercise of powers of rejecting a memorandum of appeal under Order XLI, rule 3 of the Code, after admission of the same by Motion Bench. This power can be exercised by the Court hearing the appeal at a subsequent stage also on an objection taken by the respondent. Hence an appeal liable to be rejected on some ground under Order XLI, rule 3 of the Code can be dismissed after admission on the same ground.

(Para 8)

Held, that Rules of procedure have been framed by the Punjab High Court in exercise of its rule-making power available to it under sections 122 and 129 of the Code of Civil Procedure or clause 27 of the Letters Patent. The Rules, therefore, have the force of law and non-compliance with any rule framed by the Punjab High Court prescribing a condition precedent or a necessary condition to the filing of an appeal will render the memorandum of appeal as not competent in law and liable to rejection.

(Para 9)

Held, that if appeal under clause 10 of the Letters Patent does not comply with the mandatory provisions of rule 3 of Chapter 2-C of the Rules by not filing three sets of typed copies of the documents, it has to be regarded as no appeal in the eye of law and shall not be deemed to have been filed on that day. It shall be deemed to have been filed only on the day when it is complete in all respects, as required by the Rules, and is accepted for registration by the Registry of the High Court. A Letters Patent Appeal will be treated as validly and properly filed on the day when it is filed along with three sets of the copies of the documents mentioned in rule 3, Chapter 2-C of the Rules. Such an appeal, if it is not accompanied by the three sets of copies of documents when it is originally presented within time is liable to be dismissed as barred by time, if it is filed along with the

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three sets after the expiry of the period of limitation prescribed for it, unless the delay is condoned under section 5 of the Limitation Act, or Rule 4 of Chapter 1-A(a) of Punjab High Court Rules and Orders, Volume V, whichever may be applicable.

(Paras 15 & 16)

Held, that if an appeal, originally filed within time, is returned for amendment and refiled within a time fixed by the Deputy Registrar, and the same is entertained by the Deputy Registrar without any objection when refiled within 40 days of its initial presentation, though after the expiry of the period allowed by him for amendment and refiled the same, it will be deemed that the Deputy Registrar extended the time for refiled of the same up to the date when it was so entertained by him.

(Para 11)

Case referred by the Division Bench consisting of Hon'ble Mr. Justice R. S. Narula and Hon'ble Mr. Justice Rajendra Nath Mittal on 1st September, 1972, to a Full Bench for decision of the following seven questions of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice R. S. Narula, Hon'ble Mr. Justice Bal Raj Tuli and Hon'ble Mr. Justice Muni Lal Verma after deciding the questions of law referred to returned the case to the Division Bench on 19th March, 1974, for deciding it according to law.

- (1) *Whether the power to condone delay or extend time for filing an appeal under Clause 10 of the Letters Patent of this Court is confined to the Bench admitting the appeal; and rule 4 of Chapter 1-A(a) of the Rules and Orders of this Court Volume V takes away the jurisdiction of the Bench hearing the appeal or any Bench other than the Motion Bench to extend the time? In other words whether the law laid down by the Division Bench of this Court in Janardhan Misra's case is correct or the view expressed by the Division Bench of the Delhi High Court in the case of Matu Ram and others, and by the earlier Division Bench of this Court in Harbans Singh's case is sound?*
- (2) *Whether the delay in preferring the appeal is deemed to have been impliedly condoned by the Motion Bench by admitting it to a hearing after the expiry of the period of limitation?*
- (3) *Can an appeal be dismissed after admission on a ground on which it was liable to be rejected under Order 41 Rule 3 of the Code of Civil Procedure?*

- (4) *Whether a memorandum of appeal can be rejected on a ground not specified in Order 41 Rule 3 of the Code of Civil Procedure but because of non-compliance with any rule of procedure framed by this Court ?*
- (5) *Can a Letter Patent Appeal which has not been rejected under 41 Rule 3 of the Code be dismissed as barred by time on the ground that though it was originally filed within time, it has been refiled along with spare paper-books beyond time ?*
- (6) *What is the effect of the Registry entertaining an appeal which is refiled after the expiry of the period of limitation beyond the time allowed in the endorsement of return, but within forty days of the order of return if the appeal when originally filed was within time ? and*
- (7) *Can an appeal under clause 10 of the Letters Patent be held to be incomplete or "no appeal in the eye of law" merely because it is not accompanied by the requisite three spare copies of the paper-book ?*

Letters Patent Appeal under clause 10 of the Letters Patent of the High Court against the judgment passed by Hon'ble Mr. Justice Ranjit Singh Sarkaria, in Civil Writ No. 1146 of 1966 on 27th November, 1970.

