

**(1968) 05 DEL CK 0018**  
**In the Delhi High Court**  
**Case No : Second Appeal No. 12 of 1967**

Ganga Ram

APPELLANT

Vs

Khiala Ram Bansi Lal

RESPONDENT

**Date of Decision :** 01-05-1968

**Acts Referred:**

**Citation :** (1968) 4 DLT 676

**Hon'ble Judges :** T.V.R. Tatachari, J

**Bench :** Single Bench

**Advocate :** M. Chitkara, A.C. Sud and M.V. Sharma, for the Appellant;

## **Judgement**

T.V.R Tatachari, J.

(1) This Second Appeal has been filed by one Ganga Ram, a judgment.debtor, against the jadgment of the District Judge, Mahasu and Kinnaur Districts, Himachal Pradesh, dated 20th December, 1966, in C M.A.No 37-M/I4 of 1968. whereby the District Judge confirmed the order of the Senior Subordinate Judge, Mahasu District, Simla, dated 19th March, 1966, in application No. 5/6 of 1965 on his file. The said application was filed by the appellant herein, Ganga Ram, under Order 9 rule 13 and section 151 of the Code of Civil Procedure, for setting aside an ex parte decree, dated 14th November, 1962, passed against him by the Court of the Subordinate Judge, Rampur.

(2) The fact which gave rise to the filing of this aforesaid application are as follows. The respondent herein Messrs Khiali Ram Bansi Lall, filed a suit against the appellant herein in the Court of the Subordinate Judge Rampur, on 2Srd April, 1955, for rendition of accounts. The appellant (defendant) filed his written statement on 22nd November, 1955, and issues were framed on 2nd January, 1956. On 24th July, 1959, a preliminary decree was passed by the learned Subordinate Judge in favor of the respondent (plaintiff) firm against the appellant (defendant). By the said preliminary decree it. was ordered that the appellant (defendant) should render accounts, and that a Commissioner be

appointed to look into the accounts and to determine the amount due to the respondent (plaintiff) firm from the appellant (defendant). The appellant (defendant) filed an appeal against the said preliminary decree in the Court of the District Judge, Mahasu. The appeal was dismissed on 31st May, 1901. The appellant (defendant) preferred a Second Appeal to the Court of the Judicial Commissioner. On an application filed by the appellant herein (defendant), the learned Judicial Commissioner passed an order on 8th December, 1961 staying the passing of the final decree, but directing that in other respects the proceedings in the lower Court might continue. By his judgment dated 5th May, 1932, the learned Judicial Commissioner partly allowed the Second Appeal, and modified the preliminary decree passed by the trial Court to the extent that the appellant herein (defendant) was held not liable to render accounts regarding certain amounts of commission in respect of timber scantlings.

(3) After the disposal of the Second Appeal in the manner mentioned above, the records of the case were sent back to the Court of the Subordinate Judge, Rampur, in or about the month of July, 1962. On 13th July, 1962, the learned Subordinate Judge, Rampur, passed an order that the respondent herein (plaintiff), the counsel for the respondent (plaintiff), and the counsel for the appellant (defendant) be summoned to appear in his Court on 24th July, 1962. It may be noted that while summons were directed to be issued to the respondent (plaintiff) as well as his counsel, summons were directed only to that counsel for the appellant (defendant) but not to the appellant defendant. Accordingly, the summons were served upon respondent (plaintiff), his counsel, and the counsel for the appellant (defendant). On 24th July, 1962, the respondent (plaintiff) as well as his counsel appeared in the Court. Shri Bahadur Singh, the learned counsel for the appellant (defendant) also appeared, but reported to the Court that he had no instructions from his client. The learned Subordinate Judge thereupon ordered on that date that summons be issued to the appellant (defendant) to turn his appearance in the Court on 30th August, 1962. The relevant portion of the report of the process server, Sukru, who went to serve the summons on the appellant (defendant), as translated by the learned counsel for the appellant (defendant), runs as under:- "Sir, It is requested that on 12th August, 1962 I went to Chirag for the service of the summons in the presence of Sarju Rajput of Marthi and Mtoi Ram Brahman. Shri Ganga Ram is not found at his house. It was stated that he has gone to Jungle side for some work. Therefore a copy of the summons has been affixed at the open door of the defendant in the presence of the witnesses. Necessary report is submitted. Sd/. Sankra Peon 12th August, 1932." Thus, the summons were not served personally on the appellant (defendant), but the service was by affixature." J

