DATUK BANDAR KUALA LUMPUR v. KUALA LUMPUR GOLF AND COUNTRY CLUB BHD
FEDERAL COURT, PUTRAJAYA
SITI NORMA YAAKOB, CJ (MALAYA); STEVE SHIM, CJ (SABAH & SARAWAK); ABDUL HAMID MOHAMAD, FCJ
CIVIL APPEAL NO: 02-14-2004 (W)
3 JUNE 2005
[2005] 3 CLJ 901

***LOCAL GOVERNMENT**: Rates - Annual value - Whether time for payment of rate as provided by s. 145(1) Local Government Act 1976 could be extended - Whether general power of court to extend time under para. 8 Schedule to Courts of Judicature Act 1964 applicable to a statute which imposes express time stipulations but which does not itself provide for extension of time - Local Government Act 1976, s. 145(1) - Courts of Judicature Act 1964, para. 8 of Schedule*

***CIVIL PROCEDURE**: Time - Extension of time - Whether time for payment of rate as provided by s. 145(1) Local Government Act 1976 could be extended - Whether general power of court to extend time under para. 8 Schedule to Courts of Judicature Act 1964 applicable to a statute which imposes express time stipulations but which does not itself provide for extension of time - Local Government Act 1976, s. 145(1) - Courts of Judicature Act 1964, para. 8 of Schedule*

The respondent, on 31 December 1996, filed an originating motion under s. 145 of the Local Government Act 1976 ('the Act') praying that: (i) the decision of the appellant made on 27 November 1996 whereby the total annual value of certain land was revised to a total sum of RM5,760,000 be set aside, and that the annual value be substituted by the estimated gross annual rent of the land amounting to RM1,300,000 only; and (ii) the costs of this appeal be taxed by the proper officer of this court and be paid by the respondent to the appellant. That was in fact an appeal against the decision of the appellant under s. 145(1) of the Act and as at the time of the filing of the originating motion, the respondent had not paid the rate appealed against. The amount was only paid on 6 February 1997 *ie*, about five weeks later.

The appellant, on 3 May 1997, filed an affidavit in reply raising, *inter alia*, a preliminary objection that the appeal was not properly brought because the respondent did not pay the appellant the amount of the rate appealed against "with the filing of the originating motion", as required by the proviso to s. 145(1) of the Act. The respondent, on 9 June 1997, filed the originating motion praying that the time for the payment of the rate appealed against be extended to 6 February 1997, the day it was paid. The High Court allowed the respondent's application. On 25 October 2004, this court granted the appellant an extension of time to appeal and leave to appeal to this court on the following questions of law: (a) whether the time to pay the rates appealed against, which by the proviso to s. 145(1) of the Act, is stated to be at the time of filing the motion could, despite its mandatory nature, be extended by the court; and (b) whether the general power of the court to extend time under the Courts of Judicature Act 1964 ('the CJA') could apply to a particular statute which imposes express

time stipulations, and which statute does not itself provide for extension of time.

Held (dismissing the appeal)

Per Abdul Hamid Mohamad FCJ:

[1] Whether or not the time for payment of the rate as provided by s. 145(1) of the Act could be extended depended on whether at the time of the filing of the originating motion, the amount had been made known to the respondent. If the amount had not been made known to the respondent, the condition requiring payment at that point of time was incapable of performance. Thus, the interest of justice required that the court might extend the time so as not to frustrate the right of appeal of the respondent.

[2] Whether or not the general power of the court to extend time under para. 8 of the Schedule to the CJA is applicable to a statute that does not provide the power for the extension of time will depend on the provision of the statute. If from the wording of the statute, the time prescribed for the doing of an act is mandatory and the condition to be fulfilled exists during the period and is capable of performance, the general power to extend time under para. 8 of the Schedule to the CJA is not applicable. But, as in this case, where the condition *ie*, the payment of the rate had not existed because the amount thereof was not yet known to the respondent and was therefore incapable of performance by the respondent, the interest of justice required that the general power to extend might be ordered by the court.

