liable to the penal consequences provided in that sub-s., and Mr. Lulla says that in this particular case the relationship of landlord and tenant was not established at the date when the premium was received by the accused. In our opinion, this contention is based upon a clear fallacy. The definition of "landlord" is a person who is for the time being receiving or entitled to receive rent in respect of any premises. Therefore, in order to determine who is the landlord in respect of any particular premises, the question that has got to be asked is, who is the person who is entitled to receive rent in respect of those premises? Even if the person does not actually receive rent, his title to receive rent is sufficient. In this particular case it is impossible to contend, in our opinion, that the accused were not the landlords of the premises in respect of which they entered into an agreement, in respect of which they accepted a deposit and in respect of which they actually passed a receipt for rent. The accused were the persons who were entitled to receive the rent and therefore they satisfy the definition of the statute.

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In our opinion, therefore, the facts on which this reference has been made to us do bring the case of the accused within the meaning of s. 18 (*1*), and accordingly we answer the question submitted to us in the affirmative. The matter will go back to the Criminal Bench for disposal according to law.

Answer accordingly

M. W. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice.

PREM NARAYAN AMRITLAL VARMA, PETITIONER *v.* DIVISIONAL TRAFFIC MANAGER, BHUSAVAL CENTRAL RAILWAY, OPPONENT.*

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Jan. 27

Payment of Wages Act (IV of 1936) ss. 15, 17—Powers of the District Court in appeal—Whether appellate Court has jurisdiction to interfere with the order made by the authority condoning delay—Construction.

The District Court exercising appellate powers under s. 17 of the Payment of Wages Act, 1936, has no jurisdiction to interfere with a decision of the Payment of Wages Authority condoning the delay on the part of the employee in making an application to the Authority for

* Civil Revision Application No. 674 of 1952 with C. R. A. Nos. 673 and 675 of 1952.

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a direction under s. 15 (3) inasmuch as an order of the Authority condoning delay falls under sub-s. (2) and not sub-s. (3) of s. 15.

Krishnasami Pandikondar v. *Ramasami Chettiar*,[1] distinguished.

The facts are set out in the judgment.

D. Latifi, for the petitioner.

Baptista with *Little & Co.* for the opponents.

Chagla C. J. This matter came before me on December 13, 1951. The learned District Judge had taken the view that the decision of the authority under the Payment of Wages Act directing the employer to pay certain wages to his employee was incompetent inasmuch as the authority had no jurisdiction to decide the question whether the suspension of the employee was rightful or wrongful. Having taken that view the learned District Judge did not decide the appeal on merits. I therefore sent the matter back to him and directed him to decide the appeal on merits. The learned District Judge decided in favour of the employee on merits, but he held that part of the claim of the employee was barred inasmuch as the authority had wrongly condoned the delay in making the original application under s. 15 of the Payment of Wages Act, and therefore he allowed the claim of the employee only in part. It is from that decision that this revision application is preferred, and the first contention urged by Mr. Latifi is that the learned District Judge had no jurisdiction to reverse in appeal a decision of the authority condoning the delay on the part of the employee.

In order to decide this point it is necessary to look at the scheme of the Payment of Wages Act. Sub-s. (2) of s. 15 provides that where contrary to the provisions of the Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person may apply to the Authority for a direction under sub-s. (3). The first proviso to this sub-section lays down the period of limitation and that period is that the application must be presented within six months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be. Then there is a second proviso to this sub-section and that is that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the

[1] (1917) L. R. 45 I. A. 25.

application within such period. Therefore a statutory right is given to every employee to present an application within six months under sub-s. (2) of s. 15. If he presents an application beyond six months he has no right to do so and an order is necessary from the authority under the second proviso before such an application can be admitted, and the authority can only make such an order provided it is satisfied that he had sufficient cause for not making the application within the statutory period. Then we come to sub-s. (3) of s. 15 and that provides that when any application under sub-s. (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under s. 3, or give them an opportunity of being heard, and after such further inquiry, if any, as may be necessary may, (and I am quoting the relevant part of the sub-section) direct the refund to the employed person of the amount deducted or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit. Sub-s. (4) of s. 15 gives the power to the authority to impose a fine not exceeding Rs. 50 upon the employee to be paid to the employer if it is satisfied that the application was either malicious or vexatious. Then comes s. 17 which is a section which deals with appeals, and that section provides that an appeal against a direction made under sub-s. (3) or sub-s. (4) of s. 15 may be preferred to the tribunal mentioned in that sub-section. Now, an appeal is always the creature of statute and the right of appeal is limited by the law which gives that right, and an appellate Court cannot exercise wider powers of correcting the lower Court than are strictly conferred upon it by the law which creates the appellate Court. Therefore it is clear that under s. 17 the powers of the appellate Court are confined to hearing an appeal from a direction made by the Authority under sub-s. (3) or sub-s. (4) of s. 15.

