umbrella and soap which never paid tax under the Act of 1918 could be dealt with by the partners as they liked without affecting the question of relief under s. 25 in respect of the head business.

In my judgment, these appeals must be allowed and the question answered in favour of the assessee firm but only in respect of the business in piece-goods, yarn and banking which alone had paid tax under the Income-tax Act of 1918. I would therefore allow the appeals with costs here and in the High Court.

ORDER BY COURT

In accordance with the opinion of the majority the appeals are dismissed with costs.

VIDYACHARAN SHUKLA

v.

KHUBCHAND BAGHEL AND OTHERS

1963

December, 20

(B. P. SINHA, C.J., K. SUBBA RAO, RAGHUBAR DAYAL, N. RAJAGOPALA AYYANGAR AND J. R. MUDHOLKAR JJ.)

Election—Appeal to High Court under s. 116-A—Whether in computing period of limitation for filing an appeal to High Court, time provided by s. 12 of Limitation Act for getting a copy of the order can be excluded—Whether s. 29(2)(a) applied to cases of appeal preferred under s. 116-A—Relationship between the two limbs of s. 29(2) of Limitation Act—Limitation Act, 1908 (9 of 1908), ss. 12, 29(2), First Schedule, Art, 156—Representation of the People Act, 1951 (43 of 1951), s. 116-A.

The appellant was elected to the House of the People from a constituency in the State of Madhya Pradesh. The respondents were the other contesting candidates. Respondent No. 1 filed an election petition challenging the election of the appellant. That election petition was dismissed by the Election Tribunal. Against the order of the Tribunal the first respondent preferred an appeal to the High Court under s. 116-A

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of the Representation of the People Act, 1951. Admittedly, the appeal was filed more than 30 days after the order of the Election Tribunal. If the time requisite for obtaining a copy of the order of the Tribunal was excluded, the appeal was filed within 30 days. However, if that was not done, the appeal was out of time. The contention of the appellant before the High Court was that the respondent No. 1 was not entitled in law to exclude the time taken by him in obtaining the copy of the order of the Tribunal. That contention was rejected by the High Court. The High Court also found that the appellant was guilty of two corrupt practices and hence his election was set aside. The appellant came to this Court by special leave.

The only question raised before this Court was whether for the purpose of computing the period of 30 days prescribed under s. 116-A(3) of the Act, the provisions of s. 12 of the Limitation Act could be invoked or not. Dismissing the appeal.

Held: (*per* B. P. Sinha, C.J., K. Subba Rao, Raghubar Dayal and N. Rajagopala Ayyangar JJ.) (i) The exclusion of time provided for by s. 12 is permissible in computing the period of limitation for filing the appeal in the High Court.

Per B. P. Sinha, C.J., K. Subba Rao and N. Rajagopala Ayyangar JJ.) (ii) Though the right of appeal is conferred by s. 116-A of the Representation of the People Act, 1951, and it is by virtue thereof that the appeal was filed by respondent in the High Court, it is still an appeal "under the Code of Civil Procedure, 1908, to the High Court". To attract Art. 156 of the First Schedule to the Limitation Act, it is not necessary for an appeal to be an "appeal under the Code of Civil Procedure" that the right to prefer the appeal should be conferred by the Code of Civil Procedure. It is sufficient if the procedure for the filing of the appeal and the power of the Court for dealing with the appeal, when filed, are governed by the Code.

Per Raghubar Dayal and Mudholkar JJ.—There is no warrant for holding that an appeal which is not given by the Code of Civil Procedure is still an appeal under the Code merely because its procedural provisions govern its course. Where a right of appeal is given by some other law, the appeal must be regarded as one under that law and not under the Code of Civil Procedure. There is no reason for construing the words "under the Code of Civil Procedure" as meaning "governed in the matter of procedure by the Code of Civil Procedure".

Held: (iii) (*per* B. P. Sinha, C.J., N. Rajagopala Ayyangar and Raghubar Dayal JJ.) The entire sub-s. (2) of s. 29 of the Limitation Act has to be read as an integrated provision and the conjunction "and" connects the two parts and makes it necessary for attracting cl. (a) that the conditions laid down by the opening words of sub-s. (2) should be satisfied.

Per Subba Rao and Mudholkar JJ.—The second limb of sub-s. (2) of s. 29 is wide enough to include a suit, appeal or an application under a special or local law which is of a type for which no period of limitation is prescribed in the First Schedule.

Per Subba Rao J.—The use of the word "any" clearly shows that the second part of sub-s. (2) of s. 29 does not depend on the first part or *vice versa*. The second part of sub-s. (2) is an independent provision providing for that category of proceedings to which the first part does not apply.

Held: (i) that s. 116-A does not provide an exhaustive and exclusive code of limitation for the purpose of appeals against orders of Tribunals and also does not exclude the general provisions of the Limitation Act. Section 29(2)(a) of the Limitation Act speaks of express exclusion and there is no express exclusion in s. 116-A(3) of the Representation of the People Act, 1951. Moreover, the proviso to s. 116-A(3) from which an implied exclusion is sought to be drawn does not lead to any such necessary implication. The proviso only restores the power denied to the Court under s. 29(2)(b) of the Limitation Act. If this proviso had not been there, s. 29(2)(b) would have excluded the operation of s. 5 of the Limitation Act with the result that even if a sufficient cause for the delay existed, the High Court would have been helpless to excuse the delay.

(ii) S. 12(2) of the Limitation Act applies to an appeal to the High Court against the order of the Tribunal. An order made under s. 98 of the Representation of the People Act, 1951, if it contains also the reasons for it, is a composite document satisfying the definition of a judgment as well as that of an order and thereby attracting the relevant provisions of s. 12 of the Limitation Act. Section 12(2) does not say that the order mentioned therein shall be only such order as is defined in the Civil Procedure Code. If a statute provides for the making of an order and confers a right of appeal to an aggrieved party against that order within a prescribed time, the time requisite for obtaining a copy of the order can be excluded. The Act of 1951 empowers the Tribunal to make an order and gives a right of appeal against that order to the High Court and therefore s. 12(2) is directly attracted without any recourse to the definition of an order in the Code of Civil Procedure.

Per Mudholkar J.—The first limb of s. 29(2) is concerned only with the proceedings under special or local law for which a period of limitation is prescribed in the First Schedule to the Limitation Act. If for such a proceeding the period to be found in the First Schedule is different from that prescribed under a special or local law, certain consequences will follow under the provision. No inconvenience is to be caused by giving a literal and natural interpretation to the expression used by the legislature in the first portion of sub-s. (2) of s. 29 because cases of other kind can easily come under the second portion thereof. Case Law referred to.

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Vidyacharan Shukla v. *Khubchand Baghel*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 815 of 1963.

Appeal by special leave from judgment and order dated April 23, 1963, of the Madhya Pradesh High Court in 1st Appeal No. 23 of 1963.

G. S. Pathak, B. A. Musodkar, S. N. Andley and *Rameshwar Nath,* for the appellant.

M. S. Gupta, for respondent No. 1.

December 20, 1963.

The following Judgments were delivered:

Ayyangar J.

AYYANGAR J.—On behalf of the Chief Justice and himself) We have had the advantage of perusing the judgment of our brother Subba Rao J. and we agree with him that the appeal should be dismissed.

The justification for this separate judgment, however, is because of our inability to agree with him in his construction of the relative scope of the two limbs of s. 29(2) of the Indian Limitation Act.

The facts of the case have been set out in detail in the judgment of Subba Rao J. and it is therefore unnecessary to repeat them. There were three principal points that were urged before us on either side which require to be considered and all of them turn on the proper construction of s. 29(2) of the Indian Limitation Act which we shall for convenience set out here:

> "29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—
>
> (a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply."

The learned Judges of the High Court have proceeded on the basis that s. 29(2)(a) applies to the case of appeals preferred under s. 116 A of the Representation of the People Act, 1951 and on that footing have held that the appeal presented to them by the respondent was within time if computed after making the deductions permitted by s. 12 of the Limitation Act. It is the correctness of this view that is challenged before us.

Proceeding now to deal with the question whether the terms of s. 29(2) are apt to take in appeals under the Representation of the People Act, the first matter to be considered necessarily is whether that Act is a "special or local law" within the opening words of the sub-section. As to this, however, Mr. Pathak raised no dispute and he conceded that s. 116A was such a "special or local law." That this "special or local law" prescribes "for an appeal a period of limitation" is also evident. The first point of controversy, however, has arisen as to whether "the period of limitation prescribed by the special or local Law *is different* from the period prescribed therefor by the first schedule." The contention urged strenuously before us by Mr. Pathak, the learned counsel for the appellant, was that there would be "a different period" only where for the identical appeal (to refer only to that proceeding with which we are immediately concerned) for which a period of limitation has been prescribed by the special or local Law, a period is prescribed by first column of the first schedule, and there is a difference between the two periods. It was his further contention that where the Indian Limitation Act made no provision for such an appeal, s. 29(2) and the provision contained in its (a) and (b) were inapplicable. There have been several decisions on this point but it is sufficient to refer to the decision of the Bombay High Court in *Canara Bank Ltd., Bombay* v. *The Warden Insurance Co. Ltd., Bombay* (1) where Chagla C.J. repelled this construction and held that even where there was no provision in the first schedule for an

(1) I. L. R. 1952 Bom. 1083.