C.M. 4005/1972.

Application under Section 5 of the Indian Limitation Act, praying that appeal be treated as within time and the delay if any be condoned and appeal be decided on merits.

Jagan Nath Kaushal, Senior Advocate with Ashok Bhan Advocate, for the appellant.

Harbans Lal Sarin, Advocate with M. L. Sarine, Advocate, for the respondents.

ORDER

VERMA, J.—(1) The appellant filed Civil Writ Petition No. 1146 of 1966, in this Court against the order of the Financial Commissioner, which was dismissed by a learned Single Judge on November 27, 1970. Against that judgment the appellant filed an appeal under Clause 10 of the Letters Patent on December 23, 1970. The Deputy Registrar raised certain objections, including that it was not accompanied by three sets of typed copies of documents as required

by rule 3 of Chapter 2-C of the High Court Rules and Orders, Volume V, and ordered its return to the learned counsel for the appellant for removing the defects and to refile it within a week. The order for return was passed on December 23, 1970, but it has not been possible to ascertain as to on which date the learned counsel or his clerk took it back from the Court. However, after removing the defects pointed out by the Deputy Registrar, the appeal was refiled on January 30, 1971. No objection was then taken by the Deputy Registrar to its having been refiled after more than a week allowed by him. On February 24, 1971, the appeal was admitted by the Motion Bench without advertng to the question of limitation. On April 19, 1972, when the appeal came up for hearing before the Division Bench, the learned counsel for Dayal Singh, Harbhajan Singh and Harbans Singh, the contesting respondents, raised the objection that it was barred by time. Thereupon, the appellant moved an application under section 5 of the Limitation Act for condonation of delay, if there was any, in presenting the appeal. The said application was resisted by Dayal Singh, Harbhajan Singh and Harbans Singh (hereinafter called the respondents). It was contended by the learned counsel for the appellant that the appeal, when initially presented on December 23, 1970, was within time and even otherwise, if there was any delay in its presentation when it was refiled, the Motion Bench, while admitting the appeal, would be deemed to have condoned the same. On the other hand, the learned counsel for the respondents argued that in the circumstances of the case, the appeal should be deemed to have been presented on January 30, 1971, and as it was then barred by time, it was only the Motion Bench which could, on good cause being shown, condone the delay. Reliance in that respect was placed by him on rule 4 of Chapter 1-A(a) of the High Court Rules and Orders, Volume V, and certain judgments of this Court as well as the High Courts of Delhi and Lahore. The Division Bench, while hearing the appeal on September 1, 1972, felt that several questions of law of great public importance and of daily occurrence were involved, which required determination by a larger Bench, particularly because there was difference of opinion amongst the learned Judges as disclosed by the judgments cited at the Bar. Consequently, the Division Bench formulated the following seven questions to be referred to a Full Bench for decision:—

- (1) Whether the power to condone delay or extend time for filing an appeal under Clause 10 of the Letters Patent of this Court is confined to the Bench admitting the appeal

and rule 4 of Chapter 1-A(a) of the Rules and Orders of this Court, Volume V, takes away the jurisdiction of the Bench hearing the appeal or any Bench other than the Motion Bench to extend the time? In other words whether the law laid down by the Division Bench of this Court in *Janardhan Misra's Case* is correct or the view expressed by the Division Bench of the Delhi High Court in the case of *Matu Ram and others*, and by the earlier Division Bench of this Court in *Harbans Singh's case* is sound?