[3] In the circumstances of this case, the learned judge was right to make the order for the extension of time for the respondent to pay the rate so as not to frustrate the respondent's right of appeal through no fault of theirs.

[Appeal dismissed and deposit to be paid to the respondent towards their taxed costs.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Responden telah, pada 31 Disember 1996, memfailkan suatu usul pemula dibawah s. 145 Akta Kerajaan Tempatan 1976 ('Akta itu') memohon supaya: (i) keputusan perayu yang dibuat pada 27 November 1996 di mana jumlah nilai tahunan sebidang tanah ditukar menjadi sejumlah RM5,760,000 diketepikan, dan nilai tahunan itu digantikan dengan anggaran sewa tahunan tanah tersebut berjumlah RM1,300,000 sahaja; dan (ii) kos rayuan ini ditaksir oleh pegawai mahkamah ini yang berkenaan dan dibayar oleh reponden kepada kepada perayu. Kebetulan ini adalah satu rayuan ke atas keputusan perayu di bawahs. 145(1) Aktaitu dan semasa pemfailan usul pemula itu, responden belum lagi membuat bayaran cukai yang dirayu itu. Jumah itu hanya dibayar pada 6 Februari 1997 iaitu lebih kurang lima minggu kemudiannya.

Perayu telah, pada 3 Mei 1997, memfailkan suatu afidavit jawapan menimbulkan, antara lain, bantahan awal bahawa rayuan tidak dikemukakan dengan betul memandangkan yang responden gagal membayar kepada perayu jumlah cukai yang dipertikaikan "dengan pemfailan usul pemula itu", sebagaimana dikehendaki di bawah proviso kepada s. 145(1) Aktaitu. Responden telah, pada 9 Jun 1997, memfailkan usul pemula memohon lanjutan masa bagi pembayaran cukai yang dipertikaikan itu sehingga 6 Februari 1997, iaitu tarikh ia dibayar. Mahkamah Tinggi telah membenarkan permohonan responden itu. Pada 25 Oktober 2004, mahkamah ini telah membenarkan perayu lanjutan masa bagi merayu dan kebenaran

bagi merayu kepada mahkamah ini di atas persoalan undang-undang berikut: (a) sama ada masa untuk membayar cukai yang dipertikaikan, yang di bawah proviso kepada s. 145(1) Akta itu, dinyatakan perlu dibayar semasa pemfailan usul dapat, tidak kira sifat mandatorinya, dilanjutkan oleh mahkamah; dan (b) sama ada kuasa am mahkamah bagi melanjutkan masa di bawah Akta Mahkamah Kehakiman 1964 ('Akta CJA') dapat digunakan bagi suatu Akta yang mengenakan tempoh masa yang tepat dan Akta itu tidak dengan sendirinya membuat peruntukan bagi lanjutan masa.

Diputuskan (menolak rayuan itu):

Oleh Abdul Hamid Mohamad HMP:

[1] Sama ada atau sebaliknya masa bagi membuat bayaran cukai yang diperuntukkan di bawah s. 145(1) Aktaitu dapat dilanjutkan bergantung kepada sama ada semasa pemfailan usul pemula itu, jumlah itu telah diumumkan kepada responden. Sekiranya jumlah itu tidak diketahui responden, maka syarat memerlukan bayaran dibuat pada masa itu tidak dapat diperlakukan. Maka kepentingan keadilan memerlukan bahawa mahkamah dapat melanjutkan masa agar hak responden mengemukakan rayuan tidak dikecewakan.

