to occupy the premises in dispute. The plaintiff-landlord filed the for possession alleging that the defendants are trespassers after death of the original tenant Gopi Ram. Both the courts below decreed the plaintiffs' suit.

3. In view of the Full Bench judgment of this Court in *Harish Chander and others v. Kirpa Ram*[1], this appeal has to be allowed since it has been held therein that the tenancy was heritable.

4. Consequently, this appeal succeeds, the judgments and decrees of the Courts below are set aside and the plaintiff's suit is dismissed with no order as to costs.

*R. M. S.*

*Appeal dismissed.*

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PUNJAB AND HARYANA HIGH COURT

*Before : Mr. Justice G. C. Mital.*

ARUNA LUTHRA—Petitioner,

*versus*

STATE OF HARYANA and others—Respondents.

Civil Writ Petition No 5118 of 1982.

(*i*) **Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978, Regulation 5(5)—Plot purchased in open auction—Purchaser/allottees required to communicate acceptence or refusal within 30 days of the receipt of the letter.**

*Held*, that the amount involved is big and 30 days' time has been provided for taking a decision and for making arrangements to pay the amount indicated in the allotment letter. On this basis the only reasonable interpretation is to read the date of allotment as the date on which intimation is received by the allottee and not merely from the date mentioned in the letter of allotment. If any other interpretation is placed, then it is possible that in many cases the letter of allotment may reach the allottee sometimes immediately before or even after the expiry of 30 days time, for which the allottee would not be at fault. It is sometimes also possible that the concerned authority may order the issue of letter, which may be typed but may be kept in office for the signatures of the concerned authority. It is equally possible that even after signatures, in issue and despatch, it may take some time and then in transit it can be delayed. Therefore, I hold that the reasonable meaning to be put to the regulation is that 30 days' time would start from the date of receipt of the allotment letter and not from the date of issue of the letter of allotment.

[ Para 4 ]

(*ii*) **Haryana Urban Development (Disposal of Land and Buildings) Regulations 1978, Regulation 5(5)—In conditions of letter of allotment—Mentioned "that the acceptance alongwith the amount stated in the condition had to be sent by registered post within 30 days' "from the date of issue of the allotment letter"—Effect—Condition beyond the scope of the regulation.**

*Held*, that according to condition 5 of the allotment letter in case the allotment was accepted, the acceptance alongwith the amount stated in that condition, had to be sent by registrered post within 30 days from the date of the issue of the allotment letter. In this condition the words date of issue of the allotment letter are mentioned and because of this

1. (1986-1) 89 P. L. R. 164=1986 (1) R. C. J. 162 (FB).



condition it was sought to be argued that 30 days are to be counted from the date of issue of the allotment letter and not from the date of receipt. A letter of allotment or the conditions mentioned therein are subject to the regulations. The regulation did not provide 'from the date of issue of the allotment letter' and merely provides 'from the date of allotment'. Since the words 'issue' has been inserted in condition No. 5, which is beyond the scope of the regulation, it would have no legal effect. Hence condition No. 5 has to be read in terms of the regulation.

[ Para 6 ]

(*iii*) **Haryana Urban Development (Disposal of Land and Buildings) Regulations 1978, Regulation 5 (5) Question of taking penal action for breach of condition of transfer would arise only if allotment becomes a contract on acceptance and payment of the balance price within 30 days —No reply sent by purchaser allottee - Offer of allotment stood automatically cancelled—No penal action can be taken.**

*Held*, that a binding contract between the applicant and HUDA comes into being only when the offered allotment is accepted by the applicant and the acceptance alongwith balance price to make up 25 per cent to HUDA within 30 days of the receipt of the allotment letter failing which the offer of allotment stands automatically cancelled. Till allotment is accepted in the aforesaid manner by the person to whom the offer of allotment is made it does not become a transfer within the meaning of section 2 (x) of the Act. If he does not become a transferee, section 17 of the Act would not apply, because the question of taking penal action for breach of condition of transfer would arise only if allotment becomes a contract, on acceptance and payment of the balance price within 30 days of the receipt of letter of allotment. In this case the petitioner did not convey either acceptance of the allotment nor sent the amount asked for within 30 days of the receipt of the allotment letter. Hence under rule 5 (5) of the Regulations, offer of allotment stood automatically cancelled.