- (2) Whether the delay in preferring the appeal is deemed to have been impliedly condoned by the Motion Bench by admitting it to a hearing after the expiry of the period of limitation?
- (3) Can an appeal be dismissed after admission on a ground on which it was liable to be rejected under Order XLI Rule 3 of the Code of Civil Procedure?
- (4) Whether a memorandum of appeal can be rejected on a ground not specified in Order XLI, Rule 3 of the Code of Civil Procedure but because of non-compliance with any rule of procedure framed by this Court?
- (5) Can a Letters Patent Appeal, which has not been rejected under Order XLI Rule 3 of the Code, be dismissed as barred by time on the ground that though it was originally filed within time, it has been refiled along with spare paper-books beyond time?
- (6) What is the effect of the Registry entertaining an appeal which is refiled after the expiry of the period of limitation beyond the time allowed in the endorsement of return, but within forty days of the order of return if the appeal when originally filed was within time?
- (7) Can an appeal under clause 10 of the Letters Patent be held to be incomplete or "no appeal in the eye of law" merely because it is not accompanied by the requisite three spare copies of the paper-book?

This Full Bench has, accordingly, been constituted to decide these matters.

(2) In order to appreciate the contentions advanced by the learned counsel for the parties and for recording answers to the aforesaid questions, it would be appropriate to reproduce the relevant provisions of

law cited at the Bar, i.e., the Rules and Orders of this Court, Volume V (hereinafter referred to as the Rules), relevant clauses of the Letters Patent, and the relevant provisions of the Indian Limitation Act, No. 9 of 1908 (hereinafter called Act No. 9 of 1908), as well as of the Limitation Act, No. 36 of 1963 (hereinafter referred to as Act No. 36 of 1963), which came into force on January 1, 1964. These provisions are as under :—

Rule 4 of Chapter 1-A(a) of the Rules :

“No memorandum of appeal preferred under clause 10 of the Letters Patent shall be entertained if presented after the expiration of 30 days from the date of the judgment appealed from, unless the admitting Bench in its discretion, for good cause shown, grants further time for the presentation. Such memorandum of appeal need not be accompanied by a copy of the judgment appealed from, but a memorandum of appeal for which a certificate is required under clause 10, must contain a declaration to the effect that the Judge, who passed the judgment, has certified that the case is a fit one for appeal. The time spent in obtaining the certificate from the Judge (including the date of application and the date on which the Judge passed the order) shall be excluded in computing the period of limitation. Section 12 of the Indian Limitation Act governs an appeal under the Letters Patent and the appellant in such a case is entitled to exclude the “time requisite” for obtaining a copy of the judgment appealed against (whether such copy is filed or not) even though under the Rules of the Court no copy of the judgment is required to be filed with the memorandum of appeal.”

Rule 5(1) The Deputy Registrar may return for amendment and refiling within a time not exceeding 10 days at a time, and 40 days in the aggregate, to be fixed by him, any memorandum of appeal for the reason specified in Order XLI, Rule 3, Civil Procedure Code. (2) If the memorandum of appeal is not amended within the time allowed by the Deputy Registrar under sub-rule (1), it shall be listed for orders before the Court.”

Rules 2 and 3 of Chapter 2-C of the Rules :

“2. The paper-book in such appeals (i.e. under clause 10 of the Letters Patent) shall ordinarily consist of:—

- (a) the memorandum of appeal,

- (b) a copy of the judgment appealed from;
 - (c) copy of the judgment or other documents which were before the Judge from whose judgment the appeal is preferred.
3. No appeal under clause 10 of the Letters Patent will be received by the Deputy Registrar unless it is accompanied by three typed copies of the following :—
- (a) Memorandum of appeal,
 - (b) Judgment appealed from, and
 - (c) Paper-book which was before the Judge from whose judgment the appeal is preferred.”

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Clause 27. And we do further ordain that it shall be lawful for the High Court of Judicature at Lahore from time to time to make rules and orders regulating the practice of the Court and for the purpose of adapting as far as possible the provisions of the Code of Civil Procedure, being an Act, No. v of 1908, passed by the Governor-General in Council, and the provisions of any law which has been or may be made, amending or altering the same, by competent legislative authority for India, to all proceedings in its testamentary, intestate and matrimonial jurisdiction, respectively.

Clause 37. And we do further ordain and declare that all the provisions of these Our Letters Patent are subject to the Legislative powers of the Governor-General in Legislative Council, and also of the Governor-General in Council under section seventy-one of the Government of India Act, 1915 and also of the Governor-General in cases of emergency under section seventy-two of that Act and may be in all respects amended and altered thereby.”

ACT No. 9 of 1908

“Section 29(2). Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that Schedule.....”

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The First Schedule

<i>Description of appeal</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
151. From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay, or of High Court of Punjab in the exercise of its original jurisdiction.	Twenty days.	The date of the decree or order.

