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judicial opinion is divided in two schools of thought on this point, it is not necessary to discuss these cases in detail. The main line of difference is that the view taken by the Allahabad High Court is based on the strict grammatical meaning of the words used in section 12(2) while the opposite view mainly rests on equitable considerations. As stated above, I prefer the view taken by the Allahabad High Court in this matter as in my opinion it is in consonance with the principles of construction for Limitation Act laid down by the Judicial Committee.

The result is that it must be held that the appeal filed by the petitioners in the Court of the District Judge was barred by time. This petition for revision, therefore, fails and is dismissed with costs.

Grover, J.

GROVER, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Before Bhandari, C. J. and Mehar Singh, J.

UNION OF INDIA AND THE ESTATE OFFICER, DELHI,—*Appellants.*

versus

SHREE RAM KANWAR AND OTHERS,—*Respondents*

Letters Patent Appeal No. 4-D/1955

1957

Nov., 21st

Indian Limitation Act (IX of 1908)—Section 29—Special Law—High Court Rules and Orders, Volume V, Chapter I, Rule 4—Rule framed by the High Court under powers conferred on it by Clause 27 of the Letters Patent—Whether constitutes special law—Letters Patent of the Punjab High Court—Clauses 27 and 37—Rule-making power of the High Court—Whether subject to the legislative powers of the Legislature—Rule 4—Applicability and

scope of—Indian Limitation Act (IX of 1908)—Article 151 —Whether applies to the exclusion of Rule 4—Section 5—Sufficient cause—Delays in Government offices and inadvertence of the counsel to refer to the appropriate provision relating to the period of limitation for filing an appeal —Whether constitute sufficient cause—Requisitioning and Acquisition of Immovable Property Act (XXX of 1952)—Sections 3, 6 and 24—Effect of, on properties requisitioned before the Act came into force—Private school receiving grant from the Central Government—Whether a public purpose of the Union of India.

Held, that rule 4 in Chapter I of High Court Rules and Orders, Volume V, has been framed by the High Court by virtue of power conferred upon it by clause 27 of the Letters Patent and is consequently a statutory rule having the same binding force as an enactment of the Legislature itself. Even if the rule approximates very nearly to a "bye-law", it still is, on authority, "law". Rule 4 is thus a "Special Law" within the scope of subsection (2) of section 29 of the Limitation Act.

Held, that having regard to the provisions of clause 37 of the Letters Patent, the powers of the High Court to make rules under clause 27 of the Letters Patent are subject to the legislative powers of the Legislature, and if the rule conflicts with any law made by the Legislature, it obviously cannot be a valid rule within the powers of the High Court. The rule-making power of the High Court being subject to the legislative powers of the Legislature, the High Court cannot make rules inconsistent with and contrary to the law made by the Legislature.

Held, that rule 4 is so far as it prescribes a period of limitation in the case of an appeal from the judgment of the High Court passed in the exercise of its extraordinary or ordinary original jurisdiction different than that provided in Article 151 of the Limitation Act, being a rule inconsistent with and contradictory to that Article, is not a valid rule and is ultra vires. Of course the application of the rule to an appeal from a judgment of the High Court passed in the exercise of its appellate jurisdiction, for which there is no provision in the Limitation Act, is on a different footing and to that extent the rule is valid being *intra vires* the rule-making powers of the High Court and that is

not affected by it being *ultra vires* in so far as it deals with appeals from a judgment of the High Court passed in exercise of its extraordinary or ordinary original jurisdiction.

Held, that Article 151 of the Limitation Act applies to the appeals provided for therein to the exclusion of rule 4 framed by the High Court.

Held, that it is a discretionary matter with the Court whether, in a given case, having regard to its peculiar circumstances, it will enlarge the period of limitation or not. The law of limitation operates equally for or against a private individual as also a Government. No special indulgence can be shown to the Government which in similar circumstances is not to be shown to an individual suitor. The delays in Government Offices are no justification for invoking the power of the Court under section 5 of the Limitation Act. Again mere inadvertence of the legal practitioner to a particular provision of the law of Limitation directly applicable to the case can, in no circumstances, be considered sufficient cause within the meaning of that section. If at the time of the filing of the appeal there was neither ambiguity nor any difficulty about the law of limitation applicable, there is no sufficient cause for enlarging the period of limitation for filing an appeal merely because the counsel for the appellant raises a confusion or difficulty about the law applicable at the time of the arguments.