[ Para 12 ]

(*iv*) **Haryana Urban Development (Disposal of Land and Buildings) Regulations 1978, Regulation 5 (5) Purchaser/Allottee asking further time for deposit of the amount—Time not extended—Payment not made within time—Allotment stood automatically cancelled—Earnest money given to be refunded.**

Petition under Articles 226/227 of the Constitution of India.

*Mr. Balwant Singh Malik with Mr. S. V. Rathee*, for the petitioner.

*Mr. R. P. Bali*, for the State of Haryana

*Mr. Harbhawan Singh, Sr. Advocate*, for H. U. D. A.

JUDGMENT

**Gokal Chand Mital, J.**—(*28th May, 1986*). Whether the words 'within 30 days of the allotment' in regulation 5(5) of the Haryana Urban Development (Disposal of Land and Buildings) Regulation, 1978, (for short 'Regulations'), mean within 30 days from the date of receipt of the allotment letter or from the date of issue of the allotment letter, is the main point, which arises for consideration in these writ petitions.

*C. W. P. No. 5118 of 1982*

2. The facts of this writ petition are that on 30th October, 1980, the Haryana Urban Development Authority (for short 'HUDA'), held auction for sale of plots in Faridabad. Smt. Aruna Luthra gave the higest bid for : Shop-cum-flat No. 33, Sector 7, Faridabad, and deposited

Rs. 28310, towards the 10 per cent sale consideration at the time of auction and completed the other formalities. Allotment letter Annexure P—1 was issued to her. According to condition No. 5 of the allotment, she was to deposit Rs. 42,465 within 30 days from the date of issue of the allotment letter. Payment of this amount would have constituted payment of 25 per cent of the sale consideration. According to the petitioner, she got the allotment letter Annexure P1, dated 5th December, 1980, on 23rd December, 1980. On 16th January, 1981, Rs. 43,000 were deposited by her,—*vide* letter Annexure P-2, dated 19th January, 1981. She demanded possession of the plot as per the terms and conditions of the allotment letter. Vide letter dated 20th April, 1981, Annexure P3, HUDA replied that possession was being vacated for issuing possession letter to her. It was also made clear that no interest would be charged on the 75 per cent balance amount till the date of delivery of possession. Annexure P4 dated 3rd June, 1981 was issued as a reminder for delivery of possession. Vide letter dated 1`th August, 1981, Annexre P5, HUDA informed the petitioner that since the amount had not been deposited within 30 days of the letter of allotment, conditions Nos. 4 and 5 stood violated. She was asked to clear her position. Vide Annexure P6, reply was sent in which it was clearly mentioned that the letter of allotment was received on 22nd December, 1980 and within 30 days of the same, the amount was deposited. On 1st September, 19`1, another instalment of Rs. 35000 was sent by bank draft, which was duly received by HUDA.—*vide* receipt Annexure P7 dated 1st September, 1981. The petitioner is alleged to have sent the legal notice dated 20th July, 1982 stating all facts and demanded the possession of the shop-cum-flat ('SCF' for short'), copy of which is Annexure P8. In reply to the notice, the petitioner was surprised to learn,—*vide* letter Annexure P9, dated 2nd September, 1982 that the allotment had been cancelled,—*vide* office letter dated 15th February, 1982, copy of which was enclosed with letter Annexure P9. Copy of the cancellation order dated 15th February, 1982 is Annexure P10. In this writ petition under Articles 22-/227 of the Constitution of India, the legality of cancellation order Annexure P10, has been challenged.

