



2026:AHC:77919

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 10320 of 2026

Mount Litera Zee School And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)

: Shreya Gupta

Counsel for Opposite Party(s)

: G.A., Sumit Daga

Court No. - 74

HON'BLE DEEPAK VERMA, J.

1. Heard Ms. Shreya Gupta, learned counsel for the applicants; Sri Sumit Daga, learned counsel for the opposite party no.2; A.G.A for the State and perused the record.

2. Instant application has been filed to quash the order dated 29.01.2026 (Annexure No.1) passed by the Presiding Officer, Additional Court, 138 N.I. Act, Muzaffar Nagar as well as entire proceedings of Complaint Case No. 3078 of 2017 (M/s A.S.J. Developers Vs. Mount Litera Zee School), under Section 138 of Negotiable Instruments Act, 1881, Police Station Nai Mandi, District Muzaffar Nagar, pending before the Presiding Officer, Additional Court, 138 N.I. Act, Muzaffar Nagar.

3. The facts and dispute are that opposite party no.2, ASJ Developers a partnership firm, filed present complaint against the applicants alleging that applicants tendered a cheque amounting to Rs.2,50,000/- bearing cheque No.936010 dated 29.07.2017 towards part payment of monthly rent of one premises taken on temporary lease for running of school. When the cheque was presented in the bank, it was returned unencashed with report of stop payment by the applicants on 11.08.2017. Thereafter, the complainant issued statutory notice and demand was not fulfilled then present complaint has been lodged.

4. Counsel for the applicants submits that the complaint has been lodged with false and frivolous facts and present application has been filed against the order dated 29.01.2026 by which the application of the applicants in regard to non maintainability of the complaint on account of

notice issued to applicants after thirty days and notice has been sent to applicant on 31st day one day delay. The learned Magistrate vide order dated 29.01.2026 rejected the application of the applicants observing that notice issued by the opposite party no.2 under Section 138 (b) of N.I.Act, was sent in valid statutory period. The learned Magistrate while calculating the period has observed that the last day i.e. 30th day as provided under the Act for sending notice within thirty days fell on Sunday, as such, notice given to the applicant on 31st day would be considered in time in view of the provisions under Section 10 of the General Clauses Act, which provides that if the last day of the limitation period falls on holiday or Sunday, then next day would be considered as in time. Further submission is that the observation made by the learned Magistrate is illegal and against the provisions of Apex Court Judgment and liable to be set aside. The Hon. Apex Court as well as other Courts and Co-ordinate Bench of this Court have observed that General Clauses Act would not be applicable under Section 138 N.I. Act. The Hon. Apex Court in paragraphs 21, 23 and 25 of the judgement in **Econ Antri Ltd. Vs. Rom Industries Ltd. and Another** 2014 3 SCC(Cri) 551 has held thus:

"21. In this connection we may also usefully refer to the judgment of the Division Bench of the Bombay High Court in Vasantlal Ranchhoddas Patel v. Union of India [Vasantlal Ranchhoddas Patel v. Union of India, AIR 1967 Bom 138] which is approved by this Court in Gopaldas Udhavdas Ahuja v. Union of India [(2004) 7 SCC 33 : 2004 SCC (Cri) 1830] , though in different context. In that case the premises of the appellants were searched by the officers of the Enforcement Directorate. Several packets containing diamonds were seized. The appellants made an application, for return of the diamonds, to the learned Magistrate, which was rejected. Similar prayer made to the Single Judge of the Bombay High Court was also rejected. An appeal was carried by the appellants to the Division Bench of the Bombay High Court. It was pointed out that under Section 124 of the Customs Act, 1962, no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Police, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty. Under Section 110(1) of the Customs Act, 1962 a proper officer, who has reason to believe that any goods are liable to confiscation may seize such goods. Under sub-section (2) of Section 110 of the Customs Act, 1962:

“[w]here any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized”.