Held, that the effect of proviso (b) to subsection (2) of section 24 of Act No. XXX of 1952 is that the Act is applied to the premises, which had been requisitioned before the coming into force of that Act from the date on which they were originally requisitioned and that requisition is to be considered to have been made according to section 3 of that Act. Under that section the requisition has to be not only for a public purpose but for a public purpose which is the purpose of the Union of India. Both these conditions must subsist at one and the same time.

Held, that a private school of music, dancing and painting which receives aid from the Central Government remains a private institution in spite of that aid and no requisition of premises can be made for such an institution as

it cannot be said to be a public purpose of the Union of India even if the admission to the institution is open to all.

Letters Patent Appeal under Clause 10, of the Letters Patent against the order of Hon'ble Mr. Justice D. Falshaw, dated the 19th October, 1954, in Civil Writ No. 8-D/1954, holding that the owners are entitled to be restored to possession of the flat in dispute and issue an order by way of mandamus *to the Government to restore possession of the flat to them with costs.*

BISHAMBER DAYAL and KESHAV DAYAL, for Petitioner.

D. K. KAPUR, and RADHEY LAL, for Respondents.

ORDER

Mehar Singh, J.

MEHAR SINGH, J.—This is an appeal from the order, dated October 19, 1954, of a learned Single Judge of this Court accepting a petition, under Article 226 of the Constitution of the respondents who were the petitioners, against the Union of India and the Estate Officer appellants. The facts are as given below.

The respondents are the owners of flat No. 5, Aggarwal Buildings, Connaught Circus, New Delhi. It was requisitioned by the Central Government under sub-rule (1), of Rule 75-A of the Defence of India Rules on April 14, 1943.

The purposes for which power was given to the Central or the Provincial Government to requisition property are stated in sub-rule (1), of rule 75-A of the Defence of India Rules which runs thus—

> "Rule 75-A (1) If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient

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prosecution of the war, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any property, movable or immovable and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning."

There is a proviso to the sub-rule but that is not material for the present purpose. In the Government of India order of April 14, 1943, requisitioning the flat in question, no purpose for requisitioning it is stated.

The flat was occupied for some years by Government servants. Another Central Government order under the same rule followed on April 2, 1946. It appears that the flat was kept under requisition by successive orders.

On the expiry of war emergency, the Defence of India Act, and the Rules made under it as Defence of India Rules expired. Power was taken by the Government under section 3 of the Requisitioned Land (Continuance of Powers) Act, 1947 (Act No. XVII of 1947), to continue under requisition all the already requisitioned property. It appears that under this provision the flat continued to be requisitioned. That Act came into force on March 24, 1947.

On account of the partition of the country there were disturbances in or about August, 1947. Some months earlier to that the flat remained vacant for a few months. After the partition some refugees occupied it some time about August, 1947. It remained in their occupation till about August, 1951. After that it again remained

vacant for about four months. In para No. 9 of their petition the respondent aver that "it seems thereafter respondent No. 3 (the Triveni Kala Sangam) which is a private dancing and music institution has been in possession of the flat". This is not denied in the return on behalf of the appellants.

On March 14, 1952, came into force the Requisitioning and Acquisition of Immovable Property Act, 1952 (Act No. XXX of 1952). Subsection (1), of section 6, of this Act reads—

> "Section 6 (1) The Central Government may at any time release from requisition any property requisitioned under this Act and shall, as far as possible, restore the property in as good a condition as it was when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force:
>
> Provided that where the purposes for which any requisitioned property was being used cease to exist, the Central Government shall, unless the property is acquired under section 7, release that property, as soon as may be, from requisition."

It is under the proviso to that sub section that the respondents claim de-requisitioning of the flat because the purpose for which it was requisitioned has ceased to exist. This claim of the respondents has been resisted by the Union of India, Estate Officer, Government of India, and the Triveni Kala Sangam respectively respondents Nos. 1 to 3 in the original petition, and of whom the first two are appellants in this appeal.

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The learned Single Judge was doubtful whethere requisitioning of the flat for the accommodation of a school of music, dancing and painting is requisitioning it for a public purpose, but he came to the conclusion that it could not possibly be said that such a purpose is not entirely different from that for which the flat was originally requisitioned and retained by the Government till the end of 1951. The petition of the respondents has been accepted with an order to the Union of India to restore possession of the flat to the respondents.