3. On behalf of HUDA, the stand taken in the written statement is that the allotment letter was issued on 5th December, 1980 and the petitioner was required to deposit the amount by 4th April, 1981 as per conditions Nos 4 and 5 of the allotment letter and as per regulation 5(5) of the Regulations, the petitioner had to send acceptance or refusal within 30 days as per condition No. 4 of the allotment letter. Neither acceptance nor refusal came nor amount was deposited within 30 days and, as such the allotment stood automatically cancelled under the regulations. The amount received on 16th January, 1981 was said to have been received by the clerk in routine without application of mind by the relevant authority under the Act. Receipt of letter Annexure P2, issue of letter Annexure P3 and receipt of letter Annexure P4 were admitted. On the aforesaid facts, two points arise for determination :

(i) What is the true interpretation of regalation 5(5) of the Regulations;

(ii) Whether the petitioner has complied with the terms and conditions of the allotment letter.



In order to appreciate the first point, the regulation 5(5) of the Regulations deserves to be reproduced :

"The applicant to whom the land/building has been allotted shall communicate his acceptance or/refusal in writing with 30 days of the date of allotment, by registered post to the Estate Officer. In case of acceptance the letter shall be accompained by such amount as intimated to him in the allotment letter. In case of refusal, he shall be entitled to the refund of the money tendered with the application. In case he fails to either accept or refuse within the stipulated period, allotment shall be deemed to be cancelled and the deposit made under sub-Regulation (2) may be forefeited to the Authority and the applicant shall have no claim for damages."

4. The only difference between the stand of the parties is about the meaning of 'within 30 days of the date of allotment'. While according to the petitioner, it should be meant to read '30 days from the date of receipt of the allotment letter', whereas according to the counsel for HUDA, 30 days should be counted from the date of issue of the letter of allotment. The idea of providing 30 days' time is to give another opportunity to the allottee to accept or refuse the allotment and in either of the events to inform HUDA. In case allotment is not accepted then HUDA may offer it to some body else in accordance with the rules and regulations and in case allotment is accepted, the acceptance should be accompained by an amount to be intimated in the allotment letter. The amount involved is big and 30 days' time has been provided for taking a decision and for making arrangement to pay the amount indicated in the allotment letter On this basis the only reasonable interpretation is to read the date of allotment as the date on which intimation is received by the allottee and not merely from the date mentioned in the letter of allotment. If any other interpretation is placed, then it is possible that in many cases the letter of allotment may reach the allottee sometimes immediately before or even after the expiry of the 30 days time, for which the allottee would not be at fault. It is sometimes also possible that the concerned authority may order the issue of letter, which may be typed but may be kept in office for the signatures of the concerned authority. It is equally possible that even after signatures, in issue and despatch, it may take some time and then in transit it can be delayed. Therefore, I hold that the reasonable meaning to be put to the regulation is that 30 days' time would start from the date of receipt of the allotment letter and not from the date of issue of the letter of allotment.

5. Coming to the second point, the case of the petitioner from the very beginning has been that she got the allotment letter on 22nd December, 1980. On 16th January, 1981 she sent acceptance and also sent a draft. *Vide* letter Annexure P2, she demanded possession of the premises. *Vide* Annexure P3, the draft was received without any objection and the petitioner was told that she would be delivered possession as soon as the premises were got vacated. Soon thereafter, letter Annexure P4 was written asking for possession of the plot and it was on 12th August, 1981,—*vide* Annexure P5 that the petitioner was told about the delayed payment and her explanation was sought. She furnished the explanation that she had received the allotment letter on 22nd

December, 1980. This fact no body refuted either before the filing of the writ petition or after the filing of the writ petition. Since the factual position that the allotment letter was received by the petitioner on 22nd December, 1980 remains unchallenged and un-controverted, it is evident that the draft dated 16th January, 1981 was received within 30 days' of the receipt of the allotment letter, and hence the petitioner complied with the regulations.