Under proviso to Section 110 sub-section (2), however, the Collector could extend the period of six months on sufficient cause being shown. It was argued that the Customs Officers had seized the goods within the meaning of Section 110 of the Customs Act, 1962 on 4-9-1964. The notice contemplated under Section 124(a) was given after 3-3-1965, that is, after the period of six months had expired. As per Section 110(2), notice contemplated under Section 124(a) of the Customs Act, 1962 had to be given within six months of the seizure of the goods, and, therefore, notice issued after the expiry of six months was bad in law and, hence, the Collector of Customs was not competent to extend the period of six months under the proviso to sub-section (2) of Section 110 as he had done. Therefore, no order confiscating the goods or imposing penalty could have been made and the goods had to be returned to the appellants. It was argued that Section 9 of the General Clauses Act, 1897 has no application because the words “from” and “to” found in Section 9 of the General Clauses Act, 1897 are not used in sub-section (2) of Section 110 of the Customs Act, 1962. This submission was rejected and Section 9 of the General Clauses Act, 1897 was held applicable.

Speaking for the Bench Chainani, C.J. observed as under:

“10. ... The principle underlying Section 9 has been applied even in the cases of judicial orders passed by courts, even though in terms the section is not applicable. See Ramchandra Govind Unavne v. Laxman Savleram Ronghe [AIR 1938 Bom 447] , Dharamraj Mahadeo v. Commr. [AIR 1957 Bom 154] , Puran Chand v. Mohd. Din [AIR 1935 Lah 291] , Marakanda Sahu v. Lal Sadananda Singh [AIR 1952 Ori 279] and Official Liquidator v. N. Padmanabha Menon [(1954) 2 MLJ 44] . The material words in sub-section (2) of Section 110 are ‘within six months of the seizure of the goods’. In such provisions the word ‘of’ has been held to be equivalent to ‘from’: see Williams v. Burgess [(1840) 12 Ad & El 635 : 113 ER 955] . In that case Section 1 of the relevant statute enacted that warrants of attorney shall be filed ‘within twenty-one days after the execution’.

Section 2 enacted that unless they were ‘filed as aforesaid within the said space of twenty-one days from the execution’, they and the judgment thereon shall be void subject to the conditions specified in the section. The warrant of attorney was executed on 9-12-1839 and it was filed, and judgment entered up on the 30th December. It was held that in computing the period of 21 days the day of execution must be excluded. Reliance was placed on Fallon, ex p [(1793) 5 TR 283 : 101 ER 159] in which the word used was ‘of’ and not ‘from’. It was observed that ‘of’, ‘from’ and ‘after’ really meant the same thing and that no distinction could be suggested from the nature of the two provisions. In Stroud's Judicial Dictionary, 1953 Edn., Vol. 3 in Note (5) under the word ‘of’, it has been observed that ‘of’ is sometimes the equivalent of ‘after’ e.g. in the expression ‘within 21 days of the execution’. The principle underlying Section 9 of the General Clauses Act cannot therefore, be held to be inapplicable, merely because the word used in sub-section (2) of Section 110 is ‘of’ and not ‘from’.”

The relevant extracts from Halsbury's Laws of England [3rd Edn., Vol. 37, pp. 95-96] were quoted. They read as under:

“11. ... ‘168. Exclusion of first day.—The general rule in cases in which a period is fixed within which a person must act or take the consequences is that the day of the act or event from which the period runs should not be counted against him.

This general rule applies irrespective of whether the limitation of time is imposed by the act of a party or by statute; thus, where a period is fixed within which a criminal prosecution or a civil action may be commenced, the day on which the offence is committed or the cause of action arises is excluded in the computation.’”

In the circumstances, it was held in Vasantlal Ranchhoddas Patel case [Vasantlal Ranchhoddas Patel v. Union of India, AIR 1967 Bom 138] that the day on which the goods were seized has to be excluded in computing the period of limitation contemplated under sub-section (2) of Section 110 and therefore the notice was issued within the period of limitation. It is pertinent to note that under Section 110(2) of the Customs Act, notice had to be given within six months of the seizure of the goods. Similarly, under Section 142(b) of the NI Act, the complaint has to be made within one month of the date on which cause of action arose. The view taken in Vasantlal Ranchhoddas Patel [Vasantlal Ranchhoddas Patel v. Union of India, AIR 1967 Bom 138] meets with our approval.