The order of the learned Single Judge is of October 19, 1954. On behalf of the appellants an application for the copy of the order was made on October 20, 1954. The copy of the order was delivered to the Government Pleader on November 3, 1954. It was forwarded to the Estate Officer for consultation of the Ministry of Law and was not received back until November 24, 1954. On November 26, 1954, the appeal was filed. On January 20, 1955, an application was made by the learned Advocate on behalf of the appellants under section 5, of the Limitation Act, for enlargement of the period of limitation for filing the appeal on the following two grounds, numbered as 7 and 8 in the application,—

> "7. That Government Pleader, Delhi, was under the impression that period of limitation is 30 days from the date of the order, excluding the period spent in obtaining certified copy of the order.
>
> 8. That the delay in filing the appeal was bona fide and for sufficient cause as the Ministry of Law had to be consulted in the matter and certain other formalities had also to be gone through before filing of appeal could be authorised."

There is a preliminary objection by the learned counsel for the respondents that the appeal is barred by time because the limitation for an appeal from an order of the High Court in exercise of its original jurisdiction is 20 days from the date of the order according to Article 151 of the Limitation Act. It cannot be denied that the order of the learned Single Judge under appeal has been passed in exercise of the original jurisdiction of this Court. Article 151 is thus immediately attracted. Excluding the time spent in obtaining copy of the order and excluding other days to the exclusion of which the appellants are entitled under the law, the appeal was filed 23 days after the copy of the order was delivered to the Government Pleader on November 3, 1954. The appeal is obviously time-barred under Article 151, as it has been filed more than 20 days after the date of the order appealed from. In fact it has been filed after 23 days from the date of that order, excluding the time to the exclusion of which the appellants are entitled. According to para No. 5 of the application under section 5 of the Limitation Act on behalf of the appellants, the copy of the order was not received back by the Advocate on behalf of the appellants for filing the appeal until November 24, 1954. If the appeal had been filed on that very day, it is obvious it would still have been time-barred by one day. The provisions of Article 151 are clear and unambiguous and there can arise no confusion or difficulty in the application of the same to a simple case as the present should the counsel filing the appeal advert to those provisions.

In *Punjab Co-operative Bank Limited* v. *Official Liquidators, Punjab Cotton Press, Company Limited (in Liquidation) and others* (1), Tek Chand J. with whom the other four learned

(1) A.I.R. 1941 Lah. 257.

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Judges sitting in the Full Bench concurred, at page 260, first referred to these two different classes of cases:—

> "(a) Where the judgment under appeal was passed by the High Court in the exercise of its original civil jurisdiction, i.e., when a suit had been removed by the Court from a subordinate Court and had been tried and determined by it under clause 9, Letter Patent and the right of appeal as well as the forum is provided for in clause 10, or
>
> (b) Where the judgment had been passed in the exercise of the appellate jurisdiction of the High Court on appeal from an original or an appellate decree or order of a subordinate Court."

And then observed—

> "So far as cases falling within class (a) are concerned, the answer to the question is simple. Such cases are obviously governed by Article 151, Limitation Act, which prescribes the period of time within which appeals from decisions or orders passed by any of the High Courts mentioned therein in the exercise of its original jurisdiction, must be preferred. It will be seen that this article is governed in its terms and applies equally to all appeals from decrees or orders passed by the High Court in the exercise of its original jurisdiction, whether ordinarily or extraordinarily or specially conferred by a statute to try and determine particular types of cases, (e.g., matrimonial, insolvency, company, etc.)."

This was followed by a Special Bench of the Calcutta High Court in *Chairman Budge Budge Municipality* v. *Mongru Mia and others* (1). In that case Article 151, was applied to a similar case as the present but time was enlarged under section 5 of the Limitation Act, because of confusion prevailing on the question of Limitation in the matter of filing appeals from an order of a Single Judge made in the exercise of original jurisdiction of the High Court and in view of the mistaken practice that had come to be adopted in this behalf in that Court. No case has been cited which says that to a case as the present it is not Article 151 but some other provision of law of limitation that applies. The plain reading of Article 151, cannot possibly leave any doubt or confusion that in a case of the type as the present case it is this Article that applies.

The learned counsel for the appellants, however, refers to rule 4 at page 2 in Chapter I of Volume V of the Rules and Orders of this High Court, and contends that under that rule in the case of an appeal under clause 10 of the Letters Patent, the period of limitation is 30 days from the date of the judgment appealed from. The appeal was filed within 30 days from the date of the judgment appealed from and so is within time. He contends that Article 151, has no application to the case because rule 4 is a 'Special Law' within the scope of subsection (2) of section 29 of the Limitation Act, and the period prescribed in that rule must be taken as if prescribed in the schedule to the Limitation Act. Rule 4, in so far as it is relevant for the present purpose runs thus—

> "Rule 4, No memorandum of appeal preferred under clause 10 of the Letters

(1) A.I.R. 1953 Cal. 433.