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appeal in a situation identical with that for which the special law provides, the test of "a prescription of a period of limitation *different from* the period prescribed by the First Schedule is satisfied. This Court in *State of U.P.* v. *Smt. Kaushaliya etc.*(1) upheld this construction and approved the judgment of Chagla C.J. in the *Canara Bank* case. Apart from the decision of this Court, we consider the reasoning of Chagla C.J. to be unexceptionable and we agree with Subba Rao J. in holding that the requirement of a prescription by the special law "of a period different" from that prescribed by the First Schedule is satisfied in the present case.

The next point was one that arose on the submission of counsel for the respondent and it was this. Assume that the construction of the words "different from" urged by the appellant were accepted, and this requirement would be satisfied only if the First Schedule made provision for an identical appeal as that under the special law, still it was submitted by the respondent that even this was satisfied in this case. For this purpose he relied on Art. 156 of the first schedule which runs:

"Description of appeal	Period of limitation	Time from which period begins to run
156.—Under the Code of Civil Procedure, 1908, to a High Court, except in the cases provided for by article 151 and article 153.	Ninety days	The date of the decree or order appealed from."

The argument was that though the right of appeal in the case before us was conferred by s. 116A of the Representation of the People Act and it was by virtue thereof that the appeal was filed by the respondent to the High Court, it was still an appeal "under the Code of Civil Procedure, 1908, to a High Court." For this submission learned Counsel relied principally on two decisions—one of the Calcutta and the

(1) A. I. R. 1964 S. C. 416.

other of the Madras High Court, and they undoubtedly support him. In *Aga Mohd. Hamdani* v. *Cohen and Ors.*(1) —as well as in *Ramasami Pillai* v. *Deputy Collector of Madura*(2) which followed it—the Court held that to attract this article it was not necessary in order to be an "appeal under the Code of Civil Procedure" within the meaning of those words in Art. 156, that the right to prefer the appeal should be conferred by the Code of Civil Procedure but that it was sufficient if the procedure for the filing of the appeal and the powers of the court for dealing with the appeal were governed by that Code. For adopting this construction the Court relied on the reference in Art. 156 to Art. 151. Article 151 dealt with appeals to the High Court from judgment rendered on the original side of that Court. The right to prefer these appeals was conferred by the Letters Patent constituting the respective High Courts and not by the Code of Civil Procedure, though the Code of Civil Procedure governed the procedure, jurisdiction and powers of the Court in dealing with the appeals so filed. There would have been need therefore to except cases covered by Art. 151 only if the words "under the Code of Civil Procedure" were understood as meaning appeals for the disposal of which the provisions of the Code of Civil Procedure was made applicable. We might mention that besides the Calcutta and the Madras High Courts a Full Bench of the Allahabad High Court also has in *Daropadi* v. *Hira Lal*(3) adopted a similar construction of the Article, the learned Judges pointing out that several Indian enactments, among them the Indian Succession Act, the Probate and Administration Act, the Land Acquisition Act and the Provincial Insolvency Act, proceeded on the basis of a legislative practice of conferring rights of appeal under the respective statutes without prescribing any period of limitation within which the appeal should be preferred, but directing the application of the provisions of the Civil Procedure Code to such appeals, the intention obviously being that Art. 156 would furnish the period of limitation for such appeals. We consider that these deci-

(1) I. L. R. 13 Cal. 221.
(2) I. L. R. 43 Mad. 51.
(3) I. L. R. 34 Allahabad 496.

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sions correctly interpret Art. 156 and, in any event, we are not prepared to disturb the decisions which have stood for so long and on the basis of the correctness of which Indian legislation has proceeded.

Mr. Pathak drew our attention to some decisions in which a different construction was adopted of the word "under" a particular enactment occurring in other Articles of the Limitation Act and in particular some dealing with appeals in certain criminal matters. In them the word 'under' was understood as meaning "by virtue of". He was, however, unable to bring to our notice any decision in which the construction adopted of Art. 156 which we have set out has been departed from. In the cases dealing with the words "under the Criminal Procedure Code" which he placed before us, the situation would obviously be different, since the indication afforded by the mention of Art. 151 in Art. 156 does not figure in the Articles dealt with. Therefore that would be a circumstance pointing to a different result.

If the construction adopted of Art. 156 in the Calcutta and Madras decisions to which we have referred were upheld, there could be no controversy that an appeal under s. 116A of the Representation of the People Act would be "under the Code of Civil Procedure", for s. 116A(2) enacts, to read the material portion:

> "116A. (2) The High Court shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority, and follow the same procedure, with respect to an appeal under this Chapter as if the appeal were an appeal from an original decree passed by a civil court situated within the local limits of its civil appellate jurisdiction;....."

In this view even on the narrowest construction of the words "different from those prescribed therefor in first schedule" occurring the opening part of s. 29(2), the exclusion of time provided for by Art. 12 of the Limitation Act would be permissible in computing the period of limitation for filing the appeal to the High Court in the case before us.

The last point which remains for consideration is one which would be material only in the event of the two points we have already dealt with being decided differently. This relates to the relationship or inter-connection between the first and the second limbs of s. 29(2) of the Limitation Act. The reason why we are dealing with it is because of our inability to agree with the construction which our learned brothers Subba Rao & Mudholkar JJ. have placed on this feature of the sub-section. Sub-section (2), it would be seen, consists of two parts. The first sets out the conditions to which the special law should conform in order to attract section 3 and that part ends with the words "as if such period were prescribed therefor in that schedule". This is followed by the conjunction 'and' that word by the second part reading "for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply."

The question that has been debated before us is whether the condition postulated by the first limb, namely the special or local law prescribing a period of limitation for a suit appeal etc. different from the period prescribed therefor by the first schedule has to be satisfied in order to render the provisions of cl. (a) applicable. If the conjunction 'and' was used for the purpose of indicating that the two parts were cumulative, that is, if the two parts operated in respect of the same set of circumstances, then unless the opening words of sub-s. (2) were satisfied, there would be no basis for the application of cl. (a) to the period prescribed for a suit, appeal or application applicable by the special or local law. If on the other hand, the two parts of the sub-section could be read independently as if they made provision for two separate situations, the result would be that the words starting from "for the purpose

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of determining any period of limitation prescribed for any suit, appeal or application by any special or local law" followed by clauses (a) & (b) would be an independent provision unrelated to the first part and therefore could operate unhampered by the condition set out in the first part. In other words, if the latter construction were adopted for every suit, appeal or application for which a period of limitation was prescribed by a special or local law, the provisions in ss. 4, 9 to 18 & 22 would apply unless excluded. Mr. Pathak urged that the conjunction 'and' could in the context be construed only as rendering the second limb a part and parcel of the first, so that unless the conditions laid down by the opening words of the sub-section were satisfied, the provisions of the Limitation Act set out in cl. (a) would not be attracted to "determine the period of limitation" prescribed by the special or local law. The question of the import and function of the conjunction 'and' was the subject of elaborate consideration by a Full Bench of the Allahabad High Court in a decision in *Sehat Ali Khan* v. *Abdul Qavi Khan*(1). The majority of the learned Judges held that the two parts of the sub-section were independent and that "for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law", cl. (a) would apply unless excluded. Raghubar Dayal J. then a judge of that Court, however, dissented from this view and held that the entire sub-s. (2) had to be read as an integrated provision and that the conjunction 'and' connected the two parts and made it necessary for attracting cl. (a) that the conditions laid down by the opening words of sub-s. (2) should be satisfied. Mr. Pathak recommended for our acceptance the dissenting judgment of Dayal J. We consider that the view expressed by Raghubar Dayal J. as to the inter-relation of the two parts of the sub-section reflects correctly our own construction of the provision. Raghubar Dayal J. has approached this question of construtcion from several angles including the grammar of the passage. Without going into any of them, we would rest our decision on a shorter ground. In order that the second part might be held to be independent of the first, the first part should itself be complete and be

(1) I. L. R. [1956]2 Allahabad 252.

capable of operating independently. Unless this test were satisfied, the conjunction 'and' would have to be read as importing into what follows it, the conditions or consideration set out earlier as otherwise even the first part would be incomplete. Let us now see whether the first part could function without the second. The first part reads "where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the first schedule the provision of s. 3 shall apply as if that period was prescribed therefor in that schedule." The question is what this, standing by itself, would signify. If the conditions prescribed by the opening words were satisfied, s. 3 of the Limitation Act would be attracted Section 3 reads:

> "Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence....."

