view of the clear provisions of section 14(2) this cannot be done. The restriction must be spelt out of the grant and it cannot be implied.

For the reasons given above, the appeal is rejected with no order as to costs.

R.S.

CIVIL MISCELLANEOUS

Before Inder Dev Dua, J.

CANTONMENT BOARD, AMBALA CANTONMENT,—

Petitioner

versus

MESSRS LACHHMAN DAS-HARI RAM AND ANOTHER,—
Respondents.

Civil Writ No. 648 of 1960

1962

Jan. 19th

Cantonments Act (II of 1924)—Section 84—District Magistrate—Whether includes Additional District Magistrate—Constitution of India—Articles 226 and 227—Delay in filing petition under—Effect of—Whether fatal or to be considered as a circumstance in granting relief.

Held, that the expression 'District Magistrate' has not been defined in the Cantonments Act, but keeping in view the context in which this expression has been used in section 84, a Magistrate on whom all the powers of District Magistrate have been conferred would fall within the contemplation of the above section. The power which is conferred on the officer mentioned in section 84 is judicial power of a District Magistrate and the Additional District Magistrate who exercises the judicial powers of a District Magistrate can reasonably and without any serious legal impediment be considerd to be included in the expression 'District Magistrate'.

Held, that delay as such has seldom been considered to be an absolute bar in granting relief to a suitor under either article 226 or article 227 of the Constitution of India, It is only one of the circumstances to be taken into

consideration in determining whether or not to exercise the discretionary power vested in the High Court under the said Articles. Though under Article 227, High Court can exercise its power of judicial superintendence *suo motu*, it is indisputable that, while doing so the Court is expected to bear in mind the factor of delay, for, the power vested in the Court is not completely absolute or arbitrary.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari *or any other appropriate writ, direction or order be issued quashing the order, dated 4th September, 1959, by the Additional District Magistrate, Ambala.*

BHAGAT SINGH CHAWLA, ADVOCATE, for the Petitioner.

H. L. SARIN, ADVOCATE, for the Respondents.

JUDGMENT.

Dua, J. DUA, J.—This writ petition has since been amended as per order passed by me on 12th October, 1961, which may be read as part of this order. The counsel for the respondents has, however, submitted that in spite of the amendment, his preliminary objection based on delay and laches still subsists. By means of this amendment, all that the petitioner has done is to add Article 227 of the Constitution in the heading of the petition and to pray for revision of the impugned order, and this, according to the respondents' counsel, makes no difference so far as the preliminary objection goes. Unexplained delay and laches is as much objectionable in invoking this Court's jurisdiction under Article 226 of the Constitution as it is in seeking relief under Article 227. On behalf of the petitioner, it is urged, in reply, that though unexplained delay and laches may be an equally strong factor in both the aforesaid Articles, under Article 227, this Court is competent also to exercise its powers *suo motu* with the result that whereas undue delay in case of a petition under Article 226 may, comparatively speaking, be more serious, in the case of Article 227, the Court may, ignoring the applicant's prayer, *suo motu* consider the merits

of the controversy, the delay on the part of the petitioner in approaching the Court notwithstanding.

In my opinion, the distinction sought by the petitioner's counsel is without substance because delay as such has seldom been considered to be an absolute bar in granting relief to a suitor under either of the two articles mentioned above. It is only one of the circumstances to be taken into consideration in determining whether or not to exercise the discretionary power vested in this Court under the said Articles. Though under Article 227, this Court can exercise its power of judicial superintendence *suo motu*, it is indisputable that, while doing so the Court is expected to bear in mind the factor of delay, for, the power vested in the Court is not completely absolute or arbitrary. In this view of the matter, I do not think it is necessary to consider the various authorities cited at the bar, for, in matters of discretion, other decided cases can scarcely constitute binding precedents; they can only serve as helpful illustrations. From its very nature, discretion has to be exercised after weighing all the circumstances of the particular case and it is seldom that one can come across exactly similar facts in two cases. The well-recognised rules discernable from decided cases are, however, by now fairly settled and there has been no serious dispute about them. In this Court also, there is no fixed period of time after which, as a matter of settled practice, the writ petitions or petitions under Article 227 of the Constitution must be dismissed on the ground of delay; it being a question to be considered on the facts and circumstances of each case.

The impugned order is dated 4th September, 1959, and the writ petition was filed in this Court on 4th May, 1960, without impleading the Additional District Magistrate whose order was impugned under Article 226 of the Constitution. This delay has been sought to be justified on the ground that the Cantonment Board had to consult its legal advisers and then decide whether or not to assail the order in this Court. It has been stated

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that the Cantonment Board passed the necessary resolution only on 30th March, 1960, and that within one month and 5 days' the writ petition was actually presented in this Court. In so far as the failure to implead the Additional District Magistrate is concerned, it has been submitted that an application for impleading him was also actually filed on 6th February, 1961, and that the delay of about 9 months after the presentation of the writ petition should not be considered to be fatal as it was due merely to inadvertance.