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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.....

This rule has been made by the High Court in pursuance of clauses 10 and 27 of the Letters Patent. Clause 10 relates to appeals from Judgment of a Single Judge to the High Court and clause 27 relates to regulation of proceedings. It provides—

> "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 for regulating the practice of the Court and for the purpose of adopting 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."

The question is whether rules made in accordance with these provisions of the Letters Patent are a 'special law' within the scope of section 29 (2) of the Limitation Act?

This question was considered by Cunliffe, J., in (*Shakoor*) *Abdul Ganny* v. *Mrs. I. M. Russel* (1). In that case an appeal had been struck off

(1) A.I.R. 1930 Rangoon 228 (F.B.).

for default of payment of process fees under rule 9 (1) of the Rangoon High Court. Sub-rule (2) of that provided for an application within eight days for restoration of the appeal so struck off. The learned Judges were of the opinion that such striking off was in fact dismissal for want of prosecution and an application for restoration was an application for readmission of the appeal. In the case of readmission of an appeal dismissed for want of prosecution the period of limitation is 30 days from the date of dismissal under Article 168 of the Limitation Act. The question arose whether rule 9(2) laying down a different time limit from that provided in Article 168, in such cases was *ultra vires*? Cunliffe, J., after referring to section 29(2) of the Limitation Act observed—

> "The question, therefore, seems to me to be whether the rules made by a High Court under its Letters Patent and by virtue of the Civil Procedure Code amount to a special or local law. In my opinion they do not. I think that the expression "special or local law" cannot possibly be applied to rules under the Letters Patent of a High Court. The Letters Patent themselves constitute neither a special nor a local law. They are a charter from the Crown. The Civil Procedure Code is a general law in *pari materia* with the Limitation Act.
>
> In my opinion High Court rules approximate closely to bye-laws. They can be altered at will. They can be canvassed. They are subordinate and domestic enactments. They must be *intra vires* of the power from which they derive any other power *pari materia*."

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This was followed in *Mukund Mahto and others* v. *Niranjan Chakrabarty and others* (1), but without any discussion of the matter. In *Punjab Co-operative Bank Limited* v. *Official Liquidators, Punjab Cotton Press Company Limited (in liquidation) and others* (2), Tek Chand J., after noticing the two cases already cited above at page 261, dissented from those two cases and has shown that the view taken in the same is not the correct view. He has rightly pointed out that the Lahore High Court, though not brought into existence directly by an Act of Parliament, was "established and erected" by Letters Patent granted by the King of England under the authority expressly conferred on him by section 113 of the Government of India Act, 1915. Its Letters Patent were, therefore, not a charter granted by the Crown in the exercise of the Royal prerogative. Rule 4 has been framed by the High Court by virtue of power conferred upon it by clause 27 of the Letters Patent and is consequently a statutory rule having the same binding force as an enactment of the Legislature itself. Then the learned Judge further points out that even if the rule approximates very nearly to a "bye-law" it still is, on authority 'law'. He concludes by saying that "it must be held that the statutory rules framed by the High Court under clause 27, Letters Patent, under the authority delegated to it by His Majesty who, in turn, was acting under the powers conferred on him by Act of Parliament are a 'Special Law'. With this view, if I may say so with respect, I agree entirely. So rule 4 is a 'Special Law' within the scope of sub-section (2) of section 29 of the Limitation Act.

The provision in rule 4, read as such, deals with both (a) an appeal from a judgment passed

(1) A.I.R. 1934 Pat. 353.
(2) A.I.R. 1941 Lah. 257 (F.B.).

by the High Court in exercise of its extraordinary or ordinary original civil jurisdiction, and (b) an appeal from a judgment passed by the High Court in the exercise of its appellate jurisdiction. There is no provision in the Limitation Act, which deals with the period of limitation for filing an appeal from a judgment of the High Court passed by it in the exercise of its appellate jurisdiction, but as pointed out, there is Article 151, of the Limitation Act which provides for a period of 20 days for an appeal from the date of the decree or order made by the High Court in exercise of its original jurisdiction. It has been found that rule 4 is a special law within the scope of sub-section (2) of section 29 of the Limitation Act, and if it is *intra vires* the powers of the High Court it prescribes for an appeal from the judgment of a Single Judge of the High Court a period of limitation different from the period prescribed for the same by the first Schedule of the Limitation Act, and it is that period that will determine the period of limitation for such an appeal. The question therefore, that now arises is whether that rule is *intra vires* the powers of the High Court in so far as it prescribes a different period of limitation, as compared to that provided in Article 151, in the case of an appeal from the judgment of the High Court passed in the exercise of its original jurisdiction? The rule has been made in exercise of the powers of the High Court under clause 27 of the Letters Patent, but these powers are subject to the provisions of clause 37 of the same. Clause 37 of the Letters Patent says—

> "Powers of Indian Legislature. 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

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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."