(4) On 30th August, 1962, the counsel for the respondent (plaintiff) was present, but neither the appellant (defendant) nor his counsel was present. The Court, Therefore, ordered ex-parte proceedings against the appellant (defendant), as the appellant (defendant) had been served by substituted service and yet was not present in person or through counsel on 30th August, 1962. The Court

adjourned the case to 3rd October 1962 for production of ex-parte evidence by the respondent (plaintiff). On that date, the learned Subordinate Judge had gone to Simla, and the Reader of the Court made a note that the case would come up on 23rd October, 1962. On 23rd October, 1962, the counsel for the respondent (plaintiff) was present, and on his request the case was adjourned to 14th November, 1962 for recording ex-parte evidence. On that date, the respondent (plaintiff) adduced ex parte evidence and an ex parte final decree for Rs. 9,995.22 with costs of the suit was passed in favor of the respondent (plaintiff) firm against the appellant (defendant).

(5) Meanwhile, on 25th August, 1962 the appellant (defendant) sent an application to the Court of the learned Subordinate Judge, Rampur, in which it was stated as follows :- To The Sub-Divisional Officer, Rampur Sub-Division, Rampur, District Mahasu (H. P.) Dated Chamanpur the 25th August, 1962. Subject : Change in hearing- Khiala Ram, Bansi Lal. versus Pt. Ganga Ram. Sir. Most respectfully I beg to state that I have been down with Malaria fever for the last three days. It is Therefore, not possible for me to reach Rampur on due date of hearing, i. e. on 30th August, 1962 in connection with Khiali Ram, Bansi Lal versus Pt. Ganga Ram. The same may Therefore be at changed for two (torn) so that I may be recovered fully (torn) attend the same and oblige. Certificate is also enclosed. Yours faithfully, The said application was accompanied by a medical certificate. It appears that this application was received by the learned Subordinate Judge after he passed the order mentioned above on 30th August, 1962. He, Therefore, wrote an order on the said application as follows : - "This application was received after the order on the file had been given. This application is unstamped. However, he may be informed of the next date through a registered letter" It appears that instead of an intimation by registered post as directed by the learned Subordinate Judge, a notice was sent to the appellant (defendant) through the process server Sukru. According to the report of the said process server, he went to the house of the appellant (defendant) on 23rd September, 1962, but the appellant (defendant) was not present and was said to have gone to Simla and was likely to return after ten or twelve days, and the process server Therefore affixed the summons or notice on the door of the residential house of the appellant (defendant). It was also stated in the report that the process server informed the wife of the appellant (defendant) about the next hearing date.

(6) The appellant (defendant) did not take any further action, but waited for about one year nine months and thirteen days, i.e. for about 640 days, from the date of the ex parte decree, and then filed an application under Order 9 rule 13 and Section 151 of the CPC on 27th August, 1964. It is out of this application that the present Second Appeal has arisen. In that application, the appellant (defendant) stated, inter alia, that summons had not been duly served on him, that he came to know about the ex-parte decree on 7th August, 1964 when a notice under Order 21 rule 66 of the Code of Civil Procedure was served on him, and that as the summons were not duly served upon him, the ex parte decree

should be set aside and the case be reheard.

(7) The application was opposed by the respondent "plaintiff who contended that the appellant (defendant) was duly served on 12th August, 1962 regarding the hearing on 30th August, 1962, that he had failed to appear despite the service, that he had in fact submitted an application along with a medical certificate for adjournment of the case which shows that he was served well before the date of hearing (30th August, 1962). that it was not correct that he came to know about the decree on the 7th August, 1964, that he came to know about the passing of the ex parte decree long prior to the said date (7th August, 1964), that he did not file the application under Order 9 rule 13 of the CPC within thirty days from the date- of the decree or from date oi his knowledge of the decree, and that Therefore application was barred by time

(8) The application was subsequently transferred to the Court of the Senior Subordinate Judge, Mahasu District Simla, the learned Senior Subordinate Judge framed "he following issues: - "(1) Whether the summons were not duly served on the petitioner? (2) Whether the application is within limitation? (3) Relief " By his judgment dated 19th March, 1966 the learned Senior Subordinate Judge held on issue No. 1 that the appellant herein (defendant) had been duly served for 30th August, 1962, and on issue No. 2 that the appellant (defendant) should have made an application for setting aside the ex -parti decree within thirty days from the date of the decree, and as he did not do so his application was time barred.