In other words, if the special or local law prescribed a period of limitation different from that prescribed by the first schedule by the application of the first part of sub-s. (2), the court is enabled to dismiss suits, appeals and applications filed beyond time. If this is the only effect it would be seen that the provision is inane and redundant, because even without it, by the very prescription of a period of limitation the jurisdiction of the court to entertain the suit, appeal etc. would be dependent on the same being filed in time.

It is possible, however, to construe the reference to s. 3 in s. 29(2) to mean that the power to dismiss the suit, appeal etc. if filed beyond the time prescribed, is subject to the modes of computation etc. of the time prescribed by applying the provisions of ss. 4 to 25 which are referred to in the opening words of s. 3. On this construction where a case satisfies the opening words of s. 29(2) the entire group of ss. 3 to 25 would be attracted to determine the period of limitation prescribed by the special or local law. Now let us test this with reference to the second limb of s. 29(2) treating the latter as

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a separate and independent provision. That part starts with the words "for determining any period of limitation prescribed for any suit, appeal or application by *any special or local law*" (italics ours). The words italicised being perfectly general, would manifestly be comprehensive to include every special or local law, and among these must necessarily be included such special or local laws which satisfy the conditions specified by the first limb of s. 29(2). We then have this strange result that by the operation of the first part ss. 3 to 25 of the Limitation Act are made applicable to that class of special and local laws which satisfy the conditions specified by the first limb, whereas by the operation of the second limb the provisions of section 3, 5, 6 to 8 & 19 to 21 & 23 to 25 would not apply to the same class of cases. A construction which would lead to this anomalous result cannot be accepted and we, therefore, hold that subject to the construction we have put upon sub-s. (2) of s. 29 both the parts are to be read as one whole and that the words following the conjunction 'and' "for the purpose of determining any period of limitation" etc. attract the conditions laid down by the opening words of the sub-section.

As we have pointed out earlier this does not affect the result. We agree that the appeal fails and we direct that it be dismissed with costs.

Subba Rao J.

SUBBA RAO J.—This appeal by special leave raises the question of true construction of the provisions of s. 29(2) of the Indian Limitation Act, 1908 (9 of 1908), in the context of its application to s. 116-A of the Representation of the People Act, 1951 (43 of 1951), hereinafter called the Act.

The facts relevant to the question raised lie in a small compass and they are not disputed. The appellant was elected to the House of the People from the Mahasamund parliamentary constituency in the State of Madhya Pradesh in the third general elections. The respondents were the other contesting candidates. Respondent 1 filed an election petition before the Election Commissioner of India under ss. 80 and 81 of the Act for setting aside the election of the appellant and it was duly referred to the Election Tribunal. The

Election Tribunal, by its order dated January 5, 1963, dismissed the election petition. On February 11, 1963, the first respondent preferred an appeal against the said order of the Election Tribunal to the High Court of Madhya Pradesh at Jabalpur. Under sub-s. (3) of s. 116-A of the Act every appeal under Ch. IVA of the Act shall be preferred within a period of thirty days from the date of the order of the Tribunal under s. 98 or s. 99 thereof. Admittedly, the appeal was filed more than 30 days from the said order. If the time requisite for obtaining a copy of the order of the Tribunal was excluded, the appeal was filed within 30 days; but if in law it could not be excluded, the appeal would certainly be out of time. The appellant contended before the High Court that respondent 1 was not entitled in law to exclude the time so taken by him in obtaining a copy of the order of the Tribunal, but that plea was rejected by the High Court. On merits, the High Court held that the appellant had committed two acts of corrupt practice as defined by s. 123(4) of the Act and on that finding it declared the election of the appellant void. It is not necessary to go into the details of the judgment of the High Court given on the merits of the case, as nothing turns upon them in this appeal, for the learned counsel confined his argument only to the question of limitation. The present appeal has been preferred by the appellant against the said order of the High Court setting aside his election.

The only question, therefore, is whether for the purpose of computing the period of 30 days prescribed under s. 116-A (3) of the Act the provisions of s. 12 of the Limitation Act can be invoked.

Mr. Pathak, learned counsel for the appellant, in an elaborate argument placed before us the different aspects of the question raised, and I shall deal with his argument in the appropriate context in the course of my judgment. It would be convenient at the outset to read the relevant provisions of the Act and those of the Limitation Act.

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The Representation of the People Act, 1951.

Decision of the Tribunal :

Section 98. At the conclusion of the trial of an election petition the Tribunal shall make an order:—

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

. . . . . .

Section 116-A. (1) An appeal shall lie from every order made by a Tribunal under section 98 or section 99 to the High Court of the State in which the Tribunal is situated.

(2) The High Court shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority, and follow the same procedure, with respect to an appeal under this Chapter as if the appeal were an appeal from an original decree passed by a civil court situated within the local limits of its civil appellate jurisdiction.

. . . . . .

(3) Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the Tribunal under section 98 or section 99:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.

The Indian Limitation Act, 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 therefor by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that Schedule, and for the

purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

(a) the provisions contained in section 4, section 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply.

Section 12.—(2) In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of judgment, the day on which the judgment complained of was pronounced, and time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded.

(3) Where a decree is appealed from or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

Section 116-A of the Act confers a right of appeal against an order of the Tribunal under s. 98 or s. 99 thereof; sub-s. (3) thereof prescribes a period of limitation of 30 days for preferring such an appeal. Section 29 of the Limitation Act attracts, by fiction, the provisions of s. 3 thereof to an appeal described in s. 29 of the said Act; with the result, the provisions of sub-ss. (2) and (3) of s. 12 of the Limitation Act are attracted thereto; and if those sub-sections were attracted in computing the period of limitation prescribed for an appeal the time requisite for obtaining a copy of the decree or order or judgment on which it is founded shall be excluded. Learned counsel for the appellant, therefore, contends that s. 29 of the Limitation Act does not apply to an appeal under s. 116-A of the Act. The first argument of learned counsel is that for invoking sub-s.(2) of s. 29 of the Limitation Act the necessary condition is that the First Schedule thereto shall prescribe a period of limitation for an appeal and that a special law shall prescribe for the same type of appeal a different period of limitation and that, as in the

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present case the First Schedule has not prescribed any period of limitation to an appeal under s. 116-A of the Act against an order of the Tribunal, sub-s. (2) of s. 29 of the Act is not attracted. This argument is met by learned counsel for the respondents in two ways, namely, (i) that the First Schedule to the Limitation Act has prescribed a period of limitation for such an appeal, and (ii) that sub-s. (2) will apply even to a case where the First Schedule to the Limitation Act has not prescribed any period of limitation for an appeal, but a special law prescribed a period of limitation for such an appeal. I shall proceed to consider the two limbs of the argument separately.

Has the First Schedule to the Limitation Act prescribed a period of limitation for an appeal against an order of an Election Tribunal under s. 98 or s. 99 of the Act? Article 156 of the First Schedule to the Limitation Act says that to an appeal under the Code of Civil Procedure, 1908, to a High Court, except in the cases provided for by article 151 and article 153, the period of limitation is 90 days from the date of the decree or order appealed from; and article 151 referred to in article 156 provides for an appeal against a decree or order of any of the High Courts of Judicature at Fort William, Madras, and Bombay, or of the High Court of Punjab in the exercise of its original jurisdiction. What does the expression "under the Code of Civil Procedure" in art. 156 of the First Schedule to the Limitation Act connote? Does it mean that a right of appeal shall be conferred under the Code of Civil Procedure, or does it mean that the procedure prescribed by the said Code shall apply to such an appeal? A comparison of the terms of art. 156 and art. 151 indicates that the emphasis is more upon the procedure applicable to an appeal than on the right of appeal conferred under an Act. The heading of the first column in the First Schedule to the Limitation Act is "Description of appeal". The phraseology used in art. 156 describes the nature of the appeal in respect of which a particular period of limitation is prescribed. It does not refer to a right conferred under the Code of Civil Procedure, but only describes the appeal with reference to the procedure applicable thereto. Though the word "under" may support the contrary view, the reference to

art. 151 therein detracts from it. Article 151 is an exception to art. 156, indicating thereby that, but for the exception art. 156 will apply to an appeal covered by art. 151: that is to say, an appeal under art. 151 is deemed to be an appeal under the Code of Civil Procedure. Though a right of appeal is conferred under the Letters Patent, it is deemed to be an appeal under the Code of Civil Procedure, because the Code of Civil Procedure governs the said appeal. As Rajamannar, C.J., observed in *Kandaswami Pillai* v. *Kannappa Chetty*(1),

> "It is well established that the Limitation Act and the Code are to be read together, because both are statutes relating to procedure and they are in *pari materia* and, therefore, to be taken and construed together as one system as explanatory of each other."