6. On the second point, one more matter deserves to be discussed. On behalf of HUDA reference was made to conditions No. 4 and 5, contained in the allotment letter, Annexure P-1. According to condition No. 4, if the allotment was not accepted, the refusal was to be communicated by registered letter, within 30 days from the date of allotment letter, failing which the allottee was not to have any claim for damages. According to condition No. 5, in case the allotment was accepted, the acceptance along with the amount stated in that condition, had to be sent by registered post within 30 days from the date of the issue of the allotment letter. In this condition the words date of the allotment letter are mentioned and because of this condition it was sought to be argued that 30 days are to be counted from the date of issue of the allotment letter and not from the date of receipt. A letter of allotment or the conditions mentioned therein are subject to the regulations. The regulation did not provide 'from the date of issue of the allotment letter' and merely provides 'from the date of allotment'. Since the words 'issue' has been inserted in condition No. 5, which is beyond the scope of the regulation, it would have no legal effect. Hence condition No. 5 has to be read in terms of the regulation.

7. Morever, on the facts of the present case, there was clear application of mind by the Estate Officer of HUDA while issuing letter Annexure P3, which is dated 20th April, 1981, long after the draft is alleged to have been received by a clerk in the office on 16th January, 1981. On the peculiar facts of this case, the second point is also decided in favour of the petitioner and it is held that the petitioner has fully complied with the terms and conditions of the allotment letter and regulation and the order Annexure P10 is clearly illegal and in excess of authority.

8. For the reasons recorded above, the writ petition is allowed with costs and the order Annexure P10 is quashed with the result that the allotment of the plot in dispute in favour of the petitioner continues.

*C. W. P. No. 1761 of 1981*

9. In this case M/s Haryana Polymers Corporation (for short 'the petitioner') applied to HUDA for allotment of industrial site in Faridabad. By letter dated 12th September, 1978, the petitioner was allotted industrial plot No. 10 in Sector 27-B, Faridabad, measuring 1,250 sq. yards. The tentative price of the plot was determined at Rs. 37,500 and since the petitioner had sent Rs. 25.00 with the application, it was required to deposit Rs. 6,875 within 30 days' of the issue of the allotment letter to make up the payment of 25 per cent of the price The balance was payable in six annual instalments with specified Interest. Since Rs. 6,875 and the acceptance of the allotment was not sent by the petitioner within 30 days, the Estate Officer of HUDA issued notice dated 28th November, 1978, under



section 17(1) of the Act to show cause as to why the penalty of Rs. 687 be not imposed. In this letter it was further mentioned that the date for payment was extended up to 30th November, 1978 Copy of this letter/notice is Annexure P2. By letter dated 26th June, 1979, Annexure P3, the petitioner was informed that since it had not accepted the offer of plot and had not deposited the amount, under regulation 5(4) and (5) of the Regulations, the allotment stood automatically cancelled and deposit of Rs. 2,500 was forfeited. It is thereafter that on 21st February, 1980, the petitioner deposited Rs. 6,875 during the pendency of the appeal against the letter of cancellation Annexure P3, and the appeal was dismissed on 28th January, 1981, copy of which is Annexure P6. The petitioner's revision failed on 22nd April, 1981, copy of which is Annexure R1.

10. Against the aforesaid orders, this petition under Articles 226/227 of the Constitution of India is directed.

11. A reading of the facts stated above shows that HUDA is not clear as to the meaning of section 17(1) coupled with the other relevant section of the Act nor of regulation 5 and its sub-regulations. Section 15 of the Act provides for disposal of land by HUDA. Sub-section (3) of this section provides that the concerned authority can sell, lease or transfer, whether by auction, allotment or otherwise, any land or building belonging to HUDA, on such terms and conditions as it may be regulations provides. If lease is created under the regulations so framed in case of default of any terms and conditions of the lease, penalty as provided by section 16 of the Act can be imposed. In case any property is transferred by it by sale or allotment and if the transferee makes default in any of the specified conditions, penal action can be taken under section 17 of the Act. Section 2(x) of the Act defines 'transferee' and it means a person including a firm or body of individuals whether incorporated or not, to whom land or building is sold, leased or transferred in any manner, whatsoever, under this Act. Regulation 5 of the Regulations prescribes the procedure for transfer by allotment. Under sub-regulation (i), the intending purchaser has to file an application in the prescribed form, which is to accompany with 10 per cent of the price as provided by under sub-regulation (2), and under sub-regulation 5 on allotment being made the allottees has to communicate his acceptance or refusal in writing within 30 days of the allotment by registered post to the Estate Office and in case of acceptance, the letter has to be accompanied by an amount as intimated in the allotment letter, i. e., to make up initial payment of 25 per cent. In case of refusal, the applicant is entitled to refund of the amount tendered with the application. In case an applicant fails to either accept or refuse within the stipulated period, the allotment is to be deemed to be cancelled and the deposit made under sub-regulation (2) may be forfeited.