(9) A contention was urged before him that the Court should set aside the ex parte decree in exercise of the inherent powers of the Court on the ground that the appellant (defendant) had not been properly served for 30th August, 1962, and he came to know of the decree only on 7th August, 1964 The learned Subordinate Judge pointed out that notice was issued to the appellant (defendant) for 30th August, 1962 and substituted service had been effected on him, that he had even submitted an application on for an adjournment of the case, and despite all this the appellant (defendant) was grossly negligent and did not pursue the case, and that Therefore even if the Court was entitled to exercise its inherent powers, the instant case was not a fit case for the exercise of the said inherent powers,

(10) In the above view taken by the learned Senior Subordinate Judge, he did not consider it necessary to give any finding regarding the contention of the appellant (defendant) that he came to know of the ex parte decree only on 7th August, 1964. In the result, the learned Subordinate Judge dismissed the application.

(11) Against that order, the appellant (defendant) preferred an appeal to the Court of the District Judge, Mahasu and Kinnaur Districts, Himachal Pradesh at Simla. The learned District Judge, by his judgment dated 20th December, 1966, dismissed the appeal. It is against this appellate judgment that that present second appeal has been filed in this Court.

(12) As stated above, the ex parte decree was passed against the appellant (defendant) on 14th November, 1962, and he filed the application under Order 9 Rule 13 of the CPC on 27th August, 1964 for an order setting aside the ex parte decree. Under Order 9 rule 13, he has to satisfy the Court that the summons was not duly served, and according to Article 164 of the Indian Limitation Act, 1908, the period of limitation for the application by the appellant (defendant) for an order setting aside the ex-parte decree is thirty days from the date of the decree, or where the summons was not duly served, from the date when he has that knowledge of the decree. Thus, if the summons was duly served, the application has to be filed within thirty days from the date of the ex parte decree. On the other hand, if the summons was not duly served, the application has to be filed within thirty days from the date when the applicant has knowledge of the decree. In the present case, the appellant (defendant) filed the application which was filed more than thirty days after the passing of the ex-parte decree. His contentions in the lower Courts were that the summons was not duly served, that he came to know of the ex parte decree only on 7th August, 1964, and that he filed that application for an order setting aside the ex-parte decree within thirty days from that date. These contentions were not accepted by the lower Courts.

(13) Shri M.G. Chitkara, the learned counsel for the appellant (defendant) raised before the court the same two contentions, viz. (1) that the summons was not duly served upon the appellant (defendant), and (2) that the appellant (defendant) came to know of the ex-parte decree only on 7th August, 1964, and filed the application for setting aside the ex parte decree on 27th August, 1964 i.e. within thirty days from that date of his knowledge of the decree, and Therefore his application was not barred by time as held by the lower Courts.

(14) For a proper appreciation of the first contention, it is necessary to refer to the relevant provisions in the Code of Civil Procedure. Order 9, rule 13(a) of the Code of Civil Procedure provides that where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then if it is proved that the summons was duly served, the Court may proceed ex-parte. In *Sangram Singh v. Election Tribunal, Katoch, Bhurey Lal Baya*, the Supreme Court, discussing the scope of the said Rule 13(a), observed that "it is confined to the first hearing of the suit and does not per se apply to subsequent hearings" relying upon the observation of the Privy Council in *Sahibzada Zeinut abdin Khan v. Sahibzada Ahmaed Razvi Khan*", at page 236. So also, the words "where the summons was not duly served in Article 164 of the Limitation Act" have been interpreted as referring to the summons given for the first bearing of a suit for the purposes of limitation, and not to notices issued to parties subsequently whether such notices are necessary under law or not (vide *Surjit Singh v. Lieut. Capt. C. F. Torrie, Piroj Shah and Company v. Qasid Shah, Sham Sunder v. Devi Ditta, Tata Chand v. Ram Chana, and Sodhi Harham Singh v. Sodhi Mohinder Singh*).