So construed it may reasonably be held that art. 156 provides for an appeal governed by the procedure prescribed by the Code of Civil Procedure. This view was accepted by the Calcutta High Court as early as 1886 in *Aga Mahomed Hamadani* v. *Cohen*(2). There, under s. 49 of the Burma Courts Act (XVII of 1875), where the amount or value of a suit or proceeding in the Recorder's Court exceeded Rs. 3,000, and was less than Rs. 10,000, an appeal lay to the High Court. Under s. 97 of the said Act, "save as otherwise provided by this Act, the Code of Civil Procedure shall be, and shall, on and from the 15th day of April 1872, be deemed to have been in force throughout British Burma". Section 540 of the Civil Procedure Code of 1882, which was in force at that time, read:

> "Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal shall lie from the decrees or from any part of the decrees of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts."

(1) A. I. R. 1952 Mad. 186. (2) (1886) I. L. R. 13 Cal. 221.

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The effect of this provision of the Code on the Burma Courts Act was that where an appeal was not expressly excluded by any special Act, an appeal lay to whatever court which under the enactment in force was the appropriate court. But this section was overborne by the Burma Courts Act to the extent it conferred a right of appeal from the Recorder's Court to the High Court subject to certain conditions, for s. 49 of the Burma Courts Act had taken away the right of appeal of value under a prescribed amount and conferred such a right, when the subject-matter of the appeal was between two prescribed amounts, from the decree of the Recorder's Court to the High Court. It is, therefore, not correct to say, as contended by the learned counsel, that a right of appeal was conferred under s. 540 of the Code of Civil Procedure, 1882. After the passing of the Burma Courts Act, a right of appeal was conferred under s. 49 of that Act and not under s. 540 of the Code. It was contended before the Calcutta High Court, as it is now contended before us, that art. 156 of Schedule II of the Limitation Act did not apply to an appeal under the Burma Courts Act, on the ground that the said appeal was not an appeal under the Code of Civil Procedure. The learned Judges observed thus, at p. 224:

> "Now, what is meant by an appeal under the Civil Procedure Code? A particular appeal was given by the Burma Courts Act and the Burma Courts Act is still the only Act which prescribes to what Court this appeal shall lie. If it had not been given by the Burma Courts Act then s. 540 of the Civil Procedure Code would have been sufficient to give it, provided that some Court was by some enactment provided as the proper Court to hear the appeal. The procedure in appeals in every respect is governed by the Code of Civil Procedure. The Limitation Act, Schedule II. Art. 156, when it speaks of the Civil Procedure Code is, on the face of it, speaking of a Code which relates to procedure, and does not ordinarily deal with substantive rights: and the

> natural meaning of an appeal under the Civil Procedure Code appears to us to be an appeal governed by the Code of Civil Procedure so far as procedure is concerned."

It is manifest from this passage that the learned Judges did not repel the contention on the ground that the right of appeal was conferred by s. 540 of the Code of Civil Procedure, but expressly for the reason that the natural meaning of the relevant expression in art. 156 of Sch. II of the Limitation Act was that the appeal mentioned therein was one governed by the Code of Civil Procedure. This decision was followed by a Division Bench of the Madras High Court in *Ramaswami Pilai* v. *The Deputy Collector of Madura*(1). The learned Judges, Abdur Rahim and Oldfield, JJ., held that art. 156 of the Limitation Act (IX of 1908) applied to appeals filed under s. 54 of the Land Acquisition Act (1 of 1894). The right of appeal was conferred under the Land Acquisition Act, but the procedure prescribed by the Code of Civil Procedure governed that appeal. The same argument now raised before us was raised, but was repelled. After citing the relevant part of the passage from the judgment of the Calcutta High Court extracted above, the learned Judges stated at p. 55 thus:

> "It seems to us that this is the correct interpretation of article 156. There seems to be no good reason for saying that an appeal under the Civil Procedure Code means only an appeal the right to prefer which is conferred by the Code itself. On the other hand it would not be straining the language of the article too much to hold that an appeal, the procedure with respect to which, from its inception to its disposal, is governed by the Civil Procedure Code, may rightly be spoken of as an appeal under the Code."

Then the learned Judges referred to art. 151 of the Limitation Act and concluded thus:

(1) (1919) I .L. R. 43 Mad. 51.

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"That also tends to show that what is meant by the legislature is appeals, the hearing and disposal of which is governed by the rules of procedure laid down in the Civil Procedure Code."

Though about 77 years have passed by since the decision of the Calcutta High Court and though the Limitation Act was amended a number of times, the Legislature did not think fit to express its dissent from this view by amendment or otherwise. No direct decision has been brought to our notice which has differed from, or even questioned the correctness of, this decision. In this context we may also refer to the decision of the Allahabad High Court in *Dropadi* v. *Hira Lal*(1) where it is pointed out that several Indian enactments, for instance, the Succession Act, the Probate and Administration Act, the Land Acquisition Act and the Provincial Insolvency Act, confer rights of appeal and direct the application of the provisions of the Code of Civil Procedure to such appeals, but prescribed no period within which such appeals might be filed, the idea being that art. 156 of the Limitation Act would furnish the period of limitation for the filing of such appeals. Mr. Pathak, learned counsel for the appellant, brought to our notice a number of decisions which considered the forum to which an appeal shall lie against an order under s. 476 of the Code of Criminal Procedure and the procedure to be followed therein.

In *Nasaruddin Khan* v. *Emperor*(2), where an appeal under s. 476-B of the Code of Criminal Procedure from the Court of the Munsif was heard in part by the District Judge, and on the next date of hearing the appellant's pleader was not present in Court, it was held that the District Judge was entitled to consider that the apeal had been abandoned and to dismiss it under the provisions of Order XLI of the Code of Civil Procedure. In *Mt. Abida Khatoon* v. *Chote Khan*(3), the Allahabad High Court held, under similar circumstances, that an appellate court could set aside an order dismissing an appeal for default. The Nagpur High Court in

(1) (1912) I. L. R. 34 All. 496. (2) (1926) I. L. R. 53 Cal. 827.
(3) A. I. R. 1956 All. 155.

Bholanath Balbhadra Sahai v. *Achheram Puran Kurmi*(1), held that in such an appeal the appellate Court could exercise its power under O. XLI, r. 27 of the Code of Civil Procedure. In *Chandra Kumar Sen* v. *Mathuria Debya*(2), the Calcutta High Court applied to such an appeal the period of limitation prescribed under art. 154 of the Limitation Act.

It is said that the combined effect of these decisions is that the procedure applicable in an appeal against an order made by a civil court under s. 476 of the Code of Criminal Procedure is that prescribed by the Code of Civil Procedure whereas the period of limitation is that prescribed for an appeal under the Code of Criminal Procedure. But the learned counsel himself conceded that there is a conflict of decisions on the question whether to an appeal against the order of a civil court under s. 476-B of the Code of Criminal Procedure, the civil procedure applies or the criminal procedure applies and, therefore, the only decision which may have some bearing on the question now raised is that in *Chandra Kumar Sen* v. *Mathuria Debya*(2). There, an application was filed before the Subordinate Judge for filing of a complaint against the petitioner under s. 476 of the Code of Criminal Procedure. That was rejected. The complainant preferred an appeal to the District Judge more than 30 days prescribed under art. 154 of the Limitation Act. The learned District Judge held that no question of limitation arose, for the District Judge *suo motu* could lodge a complaint in the criminal court when an offence in connection with the administration of civil justice came to his notice. On that reasoning he instituted a complaint. The High Court held that the appeal was filed before he District Judge under s. 476-B of the Code of Criminal Procedure and that under art. 154 of the Limitation Act it should have been filed within 30 days from the date of the order of the Subordinate court. It will be noticed that no argument was raised in that case that the appeal was governed by the Code of Civil Procedure and, therefore, the appropriate article of the Limitation Act was not art. 154,

(1) A. I. R. 1937 Nag. 91. (2) (1925) I. L. R. 52 Cal. 1009.

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but art. 156 thereof, for the simple reason that whichever article applied the appeal was clearly barred by limitation. It is not, therefore, permissible to read into the decision the entire argument now advanced before us. The present question was neither raised nor argued in that case. It may, therefore, be safely held that for over 75 years the decision of the Calcutta High Court on the construction of art. 156 of the Limitation Act stood the ground. Though it must be conceded that the point is not free from difficulty, we are not prepared to depart from the construction put upon the article as early as 1886 and which was not dissented from all these years. I, therefore, hold that the expression "appeal under the Code of Civil Procedure" in art. 156 of the Limitation Act means an appeal governed by the Code of Civil Procedure.

