

## Tula Ram vs Bhajan Singh on 29 November, 1950

**Equivalent citations: AIR1953ALL609, AIR 1953 ALLAHABAD 609**

ORDER

Malik, C.J.

1. On 22-8-1944, the defendant Bhajan Singh is said to have borrowed a sum of Rs. 700/- from the plaintiff Tula Ram on the basis of a promissory note. On 22-8-1947, the plaintiff on his return to his house in Najibabad discovered that that was the last day for the filing of the suit on the basis of the promissory note. He had a plaint hurriedly drafted and went to Nagina, where the court is situate, and at 9-30 P.M. Mr. Ranbir Singh, Vakil for the plaintiff, went to the residence of the learned Munsif and wanted to file the plaint. The learned Munsif passed the following order on the back of the plaint: "Presented to me by Mr. Ranbir Singh Vakil at 9-30 P.M. on 22nd August 1947, at my house. I do not think it proper to accept it at this late hour and, therefore, refuse to accept it and return it back to the said Vakil."

It is against this order that this revision has been filed. The opposite party is not represented before me.

2. In a Civil Revision under Section 115, C.P.C. this Court can interfere only on a question of jurisdiction and while it is desirable that a claim should not be allowed to get time-barred by a judicial officer refusing to accept a plaint presented after court hours on the last day of limitation, which through some honest mistake could not be filed earlier, yet I am not prepared to hold that a Judicial Officer has no jurisdiction to refuse to accept a plaint presented to him after court hours and must, therefore, accept a plaint presented at any time from early in the morning till 12 o'clock in the midnight. The Limitation Act, which prescribes the period of limitation for a suit) no doubt does not lay down that on the last day of limitation the plaint should be filed within court hours after which it would get time-barred. In this connection I may refer to the case of -- 'Din Ram v. Hari Das', 9 All LJ 743 (FB) (A), where a memorandum of appeal presented at the residence of the District Judge on the last day of limitation after court hours was held to be not time-barred. After court hours, however, a judicial officer is not bound to do judicial work and he is, therefore, not bound to accept plaints or applications at his residence. The difficulty is not felt so much by a court of appeal as Section 5, Limitation Act, applies to appeals and on sufficient cause being shown delay can be condoned, but in a court entertaining original suits the refusal to entertain a plaint filed after court hours puts an end to the claim of the plaintiff if that is the last day of limitation as Section 5, Limitation Act, does not apply to original suits. To my mind therefore though a judicial officer is not bound to accept a plaint or an application presented to him after court hours, as far as possible if that is the last day of limitation he should, if it is not too inconvenient, accept the plaint or application and direct it to be put up before him the next day in court for further orders.

3. In this case the plaint was presented to the learned Munsif within time and he received the plaint and endorsed on it an order in his own hand on the back of the document. After having done so he should not have returned it to the lawyer concerned. When the court receives an application and passes an order thereon it becomes a part of the record of the court and it cannot be returned to counsel or to parties. The learned Munsif might have refused to accept the plaint but having taken it and written on the back of it an order that it was presented that day, he should not have returned the document to the lawyer concerned.

4. In this view of the matter the revision must be allowed and the order of the learned Munsif returning the document to the lawyer set aside. The plaint having been presented to him within time on 22-8-1947, it must go back for trial according to law. I notice, how ever, that a court-fee stamp of only Rs. 5/-

was paid on the plaint. I direct that the court-

fee should be realised according to the provisions of the Court-fees Act.