(15) In the present case the failure of the -appellant (defendant! to appear was not on the first date oi hearing, but was on a subsequfnt date of hearing. As already stated above in the narration of facts, after the suit was &Sed the appellant (defendant) was duly served with the summons, be appeared through counsel and filed his written statement, issues were framed, and a preliminaiy decree lor account was passed by the trial Court. The apprllant (defendant) preferred an appeal, and the same was dismissed subsequently. He thereupon filed a second appeal which was partly allowed, and the case was sent back to the trial Court for further proceedings The first date of hearing alter the case thus came back to the trial Court was 13th July, 1982. But, the said date of bearing cannot be regarded as the first date of hearing within the meaning of Order 9 rule 6 as interpreted by the Supreme Court. On that date, the Court directed the issue of summons to the respondent (plaintiff), the counsel for the respondent (plaintiff), and the counsel for the appellant (defendant) for 24th July, 1962. But, the said summons was not the summons contemplated in Order 9 rule 6 cr Order "i) rule 13 of the CPC or Article 104 of the Lamination Act. It was only a notice or intimation to the respondent (plaintiff) and to the counsel for the parties about the date of hearing alter the case was received back from the Court of the Judicial Commissioner. It was sent not by reason of any statutory obligation, but was sent only in the interests of fairness and justice to toe parties.

(16) However, on 24th July, 1962, the counsel for the appellant (defendant) appeared in the Court, but reported that be had no instructions Shri A, C. Sud the learned counsel for the respondent (defendant) submitted that the appellant (defendant) was represented by his counsel, Shri Bahadur Singh, that under Order 3 rule 3 of the CPC processes served on the recognised agent of a party are as effectual as if the same had been served on the party in person, and that the summons or notice served upon Shri Bahadur Singh should be regarded as a due and sufficient service upon the appellant (defendant). He further submitted that under Order a rule 4(2) of the Code of Civil Procedure, an appointment of a counsel has to be deemed to be in force until it is determined with the leave of the Court by a writing signed by the client or the counsel, as the case may be, and filed in Court, or un" til all proceedings in the suit are ended so far as it regards the clients, and that Therefore the appointment of Shri Bahadur Singh cannot be regarded to have been determined when he reported that he had no instructions on 24th July, 1962. The learned counsel relied upon the decision in Baldev Singh v. Krishan and others, where it was held that "a preliminary decree in a suit of this nature (for rendition of accounts) does not conclude the proceedings and those intervening between the passing of the preliminary decree and the final decree are not fresh proceedings bat a continuation of the same suit." It is true that the appellant (defendant) was represented by Shri Bahadur Singh in the suit, and in view of the provision in Order 3 rule 412) of the Code of Civil Procedure, the appointment of Shri Bahadur Singh cannot be regarded to Lave been determined as there is ntohing on record to show that the

appointment was determined with the leave of the Court "by writing signed by the client or the pleader, as the case may be. and filed in Court." It is also true that the Court when Bahadur Singh reported that he had no instructions, directed the summons to be issued to the appellant (defendant) for 30th August, 1962, and Therefore the Court might be regarded to have given leave for the determination of the appointment. But the further requirement in Order 3 rule 4(2) that there should be " a writing signed by client or the pleader, as the case may be, and filed in Court " does not seem to have been complied with. Therefore, the contention of the learned counsel that the appointment of Shri Bahadur Singh was not determined has to be accepted as correct. But, I am unable to see how this conclusion supports or helps the case of the respondent (plaintiff), as the Court, when Shri Bahadur Singh reported on 24th July, 1962 that he had no instructions, directed that summons be issued to the appellant (defendant) for his appearance in the Court on 30th August, 1962, and on 30th August, 1962. neither Shri Bahadur Singh nor the appellant (defendant) appeared in the Court. Thus, the fact remains that the appellant (defendant) did not appear in the Court on 30th August, 1962, either in person or by his counsel. Shri Bahadur Singh did not appear because, according to him, he had no instructions. The appellant (defendant) did not appear because, according to him, the summons or notice was not duly served upon him. The Court Therefore directed rightly that the proceedings should continue ex parte