23. Reliance placed on Danial Latifi [Danial Latifi v. Union of India, (2001) 7 SCC 740 : (2007) 3 SCC (Cri) 266] is totally misplaced. In that case the Court was concerned with Section 3(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. Section 3(1)(a) provides that a divorced woman shall be entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband. This provision is entirely different from Section 142(b) of the NI Act, which provides that the complaint is to be made “within one month of the date on which the cause of action arises” (emphasis supplied).

25. Having considered the question of law involved in this case in proper perspective, in the light of relevant judgments, we are of the opinion that Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329] lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that SIL Import, USA [SIL Import, USA v. Exim Aides Silk Exporters, (1999) 4 SCC 567 : 1999 SCC (Cri) 600] does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329] by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly.”

5. In Shivnath Suryoba Gaonkar Vs. Bicholim Marchant Urban Cooperative Credit Society Pvt. Ltd. 2024: BHC-GOA:1693 in which the Bombay High Court has held thus:

"41. Similarly, the method by which demand notice in writing to be forwarded is not

disclosed under the Act. The only condition is that there must be a demand for the money mentioned in the cheque in writing. Thus, such demand in writing could be communicated to the drawer of the cheque even by hand delivery by taking acknowledgment, sending it by email or by courier service or by any other mode. Thus, it is not necessary that such notice must be dispatched by the post department under acknowledgment. It is no doubt true that in the present matter notice was forwarded through the post department on the 31st day.

42. For the purpose of claiming benefit of Section 10 of the General Clauses Act, first of all the complainant has to disclose it in its complaint and then prove it by leading evidence. Admittedly, the complaint is clearly silent as to when notice was actually dispatched. Even the verification of the complainant would go to show that notice was sent on 6.11.2020 which is found in paragraph 9 of the statement of the complainant recorded under Section 200 of Cr.P.C."

6. The Hon. Apex Court in Kamlesh Kumar Vs. State of Bihar and Another AIR 2014 SC 660 has observed that:

"11. It is thus clear that period of limitation is not to be counted from the date when the cheque in question was presented in the first instance on 25-10-2008 or the legal notice was issued on 27-10-2008, inasmuch as the cheque was presented again on 10-11-2008. For the purposes of limitation, insofar as the legal notice is concerned, it is to be served within 30 days of the receipt of information by the drawee from the bank regarding the return of the cheque as unpaid. Therefore, after the cheque is returned unpaid, notice has to be issued within 30 days of the receipt of information in this behalf. That is the period of limitation provided for issuance of legal notice calling upon the drawer of the cheque to make the payment. After the sending of this notice 15 days' time is to be given to the noticee, from the date of receipt of the said notice to make the payment, if that is already not done. If the noticee fails to make the payment, the offence can be said to have been committed and in that event the cause of action for filing the complaint would accrue to the complainant and he is given one month's time from the date of cause of action to file the complaint.

12. Applying the aforesaid principles, in the present case, we find that the cheque was presented, the second time, on 10-11-2008. The complainant, however, sent the legal notice on 17-12-2008 i.e. much after the expiry of the 30 days. It is clear from the complaint filed by the complainant himself that he had gone to the Bank for encashment of the cheque on 10-11-2008 but the cheque was not honoured due to the unavailability of the balance in the account.

13. The crucial question is as to on which date the complainant received the information about the dishonour of the cheque? As per the appellant, the respondent complainant received the information about the dishonour of the cheque on 10-11-2008. However, the respondent complainant has disputed the same. However, we would like to add that at the time of arguments the aforesaid submission of the appellant was not refuted. After the judgment was reserved, the complainant has filed an affidavit alleging therein that he received the bank memo of the bouncing of the

cheque on 17-11-2008 and therefore, the legal notice sent on 17-12-2008 is within the period of 30 days from the date of information. Normally, we would have called upon the parties to prove their respective versions before the trial court by leading their evidence. However, in the present case, as rightly pointed out by the learned Senior Counsel for the appellant, the complainant has accepted in the complaint itself that he had gone to the Bank for encashment of cheque on 10-11-2008 and the cheque was not honoured due to insufficiency of funds, thereby admitting that he came to know about the dishonour of the cheque on 10-11-2008 itself. It is for this reason that the appellant has filed a reply-affidavit stating that this is an afterthought plea as no material has been filed before the court below to show that the Bank had issued a memo about the return of the cheque which was received by the complainant on 17-11-2008. The specific averment made in the complaint in this behalf is as under:

“Subsequently the complainant again went to encash the cheque given by the accused on 10-11-2008 which again bounced due to unavailability of balance in the accused's account.” It is, thus, clear from the aforesaid averment made by the complainant himself that he had gone to the Bank for encashing the cheque on 10-11-2008 and found that because of unavailability of sufficient balance in the account, the cheque was bounced. Therefore, it becomes obvious that he had come to know about the same on 10-11-2008 itself. In view of this admission in the complaint about the information having been received by the complainant about the bouncing of the cheque on 10-11-2008 itself, no further enquiry is needed on this aspect.

14. It is, thus, apparent that the complainant received the information about the dishonour of the cheque on 10-11-2008 itself. However, he did not send the legal notice within 30 days therefrom. We, thus, find that the complaint filed by him was not maintainable as it was filed without satisfying all the three conditions laid down in Section 138 of the NI Act as explained in para 12 of the judgment in MSR Leathers [MSR Leathers v. S. Palaniappan, (2013) 1 SCC 177 : (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458] , extracted above.”

7. Learned counsel for the applicant has drawn the attention of the Court towards Sections 9 and 10 of the provision of General Clauses Act and argued that provision under Section 10 of the General Clauses Act is not applicable in the present case as Section 10(1) would be applicable only those Act or Regulation made after the commencement of this Act. The N.I. Act is of 1881 before the commencement of the General Clauses Act 1897. Counsel for the applicant further submitted that in view of the Apex Court's judgment, the finding recorded by the trial court is perverse and liable to be set aside.

8. Counsel for the opposite party no. 2 vehemently opposed the submission raised by counsel for the applicants and submitted that this is third time of litigation. Earlier, the applicants filed Application under Section 482 Cr.P.C. No. 10583 of 2019 which has been dismissed by the order dated 26.08.2019 which is quoted below:

"Heard learned counsel for the applicant, Sri Amit Daga, learned counsel for the complainant, learned AGA for the State and perused the application.

This application is misconceived and the same is hereby rejected."

9. Thereafter, the applicants filed application under Section 528 BNSS No.40190 of 2025 and the Co-ordinate Bench of this Court vide order dated 18.11.2025 set aside the impugned order dated 04.09.2025 and allowed the application and remanded back the matter for fresh consideration with observation that:

"16. It is also not in dispute between the parties that there is no such averment or evidence in the statement of the complainant that on 15.8.2017 the dishonour memo was received. Although, learned counsel for the opposite party no.2 submits that since the objection in respect of the limitation was raised at the first time by the applicant as such the aforesaid stand was taken in objection of opposite party no.2.

17. It is to be seen that the question of limitation under proviso (b) to Section 138 N.I. Act is required to be decided on the basis of averment made in the complaint and the statement of the complainant. If the objections are filed by the complainant in respect of an application filed by the accused-applicant for dismissal of the complaint case and in the objection any new fact has entered while deciding the application, it has to be seen by the trial court whether such averment was ever made in the complaint or in the statement of the complainant before the court concerned. The finding recorded by the trial court by relying upon the fact that on 15.8.2017 the return memo has been received is wholly perverse and is not based on any material evidence on record. It has not been shown to this Court that such fact has been stated in the evidence or in the complaint before the court concerned."

10. Counsel for the opposite party no.2 further argued that the order challenge herein is just and proper. The learned Magistrate has rightly considered all aspects and rejected the objection of the applicants and considered that the complaint filed by the opposite party no.2 is in time and rightly considered Section 10 of General Clauses Act. The order challenge herein dated 29.01.2026 does not require any interference. Counsel for the complaint has placed reliance over Paragraphs 7 and 8 of the judgment of **M/s Saketh India Ltd. and others Vs. M/s India Securities Ltd.** 1999 AIR (SC) 1090 which are quoted below:

"7. The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. Similar provision is made in sub-section (2) for appeal, revision or review.