Act No. 36 of 1963.

The provision contained in section 29(2) of Act No. 36 of 1963 is similar to the one contained in the aforesaid section 29(2) of Act No. 9 of 1908. Article 117 of Act No. 36 of 1963 is as under:—

<i>Description of appeal</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
117. From a decree or order of any High Court to the same Court.	Thirty days	The date of the decree or order.

I now proceed to discuss the various questions referred to us with a view to answer the same.

Question No. 1

(3) Relying on *Rameshwar Das v. Official Receiver, Delhi and another* (1), *Harbans Singh v. Karam Chand and another* (2),

(1) A.I.R. 1938 Lah. 325.

(2) 1949 P.L.R. 50.

Matu Ram and others v. Union of India and others (3), and an unreported judgment of this Court in *Des Raj and others v. The Administrator, Municipal Committee, Sonapat* (4), Shri H. L. Sarin, learned counsel for the respondents, argued that the Motion Bench was the only Bench which could condone the delay in filing the appeal, and that no other Bench, not even the one hearing the appeal, was competent to extend the time for presentation of the appeal. On the other hand, Shri J. N. Kaushal, learned counsel for the appellant, relying on an unreported judgment of this Court *Janardhan Misra v. P. N. Thapar* (5), contended that the Bench hearing the appeal had the jurisdiction to condone the delay, if there was any, in filing it.

(4) It will be presently seen that the judgments relied on by Shri Sarin are not applicable to the case in hand and that the present case is covered by the judgment recorded in *Janardhan Misra's case*, and the contention of Shri Kaushal is sound and must prevail. True, the consensus of the learned Judges, who decided the cases cited by Shri Sarin, was that the Motion Bench (referred to as admitting Bench in rule 4) was alone competent, for good cause shown, to extend the period of 30 days prescribed by the said rule for presenting a Letters Patent Appeal. But all the aforesaid cases, relied on by Shri Sarin, relate to the period when the provisions of Act No. 9 of 1908 were in operation. Rule 4 was made in pursuance of the rule-making powers available to this Court under clause 27 of the Letters Patent. But, then those powers were subject to the legislative power of the Legislature,—*vide* clause 37 of the Letters Patent. Article 151 in the First Schedule of Act No. 9 of 1908 provided a period of 20 days for any appeal from a decree or order passed by the High Court in exercise of its original jurisdiction, while Rule 4, in contradistinction to the said Article 151, provided a different period, i.e., 30 days from the date of the judgment appealed from, for an appeal under clause 10 of the Letters Patent. The said rule 4, having been made by this Court under powers available to it under clause 27 of the Letters Patent, had the status of a special law. Therefore, the period of 30 days having been prescribed by special law was saved by sub-section (2) of section 29 of the Act No. 9 of 1908, and the same prevailed against the period

(3) A.I.R. 1967 Delhi 58.

(4) L.P.A. No. 266 of 1960 decided on 29th August, 1963.

(5) C.Ms. No. 4353 of 1966 and 415 of 1967 in L.P.A. 428 of 1966 decided on 11th January, 1968.