(17) that next question for consideration is as to whether the appellant (defendant) was not duly served as alleged by him. What constitutes due service for the purposes of Order 9 rules 6 and 13 as well as Article 164 of the Limitation Act has to be determined by reference to the provisions in Order 5 of the Code of Civil Procedure. It is wellsettled that in view of the provisions in Order 5 rule 17, the serving officer should use all due and reasonable diligence to effect personal service upon the defendant, and it is only when in spite of the said due and diligent effort the defendant could not be found and there is no agent empowered to accept service of the summons on his behalf, not any other person on whom service can be made, or where the defendant or his agent or such other person on whom the service can be made refuses to accept the service, that the serving officer should effect the service by affixing the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain. In *Subramania Pillai v. I Subramania Ayyar* it was held, following the decision in *Bhomselli v. Umabai* that "mere temporary absence of the person to be served does not justify the process server affixing the summons to the door.... It is the duty of the peon to take some pains to find out the person to be served, so that, if possible, personal service may be effected.". (Vide also the decisions in *Abraham Pillai v. Donald Smith*, *Vellayappa Chetty v. Veerappa Chetty*, *Cohen v. Nursing Dass Auddy*, *Ouseph Cherian v. K G. Gopal krishnan Baldeodas Lohea v. Shubchurndas*, *Tripura Modern Bank Limited v. Bansen & Co. Dalu and another v. Khema* and other in *Nripendra Narayan v. Mt. Chanoramani*. In *Subramania*

Pillai v. Subramania Ayyar. the return of the serving officer was to the effect that he was told by the females in the house of the person to be served and the neighbours that the said person to be served left for another place two days ago, and that there was no male member in the house, and that, Therefore, he affixed the notice to the front door of the house. It was held that the service was not proper. In Abraham Pillai v. Donald Smith" the return of the process-server was that he was told by the wife of the person to be served that the latter had gone to a certain coffee garden and that she did not know when he would return, and thereupon the process-server affixed a copy of the summons on the outer wall of the house, and it was held that the service was not proper as the process-server made no attempt to serve the summons on the person to be served personally. In each of the other cases mentioned above, similar service made by the process-servers was held to be improper and insufficient. In the present case, the return of the process- servers which was extracted above -during the narration of the facts, states that the appellant (defendant) was not found at his house, that the appellant (defendant) had gone to jungle side for some work, and that Therefore a copy of the summons was affixed on the door of the appellant's house. It does not appear from the return that the process-server made any effort to find out when exactly the appellant (defendant) would return from the jungle or whether there was any agent or other person in the house who could be served with the summons In the circumstances the service of the summons must be held to be improper and insufficient, and it follows that the appellant (defendant) was not duly served with the summons or notice for the bearing on 30th August, 1962. The lower Courts did not consider the above legal aspects of the question, and their finding that the summons or notice for 30th August, 1962 was duly served cannot be accepted as correct.

(18) According to the report of the process server, the affixture of the summons or notice was made by him on 12th August, 1962. Apparently the appellant (defendant) saw the affixed summons or notice, and sent an unstamped application on 25th August, 1962 praying for an adjournment on the ground that he was sick. The application reached the Court on 30th August, 1962, but earlier in the day the case appears to have reached and as the defendant-appellant was not present, the Court ordered the proceedings to continue ex-parte, and adjourned the case to 3rd October, 1962 for production of ex parte evidence by the respondent (plaintiff). And, when the application was received later in the day, the Court wrote an order on the application itself that the appellant (defendant) may be informed of the next date of hearing through a registered letter.

(19) However, instead of sending a registered letter, a notice was sent to the appellant (defendant) through the process-server. According to the report of the said process server, he went to the house of the appellant on 23rd September, 1962, but the appellant was not present and was said to have gone to Simla and was likely to return after ten or twelve days, and the process server Therefore, affixed the notice on the door of the house. When the process server was told

