

(1876) 06 AHC CK 0001

Allahabad High Court

Case No: None

Ahmad Khan and
Others

APPELLANT

Vs

Bishan Chand

RESPONDENT

Date of Decision: June 30, 1876**Citation:** (1875) ILR (All) 263

Judgement

1. It appears that the Court should have sat on the 14th November 1874, and if it had done so, the suit, according to the Judge's view of the limitation that applies, would have been within time. The Judge does not notice the fact that the Court did not sit on the 14th, but confines his remarks to the point that, when the Court opened, the petition was filed, and the limitation being three years, not two years as found by the first Court, the suit was within time. It was contended that the Courts did not sit because the Judge had issued an unauthorized order that they were not to open until the Monday following Saturday the 14th, on which day they should have been opened after the close of the vacation. The Judge's unauthorized order cannot, it is urged, override the law of limitation, which must be applied strictly. It does not appear why this order was issued; probably it was to suit the convenience of the Judges on their return to their Courts after the vacation, because Sunday caused another break between Saturday and Monday. There was considerable difference of opinion before the passing of the present Limitation Law, as to whether Act XIV of 1859 was to be strictly applied in a case of this nature when a Court happened to be unexpectedly closed. [In the following cases it was held that a plaintiff was not entitled to deduct the time the Court was closed from the period of limitation applicable to his suit under Act XIV of 1859, that Act giving no discretion to the Court to extend such period--Rajkristo Roy v. Dinobundho Surma B.L.R. Sup. Vol. 360 : S.C. 3 W.R. S.C.C.R. 5; Mc Killigan v. Tarinee Churn Singh 3 W.R. 209; Kudomessuree Dossee v. Enam Ali 20 W.R. 167; Ramasamy Chatty v. Venkatachellapatty Chatty 2 Mad. H.C.R. 408. In Manirun v. Luteefun 3 W.R. 46, it was held otherwise. Where the time fixed by the decree in a suit for pre-emption for the deposit of the purchase-money expired when the Court was closed, its deposit when the Court re-opened was held to have been made within

time--Muchul Kooer v. Laljee H.C.R. N.W.P. 1870 p. 112. In the present case the plaintiff appears to have brought his claim to the Munsifi and to have been ready to present it on the 14th. It is dated the 14th, so is the vakalatnama and the plaint was presented on Monday the 16th. In such a case we should not be disposed to apply the strictest interpretation, and looking at the terms of Section 5, Clause (a), Act IX of 1871, we do not think that we are called upon to do so. The section provides that, if the period of limitation prescribed for any suit, appeal, or application expires on a day when the Court is closed, the suit, appeal, or application may be instituted, presented, or made on the day that the Court reopens. This was the course followed in the case before us, and the section appears to us wide enough, since it does not refer to vacations or holidays, to admit of the entertainment of the suit.