Even so, it is contended that under s. 116-A(2) of the Act the High Court, though it has the same powers, jurisdiction and authority of an appellate court governed by the Code of Civil Procedure, is not empowered to follow the procedure prescribed under the Code in respect of receiving the appeals. This argument is contrary to the express terms of sub-s. (2) of s. 116-A of the Act. Under that sub-section, "The High Court shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority and follow the same procedure, with respect to an appeal under this Chapter as if the appeal were an appeal from an original decree passed by a civil court situated within the local limits of its civil appellate jurisdiction". Under the second part of sub-s. (2) of s. 116-A of the Act, a fiction is created, namely, that though a right of appeal is conferred by s. 116-A(1) of the Act, the appeal thereunder for the purpose of sub-s. (2) will be deemed to be an appeal from an original decree passed by a civil court situated within the local limits of its civil appellate jurisdiction. The first part of the sub-section describes the purposes for which the fiction is invoked, namely, the exercise of the powers, jurisdiction and authority and the following of the procedure with respect to such an appeal. The powers, jurisdiction and authority take in the powers, jurisdiction and authority exercisable by an appellate tribunal in regard to various matters prescribed in the Code of Civil

Procedure. What does the word "procedure" mean? The procedure must necessarily be the procedure governing such an appeal. It means, *inter alia,* the manner of receiving an appeal in the court, the preparation of records of the appeal, the posting of the appeal and the manner of its disposal. We find it impossible to exclude from the word "procedure" the filing and receiving of an appeal in the court. If that part was excluded, how could the appeal be received in the High Court? The answer given is that the Government might make rules under s. 169(1) of the Act. When s. 168(2) confers a statutory power on the High Court to follow the procedure prescribed by the Code of Civil Procedure, we cannot invoke the general power of the Central Government to make rules under s. 169(1) of the Act. If so, the procedure prescribed by O. XLI of the Code of Civil Procedure, along with the other relevant provisions of the said Code, equally applies to an appeal filed under s. 116-A (2) of the Act. The result is that under s. 116-A(2) of the Act, the appeal, by fiction, is equated with an appeal filed under the Code of Civil Procedure in the matter of not only the exercise of the powers, jurisdiction and authority but also in the matter of procedure to be followed from the date of receipt of the appeal to its final disposal. For the aforesaid reasons, I hold that the special law, namely, the Act, prescribes a period of limitation different from the period prescribed therefor by the First Schedule to the Limitation Act within the meaning of art. 29(2) of the Limitation Act. If so, s. 12 of the Limitation Act is attracted, and the 1st respondent was entitled to exclude the time taken by him for obtaining the copy of the order.

Even assuming that art. 156 of Schedule I to the Limitation Act did not prescribe a period of limitation for the kind of appeal under consideration, the question arises whether sub-s. (2) of s. 29 of the Limitation Act would not be applicable if no period was prescribed by the First Schedule for an appeal created by a special law but the special law prescribed a period of limitation for the same. The history of this provision throws some light on this question. The first Limitation Act was passed in the year 1859 (Act XIV of 1859). Section 3 of that act provided:

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"When, by any law now or hereafter to be in force, a shorter period of limitation than that prescribed by this Act is specially prescribed for the institution of a particular suit, such shorter period of limitation shall be applied notwithstanding this Act."

The provisions of the Act of 1859 were repealed by the Limitation Act IX of 1871. Section 6 of that Act, which is relevant to the present inquiry, read:

"When, by any law not mentioned in the schedule hereto annexed, and now or hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is especially prescribed for any suits, appeals or applications, nothing herein contained shall affect such law."

The Limitation Act of 1871 was replaced by Act XV of 1877. Section 6 of this Act read:

"When, by any special or local law now or hereafter in force in British India, a period of limitation is especially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed."

The same provision was retained in the Limitation Act IX of 1908, but it was amended in the year 1922 in the present form. Before the amendment of 1922, there was a difference of view on the following questions, namely, (1) whether the general provisions of the Limitation Act, where the word "prescribed" alone without reference to any Act, was used or even where that word was not used, would be applicable to special or local laws, and (2) whether the general provisions of the Limitation Act did not apply at all to the periods of limitation prescribed by special or local laws. Decisions holding that the general provisions of the Limitation Act did not apply to periods of limitations prescribed by other laws relied upon the expression "affect or alter" used in the section as it then stood. Section 29 of the Limitation Act was amended to remove the conflict with a view to make the

general provisions applicable to the period of limitation prescribed by special or local laws. A comparison of the phraseology of the earlier sections shows that while s. 3 of the Limitation Act of 1859 used the words "shorter period", s. 6 of the Act of 1871 used the expression "differing", and s. 6 of the Acts of 1877 and 1908 removed both the expressions. The result was that s. 6 of the Act of 1871 saved all the special or local laws which prescribed a special period of limitation from the operation of the provisions of the Limitation Act. As the section then stood, it applied to all special or local laws prescribing a period of limitation whether the Limitation Act prescribed any period of limitation or not for suits or appeals similar to those governed by special or local laws, or where the period of limitation so prescribed by special or local laws was shorter or longer than that prescribed in the Limitation Act. Can it be said that by the Amending Act of 1922, a conscious departure was made by the Legislature to impose a condition for the application of sub-s. (2) of s. 29, namely, that a period of limitation should have been expressly prescribed by the First Schedule to the Limitation Act in respect of a suit or appeal governed by the special or local law? There was no occasion for such a departure. To put it in other words, apart from resolving the conflict, did the Legislature intend to exclude a particular category of proceedings governed by special or local laws from the operation of the benefit conferred by sub-s. (2) of s. 29? No justification was suggested for such a departure and we find none.

The problem may be approached from a different perspective. The scheme of the Limitation Act may be briefly stated thus: The preamble to the Act shows that it was passed to consolidate and amend the laws relating to the law of limitation in respect of the proceedings mentioned in the Act. It applies to the whole of India. Part II comprising ss. 3 to 11 deals with limitation of suits, appeals and applications; Part III comprising ss. 12 to 25 provides for computation of periods of limitation; and Part V deals with savings and repeals. We are not concerned with Schedules II and III, for they have been repealed. The First Schedule consists of three divisions: the first division provides for the period

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of limitation for suits; the second division, for appeals; and the third division, for applications. Article 120 found in the first division prescribes for a suit for which no period of limitation is prescribed elsewhere in the Schedule; art. 181 in the third division prescribes for application for which no period of limitation is prescribed elsewhere in the Schedule or by s. 48 of the Code of Civil Procedure. But no such residuary article is found in the second division dealing with appeals. The Limitation Act was conceived to be an exhaustive code prescribing for every conceivable proceeding, whether suit, appeal or application, subject to the saving in Part V thereof. It follows that there is no period of limitation for an appeal not provided for in the second division unless the special or local law prescribes for it. If so, it may reasonably be said that, as the First Schedule of the Limitation Act prescribes no limitation for an appeal not covered by arts. 150 to 157 thereof, under the Limitation Act such a suit or appeal can be filed irrespective of any time limit.

With this background let us revert to the construction of s. 29(2) of the Limitation Act. When the First Schedule of the Limitation Act prescribes no time limit for a particular appeal, but the special law prescribes a time limit to it, can it not be said that under the First Schedule of the Limitation Act an appeal can be filed at any time, but the special law by limiting it provides for a different period? While the former permits the filing of an appeal at any time, the latter limits it to the prescribed period. It is, therefore, different from that prescribed in the former. This problem was considered by a Division Bench of the Bombay High Court, consisting of Chagla C.J., and Gajendragadkar J., in *Canara Bank Limited, Bombay* v. *The Warden Insurance Company, Ltd., Bombay*(1). Therein, Chagla C.J., speaking for the Court, observed at p. 1086 thus:

> "The period of limitation may be different under two different circumstances. It may be different if it modifies or alters a period of limitation fixed by the first Schedule to the Limitation Act. It may also be different in the

(1) I. L. R. [1952] Bom. 1083.

sense that it departs from the period of limitation fixed for various appeals under the Limitation Act. If the first Schedule to the Limitation Act omits laying down any period of limitation for a particular appeal and the special law provides a period of limitation, then to that extent the special law is different from the Limitation Act. We are conscious of the fact that the language used by the Legislature is perhaps not very happy, but we must put upon it a construction which will reconcile the various difficulties caused by the other sections of the Limitation Act and which will give effect to the object which obviously the Legislature had in mind, because if we were to give to s. 29(2) the meaning which Mr. Adarkar contends for, then the result would be that even s. 3 of the Limitation Act would not apply to this special law. The result would be that although an appeal may be barred by limitation, it would not be liable to be dismissed under s. 3".