It is immediately clear that the powers of the High Court to make rules under clause 27 of the Letters Patent are subject to the legislative powers of the Legislature, and if the rule conflicts with any law made by the Legislature, it obviously cannot be a valid rule within the powers of the High Court. The rule-making power of the High Court being subject to the legislative powers of the Legislature, the High Court cannot make rules inconsistent with and contrary to the law made by the Legislature. To my mind this is abundantly clear when clauses 27 and 37 of the Letters Patent are read together. On this view rule 4 in so far as it prescribes a period of limitation in the case of an appeal from the judgment of the High Court passed in the exercise of its extraordinary or ordinary original jurisdiction different than that provided in Article 151, of the Limitation Act, being a rule inconsistent with and contradictory to that Article, is not a valid rule and is *ultra vires*. Of course the application of the rule to an appeal from a judgment of the High Court passed in the exercise of its appellate jurisdiction, for which there is no provision in the Limitation Act is on a different footing and to that extent the rule is valid being *intra vires* the rule-making powers of the High Court. And that is not affected by it being *ultra vires* in so far as it deals with appeals from a judgment of the High Court passed in exercise of its extraordinary or ordinary original jurisdiction.

A similar question arose in (*Shakoor*) *Abdul Ganny* v. *Mrs. I. M. Russel* (1), already cited above, the facts of which have also been briefly given above. In that case Page, C.J., observed—

> "In the present state of authorities—however, it must be taken, I think, that the High Courts are not entitled by rules to abrogate or vary the periods of limitation set out in the Limitation Act, in respect of proceedings to which the provisions of the Limitation Act, apply."

The learned Chief Justice in support of his conclusions relies upon *Haji Hussain* v. *Nur Mohomed* (2), *Chuni Lal Jethabhai* v. *Barot Dahyabhai Amulk*, (3), *Narsingh Sahai* v. *Sheo Parshad* (4), *and Jijibhoy N. Surty* v. *T. S. Chettyar* (5). The other two Judges consisting the Full Bench agreed with the conclusions of the Chief Justice. The view taken above is supported by these cases and no case to the contrary has been referred to by the learned Counsel for the appellants.

The consequence is that rule 4, in so far as it deals with the same subject-matter with which Article 151 of the Limitation Act deals is an invalid and *ultra vires* law, and so it is Article 151 that applies to the present case. It has already been shown that under that Article the appeal is time-barred.

There is then the application on behalf of the appellants under section 5, of the Limitation Act. It is a discretionary matter with the Court whether, in a given case, having regard to its peculiar

(1) A.I.R. 1930 Rangoon 228 (F.B.).
(2) I.L.R. (1904) 28 Bom. 643.
(3) I.L.R. (1908) 32 Bom. 14.
(4) I.L.R. (1918) 40 All. 11.
(5) A.I.R. 1928 P.C. 103.

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circumstances, it will enlarge the period of limitation or nor. At page 707 in *Surendera Mohan Ray Chaundhuri* v. *Mahendranath Banerjit* (1), the learned Judges have observed—

> "It has been repeatedly said by Judges that the discretion given to courts by that section cannot be crystallized into a rigid rule of law but has to be exercised in each case with reference to its own special facts and with a view to secure the furtherance of justice. Or, as Lord Selborne observed in *Carter* v. *Stubbs* (2), that there is no positive rule as to an absolute statement of the cases, in which and in which only the discretion of the Judge or court should be exercised to enlarge the time of appealing and that in each individual case, the surrounding circumstances must be looked into."

So what has to be seen are the circumstances of the present case in which the appeal came to be filed beyond the prescribed period of limitation. One circumstance relied upon is that the delay in filing the appeal was due to delay in the handling of the case in the Ministry of Law as it had to be consulted and certain other formalities had to be gone through before the appeal could be filed. The law of limitation operates equally for or against a private individual as also a Government. No special indulgence can be shown to the Government which in similar circumstances is not to be shown to an individual suitor. If it is felt that the ministries delay matters so much that the periods of limitation already prescribed in the Limitation Act are not long enough for the

(1) I.L.R. (1932) LIX Cal. 781.
(2) (1880) 6 Q.B.D. 116.