[2] Sama ada atau sebaliknya kuasa am mahkamah melanjutkan masa di bawah perenggan 8 Lampiran kepada Akta CJA beraplikasi kepada suatu statut yang tidak memberi peruntukan kuasa bagi melanjutkan masa bergantung kepada peruntukan statut itu. Sekiranya dari sebutan statut itu, masa yang diperuntukkan bagi perlakuan sesuatu perbuatan adalah mandatori dan syarat yang perlu dipenuhi wujud dalam masa itu dan dapat diperlakukan, maka kuasa am bagi melanjutkan masa di bawah perenggan 8 Lampiran kepada Akta CJA tidak beraplikasi. Akan tetapi, seperti dalam kes ini, sekiranya syarat itu iaitu persoalan pembayaran cukai itu tidak wujud memandangkan jumlahnya belum lagi dikenalpasti kepada responden dan memandangkan sedemikian tidak dapat diperlakukannya, maka kepentingan keadilan memerlukan bahawa kuasa am melanjutkan masa dapat diperintahkan oleh mahkamah.

[3] Memandangkan keadaan dalam kes ini, hakim yang bijaksana tepat membuat perintah lanjutan masa agar hak responden mengemukakan rayuan tidak dikecewakan tanpa sebarang kesilapan oleh mereka.

Rayuan ditolak dan deposit diarah dibayar kepada responden sebagai sebahagian kos mereka yang ditaksir.]

Case(s) referred to:

Majlis Peguam & Anor v. Tan Sri Dato' Mohamed Yusoff Mohamed [1997] 3 CLJ 332 HC ***(refd)***

Majlis Perbandaran Klang v. Zakiyah Samad [2004] 2 CLJ 429 FC ***(refd)***

Shell Malaysia Trading Sdn Bhd v. Majlis Perbandaran Klang [1988] 1 LNS 113; [1988] 3

MLJ 418 ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, para 8 of schedule

Legal Profession Act 1976, ss. 15(3), (5), 16(1)

Local Government Act 1976, ss. 127, 130, 133, 137, 141, 142, 143(3), 144, 145(1), (2), (3)

Counsel:

For the appellant - Cyrus Das (Romesh Abraham with him); M/s Shook Lin & Bok

For the respondent - Robert Lazar (Teh Lay Kheng with him); M/s Shearn Delamore & Co

Reported by Suresh Nathan

Case History:

Court Of Appeal : [2004] 4 CLJ 104
High Court : [1997] 1 LNS 325

JUDGMENT

Abdul Hamid Mohamad FCJ:

On 31 December 1996, the respondent filed an originating motion under s. 145 of the Local Government Act 1976 ("the Act") praying for the following order that:

> (i) the decision of Datuk Bandar, Kuala Lumpur made on the 27th November 1996 whereby the total Annual Value of the land held under PT 3561 and PT3557, HS (D) 71258 and 71262 respectively, Mukim Kuala Lumpur, Daerah Wilayah Persekutuan was revised to a total sum of RM5,760,000.00 be set aside and that the Annual Value be substituted by the estimated Gross Annual Rent of the land amounting to RM1,300,000.00 only.
>
> (ii) the costs of this appeal be taxed by the proper officer of this Court and be paid by the Respondent to the Appellant.

That was in fact an appeal against the decision of the appellant under s. 145(1) of the Act. As at the time of the filing of the originating motion, the respondent had not paid the rate

appealed against. The amount was only paid on 6 February 1997 ie, about five weeks later.

On 3 May 1997, the appellant filed an affidavit in reply raising, *inter alia*, a preliminary objection that the appeal was not properly brought because the respondent did not pay to the appellant the amount of the rate appealed against "with the filing of the originating motion", as required by the proviso to s. 145(1) of the Act.

On 9 June 1997, the respondent filed the originating motion praying that the time for the payment of the amount of the rate appealed against be extended to 6 February 1997, the day it was paid. The High Court allowed the respondent's application.

On 25 October 2004, this court granted the appellant an extension of time to appeal and leave to appeal to this court on the following questions of law:

> (a) whether the time to pay the rates appealed against, which by the proviso to Section 145(1) of the Local Government Act, 1976 is stated to be at the time of filing the Motion could, despite its mandatory nature, be extended by the Court;
>
> (b) whether the general power of the Court to extend time under the Courts of Judicature Act, 1964 could apply to a particular statute which imposes express time stipulations and which statute does not itself provide for extension of time.