A Full Bench of the Allahabad High Court, in *Sehat Ali Khan* v. *Abdul Qavi Khan*(1) also dealt with this question. The learned Judges expressed conflicting views. Mootham C.J., assumed that the first limb of the sub-section did not apply to a case where the schedule omitted to provide for a period of limitation. On that assumption he proceeded to consider the second limb of the sub-section. Dayal J., took the view that for the application of the first part of s. 29(2) the period of limitation should have been prescribed by the First Schedule. Agarwala J., agreed with the view of the Bombay High Court. Bhargava J., agreed with the view expressed by Mootham C.J., and Upadhya J., did not agree with the view of the Bombay High Court. A Division Bench of the Madhya Pradesh High Court in *Beharilal Chaurasiya* v. *Regional Transport Authority*(2)

(1) I. L.R. (1956) 2 All. 252. (2) A. I. R. 1961 M. P. 75, 77.

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agreed with the view expressed by the Division Bench of the Bombay High Court. Dixit C.P., speaking for the Court, stated thus:

> "A special law may provide a period of limitation and schedule 1 may omit to do so. None the less the special law would be different from the Limitation Act. Section 29(2) of the Limitation Act is not very happily worded. It must be construed so as to avoid absurdity. The expression 'a period of limitation different from the period prescribed therefor by the first schedule' occurring in s. 29(2) cannot be construed as meaning that schedule 1 must also positively prescribe the period of limitation. Such a construction would not be in accordance with the intention of the Legislature and would lead to an absurdity."

The learned Chief Justice proceeded to consider the anomalous position that would arise if a literal construction was given to the provisions of the first part of the section. This Court, in *Kaushalya Rani* v. *Gopal Singh*(1), had to consider this question incidentally in the context of the application of s. 29(2) of the Limitation Act to an application for special leave to appeal against an order of acquittal under sub-s. (3) of s. 417 of the Code of Criminal Procedure. This Court held that s. 5 of the Limitation Act would not apply to an application for special leave to appeal under sub-s. (3) of s. 417 of the Code of Criminal Procedure. The Limitation Act does not provide any period of limitation for an application for special leave to appeal from an order of acquittal under the said section. If that be so, on the argument of learned counsel for the appellant, s. 29 of the Limitation Act could not be invoked. But this Court held that s. 29(2) of the Limitation Act applied, but that section excluded the application of s. 5 to the said application. Sinha C.J., speaking for the Court, observed:

> "Hence it may be said that there is no limitation prescribed by the Limitation Act for an

(1) A. I. R. 1964 S. C. 260

> appeal against an order of acquittal at the instance of a private prosecutor. Thus, there is a difference between the Limitation Act and the rule laid down in s. 417 (4) of the Code in respect of limitation affecting such an application. Section 29(2) is supplemental in its character in so far as it provides for the application of s. 3 to such cases as would not come within its purview but for this provision."

This observation clearly supports the position that s. 29(2) would apply even to a case where a difference between the special law and the Limitation Act arose by the omission to provide for a limitation to a particular proceeding under the Limitation Act.

I, therefore, hold that in the instant case the Act provides a period of limitation different from that prescribed therefor by the First Schedule to the Limitation Act and, therefore, it is governed by s. 29(2) of the said Act.

Even if my view on the construction of the first limb of s. 29 of the Limitation Act were wrong, it would not help the appellant, for his case squarely falls within the scope of the second limb of the section. For convenience I restate the relevant part of the section:

> ".....and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law."

Learned counsel for the appellant relied upon the conjunction "and" in support of his contention that the use of that conjunction makes the following sentence a limitation on the first part of the section. He further argues that if it is not a limitation but an independent clause, it will lead to the anomaly of ss. 4 to 25 of the Limitation Act applicable to proceedings falling under the first part and only some of the provisions thereof, namely, ss. 4, 9 to 18 and 22 applying to the second part of the section. Apart from the grammatical construction, which I will consider presently, I do not see any anomaly in ss. 4 to 25 of the Limitation Act applying to the first part of the section and only some of

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them applying to the second part thereof. Those proceedings to which the first part applies, by fiction the period prescribed in the special or local law is treated as prescribed in the First Schedule itself. There cannot possibly be any reason why s. 3 of the Limitation Act in toto shall not apply to them. But the same cannot be said in the case of the proceedings of a different type not provided for in the First Schedule. So, the Legislature specified the sections applicable to them and excluded the general sections which relate to legal disabilities, acknowledgements, part-payments and others specified therein. The Legislature may have thought that such articles are not generally appropriate to proceedings under special or local laws for reliefs not provided for in the First Schedule.

Now, coming to the construction of the section, the relevant rule of construction is well settled. "A construction which will leave without effect any part of the language of a statute will normally be rejected"; or to put it in a positive form, the Court shall ordinarily give meaning to every word used in the section. Does the conjunction "and" make the following clause a limitation on the preceding one? No rule of grammatical construction has been brought to our notice which requires an interpretation that if sentences complete by themselves are connected by a conjunction, the second sentence must be held to limit the scope of the first sentence. The conjunction "and" is used in different contexts. It may combine two sentences dealing with the same subject without one depending upon the other. But, if the interpretation suggested by the learned counsel be accepted, we would not be giving any meaning at all to the word "any" used thrice in the second part of the section, namely, "any period", "any suit" and "any special or local law". If the second part is a limitation on the first part, the sentence should read, "for the purpose of determining the period of limitation prescribed for such suit, appeal or application by such special or local law." Instead of that, the use of the word "any" clearly demonstrates that the second part does not depend upon the first part or *vice versa*. There is no reason why we should attribute such a grammatical deficiency to the legislature when every word in the second part of

the section can be given full and satisfactory meaning. I would, therefore, hold that the second part is an independent provision providing for the aforesaid category of proceedings to which the first part does not apply. This is the view expressed by the majority of the judges of the Full Bench of the Allahabad High Court in *Sehat Ali Khan* v. *Abdul Qavi Khan*(1). I agree with the same.

It was then said that s. 116-A of the Act provided an exhaustive and exclusive code of limitation for the purpose of appeals against orders of tribunals and reliance is placed on the proviso to sub-s. (3) of that section, which reads:

> "Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the Tribunal under section 98 or section 99.
>
> Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period."

The contention is that sub-s. (3) of s. 116-A of the Act not only provides a period of limitation for such an appeal, but also the circumstances under which the delay can be excused, indicating thereby that the general provisions of the Limitation Act are excluded. There are two answers to this argument. Firstly, s. 29(2)(a) of the Limitation Act speaks of express exclusion but there is no express exclusion in sub-s. (3) of s. 116-A of the Act; secondly, the proviso from which an implied exclusion is sought to be drawn does not lead to any such necessary implication. The proviso has become necessary, because, if the proviso was not enacted, s. 29(2)(b) of the Limitation Act would have excluded the operation of s. 5 of the Limitation Act, with the result that even if a sufficient cause for the delay existed, the High Court would have been helpless to excuse the delay. I, therefore, hold that the proviso to sub-s. (3) of s. 116-A of the Act only restores the power denied to the court under s. 29(2)(b) of the Limitation Act.

1) I. L. R. [1956] 2 All. 252.

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Lastly, it is contended that s. 12(2) of the Limitation Act, on its express terms, would not apply to an appeal to the High Court against an order of the Election Tribunal under s. 98 of the Act. Elaborating the argument it is said that in order to exclude the time for obtaining a copy of the order appealed against, the original shall be a decree or order within the meaning of s. 12(2) or judgment within the meaning of s. 12(3) of the Limitation Act and the order under s. 98 of the Act is neither a decree nor an order or a judgment within the meaning of the said sub-sections of s. 12 of the Limitation Act. Reference is made to the definitions of decree, judgment and order in sub-sections (2), (9) and (14) of s. 2 of the Code of Civil Procedure, respectively, and it is contended that the order under s. 98 of the Act does not fall under any of the said three expressions as defined therein. Under sub-s. (9) of s. 2 of the Code of Civil Procedure, "judgment" is defined to mean the statement given by the judge of the grounds of a decree or order. Sub-section (14) of s. 2 of the said Code defines "order" to mean the formal expression of any decision of a civil court which is not a decree. It follows from the said definitions that judgment is a statement of the reasons given by the judge and order is the formal expression of his decision. Section 104 of the said Code says, "An appeal shall lie from the following orders, and save as otherwise expressely provided in the body of this Code or by any law for the time being in force, from no other orders." Order XX of the Code deals with the manner of pronouncing a judgment and decree. Under O. XX, r. 20, of the Code, "Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense." Under s. 141 of the Code, "The procedure provided in this Code in regard to suits shall be followed as far as it can be made applicable, in all proceedings in any court of civil jurisdiction". The effect of these provisions is that a decree is a formal expression of adjudication conclusively determining the rights of parties with regard to all or any of the controversies in a suit, whereas order is a formal expression of any decision of a civil court which is not a decree. Judgment is a statement given by the judge of his grounds in respect of a decree or order. Ordinarily judgment and order are en-

grossed in two separate documents. But the fact that both are engrossed in the same document does not deprive the statement of reasons and the formal expression of a decision of their character as judgment or order, as the case may be.