Government or its agents, then the better course is to obtain amendment of the law through the Legislature rather than to make an application to the Court invoking its power under section 5, of the Limitation Act. I am definitely of the opinion that delays in Government offices are no justification for invoking the power of the Court under section 5. This circumstance cannot be taken into consideration in favour of the appellants. It is no sufficient cause from any consideration for enlarging the period of limitation for filing the present appeal.

The second circumstance or reason given in support of the indulgence of the Court in enlarging the period of limitation in this case under section 5, of the Limitation Act is that the Government Pleader was under the impression that the period of limitation was 30 days from the date of the order, excluding the time spent in obtaining certified copy of the order. The papers were received by the Government Pleader, according to para 5 of the application of the appellants, one day after the expiry of the period of 20 days from the date of the judgment appealed from, excluding the time to which, under the law, the appellants are entitled to exclusion, and the appeal was already time-barred under Article 151, of the Limitation Act. If the counsel for the appellants filing the appeal ever adverted to Article 151, of the Limitation Act, it must have been immediately apparent to him that according to that Article there was no time left for filing the appeal. Further if he adverted to that Article, the only course that was open to him was to say that his impression was that the period of limitation is 30 days under rule 4 for filing such an appeal. But the application on behalf of the appellants does not say that the learned counsel filing the appeal on behalf of the appellants ever adverted to Article

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151, nor can it be concluded by implication from anything stated in the application. Obviously as there was no time for filing the appeal because of the period prescribed by Article 151, of the Limitation Act, the only way to justify the appeal was to say that an impression prevailed that the period of limitation for filing such an appeal was 30 days from the date of the judgment under rule 4. Assuming that it is true it means that the learned counsel for the appellants never adverted to Article 151, of the Limitation Act, before filing the appeal. The question is whether a mistake by the counsel or inadvertence of the counsel to the relevant provision of law of limitation is a sufficient ground for enlarging the period of limitation under section 5 of the Limitation Act? In *Kanwar Rajendra Bahadur Singh* v. *Rai Rajeshwar Bali and others* (1), their Lordships held that "mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient cause within the meaning of section 5, Limitation Act, though there is certainly no general doctrine which saves parties from the results of wrong advice." It is not possible to enunciate or state all sorts of circumstances in which the mistaken advice by a legal practitioner should be considered a sufficient cause within the meaning of that section, but of one thing I feel quite sure and that is that mere inadvertence of the legal practitioner to a particular provision of the law of limitation directly applicable to the case can in no circumstance be considered sufficient cause within the meaning of that section. The present case is nothing more than that the learned counsel filing the appeal on behalf of the appellants did not advert to Article 151, of the Limitation Act, before filing the appeal. If it had

(1) A.I.R. 1937 P.C. 276.

been the case on behalf of the appellants that on account of conflict of judicial opinion or uncertainty or vagueness about the law, their counsel was in some doubt about the correct position of law, it might have been, I do not say that that would have been acceptable, argued on their behalf, with some show of plausibility, that the appeal was filed beyond time under a mistaken advice of their counsel but no such position has been taken on behalf of the appellants and this in any case is not a case of that type. It is outright a case of inadvertence by the counsel of the appellants to the relevant provision of law and that as already pointed out, is not a sufficient cause within the meaning of section 5, of the Limitation Act. In this connection the learned counsel for the appellants has made reference to *Bijanlata Bassak* v. *Bhudhar Chandra Das* (1), in which the learned Judges have held that "where there is some dispute about the law or the law is in an unsettled state, a mistake by the learned lawyer can be accepted as sufficient cause but where the matter is beyond dispute, a statement that the lawyer did not know the law cannot be accepted as sufficient cause under section 5, Limitation Act." I should have thought that the dictum in this case rather went against the case attempted to be made out on behalf of the appellants. It has already been shown that before the filing of the appeal there was no dispute or ambiguity about the law nor was there any conflict of opinion. The law was not unsettled in any way. There was no room for mistake by the counsel for the appellants. All that has happened is that he just did not advert to the article applicable and in such circumstances the very case relied upon on behalf of the appellants decides that the fact that lawyer did not

(1) A.I.R. 1955 Cal. 578.

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know the law is not a sufficient cause under section 5 of the Limitation Act.