I shall first state the law. In so doing, it is important to look at the scheme of the legislation more widely and not just the provisions of s. 145(1) that are in issue. The relevant part of the Act is Part XV with the heading "Rating and Valuation". Section 127 empowers the local authority to impose the annual rate or rates within a local authority. Section 130 provides the basis of assessment of the rate or rates which may be assessed "upon the annual value of holdings or upon the improved value of holdings " The rate or rates so imposed "shall endure for any period not exceeding twelve months " - s. 133.

Section 137 talks about the preparation of a Valuation List. The Valuation List remains in force until it is superseded by a new Valuation List which shall be prepared and completed once every five years or within such extended period as the State Authority may determine.

Section 141 requires that the notice of the new Valuation List be published. Any person aggrieved by the valuation may make objections to the local authority within fourteen days before the time fixed for the revision of the Valuation List - s. 142.

Section 143, *inter alia,* requires the local authority to confirm the Valuation List on or before 31 December of the year preceding the year in which any Valuation List is to come into force, with or without amendment or revision. The local authority is not required to hear and determine all objections to the Valuation List before confirming it. But the local authority is required to hear objections not heard and determined before the Valuation List is confirmed as soon as possible. Until an objection has been heard and determined, the increase in the valuation or new valuation objected to shall not be deemed to be in force and the old rates shall continue to be payable - s. 143(3).

Section 144 provides for any amendment to the Valuation List by the Valuation Officer.

Notice must be given to all persons interested in the amendment - subsection (2). Any person aggrieved by the amendment to the Valuation List may make objection in writing to the local authority not less than ten days before the time fixed in the notice - subsection(3). Any amendment made in the Valuation List shall be confirmed by the local authority - subsection (5).

Then comes s. 145(1) and the proviso thereto, the provisions of which are in issue:

> 145. (1) Any person who having made an objection in the manner prescribed by section 142 or 144 is dissatisfied with the decision of the local authority thereon may appeal to the High Court by way of originating motion:
>
> Provided that with the filing of the originating motion there shall be paid into the local authority the amount of the rate appealed against.

It should be noted that there has to be a Valuation List first before the rate can be imposed. An aggrieved party may object to a new Valuation List at any time not less than fourteen days before the time fixed for the revision of the Valuation List. Whether the objection has been heard or not, the Valuation List has to be confirmed on or before 31 December of the year preceding in which the Valuation List is to come into force. An appeal lies to the High Court from the decision of the local authority regarding the objection to the valuation. Indeed, this court has held in *Majlis Perbandaran Klang v. Zakiyah binti Samad [2004] 2 CLJ 429* that the rate of assessment is not appealable. What is appealable under s. 145(1) as held in *Shell Malaysia Trading Sdn. Bhd. v. Majlis Perbandaran Klang [1988] 1 LNS 113*; [1988] 3 MLJ 418 is the annual value. However, s. 145(1) provides the amount of the rate shall be paid to the local authority "with the filing of the originating motion", when the new rate, based on the new valuation may not have been imposed or notified yet.

Reverting to the facts of this case, the decision by the appellant regarding the respondent's objection was received on 17 December 1996. In accordance with s. 145(2), the originating motion must be filed by 31 December 1996. The respondent only received the notification as to the amount of the rate payable for the year 1997 on 13 January 1997. The amount was paid on 6 February 1997. The point is, by 31 December 1996, the last day for the respondent to appeal against the valuation, the rate that is required by s. 145 to be paid "with the filing of the originating motion" was not known to the respondent yet. That is why the respondent could not pay the rate at the time of filing the notice of motion.

Learned counsel for the appellant argued that the proviso to s. 145(1) is a condition precedent to the filing of the originating motion. Failure to pay the rate renders the appeal against the valuation a nullity. The appellant takes the view that if the new rate was not known, the respondent should have enquired or pay an amount equal to the old rate.