12. A binding contract between the applicant and HUDA comes into being only when the offered allotment is accepted by the applicant and the acceptance along with balance price to make up 25 per cent is sent to HUDA within 30 days of the receipt of the allotment letter failing which the offer of allotment stands automatically cancelled. Till allotment is accepted in the aforesaid manner by the person to whom the offer of allotment is made it does not become transfer

within the meaning of section 2(x) of the Act. If he does not becom a transferee, section 17 of the Act would not apply, because the question of taking penal action for breach of condition of transfer would arise only if allotment becomes a contract, on acceptance and payment of the balance price within 30 days of the receipt of letter of allotment. In the case the petitioner did not convey either acceptance of the allotment nor sent the amount aske d for within 30 days of the receipt of the allotment letter. Hence under rule 5(5) of the Regulations, offer of allotment stood automatically cancelled.

13. As has been seen above, HUDA was not clear about the scope of the regulations and the provisions of the Act and that is why show cause notice Annexure P2 was issued under section 17(1) of the Act. When the petitioner did not send the amount required in the letter of allotment, it was not a case in which show-cause notice under section 17(1) of the Act was required and this mistake was rectified,—*vide* letter Annexure P3, by which information was given to the petitioner that the allotment stood automatically cancelled for non-compliance of the terms and conditions of the allotment letter and regulation 5(5) of the Regulations.

14. It was sought to be argued on behalf of the petitioner that on 21st February, 1980 HUDA received Rs. 6,878 and, therefore, it was estopped from disputing the allotment. In the written statement it has been explained that the amount was paid in the office to a clerk who was not aware of the facts of the case. On the peculiar facts of this case, such a deposit does not amount to estoppel because this deposit was made after the order of automatic cancellation was conveyed and when the petitioner's appeal was pending under the Act. After the allotment of the petitioner stood automatically cancelled, HUDA allotted the plot in dispute to Smt. Sudha Rani Bhandari, *vide* letter dated 3rd February, 1981, who was impleaded as respondent to this petition on her application

15. Before parting with this matter, it may be noticed that the petitioner did not file any appeal under this Act, but filed application Annexure P5 before the HUDA for allotment of the plot by withdrawing the order of cancellation. However, the request was not accepted.

16. In view of the facts stated above, it is clear that on account of the non-compliance with the regulation 5(5) of the Regulations, which is incorporated in the conditions of the allotment letter, the offer of allotment automatically stood cancelled, and, therefore, there is no merit whatsoever in this writ petition, which is dismissed leaving the parties to bear their own costs. However, in case Rs. 6,875 are still lying with HUDA, that would be refunded forthwith.