It has been said that there has been some argument during the hearing of this appeal as to whether it is rule 4 or Article 151 that applies to this appeal. And since it has been a question of some difficulty the counsel for the appellants might well have taken the view that it is rule 4 that applies to this appeal and this justifies the indulgence of the Court in enlarging the period of limitation under section 5, of the Limitation Act. I have already shown that the provision in Article 151, of the Limitation Act, is clear and unambiguous and that before the filing of the present appeal the reported cases held that it is Article 151, that applies in a case of this type and that there is no reported case taking the contrary view. At the time of the filing of the appeal there was neither ambiguity nor any difficulty about the law of limitation applicable. There was no conflict of judicial opinion on the matter. If, after having filed the appeal beyond the period of limitation prescribed by the Limitation Act, at the hearing of the appeal the counsel for the appellants by his own arguments attempts to show that there is some difficulty in the interpretation of law or there is some confusion and then the Court proceeds to dispel such difficulty or confusion, that is no indication of any thing that might have led the counsel in difficulty or confusion about the law. Such attitude is taken in the wake of the question raised before the Court and then all sorts of arguments are advanced, howsoever flimsy, to support the stand taken. The confusion or difficulty about the law applicable which a counsel for an appellant raises at the time of arguments is no sufficient cause for enlarging the period of limitation for filing an appeal by assuming that such

confusion or difficulty existed at the time of the filing of the appeal. In the present case there was no such difficulty or confusion. The second circumstance or reason advanced for the indulgence of the Court for enlargement of time under section 5 of the Limitation Act, is not a sufficient cause within the meanings of that section.

On merits also there is no substance in the case of the appellants. The flat was requisitioned under Rule 75-A of the Defence of India Rules. In sub-rule (1) of the rule are given the purposes for which the Government was authorised to requisition the property. After the expiry of Defence of India Act and the rules thereunder those purposes ceased to exist. However, it has already been pointed out that the requisitionig order about the flat was continued under the various amending statutes referred to above. The last Act that now applies to the case is Act No. XXX of 1952. Part of sub-section (1) of section 3, of that Act, in so far as it is relevant for the present purpose is—

> "Section 3 Power to requisition immovable property,—
>
> (1) Where the competent authority is of opinion that any property is needed or likely to be needed for any public purpose, being a purpose of the Union, and that the property should be requisitioned by the competent authority————."

The sub-section then proceeds to say what the competent authority is to do or how it is to act: Section 24, of this Act, repeals the previous Acts and sub-section (2) of it provides—

> "Section 24(2) For the removal of doubts, it is hereby declared that any property

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which immediately before such repeal was subject to requisition under the provisions of either of the said Acts or the said Ordinance shall, on the commencement of this Act, be deemed to be property requisitioned under section 3 of this Act, and all the provisions of this Act shall apply accordingly:

Provided that—

(a)———————————

(b) Anything done or any action taken including any orders, notifications or rules made or issued by or under either of the said Acts or the said Ordinance shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act was in force on the day on which such thing was done or action was taken."

Sub-section (2) makes the order of requisition about the flat in question to be requisition under section 3, of the Act and according to proviso (b), the Act is to be taken to have been in force on the day on which the original requisition order about that flat was made, which means that the flat stands requisitioned under the provisions of section 3, of the Act. Interpreting section 58, of Act No. XXXI of 1950 which section is *pari materia* with proviso to section 24(2) of Act No. XXX of 1952, Chagla C. J. in *Abdul Majid Haji* v. *P. R. Nayak* (1), said—

"It does not merely provide that the orders passed under the Ordinance shall be deemed to be orders passed under the

(1) A.I.R. 1951 Bom. 414.

Act, but it provides that the orders passed under the Ordinance shall be deemed to be orders under this Act, as if this Act, was in force on the day on which certain things were done or action was taken. Therefore, the object of the section is, as it were, to antedate this Act, so as to bring it into force on the day on which a particular order was passed which is being challenged. In other words, the validity of order is to be judged not with reference to the Ordinance under which it was passed, but with reference to the Act subsequently passed by Parliament. Therefore, if the order was a valid order judged by the Act, then its validity must be upheld although it was invalid or illegal or *ultra vires* if judged with reference to the Ordinance."