that the appellant (defendant) was likely to return only after ten or twelve days, it was not obligatory on the part of the process-server to wait till the return of the appellant (defendant). He therefore rightly affixed the notice on the door of the house. According to his report, he also informed the wife of the appellant (defendant) about the next date of hearing. Shri Chitkara the learned counsel for the appellant, however, submitted that the report purports to have been signed by a witness Mtoi Ram on 20th September, 1962, and by the process-server on 25th September, 1962, and that therefore the report should not be accepted as correct when it states that the notice was affixed on 23rd September, 1962. The said witness Mtoi Ram "was examined as D.W. 3 by the appellant (defendant), and he deposed that no affixture was made in his presence, and that his signature was taken by the process-server on 23rd September, 1962 on a blank-paper. These facts were not adverted to and considered by the lower Courts, apparently because their attention was not drawn to the said facts. It is true that the above facts raise a doubt as to whether the notice was duly served. But, this notice was directed to be sent just for intimation of the next date of hearing in view of the unstamped application for adjournment sent by the appellant (defendant) which was received after the order setting the appellant (defendant) ex-parte was passed. It was directed to be sent just in fairness to the appellant (defendant), and not because it was obligatory under the provisions of the Code of Civil Procedure. Therefore, it is not necessary to go into the question as to whether this notice was or was not duly served on the appellant (defendant). An order was already passed on 30th August, directing the proceedings to continue ex parte, and I therefore the crucial and material question is as to whether the summons or notice for 30th August, 1962 was duly served on the appellant (defendant), and I have already found above that it was not duly served.

(20) As already stated in the narration of the facts, on 3rd October, 1962, the learned Subordinate Judge was not in the station, and therefore the case was posted to 23rd October, 1962 by the Reader of the Court. The case was again adjourned to 14th November, 1962 at the request of the counsel for the respondent and on that date the respondent (plaintiff) adduced ex parte evidence: and the ex parte final decree which is now sought to be set aside was passed against the appellant (defendant). Thereupon, that appellant (defendant) filed on 27th August, 1961 the application under Order 9 rule 13 and Section 151 of the CPC for setting aside the ex-parte decree, alleging that the summons was not duly served upon him, and that he came to know of the decree only on 7th August, 1964 when the notice under Order 21 rule 66 of the CPC in the course of the execution of the ex-parte decree was served upon him.

(21) In view of my finding that the summons or notice for 30th August, 1962 was not duly served, the next question for determination is as to whether the application for setting aside the ex-parte decree as provided in Article 164 of the Limitation Act. The ex-parte decree was passed on 14th November, 1962, and thereafter certain letters were written by the decree holder to the judgment-debtor and by the judgment-debtor to the decree-holder. Relying on the said

letters, the Courts below held that the appellant (defendant) had knowledge of the decree long prior to 7th August, 1934, and that Therefore the application for setting aside the ex-parte decree was barred by time.

(22) Shri Chitkara, the learned counsel for the appellant (defendant) contended that at the lower courts erred in holding that the appellant (defendant) had knowledge of the decree long prior to 7th August, 1964, that the words "knowledge of the decree" in Article 164 of the Limitation Act have been interpreted as meaning a knowledge of a definite and specific decree and not a mere knowledge that some decree was passed against the judgment-debtor, that the letters relied upon by the lower Courts do not contain any particulars of the decree, and that Therefore the finding of the lower Courts that the appellant (defendant) had knowledge of the ex-parte decree long prior to 7th August, 1964 should be held to be incorrect. The learned counsel relied upon the decision in *Chintaman Pawar v. Panna Lal* in which it was held as under :-- The law requires, in order to show that the applicant had knowledge of the decree, that a particular decree had been passed against him in a particular Court in favor of a particular person and for a particular sum and not merely the knowledge that a decree had been passed by some Court against him." The above decision was based upon the earlier decisions in *Babu Rao Sita Ram v. Sadhu Shiva*, and *Giritidra Mohan Roy v. Bocha Das*, and *Muhammed Sahib v. Alagappa Chettiar*. In the last mentioned case, i.e. in *Muhammed Sahib v. Alagappa Chettiar*, it was observed as follows:- "A vague knowledge that a decree had been passed by some Court is not enough. It must be found that the defendant had knowledge that a particular decree had been passed against him in a particular Court, in favor of a particular person and for a particular sum. A vague suspicion that the defendant must have heard of some decree is not enough to dismiss the petition on the ground that it is barred by limitation." In *Messrs The Stock and Share Exchange Bureau v. Kothari and Sons*\* it was held that :- "The word "knowledge" appearing in Art. 164 (of the Limitation Act) cannot be interpreted as equivalent to "means of knowledge". The two things are quite distinct and to say that they mean the same thing is doing violence to the language of the statute." The learned counsel also relied upon the decision of the Supreme Court in *State of Punjab v. Mst. Quiser Jehan Begum*, wherein it was held that the words "six months from the date of the Collector's award" in Section 18 proviso clause (b) of the Land Acquisition Act (1894) mean the date when the award is either communicated to the party or is known by him either actually or constructively. Referring to the said knowledge of the award, the Supreme Court observed at page 1607 as follows :- "Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award." In view of the decisions mentioned above, the question for determination is as to whether the appellant (defendant) had knowledge of the decree more than thirty days prior to the filing of the application in question. As already stated, the lower Court found such a knowledge on the part of the appellant (defendant)