*C. W. P. No. 3467 of 1982*

17. M/s Krishna and Company (hereinafter called 'the petitioner') in the month of March, 1979, applied for allotment of Plot No. 12 measuring $2\frac{1}{2}$ acres in the industrial area of Dharuhera, Phase I and sent Rs. 2,500 along with the application form to HUDA. On 28th March, 1979, another sum of Rs. 8,5000 was sent by the petitioner to HUDA, which was duly received on 2nd April, 1979. Vide letter dated 10th October, 1979 (Annexure P3), the petitioner was informed about the allotment of the aforesaid plot, the total price



of which was Rs. 90,750. A further sum of Rs. 11,688 was asked for, which was to be paid within 30 days of the allotment letter and the balance was payable further within 60 days of the letter of allotment without interest or in six annual equal instalments with 10 per cent interest thereon The petitioner,—*vide* letter dated 9th November, 1979, acknowledged the receipt of the allotment letter and made a request for time up to 30th November, 1979, for making payment,—*vide* letter Annexure P4. HUDA did not extend the time and the petitioner did not pay the requisite amount within 30 days of the receipt of letter of allotment. After expiry of 30 days on 29th November, 1979, the requisite amount was sent along with letter Annexure P5. which was received in the office of the Estate Officer on 4th December, 1979, for which receipt Annexure P6 was issued. HUDA by letter dated 4th December, 1979, copy Annexure P7, informed the petitioner that the amount of Rs. 11,688 was not deposited in accordance with the condition No. 4 of the allotment letter, i. e. within 30 days of the date of allotment, and, therefore, the allotment stood cancelled and the earnest money of Rs. 11,000 stood forfeited. Feeling aggrieved, the matter was taken up in appeal, which was dismissed by the Administrator,—*vide* order Annexure P10 and the revision was dismissed by the Minister,—*vide* order Annexure P12. Thereafter, this petition under Articles 226/227 of the Constitution of India was filed.

18 In the written statement, reliance is placed on regulation 5 (5) of the Regulations, and condition No. 4 of the allotment letter, which shows that since the petitioner neither conveyed the acceptance of the offer of plot nor deposited the amount within 30 days of the allotment letter, the allotment stood automatically cancelled. It was also pleaded that thereafter the plot in dispute was allotted to M/s Orient Rains Ltd. on 29th July, 1980. As regards the receipt of the amount on 4th December, 1979, it was stated that the same was received by the clerk in routine, after the expiry of the due date, which was meaningless and that amount has been refunded to the petitioner on 26th July, 1980.

19. After hearing the learned counsel for the parties I am of the view that in view of regulation 5 (5) of the Regulations and condition of the allotment the petitioner was required to convey his acceptance of the allotment within 30 days, which had to be accompained with Rs. 11,688, failing which the allotment stood automatically cancelled. Letter Annexure P4 does not specifically state that the allotment is accepted, nor does it show that the same was refused. However, time up to 30th November, 1979, was sought for payment of the amount asked for. It may mean that the allotment was accepted subject to the condition that time was extended, and if not then the allotment was not acceptable. Therefore, in a way so far as the acceptance or refusal of the allotment was concerned, that was conveyed witin 30 days in the aforesaid manner. However, since payment was not made within the requisite period of 30 days, the allotment stood automatically cancelled and the petitioner cannot make any grievance of it in this writ petition. Moreover, the rights of the third party have come into being.

20. The only point, which remains for consideration is whether the forfeiture of Rs. 11,000 is justified on the pceuliar facts and circumstances of this case. In C. W. P. No. 1761 of 1982, from the written statement

of HUDA, it is clear that it had extended time for payment beyond days. There is clear cut provision in the Regulations empowering tension of time. Without going into the matter whether HUDA had the authority to extend the time or not, the fact remains that in the case the time was extended and may be, that the petitioner in this case labouring under the same impression that HUDA could extend time, and therefore, asked for the extension of time. The amount of Rs. 11,000 deserves to be refunded because the petitioner did reply back within 30 days of the receipt of the allotment letter. If it is taken that he accepted subject to the condition of extension of time it can be inferred that be complied with first part of regulation 5 (5) of the Regulations, due to which, amount could not be forfeited and had to be returned.

21. For the reasons recorded above, the allotment of the plot in favour of the petitioner stood automatically cancelled and, therefore, no relief can be granted. But a direction is issued to HUDA to refund the earnest money of Rs. 11,000 to the petitioner within a period of two months form today.