On behalf of the respondents, great emphasis has been laid on the circumstance that a preliminary objection pointing out the absence of Additional District Magistrate from the array of respondents was taken on 11th July, 1960, when the written statement was filed in this Court and the copy given to the petitioner's counsel. It has been stressed that in spite of this objection having been taken as early as July, 1960, no steps were taken on behalf of the petitioner to implead the Additional District Magistrate till 6th February, 1961.

The delay both in filing the petition initially and in impleading the Additional District Magistrate seems to me to be undoubtedly serious matters in the present case and they must be taken into account when considering the merits of the grievances disclosed in the petition, for the purpose of arriving at a judicial determination whether or not to afford discretionary relief to the petitioner.

I may, at this stage, also notice the contention raised on behalf of the petitioner that under Article 227 of the Constitution, it is not at all necessary to implead the Tribunal whose order is sought to be assailed. In answer to this contention, the respondent has argued that in that case the petition should be deemed to have been filed only when the application for amendment was presented to this Court and that here again, the delay is so inordinate and without any satisfactory explanation that this Court should not, in its discretion, grant the relief claimed.

There is still one more preliminary point raised at the bar which deserves to be mentioned. The respondent has urged that the copy of the impugned order should have been duly attested if the present petition is to be considered to be one for revision under Article 227 and failure to attach such a copy should entail dismissal of the petition without going into the merits. In my opinion, the objection is not wholly without substance but as according to the practice of this Court, the office has been accepted unattested copies and as this Court has not framed any precise rules on the subject, I do not feel inclined to throw out this petition at this stage on this ground. I quite realise that in the present case the petition under Article 226 has been sought to be converted into one under Article 227 of the Constitution, but even so in the absence of a clear cut rule of practice or of requisite rules, I cannot persuade myself to reject the petition on this ground alone. I would, however, like to observe that it is highly desirable that appropriate rules are framed by this Court on this subject.

On the merits, the short point raised on behalf of the petitioner is that the Additional District Magistrate is not the District Magistrate as contemplated by section 84 of the Cantonments Act, which provides for appeals against assessment, to the District Magistrate or to such other officers as may be empowered by the Central Government in this behalf. The point in issue has arisen because the respondent was assessed to house tax and an appeal was preferred to the District Magistrate, Ambala, under section 84 of the above Act. This appeal was, however, passed on by the District Magistrate to the Court of the Additional District Magistrate for disposal and was actually heard and disposed of by the Additional District Magistrate. The objection raised by the Cantonment Board to the jurisdiction of the Additional District Magistrate to hear the appeal was repelled on the ground that under section 10, Criminal Procedure Code, the Additional District Magistrate had the same powers as the District Magistrate had in hearing appeals. Before me

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also, section 10 of the Code has been relied upon by the respondent. According to this section, the State Government is empowered to appoint a Magistrate of the first class in every district to be called the District Magistrate. The State Government is also empowered to appoint any Magistrate of the first class to be an Additional District Magistrate and such Additional District Magistrate is to have all or any of the powers of a District Magistrate under the Code or under any other law for the time being in force as the State Government may direct.

The petitioners' argument is that under the Code of Criminal Procedure, it is the State Government which can confer all or any of the powers of the District Magistrate on the Additional District Magistrate whereas under section 84 of the Cantonments Act it is the Central Government which is authorised to empower officers other than the District Magistrate to hear appeals against assessment; and the District Magistrate under the Cantonments Act does not include Additional District Magistrate. Reliance has in support of this contention been placed on a decision of the Allahabad High Court in *Kidar Nath* v. *Mool Chand* (1). In this decision, Sapru, J., while dealing with the U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947) observed, that the District Magistate contemplated under section 3 of the above Act did not include an Additional District Magistrate. This decision has, however, been overruled by the Supreme Court in *Central Talkies Limited* v. *Dwarka Parsad* (2), where it has been observed that the District Magistrate under the U. P. (Temporary) Control of Rent and Eviction Act is not a *persona designata* and under the definition of "District Magistrate", the special authorization by the District Magistrate had the effect of creating officers exercising the powers of a District Magistrate under the Eviction Act. The Supreme Court directly considered the question of the construction to be placed on section 10 of the Code of Criminal Procedure and the ratio of the Supreme

(1) A.I.R. 1953 All. 62.
(2) 1961 A.L.J. 215.