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of 20 days prescribed by Article 151 in the First Schedule of Act No. 9 of 1908. To put it differently, during the period prior to January 1, 1964, when Act No. 9 of 1908 was in force, Article 151 gave way to rule 4 and the period of limitation for appeal under clause 10 of the Letters Patent was 30 days from the date of the judgment appealed from, as has been made clear by their Lordships of the Supreme Court in *The Union of India and another v. Ram Kanwar and others* (6). When Act No. 36 of 1963 came into force, i.e., on January 1, 1964, its Article 117 replaced Article 151 of Act No. 9 of 1908. The said Article 117 provides 30 days (in place of 20 days prescribed by Article 151 of Act No. 9 of 1908) for an appeal from a decree or order of any High Court to the same Court, whether passed in the exercise of original jurisdiction or appellate jurisdiction. Section 5 of Act No. 9 of 1908 did not by itself apply to extension of time fixed under other enactments, but could be made applicable thereto. Its operation had not been extended to Rule 4. Therefore, section 5 could not be invoked for extending the time fixed by that Rule. The appeal in hand having been presented on December 23, 1970, and refiled on January 30, 1971, is governed by Article 117. Since the period of limitation prescribed for the appeal by rule 4 and Article 117 of Act No. 36 of 1963 is identical, the provisions of section 29 (2) of Act No. 36 of 1963 are not attracted and, as such, there is no saving of rule 4 and it must give way to Article 117, as far as the period of limitation is concerned. It follows that Article 117 of Act No. 36 of 1963, and not rule 4, is now applicable to all appeals under the Letters Patent, and the provisions of section 5 of the Limitation Act apply thereto so far as the question of condoning the delay in filing the appeal is concerned. Rule 4 granted the discretion to condone the delay for good cause shown, in filing appeal out of time to the Admitting Bench alone, but jurisdiction to condone such delay under section 5 of the Limitation Act is now available to every Bench hearing the appeal, whether at the motion stage or at the stage of a subsequent or final hearing. Therefore, the Bench hearing the appeal is competent, in exercise of its discretion, to grant or refuse to grant extension of time on an application moved under section 5 of the Limitation Act in an appeal filed after January 1, 1964. The observations made by Mehar Singh, C.J., in *Janardhan Misra's case* fully cover the point in controversy. It is pertinent to note that in that case too, the appeal was under clause 10 of the Letters Patent and had been filed

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

after the expiry of 30 days, i.e., the period of limitation prescribed for the same, from the date of the judgment appealed from, and the said appeal had been presented after the coming into force of Act No. 36 of 1963. So, the judgment given in *Janardhan Misra's case* is relevant to the point which is the subject of this question, and none of the judgments relied upon by Shri Sarin is now relevant, for the obvious reason that all those cases relate to the period when Act No. 9 of 1908 was in force and rule 4 provided a different period of limitation for appeals under clause 10 of the Letters Patent.

(5) It, thus, follows that there is, as a matter of fact, no conflict between the ratio of the judgment recorded in *Janardhan Misra's case (supra)*, and the ratio of the various decisions, including the case of *Matu Ram and others (supra)*, relied on by Shri Sarin and referred to above. All these authorities, when read together, point out that if an appeal under clause 10 of the Letters Patent was filed out of time when Act No. 9 of 1908 was applicable, it was the Admitting Bench alone which could grant extension of time, but if such an appeal was filed after the coming into force of Act No. 36 of 1963, i.e., on or after January 1, 1964, the Admitting Bench could tentatively consider the question of condoning the delay, but it would be the Bench hearing the appeal which would finally, after hearing all the parties concerned, consider the sufficiency of cause for filing the appeal beyond limitation and may not condone the delay under section 5 of the limitation Act.

(6) As a result of the discussion above, my answer to this question is in two parts, i.e.:

- (a) That if rule 4 applies to an appeal under clause 10 of the Letters Patent, or, in other words, if Act No. 9 of 1908 was in force when the said appeal was presented, the discretion to condone the delay is confined to the admitting Bench only, and no Bench subsequently hearing the appeal would be competent to extend the time for presenting the appeal, otherwise out of time.
- (b) But if such an appeal is governed by Act No. 36 of 1963, or, in other words, when it has been presented on or after January 1, 1964, the Bench hearing the appeal has the jurisdiction to condone the delay after considering the sufficiency of cause for filing it beyond time. The Admitting Bench may also condone the said delay while admitting the

appeal, but then the respondent will be entitled to reopen the question and contend before the Bench hearing the appeal that there was no sufficient cause for condoning the delay. Similarly, if the Admitting Bench omits to condone such delay while admitting the appeal, the appellant can claim extension of time from the Bench hearing the appeal, of course by showing sufficient cause for not filing it within time.

Question No. 2

(7) Whether the case requiring condonation of delay is under rule 4 *ibid* or under section 5 of either of the two Limitation Acts, the Bench condoning the delay has to record that the delay was due to a sufficient and good cause. It, thus, follows that the pointed attention of the Bench must be drawn to the fact that the appeal as filed was barred by time and condonation of delay was desired or required. The Bench will then apply its mind to the causes pleaded for condoning the delay and if it comes to the conclusion that the delay was due to a sufficient and good cause, the delay may be condoned, but the mere admission of the appeal without the attention of the Bench being invited to the fact that it was barred by time, will not, in my opinion, have the effect of condoning the delay. It will be open to the respondent or respondents to raise the plea of limitation and the Bench hearing the appeal will record its decision on that application. The answer to question No. 2 is, therefore, in the negative.