*R.M.S.*

*Order accordingly.*

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PUNJAB AND HARYANA HIGH COURT

*Before : Mr. Justice J. V. Gupta.*

JAIRAM DASS—Appellant,

*versus*

VED PARKASH ALIAS VINAY KUMAR—Respondent.

Regular Second Appeal No. 1951 of 1980.

**Indian Majority Act (9 of 1875) Section 4—Computation of limitation for filing suit on attaining majority—Born on November 30, 1956—Suit filed on November 30, 1977—Would attain majority at midnight—The day of attaining majority to be excluded while computing limitation—Suit within limitation - *Limitation* Act (36 of 1963) Section 12(1).**

**Cases referred to :—**

1. A. I. R. 1976 Mad. 399, *Jacob v Rosay.*
2. A. I. R 1981 All. 83, *Sushila Devi v. Prem Kumar.*

Regular Second Appeal from the decree of the Court of the Addl. District Judge, Karnal, dated the 22nd day of May, 1980 reversing that of the Sub Judge IInd Class, Panipat, dated the 24th December, 1979.

*Mr. V. K. Jain*, for the Appellant.

*Mr. R. S. Cheema and Mr. Ashit Malik*, for the Respondent.

JUDGMENT

**J. V. Gupta, J.**—(*April 23, 1987*).—This order be read in continuation of my earlier order dated February 20, 19 4, whereby the issue, whether the suit is within limitation, was framed and the case was remanded to the trial Court for report after allowing the parties to produce necessary evidence on the said issue. The report of the trial Court dated May 21, 1984, was received in this Court. The learned trial Court after discussing the entire evidence has given a firm finding that the date of the birth of the plaintiff was November 30, 1956 and, therefore, the suit filed on November 30, 1977, i. e, within three years after attaining the age of majority, was within time.



2. The learned counsel for the defendant-appellant submitted that the said finding of the trial Court was wrong, as according to the learned counsel, the evidence has not been properly appreciated, and inadmissible evidence has been taken into consideration. However, I do not find any force in this contention. The entire evidence led by the parties has been discussed in detail and on that basis, a firm finding has been given that the date of birth of the plaintiff was November 30, 1956.

3. Faced with this situation, the learned counsel for the defendant-appellant submitted that even then, the suit was barrred by time as the last date of limitation for filing the suit was November 29, 1977, whereas it was filed on November 30, 1977. However, no meaningful argument could be raised to support this contention. On the other hand, the learned counsel for the plaintiffs-respondent relied upon *Jacob v. Rosay*[1], and *Sushila Devi v. Prem Kumar*[2], to contend that a person born on December 8, 1957, would attain majority at midnight of December 8, 1975. i. e., the first moment of 8th day of December, 1975. Apart from the above, section 4 of the Indian Majority Act, 1975 provides,—

> "4. Age of majority how computed.—In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the eighteen anniversary of that day.
>
> Illustrations
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> (a) ... ... ... ... ...
> to
> (b) ... ... ... ... ...
>
> (c) Z is born on the 1st day of January, 1850. He acquires a domicile in India. No guardian is appointed of his person or property by any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the first day of January, 1868."

From the said illnstration, given above, it is quite evident that the plaintiff attained the majority on November 30, 1974 and, thus, under section 12(1) of of the Limitation Act, that day has to be excluded and, therefore, the suit filed by him on November 30, 1977, within three years of his attaining majority, was within time.

4. No other point arises, nor has been raised.

5. Consequently, this appeal fails and is dismissed with no order as to costs.

*R. M. S.*

*Appeal dismissed.*

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PUNJAB AND HARYANA HIGH COURT

*Before : Mr. Justice J. V. Gupta.*

VASDEV SINGH—Petitioner,

*versus*

MISS PARMIN KAUR—Respondent.

Civil Revision No. 1177 of 1987.

**(i) Civil Procedure Code (V of 1908) Order 33 Rule 3—Suit for**

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1. A. I. R. 1976 Mad. 399. 2. A. I. R. 1981 All. 83.