With this I agree with respect and I have already stated that the effect of proviso (b) to sub-section (2) of section 24, of Act No. XXX of 1952, is the same. In other words, its effect is that Act No. XXX of 1952, is applied to the order of requisition of the flat in this case from the date on which the flat was originally requisitioned and that requisition is to be considered to have been made according to section 3, of that Act. And that section requires that the requisition is to be for a public purpose being a purpose of the Union of India. The requisition has to be not only for a public purpose but for a public purpose, which is the purpose of the Union. Both these conditions must subsist at one and the same time. The flat is in the possession of the Triveni Kala Sangam which is a school of music, dancing and painting and is obviously a private institution. It is said that it

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receives grant-in-aid from the Central Government, but inspite of that, it still remains a private institution. The learned counsel for the appellants and also for this institution say that since everybody can obtain admission to this institution for cultural education it is a public institution. Even if it is to be considered a public institution and requisitioning of property for it is to be assumed to be a public purpose, one thing is clear beyond anything that it cannot be described to be a public purpose of the Union of India. Unless the property is requisitioned for a purpose of the Union of India, an order or requisition under section 3, of Act No. XXX of 1952, is not valid according to the provisions of that Act. Obviously the property does not stand requisitioned for a public purpose, which is the purpose of the Union of India, and the order of the learned Single Judge that it be de-requisitioned is correct.

Th learned counsel for the appellants and also for the institution refer to proviso to subsection (1) of section 6, of the last mentioned Act, and say that since at the date of the Act the property was occupied by the institution and continues to be so occupied by the institution it cannot be re-requisitioned under that proviso. The proviso to subsection (1) of section 6, reads—

> "Provided that where the purpose for which any requisitioned property was being used ceases to exist the Central Government shall unless the property is acquired under section 7, release that property, as soon as may be, from requisition."

In the first place, the word 'purpose' as referred to in this proviso must have reference to the purposes to which section 3, refers. At the commencement of the Act, requisitioned property

could only be held for purposes referred to in that section. It has already been shown that the property is not being kept by the authorities for the purposes of the Union of India, and that might well have been the position when the Act came into force, which is, however, a matter of some dispute. So that this proviso does not help the appellants. And secondly, even if this argument was to be accepted, the learned Single Judge has correctly pointed out that it has not been satisfactorily established that the institution was in possession of the flat before March 14, 1952, the date on which Act No. XXX of 1952, came into force. The learned counsel for the appellants and the institution point out that in their petition the petitioners have stated that till August, 1951, the flat was in the occupation of some refugees and after that it remained lying vacant for four months. They further say that it seems that thereafter the institution has been in possession of it. The learned counsel concluded from this that the petitioners admit that the institution took possession of the flat some time in December, 1951, which is obviously before the date of the enforcement of Act No. XXX of 1952. But whereas the statement of facts in the petition is not clear and unequivocal, it was within the special knowledge of the respondents as to when the Triveni Kala Sangam took possession of the flat, but the respondents have not in their return stated the date and have in fact kept silent over the matter. They cannot be permitted to take advantage of the vague statement about this matter in the petition because it was within their special knowledge when the Triveni Kala Sangam took possession of the flat. I agree with the learned Single Judge that it has not been satisfactorily shown that the flat was in the occupation of the Triveni Kala Sangam before Act No. XXX of 1952 came into

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force. Upon these considerations this last argument urged on behalf of the appellants has no substance in it.

In consequence, the appeal is dismissed with costs.

Bhandari C.J.

BHANDARI, C. J.—I agree.

B.R.T.

SUPREME COURT.

Before Bhuvaneshwar Prasad Sinha, Syed Jafar Imam and J. L. Kapur, JJ.

Criminal Appeal No. 130 of 1956

S. A. VENKATARAMAN,—*Appellant.*

versus

THE STATE,—*Respondent.*

and

Criminal Appeal No. 25 of 1956.

V. D. JHINGAN,—*Appellant.*

versus

THE STATE OF U.P.,—*Respondent.*

1957

Dec., 3rd

Prevention of Corruption Act (II of 1947)—Section 6—Conditions for its applicability—Person a public servant at the time the offence is committed but ceasing to be public servant at the time Court is asked to take cognizance—Sanction, whether necessary—Interpretation of Statutes—Words used, whether to be given their natural meaning—Intention of the legislature—When can be ascertained—Enactment of a prohibition to take cognizance of an offence unless certain conditions are complied with—Interpretation and object of.

Held, that two conditions must be fulfilled before the provisions of section 6 of the Prevention of Corruption Act, 1947, become applicable. One is that the offence mentioned therein must be committed by a public servant and the other is that that person is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government or is a public servant who is removable from his office by any other competent authority. Both these conditions must be present to prevent a