relying upon the letters that passed between the parties. The said letters are Exhibits RW3/A dated 19th December, 1962 DW 3/2 dated 31st January, 1963, DW4/C dated 26th February, 1953. P 1 dated 28th October, 1903, DW 4/E dated 4th December 1963 and P 2 dated 16th December 1963. Transcripts of these letters were made available to me by the learned counsel for the appellant (defendant) Exhibit Kw 3/A is a registered letter written by the respondent (plaintiff) to the appellant (defendant). It appears from the record, and it is not disputed in the learned court that the same was produced by the respondent-Plaintiff Bansi Lal during the course of his evidence on 21st October, 1965, and that the envelope was opened in the Court. It is, Therefore, clear that the appellant (defendant) had no knowledge of the contents of the letter inside the envelope. It cannot, Therefore, be used against the appellant (defendant). Exhibit DW 3/2 is a letter written by the appellant (defendant) to the respondent (plaintiff). In this letter, the relevant portion reads as under : - "Shri Bansi Lal Ji, Naiaste Hope you are doing well. I went home and on my return I got your letter. You informed me that the decree you got is nominal. We should decide about the wood. Therefore you are informed that neither I got any summons from Rampur nor any knowledge of the decree " Exhibit OW 4/C is a letter written by the appellant (defendant) to his counsel Shri Bahadur Singh. The relevant portion of this letter is as under :- "I learnt from the letter of Bansi Lal that the case has been decided against me and a decree has been passed against me. But I do not know as to what amount of the decree has been passed. I did not get any summons from the Court. I, Therefore, request you to kindly send me a copy of the judgment and the decree. \* \*" The learned counsel for the appellant (defendant) submitted that this is a communication between his client and his counsel u/s 126 of the Indian Evidence Act, and that Therefore it is not admissible and cannot be used against the appellant (defendant). This objection was raised even in the trial Court when the letter was produced. This was also put to the respondent (plaintiff) who was examined as how he answered by stating that Shri Bahadur Singh died, that his papers were sold to a sweet-meat seller, and that he took this letter from the said sweet meat seller. Whatever might have been the manner in which the respondent (plaintiff) got the letter, the fact remains that it is a privileged communication u/s V-6 of Section 126 of the Indian Evidence Act, and that Therefore it is not admissible and cannot be used against the appellant (defendant). But, dismissed. accordingly is and fails, Therefore Appeal The limitation. by barred thus was decree, of knowledge his date from days thirty than more after filed decree set aside setting for application that follows It fact finding concurrent said with interference ground valid any see 1964, and to August. 7th prior long knowledge had (defendant) appellant found concurrently Courts lower fact, one as question Further, 1933. January, 31st he held be must 1963. 3 on 2 DW3 Exhibit letter write time particulars essential aware became inference legitimate a decree. other or awarded decreed amount known did grievance specific make probably, why, That awarded. costs decreed, such particulars contents reference also but reference only contained

unproduced may letter. produce mentioned. which (plaintiff) respondent written receipt acknowledged 2, exhibit Sud. Shri contention this force considerable There 1964. August, till states when pelived cannot (plaintiff), at lattar, passing came tedly admit- proceedings, result stage about enquiries duty it 1962, 25th an sent adjournment therein proceedings suit knew contended pondent res-counsel learned Sud, C. A Act. Limitation 164 Article meaning within show sufficient ter let- statement whether nominal. latter got former tbs informing (plaintiff dent respon- received stated appellant.