The same principle is also incorporated in Section 9 of the General Clauses Act, 1897 which, inter alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

8. Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the - General Clauses Act and the Limitation Act. Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires. The period of 15 days in the present case expired on 14-10-1995. So cause of action for filing complaint would arise from 15-10-1995. That day (15th October) is to be excluded for counting the period of one month. Complaint is filed on 15-11-1995. The result would be that the complaint filed on 15th November is within time."

11. Considered the argument raised by counsel for the parties and perused the record. The dispute in hand is that the applicant submitted the cheque before the bank for encashment on 29.07.2017 and same was returned to the opposite party no.2 on 11.08.2017. Thereafter, the complainant had to send statutory notice under the provisions of 138 (b) N.I. Act within thirty days to the applicant. The complainant had sent notice on 11.09.2017 after expiration of thirty days i.e. on 31st day. The dispute raised by counsel for the applicant here is that the provisions of General Clauses Act would not be applicable on the Negotiable Instruments Act. Moreover, the provisions provided under Section 10 of the General Clauses Act cannot be considered while calculating the period of thirty days.

12. Section 9 of the General Clauses Act provides that *"for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to"* and Section 10 provides that *for the computation of time on the last day, if the Court or office is found to be closed on that day or the last day of the prescribed period, the act or proceedings shall be considered as done or taken in due time if it is taken on the next day afterwards on which the Court or office is open.*

13. In the present case, learned trial court has found that the last day of

the period of thirty days, which is statutory period for giving notice to accused persons, falls on the day 10.09.2017 and it is admitted fact that 10.09.2017 was a Sunday. As per Section 10 of the General Clauses Act, if the Court or office is closed on that day, the last day of the prescribed period, the act or proceedings shall be considered as done or taken in due time if it is taken on the next day afterwards on which the Court or office is open, i.e. on the last day i.e. 30th day, last day of the required period falls on Sunday, as such, next day i.e. 11.09.2017 notice was sent to the applicant and the notice sent by the complainant shall be considered to be in time.

14. The argument of counsel for the applicant that the General Clauses Act would not be applicable in the N.I. Act, cannot be acceptable as learned counsel herself has produced judgment in which the Hon. Apex Court has considered the General Clauses Act to be very much applicable to the provisions provided under the N.I. Act. In the present case, it is apparent from the facts of the case that last day falls on Sunday for issuing notice to the applicant and the notice has been served to applicant in writing which is also apparent from the notice annexed with the record. The notice sent on 31st day, one day after 30th day of prescribed time, which happens to be a holiday, shall be considered in time. The judgment passed by the court concerned dated 29.01.2026 is based upon facts and provisions argued before the court and the court concerned has found that notice has been sent on 31st day but 30th day was holiday i.e. Sunday and notice was issued on 31st day in view of provisions provided under section 10 of the General Clauses Act, would be considered valid and in time. Moreover, the argument raised by counsel for the applicant that the provisions of Section 10 of General Clauses Act is not applicable to N.I. Act cannot be accepted as the provisions of Section 10 (2) of General Clauses Act specifically provides applicability of the provision of General Clauses Act.

15. The argument raised by counsel for the applicant in regard to non applicability of provisions of Section 10 (1) General Clauses Act is not tenable in the eye of law as definition clause 3 (7) defines the Central Act which is quoted below:

(7) “Central Act” shall means an Act of Parliament, and shall include

(a)an Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution, and

(b)an Act made before such commencement by the Governor-General in Council or the Governor-General, acting in a legislative capacity;

16. In view of that the General Clauses Act is very much applicable in the present case.

17. The order dated 29.01.2026 passed by the Presiding Officer, Additional Court, 138 N.I. Act, Muzaffar Nagar, is just and proper and does not require any interference.

18. The application is, accordingly, **dismissed**.

(Deepak Verma,J.)

April 9, 2026
Meenu Singh