In this case the Authority in ordering the employer to make payment to the employee of wages for the period during which the employee was suspended, undoubtedly made a direction under sub-s. (3) of s. 15 and the employer had the right of appeal to the District Court in respect of that direction under s. 17. But the question that has got to be considered is whether in hearing the appeal against the direction of the Authority under sub-s. (3) of s. 15 the District Court had jurisdiction to consider the order made by the Authority condoning delay. There can be no doubt that the order of

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condonation which the Authority is authorised to make is an order made under sub-s. (*2*) of s. 15 and not under sub-s. (*3*) of s. 15. Sub-s. (*3*) only comes into play when any application under sub-s. (*2*) is entertained and an application under sub-s. (*2*) can only be entertained if it is either within the statutory period of six months, in which case the employee has a statutory right to have his application heard, or if it is beyond the period of six months it is admitted by the order of the Authority condoning the delay. The Authority is not competent to entertain the application at all unless it has condoned the delay if it is filed beyond six months. Mr. Baptista has contended that sub-s. (*3*) provides for the Authority hearing the applicant and the employer and giving them an opportunity of being heard, and Mr. Baptista says that this applies not only to the merits of the application, but also to the merits of the condonation of delay. In my opinion, that contention is entirely untenable. It is clear that what sub-s. (*3*) contemplates is hearing the applicant and the employer and giving them an opportunity of being heard with regard to the merits of the application, because it is only after the application is entertained that the question arises of hearing the applicant and the employer or giving them an opportunity of being heard, and as I have already pointed out, no application can be entertained if it is beyond time unless the delay has already been condoned. Therefore no order of the Authority condoning delay can ever fall under sub-s. (*3*) of s. 15. It can never be a direction under that sub-section contemplated by s. 17. If it is not a direction under sub-s. (*3*) but is an order under sub-s. (*2*), then no appeal lies from such an order. It is suggested that in giving a direction under sub-s. (*3*) the Authority may consider the question of limitation on merits and if the Authority considers the question of limitation on merits the appellate authority would have the jurisdiction to decide whether the direction was properly made and in so deciding it may also consider the question of limitation. This would be a valid argument if the question of limitation could be considered under sub-s. (*3*), but as I have already pointed out, the stage at which the question of limitation can be considered is a stage which is antecedent to the hearing contemplated by sub-s. (*3*). The question of limitation must be finally disposed of under sub-s. (*2*) before the authority launches upon the hearing provided for under sub-s. (*3*).

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It is then pointed out that the Authority may admit the application *ex parte,* taking the view that there is a *prima facie* case for condoning delay, and subsequently notice might be given to the other side and the application for condonation of delay may be heard on merits at a later stage and that stage may well fall under sub-s. (*3*). In my opinion, it would be erroneous and clearly erroneous on the part of the Authority to admit an application which is beyond time by condoning delay without giving notice to the other side and without hearing the other side on the application made by the employee. If an application is beyond time, the employer has acquired a valuable right and it is an elementary proposition of law that a Court cannot deprive a party of a valuable right without hearing him. Therefore, in my opinion, the proper procedure for the Authority to follow in every case where an application is filed beyond the period of six months is not to admit the application but to keep it pending and issue merely a notice upon the other side to show cause why delay should not be condoned. I am told by Mr. Baptista that in cases like this what the Authority does is that it calls upon the employee to file a written statement not only with regard to the question of limitation, but even on the question of merits. In my opinion this procedure is not a correct procedure because till the application is admitted and till the Authority has made up its mind that the applicant had sufficient cause for not making the application within the statutory period, no question of considering the merits of the application can possibly arise, and therefore at that stage the notice should only be given with regard to the question of limitation. It is only after the application is admitted that the employer should be called upon to file his written statement on merits.

Mr. Baptista has relied on a decision of the Privy Council in *Krishnasami Pandikondar* v. *Ramasami Chettiar.*[1] The Privy Council there were dealing with the practice of the Madras High Court. In that case a single Judge of the Madras High Court admitted a second appeal condoning delay without giving notice to the other side. When the second appeal came before a Division Bench, the Division Bench having heard the other side came to the conclusion that delay should not be condoned and dismissed the appeal as barred by limitation. The question arose whether the Division Bench had jurisdiction to dismiss the appeal which had once been admitted by a single

[1] (1917) L. R. 45 I. A. 25.

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Judge of that High Court, he having condoned delay, and the Privy Council held that the decision of the Division Bench was a decision with jurisdiction. What was emphasised by the Privy Council was that the judgment of the single Judge in terms purported to deprive the respondent of a valuable right, for it put in peril the finality of the decision in his favour, so that to preclude him from questioning its propriety would amount to a denial of justice; and the Privy Council goes on to observe (p. 28):

> "It must, therefore, in common fairness be regarded as a tacit term of an order like the present that, though unqualified in expression, it should be open to reconsideration at the instance of the party prejudicially affected; and this view is sanctioned by the practice of the Courts in India."

The Privy Council in that case was not considering the question of appeal at all. It was the same Court, the Madras High Court, that had admitted the appeal as being within time without hearing the respondent and that very Court after hearing the respondent came to a contrary conclusion. This decision would apply if the authority passed an *ex-parte* order admitting an appeal and condoning delay. Assuming the Authority did pass an order in this way—and I hope it will never do so—, then it would certainly be incumbent upon the Authority to reconsider its order after giving notice if the other side appeared and wanted to contend that the delay had been erroneously condoned. But what I am considering in this matter is not the power of the same tribunal having once condoned delay to come to a contrary conclusion, but I am considering the power of an appellate Court to interfere with the decision of the trial Court with regard to condonation of delay, and in my opinion the two positions are entirely different and the Privy Council decision is of no help.

In my opinion, therefore, the learned District Judge has not competent to interfere with the decision of the Authority that there was sufficient cause for the applicant not presenting his application within time. The result therefore is that I will allow this revision application, make the rule absolute, and restore the original order of the Authority with costs throughout.

Same order in the other two applications.

Rule absolute.

K. B. S.