With this background let me look at the provisions of s. 116-A of the Act. Under sub-s. (1) thereof, an appeal shall lie from every order made by a Tribunal under s. 98 or s. 99 to the High Court of the State in which the Tribunal is situated. Under s. 98 of the Act,

> "At the conclusion of the trial of an election petition the Tribunal shall make an order—
>
> (a) dismissing the election petition; or
>
> (b) declaring the election of all or any of the returned candidates to be void; or
>
> (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected."

Part VI of the Act provides for disputes regarding elections; Ch. III thereof prescribes the procedure for the trial of election petitions, and s. 90 therein says:

> "(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits."

There is no provision in the Act defining how the decision should be given. It could not have been the intention of the Legislature that the Tribunal need not give the statement of reasons for its decision. As under s. 90 of the Act the Election Tribunal is directed to try election petitions as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, it is the duty of the Election Tribunal to give a statement of reasons for its decision. It is open to it to issue two documents—one embodying the reasons for the decision and the

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other, the formal expression of its decision: the former will be its judgment and the latter, its order. It may issue both in the same document in which case the judgment as well as the order is embodied in the same document. If so it is manifest that an order made under s. 98 of the Act, if it contains also the reasons for it, is a composite document satisfying the definition of a judgment as well as that of an order and thereby attracting the relevant provisions of s. 12 of the Limitation Act. That apart, a different approach to the question raised leads to the same conclusion. Section 12(2) of the Limitation Act does not say that the order mentioned therein shall be only such order as defined in the Civil Procedure Code. If a statute provides for the making of an order and confers a right of appeal to an aggrieved party against that order within a prescribed time, sub-s. (2) of s. 12 of the Limitation Act says that the time requisite for obtaining a copy of such order shall be excluded. The Act empowers the Tribunal to make an order and gives a right of appeal against that order to the High Court. Section 12(2) of the Limitation Act is, therefore, directly attracted without any recourse to the definition of an order in the Code of Civil Procedure. In either view, s. 12 of the Limitation Act applies and, therefore, the time taken for obtaining a copy of the said order shall be excluded in computing the period of limitation.

In the result, the appeal fails and is dismissed with costs.

Raghubar Dayal J.

RAGHUBAR DAYAL J.—I agree that the appeal be dismissed, but for different reasons.

I am of opinion that the first part of s. 29(2) of the Limitation Act applies only when a special or local law prescribes a period of limitation for an appeal and when for that particular appeal a period of limitation is prescribed in the First Schedule to the Limitation Act, as omission to prescribe a period of limitation cannot be equated with the prescribing of any positive period of limitation within which the appeal should be filed, and that the second part of s. 29(2) of the Act is independent of the first part and can apply to cases to which the first part does not apply. I am also of opinion that art. 156 of the First Schedule applies to appeals

which are instituted in view of the right of appeal conferred by any special or local law and not in pursuance of the provisions of s. 96 C.P.C. I do not elaborate my views as I agree with what my learned brother Mudholkar J., has said in construing the first part of s. 29(2) of the Limitation Act and art. 156 of the First Schedule and agree with my learned brother Ayyangar J., with respect to his construction of the second part of s. 29(2).

The proviso to s. 116(a) of the Representation of the People Act gives discretion to the High Court to entertain an appeal presented after the expiry of 30 days from the date of the order of the Tribunal in case it is satisfied that there is sufficient cause for the late presentation of the memorandum of appeal. The respondent has applied in this Court for the condonation of the delay in filing the appeal in the High Court. In the circumstances of the case, I consider it a fit case for condoning the delay. There was a difference of opinion in the High Courts regarding the applicability of s. 12 of the Limitation Act to such appeals. The delay was of a few days. The Election Tribunal passed the order on January 5, 1963 and the appeal was filed on February 11, 1963.

A party can reasonably desire to obtain a copy of the judgment for deciding, after studying it, whether it is worthwhile appealing against it, and if so, on what grounds. I am satisfied that there was sufficient cause for the respondent's not presenting the appeal within the period of limitation. I therefore condone the delay and confirm the order of the High Court.

MUDHOLKAR J.—While I agree with my brother Subba Rao J. that the appeal should be dismissed, I regret my inability to agree with all the reasons which he has given.

Mudholkar J.

I need not recapitulate the facts which have been set out fully in the judgment prepared by my learned brother but I would only state the point which we have to consider in this appeal. The point is whether for the purpose of computing the period of 30 days prescribed by s. 116A(3) of

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the Representation of the People Act, 1951 under which an appeal can be preferred from the decision of the Election Tribunal, the provisions of s. 12, sub-s. (2) of the Limitation Act, whereunder the time requisite for obtaining a copy of the decree and the day on which the judgment complained of was pronounced can be excluded can be pressed in aid. It was contended before us that the appeal should be deemed to be one under the Code of Civil Procedure, in which case it would fall under art. 156 of the First Schedule to the Limitation Act, and that though a shorter period of limitation is prescribed for it by the Representation of the People Act the provisions of s. 12(2) of the Limitation Act would be attracted by reason of the provisions of cl. (a) of s. 29(2). Reliance was placed in this connection on the first limb of s. 29(2). Alternatively it was argued that the first limb of s. 29, sub-s. (2) of the Limitation Act would also apply to an appeal under the Representation of the People Act even though it does not fall under art. 156 of the Limitation Act since a *different* period of limitation was prescribed for it from that prescribed for an appeal in the First Schedule of the Limitation Act and that, therefore, cl. (a) thereof would attract s. 12(2) of the Limitation Act. Finally it was argued that even if the appeal cannot be regarded as one falling within the first limb of s. 29(2) sub-s. (2) of s. 12 would still apply because the second limb of sub-s. (2) of s. 29 is wide enough in its ambit to include a suit, appeal or application for which no period of limitation is prescribed in the first schedule but a period of limitation has been prescribed by a special or local law. My learned brother has held in his judgment that an appeal provided for by s. 116A of the Representation of the People Act would be an appeal under the Code of Civil Procedure and thus fall under the first column of art. 156 of the First Schedule of the Limitation Act. He has also held that the words "where any special or local law prescribes for any suit, appeal or application a period of limitation *different* from the period prescribed therefor by the first schedule" occurring in the first limb of sub-s. (2) of s. 29 would include a suit or an appeal even though it is not of a type for which a period of limitation is prescribed in the First Schedule because it is enough if the special law prescribes for such an appeal a period

which is *different* from any period prescribed in the First Schedule. I regret I am unable to agree with either of these views. Finally, however, my learned brother has construed the second limb of sub-s. 2 of s. 29 "and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law" as being wide enough to include a suit, appeal or an application under a special or local law which is of a type for which no period of limitation is prescribed in the First Schedule. With this last conclusion I agree. In my judgment what he has said on the last point is enough for the purpose of disposing of the appeal in the way proposed by him. As, however, I do not agree with what he has said on the first two points I must briefly indicate my reasons for coming to different conclusions.

In support of the conclusion that art. 156 applies, my learned brother has relied upon the decision in *Aga Mahomed Hamadani* v. *Cohen* (1) which was followed by the Madras High Court in *Ramasami Pillai* v. *the Deputy Collector of Madura*(2). The first of these two cases was one from what was then British Burma. Under s. 49 of the Burma Courts Act, 1875 (XVII of 1875) an appeal lay to the High Court from the decision in a suit or proceeding before the Recorder's Court in which the amount or value was not less than Rs. 3,000 and was not more than Rs. 10,000. Section 97 of that Act said: "save as otherwise provided by this Act, the Code of Civil Procedure shall be, and shall, on and from the 15th day of April, 1872, be deemed to have been in force throughout British Burma." Section 540 of the Code of Civil Procedure, 1882 which was in force at that time read thus:

> "Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal shall lie from the decrees or from any part of the decrees of the Courts exercising original jurisdiction to the Courts authorised to hear appeals from the decisions of those courts."

(1) (1886) I. L. R. 13 Cal. 221 (2) (1919) I. L. R. 43 Mad. 51

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The question which the High Court had to consider in that case was whether the appeal could be said to be in time as it fell to be governed by art. 156 of the First Schedule to the Limitation Act. For deciding this matter the High Court proceeded to consider what was meant by an appeal under the Code of Civil Procedure. While dealing with the matter the High Court observed:

> "A particular appeal was given by the Burma Courts Act and the Burma Courts Act is still the only Act which prescribes to what Court this appeal shall lie. If it had not been given by the Burma Courts Act then s. 540 of the Civil Procedure Code would have been sufficient to give it, provided that some Court was by some enactment provided as the proper Court to hear the appeal. The procedure in appeals in every respect is governed by the Code of Civil Procedure. The Limitation Act, Sch. I, Art. 156 when it speaks of the Civil Procedure Code is, on the face of it, speaking of a Code which relates to procedure, and does not ordinarily deal with substantive rights: and the natural meaning of an appeal under the Civil Procedure Code appears to us to be an appeal governed by the Code of Civil Procedure so far as procedure is concerned."