Court decision appears to be that the notification issued under this section investing a Magistrate with all the powers of the District Magistrate under the Code as well as under any other law for the time being in force, sufficiently invests the said Magistrate with power to deal with an application under the Eviction Act for permission to file a suit without any special authorization. In view of the Supreme Court decision, nothing more need be said about the decision in *Kidar Nath's* case. Reference has also been made to *Prabhulal Ram Lal* v. *Emperor* (3), where a Division Bench laid down that an Additional District Magistrate invested with powers of a District Magistrate does not attain thereby the status of a District Magistrate, and section 10(2), Criminal Procedure Code, cannot be called in aid to confer the powers of the Provincial Government under Rule 26 Defence of India Rules on an officer who is not actually holding the office of District Magistrate. The respondent has, on the other hand, contended that the petitioner has not shown that the Additional District Magistrate was not duly empowered to hear the appeal in question and it has been urged that the notification conferring the powers of Additional District Magistrate on the Magistrate who passed the impugned order fully empowers him to do so. It is not disputed on behalf of the petitioner that the Magistrate who has actually passed the order in question has as Additional District Magistrate been invested with all the powers of District Magistrate under the Code and also under any other law for the time being in force. I was shown a copy of the notification conferring the powers of Additional District Magistrate on Shri P. N. Bhanot in 1953. and it may be assumed (and indeed, it was not disputed) that the notification with respect to Shri G. S. Chatrath, who passed the impugned order, was in precisely similar terms.

After considering the arguments addressed at the bar, in my opinion, the Additional District Magistrate who passed the impugned order, must

(3) A.I.R. 1944 Nag. 84.

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be considered to be duly empowered to do so. He was expressly invested with all the powers of District Magistrate under Criminal Procedure Code as also under any other law for the time being in force. The expression District Magistrate has not been defined in the Cantonments Act, but keeping in view the context in which this expression has been used in section 84, I am inclined, as at present advised, to hold that a Magistrate on whom all the powers of District Magistrate have thus been conferred would fall within the contemplation of the above section. The Nagpur decision does not seem to me to be of any valuable assistance, for in that case the question raised related to the delegation of the Provincial Government's powers to any officer or authority subordinate to it and the Court considered the question from the point of view of the emergency legislation like the Defence of India Act and Rules framed thereunder. I am unable to find any analogy between that case and the present one and the ratio and reasoning of the former can by no means afford any helpful guidance in the decision of the case in hand. When the appellate powers of a District Magistrate are conferred on the Additional District Magistrate, it would seem to me to be legitimate to assume that the Additional District Magistrate having thus been invested with the powers of District Magistrate under the Code and other laws in force, was intended to be included in the expression District Magistrate as contemplated by section 84 of the Cantonments Act. The power which is conferred on the officer mentioned in section 84 is judicial power of a District Magistrate and, therefore, the Additional District Magistrate who exercises the judicial powers of a District Magistrate can reasonably and without any serious legal impediment be considered to be included in the above expression.

But this apart on the facts and circumstances of the present case; I feel wholly disinclined to exercise the discretionary powers of this Court either under Article 226 or under Article 227 of the Constitution because there does not appear to

me to be any such manifest or gross injustice disclosed as would justify the exercise of the extraordinary power. All that has happened is that the respondent's appeal regarding assessment has been allowed in part by the Additional District Magistrate invested with powers of a District Magistrate. This Court should, in my opinion, decline in its discretion to interfere with the impugned order on this highly belated petition. This writ petition, therefore, fails and is hereby dismissed. No order as to costs.

R. S.

APPELLATE CIVIL

Before Daya Krishan Mahajan, and Prem Chand Pandit, JJ.

MESSRS KASHMIRI MAL-OM PARKASH,—*Appellant*

versus

MESSRS DURGA PARSHAD-GULZARI LAL AND ANOTHER,—*Respondents.*

First Appeal from order No. 72 of 1959

1962

Jan. 29th

Code of Civil Procedure (Act V of 1908)—Section 20—Assignment of a debt—When entitles the assignee to file a suit in the Court within whose jurisdiction the assignment took place.

Held, that before the assignment of a debt entitles the assignee to file the suit in the Court within whose jurisdiction the assignment took place, it must be proved that the assignment in fact took place and that it was not a bogus transaction effected only to give jurisdiction to that Court.

First Appeal from the order of the Court of Shri Kartar Singh, Senior Sub-Judge, Jullundur, dated the 8th July, 1959, directing that the plaint be returned to the plaintiff for presentation to the proper Court.

H. L. SARIN AND K. K. CUCCRIA, ADVOCATES, for the Appellants.

K. C. NAYAR AND S. S. DHINGRA, ADVOCATES, for the Respondents.