Question No. 3

(8) The provisions contained in Order XXI, Civil Procedure Code, govern the first appeals from decrees but, by virtue of section 117 of the Code, the said provisions, except the one contained in rule 35, are also applicable to an appeal under clause 10 of the Letters Patent. Section 117 of the Code is in these terms:—

“Save as provided in this Part or in Part X or in rules, the provisions of this Code shall apply to such High Courts.”

It is, thus, clear that the Civil Procedure Code is generally applicable to the High Court, except when it is specifically excluded or unless the High Court itself has made rules superseding any particular provisions of the Code. Rule 3 of Order XLIX, Civil Procedure Code, which restricts the application of the provisions

contained in certain rules of the Code provides that rule 35 of Order XLI shall not apply to the High Court in the exercise of its appellate jurisdiction. The combined effect of section 117 and rule 3 of Order XLIX, Civil Procedure Code, is that the provisions of Order XLI except the one contained in rule 35 (relating to the date and contents of a decree) are applicable to an appeal under the Letters Patent. The cases reported as *Suba Singh Kure Singh v. Neki Kishen Sahai and others* (7), *Yelumalai and another v. Kupammal and others* (8), *Smt. Asho Devi v. Dukhi Sao and others* (9), and *Lakhpatt Singh and others v. Dal Singh and another* (10), clearly support this view. Although it appears that objection as to the drawing up of the memorandum of appeal in accordance with rule 1 of Order XLI, Civil Procedure Code, should be taken at the initial stage, yet there is nothing in the said Order or any other provision of the Code or in the Rules framed by the High Court, which bars the exercise of the powers of rejecting a memorandum of appeal under Order XLI, rule 3, Civil Procedure Code, after admission of the same by the Motion Bench. As such, the aforesaid power can be exercised by the Court hearing the appeal at a subsequent stage also i.e., on an objection taken by the respondent/respondents. It has been held by a learned Single Judge of this Court in *Mam Raj and others v. Darshan Singh alias Ranjit Singh*, (11) at page 247, that in case an appeal has been admitted, the memorandum cannot be rejected, either under rule 3 of the order XLI or under any other provision, as time-barred. While discussing the said matter, the learned Judge sought support from the judgments in *Chintapatla Venkatanarasinha Ramchandra Rao and others* (12), and *Bidhu Bhusan Bakshi v. Kalachand Roy* (13). In both of those cases, appeals had not yet been admitted when the question of rejection of the same arose. The *ratio decidendi* of *Chintapatla's case* is that the memorandum of appeal, which has not been registered, cannot be regarded as an appeal but only as a memorandum of appeal presented to the Court. As long as there are defects in it, all that the Court can do is to return it under Order XLI, rule 3, Civil Procedure Code, in order to afford the appellant a

(7) A.I.R. 1957 Pb. 106.

(8) A.I.R. 1928 Mad. 385.

(9) A.I.R. 1965 Patna 472.

(10) 1964 A.L.J. 1049.

(11) 1972 P.L.R. 241.

(12) A.I.R. 1933 Mad. 358.

(13) A.I.R. 1927 Cal. 775.

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chance of presenting it again in a complete form. There is nothing in the said two authorities to show that an appeal cannot be rejected after its admission on a ground on which it could be rejected under Order XLI, rule 3, Civil Procedure Code. Under that rule an appeal cannot be rejected on the ground of limitation and, therefore, the observation of the learned Judge in *Mam Raj's case (supra)* appears to be correct, in so far as it concerns a time-barred appeal. After the admission of a time-barred appeal, it will be dismissed as barred by time but not rejected on that score. To make it clear, I hold that an appeal, even after admission, can be rejected on a ground on which it could be rejected before admission under Order XLI, rule 3 of the Code of Civil Procedure. If any observation in *Mam Raj's case (supra)* is to the contrary, the same cannot be said to lay down the correct law. In the light of the above discussion, my answer to this question is in the affirmative.