Referring to this, my learned brother has observed:

> "It is manifest from this passage that the learned judges did not repel the contention on the ground that the right of appeal was conferred by s. 540 of the Code of Civil Procedure, but expressely for the reason that the natural meaning of the relevant expression in art. 156 of Sch. I of the Limitation Act was that the appeal mentioned therein was one governed by the Code of Civil Procedure."

That is true. It is, however, not material for my purpose to consider whether or not the High Court was right in holding that the appeal before it was under the Burma Courts

Act. I would assume that the High Court was right but it is necessary to point out that the provisions of s. 29 of the Limitation Act as then in force did not come for consideration in that case. The question would then be whether its view that an appeal, though not provided by the Code of Civil Procedure, would yet be deemed to be an appeal under the Code for the purpose of art. 156 of the Limitation Act, was right. With respect I do not think that there was any warrant for holding that an appeal which was not given by the Code would still be one under the Code merely because the procedural provisions thereof would govern its course. Where the right of appeal is given by some other law, the appeal must be regarded as one under that law and not under the Code. I see no valid reason for construing the words 'under the Code of Civil Procedure' as meaning 'governed in the matter of procedure by the Code of Civil Procedure'. For, that is, in effect, what the High Court has done in this case. By reading the article in the way it has done the High Court has virtually construed the only provision in the Limitation Act dealing with normal civil appeals to the High Court as a residuary article which would take in all appeals by whatever law they may be provided, merely because the procedure relating to appeals contained in the Code of Civil Procedure was applicable to them. This would in my judgment go against the plain intendment of the Legislature. Indeed, while a right to institute a suit or make an application is a wider kind of right, there can be no right of appeal unless some statute confers it. That is why the Legislature has expressly enacted residuary provisions, Arts. 120 and 180, for suits and applications respectively in the Limitation Act. The First Schedule is divided into three divisions. Article 156 is one of the eight articles contained in the second division which deals with appeals. The first division of that schedule deals with suits. There, provision is made for a variety of suits including some under special laws, but it was realised that it could not be exhaustive. Therefore, art. 120 was provided therein, which deals with "Suits for which no period of limitation is provided elsewhere in this schedule." The third division of the First Schedule deals with applications of different kinds. Article 181 makes provision for applications for which no

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period of limitation is prescribed elsewhere in the Schedule. In the second division, however, which deals with appeals, there is no provision analogous to art. 120 and art. 181. Four of the eight articles deal with appeals under the Code of Criminal Procedure and four with appeals other than those under the Code of Criminal Procedure. As already stated, only one of these articles deals with normal civil appeals to the High Court, namely, art. 156. It is not couched in language similar to that used in art. 120 and art. 181. Would we then be justified in reading the first column of art. 156 to mean the same thing as is said in the first column of arts. 120 or 181? The Legislature knew that appeals have been provided by various special laws; but it made no provision for such appeals in this Schedule apparently for the reason that a law which confers a right of appeal is expected to provide for the period of limitation for such an appeal. That seems to be the explanation for the absence of a residuary provision for appeals.

The first difficulty, therefore, in interpreting art. 156 in the way contended for by the respondents is that where a different period of limitation for appeal is expressly provided by a special law art. 156 will not in terms be attracted. To bring such an appeal under it would clearly go against the express intention of the Legislature which was to confine that article to appeals under the Code of Civil Procedure. The next difficulty is that the entry deals with appeals "under" the Code of Civil Procedure and not appeals arising out of proceedings to which the Code of Civil Procedure applies. Nor again, does it include an appeal which is only deemed to be under the Code of Civil Procedure. Be it noted that so far as proceedings under the Representation of the People Act are concerned, the whole of the Code of Civil Procedure does not apply but only so much of it as is expressly made applicable by the provisions of the Representation of the People Act. It was said that if the provisions of O. XLI, of the Code of Civil Procedure were not applicable to an appeal under the Representation of the People Act there would be no provision whereunder the party could at all file an appeal. It seems to me, however, that there can be no difficulty at all in this matter as every

High Court has made rules partly under the Constitution and partly in exercise of its inherent power to make suitable provisions in regard to this and allied matters. The Calcutta High Court, however, does not appear to have given the full consideration in *Cohen's case*(1) to the ambit of art. 156 and that is another reason why I find myself unable to accept the correctness of the view it has taken in that case.

It was then said that the view should be accepted on the ground of *stare decisis*. In this connection it was pointed out that so far no court has dissented from that view and indeed the view was fully accepted in *Ramasami Pillai's case*(2) by the Madras High Court. In so far as the principle of *stare decisis* is concerned it is nothing more than, as observed by Dowrick in *Justice According to the English Common Lawyers* (1961 ed. p. 195), a precipitate of the notion of legal justice. In other words it is the principle that judicial decisions have a binding character. But in India the position is not quite the same. Here the decision of a High Court is not even always binding upon it in the sense that it can be reconsidered by a Full Bench. No doubt its decision may bind all courts subordinate to it as also all Judges sitting singly or in division benches of the High Court. It is also true that a decision of a Division Bench of a High Court is binding on every other Division Bench of that High Court but there again there have been cases where one Full Bench has reconsidered the decision of an earlier Full Bench. In any case the decision of a High Court has no more than persuasive character in so far as this Court is concerned. In that view the decision of the Calcutta High Court, even though it may not have been dissented from since the time it was rendered, cannot, in the proper sense of the term be regarded as *stare decisis*. What could be *stare decisis* in this Court would be its own previous decisions. But even here instances are not wanting where, unlike perhaps the House of Lords, we have considered ourselves free to go back on previous decisions. (See *The Bengal Immunity Company Limited* v. *The State of Bihar & ors.*(3) Finally, even where a decision has not been

(1) (1886) I. L. R. 13 Cal. 221 (2) (1919) I. L. R. 43 Mad. 51

(3) [1955] 2 S. C. R. 603

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dissented from for a long time, but has on the other hand been followed, it is not entitled to be treated as immutable, particularly where it deals only with a question appertaining to the adjective law, such as the law of limitation. There may be a great deal to be said in favour of not disturbing even erroneous decisions affecting substantive rights to property which have stood undisturbed for a long time on the ground that such a course may unsettle existing titles to property. But this or similar considerations which would justify leaving such decisions undisturbed would not stand in the way of overruling an erroneous decision on a matter appertaining to the adjective law however ancient the decision may be(1). Therefore, I do not feel myself persuaded to hold that the present appeal can be regarded as of a type falling within the first column of art. 156 of the First Schedule to the Limitation Act.

In order to deal with the second ground given by my learned brother it is necessary to reproduce the provisions of s. 29, sub-s. (2) of the Limitation Act. They run thus:

> "Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—
>
> (a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and
>
> (b) the remaining provisions of this Act shall not apply."

(1) See Allen, *Law in the making* (5th edn.) p. 209 f.n. 3

While expressing the view that the legislature has not expressed itself happily while enacting this provision he has agreed with the view taken in *Canara Bank Ltd.* v. *The Warden Insurance Co., Ltd., Bombay*(1), which was followed by the High Court of Madhya Pradesh in *Beharilal Chaurasiya* v. *Regional Transport Authority*(2). In tha. case the Bombay High Court has held that art. 156 is attracted on the ground that the period provided by the special law is different from that contained in the First Schedule. With great respect to the learned Judges, I find it difficult to strain the language used in the first limb of s. 29 (2) in this manner. The legislature has in clear terms spoken of cases in which a special or local law has prescribed for a suit, appeal or an application a period of limitation "different" from that prescribed by the First Schedule. Now, the governing words are "suit, appeal or application". Therefore, what has to be seen is whether a suit, appeal or application under a particular local or special law is of a kind similar to one for which a period of limitation is prescribed in the First Schedule. The first limb of sub-s. (2) of s. 29 is concerned only with proceedings of this kind, that is, proceedings under special or local law for which a period of limitation is provided in the First Schedule. If for such a proceeding the period to be found in the First Schedule is different from that prescribed under a special or local law certain consequences will follow under the provision. I do not think that any inconvenience would be caused by giving literal and natural interpretation to the expression used by the legislature in the first portion of sub-s. (2) of s. 29 because cases of other kind can easily come under the second portion thereof.

Since I agree with my learned brother about what he has said regarding the second limb of sub-s. (2) of s. 29 the appeal must be dismissed with costs as proposed by him.

Appeal dismissed.

(1) I. L. R. 1952 Bom. 1083.

(2) A.I.R. 1961 M. P. 75.