Question No. 4

(9) Rules of procedure have been framed by this Court in exercise of its rule-making power available to it under sections 122 and 129 of the Code of Civil Procedure or clause 27 of the Letters Patent. So, the said Rules have the force of law. Therefore, non-compliance with any rule framed by this Court prescribing a condition precedent or a necessary condition to the filing of an appeal, would render the memorandum of appeal liable to rejection. Similar appears to be the ratio of the judgment recorded by this Court in an unreported case *Ram Rachhpal etc. v. Ramji Dass* (14). My answer to this question is, therefore, in the affirmative.

Question No. 5

(10) This question is inter-linked with question No. 7 and so I propose to discuss them together. It will, accordingly, be dealt along with question No. 7.

Question No. 6

(11) Rule 5 (1) of the High Court Rules and Orders, reproduced above, authorises the Deputy Registrar to return the memorandum of appeal, which does not conform to the requirements of Order XLI, rule 3, Civil Procedure Code, for amendment and refileing the same within a time, not exceeding 10 days at a time, to be fixed by him,

(14) R.F.A. No. 241 of 1962 decided on 10th May, 1967.

and he can extend the said period up to 40 days in the aggregate. Therefore, if an appeal, originally filed within time, is returned for amendment and refiling within a time fixed by the Deputy Registrar, and the same is entertained by the Deputy Registrar without any objection when refiled within 40 days of its initial presentation, though after the expiry of the period allowed by him for amendment and refiling the same, it will be deemed that the Deputy Registrar has extended the time allowed by him in the first instance for amendment and refiling of the same up to the date when it was so entertained by him, and I answer this question accordingly.

Question Nos. 5 and 7

(12) "Appeal" and "memorandum of appeal" are two distinct things. Appeal is the judicial examination by a higher Court of the decision of an inferior Court. The memorandum of appeal contains the grounds on which the judicial examination is invited. The Code of Civil Procedure and the Rules framed by this Court make provisions respecting the matters relating to the presentation of appeals, including form of appeal, contents of memorandum of appeal and the documents that are to accompany it and as to how an appeal is to be dealt with after its presentation and admission. The said provisions may either be mandatory or directory. Incomplete appeal would mean that it is lacking in some prescribed particular. If an appeal, when filed, does not comply with any rule, which is not mandatory, it may be said to be incomplete, but when it does not comply with any rule, which is mandatory, it would be treated as no appeal in the eye of law. Since no definition of Letters Patent Appeal is available in the Code of Civil Procedure, the Letters Patent or the Rules framed by this Court, Shri Kaushal, learned counsel for the appellant, relying on *Nagendra Nath Dey and another v. Suresh Chandra Dey and others* (15), argued that the present appeal, when filed on December 23, 1970, without three sets of typed copies, as required by rule 3 of Chapter 2-C of the Rules, had to be treated as an appeal filed on that day. It has been observed by their Lordships in *Nagendra Nath Dey's case*, at page 167 :

"There is no definition of appeal in the Civil Procedure Code, but their Lordships have no doubt that any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal

(15) A.I.R. 1932 P.C, 165,

within the ordinary acceptance of the term, and that it is no less an appeal because it is irregular or incompetent.”

(13) In the said case the appeal, against which objection had been taken, was irregular in form as not being an appeal against the decree of the Subordinate Judge and being insufficiently stamped for that purpose, and it was dismissed both on the ground of irregularity and on merits. Since there is nothing to indicate in *Nagendra Nath Dey's case* that the appeal in that case had been filed in violation of any mandatory provision of law, it cannot be maintained that the ratio of that judgment would apply to the appeal that is filed in breach of the provision contained in rule 3, referred to above, which, as would be presently seen, is mandatory in nature. Rule 2 of Chapter 2-C of the Rules, reproduced above, deals with the contents of the paper-book of an appeal under clause 10 of the Letters Patent and rule 3 of the said Chapter provides that the said appeal shall be accompanied by three typed copies of (a) memorandum of appeal; (b) judgment appealed from; and (c) paper-book which was before the Judge from whose judgment the appeal is preferred, and it directs the Deputy Registrar not to receive a Letters Patent Appeal if the said three typed copies are not supplied along with it. Rule 1 of Order XLI, Civil Procedure Code, also contains a like provision that memorandum of appeal shall be accompanied by a copy of the decree appealed from. The requirement of the said rule that certified copy of the decree should be filed along with the memorandum of appeal has always been held to be mandatory, and when a memorandum of appeal is not accompanied by such a copy, it is not a valid appeal. The word “receive” finds mention in rule 9 of Chapter 2-A of the Rules, which reads thus :—

“In every appeal in which under these rules a record has to be printed, the appellant shall, with his appeal, attach a receipt for a sum of one hundred rupees which should be deposited with the Treasurer of the High Court to cover the cost of printing the record. No first appeal from a decree shall be received unless it is accompanied by such receipt.”

(14) While interpreting the said rule, it was observed in *Ram Rachhpal's case* (supra), that rule 9 is imperative in nature and if the receipt is not attached with the appeal, the consequence would be that the appeal would not be said, in fact, to have been received in

this Court. In *Jai Ram Dass v. Som Parkash and others*, (16), it was again ruled by this Court that the aforesaid rule 9 has to be complied with and it cannot be violated. When the language of rule 3 of Chapter 2-C of the Rules is read in the light of the language of the provision contained in rule 1 of Order XLI, Civil Procedure Code, and the aforesaid rule 9, it is difficult to resist the conclusion that the provision contained in the said rule 3 of Chapter 2-C is imperative and its violation would entail penal consequences. It is, therefore, clear that when an appeal under clause 10 of the Letters Patent is not accompanied by the required three copies of the documents, it is incompetent and has to be treated as not to have been received in this Court, when filed or presented and later returned. The appeal shall be deemed to have been received by the Registry when it is filed or refiled complete in all respects in conformity with the Rules, to which no objection is raised by the Registry. In *Shiromani Gurdwara Parbandhak Committee, Amritsar v. Mahant Isher Singh*, (17), an application for leave to appeal to the Supreme Court was filed on December 17, 1970, within the prescribed period of limitation, but was not accompanied by the grounds of appeal as required by Order XLV, rule 3, Civil Procedure Code. The officer, therefore, raised objection pointing out the said defect and returned the said application on December 18, 1970 for providing the grounds of appeal, with the direction to refile it within 7 days. The application was refiled on February 4, 1971, after complying with the aforesaid objection. On the date of hearing an objection was raised that the application was barred by time as the period of limitation prescribed for the said application was 60 days, which had expired long before that application was refiled on February 4, 1971. The relevant part of rule 1(a) of Chapter 8-A of the Rules reads thus:—

“A petition for leave to appeal to the Supreme Court shall comply with the requirements of Rule 3(1), Order XLV of the Code of Civil Procedure...”

It was held by a Division Bench of this Court that the provisions of Order XLV, rule 3, were mandatory and since there was a breach of the said provisions, inasmuch as the grounds of appeal were not filed along with the application when it was presented on December 17, 1970, it was no application in the eye of law and, therefore, the

(16) 1967 Curr. L.J. 857,

(17) 1972 Curr. L.J.445.

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said application was treated as having been filed on February 4, 1971. On that day the period of limitation, as indicated above, had already expired and it was, therefore, dismissed as barred by time.

(15) The above discussion leads to the conclusion that if an appeal under clause 10 of the Letters Patent does not comply with the mandatory provisions of rule 3 of Chapter 2-C of the Rules by not filing three sets of typed copies of the documents, it has to be regarded as no appeal in the eye of law and shall not be deemed to have been filed on that day. It shall be deemed to have been filed only on the day when it is complete in all respects, as required by the Rules, and is accepted for registration by the Registry. Question No. 7 is answered in these terms.

(16) In view of the aforesaid answer to question No. 7, there is no escape from the conclusion that a Letters Patent Appeal will be treated as validly and properly filed on the day when it is filed along with three sets of the copies of the documents mentioned in rule 3, Chapter 2-C of the Rules, referred to above. Such an appeal, if it is not accompanied by the aforesaid three sets of copies of documents when it is originally presented within time, is liable to be dismissed as barred by time if the same is refiled along with the aforesaid three sets of copies of documents after the expiry of the period of limitation prescribed for it, unless the delay is condoned under section 5 of the Limitation Act or Rule 4 *ibid*, whichever may be applicable. Question No. 5 is answered accordingly.

(17) The appeal will now go back to the Division Bench for final disposal in the light of the observations made above. That Bench will also decide the application for condoning the delay under section 5 of the Limitation Act, 1963. In the circumstances, there is no order as to costs of these proceedings.

NARULA, J.—I agree and have nothing to add.

TULI, J.—I also agree.

K.S.K.