Is the proviso to s. 145(1) a condition precedent to the filing of the originating motion? On the face of it, it appears to be so. In fact, it is so where the notification regarding the rate is given and received by the objector within fourteen days from the date of the decision by the local authority dismissing the objection. But, as in this case, where the respondent had not been notified of the rate, can a requirement that has not existed or, at least, not made known to the respondent be a condition precedent that must be fulfilled by the respondent? I do not think so. In the first place, for something to be a condition precedent, the "condition" must exist or must be known at the time it is required to be fulfilled. It is said that the respondent

should have enquired. But, the duty to notify the rate rests on the appellant. There is no duty on the respondent to enquire. In any event, there is no evidence that the rate had been fixed by 31 December 1996. It is also said that the respondent should have paid the old (1996) rate. The short answer to that is that there is nothing in the law to say so. Furthermore, the old rate is based on the old valuation. The old valuation is not the disputed valuation. It is the new valuation that is in dispute. It might be different if the objection had not been heard by 31 December 1996. In that case, by virtue of s. 143(3) the increase in the valuation or the new valuation is not deemed to be in force and the old rate shall continue to be payable. Under such circumstances, the argument may be on a firmer ground. But this is not such a situation. Here, the objection has been heard and determined before 31 December 1996, so s. 143(3) does not apply.

In my view, on the facts of this case, the requirement to pay the rate with the filing of the originating motion cannot be a condition precedent.

The next question is whether the court has the power to extend the time to make payment of the rate. The law is silent: it does not say that it can be done and it does not say that it cannot be done. Under the circumstances, the court is at liberty to look at the general law. Paragraph 8 of the Schedule to the Courts of Judicature Act 1964 ("CJA 1964") and the proviso thereto contain the following provisions:

> 8. Time
>
> Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed.
>
> Provided that this provision shall be without prejudice to any written law relating to limitation.
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> This provision has been considered by the Supreme Court in *Majlis Peguam & Anor v. Tan Sri Dato' Mohamed Yusoff bin Mohamed [1997] 3 CLJ 332*; [1997] 2 MLJ 271. This case was in fact relied on by the learned judge. However, the learned judge merely relied on some dicta in Mohd. Azmi FCJ's judgment. It is important to note that in that case, the Federal Court, in fact, disagreed with the learned High Court Judge who allowed the three month's period to be abridged. A few things appear to distinguish that case from the instant appeal. First, that case concerns the interpretation of ss. 15 and 16 of the Legal Profession Act 1976. Section 15(3) that requires the filing of an affidavit not less than fourteen days before the petition is to be heard contains the clause "or such shorter period as the court may allow". However, subsection (5) of the same section that requires notice of the petition to be posted for three months before the petitioner is admitted and enrolled as an advocate and solicitor does not contain such a clause. On the other hand, s. 16(1) that requires the petition and the affidavit to be served not less than ten days before the date fixed for the hearing of the petition also contains the clause "or such shorter period as the court may allow." It is therefore obvious that the omission of the clause in subsection (5) of s. 15 is intended to mean that the period is mandatory and may not be abridged. Secondly, "The omission of such power from s. 15(5) clearly implies that the three-month

> period is a mandatory requirement, not only because anyone reading the notice would not know the date of hearing of the petition and the time period by which he has to lodge a caveat, but also because the notice is addressed to the world at large and as such it is important that the prescribed time period of three months which by any standard is not excessive for the purpose of notification to the general public, should not be shortened" - per Mohd. Azmi FCJ.

In the present case, the whole of s. 145 is silent regarding extension of time. Regarding the second point, the time involved is the time to pay the rate. It only concerns the appellant. If at all, it is only the appellant who could be prejudiced. However, in this case, there is nothing to suggest that the rate was not paid within the time stipulated in the notice of assessment. So, the appellant was not prejudiced. Neither was the appellant prejudiced by the filing of the originating motion by the respondent because that is a statutory right of the respondent and the notice of motion was filed within the time stipulated for the filing thereof. The only complaint was that the amount of the new rate was not paid at the time of the filing of the originating motion. But, at that time, the new rate had not been made known to the respondent and was not even due yet as the notice of the new rate had not been given to the respondent. So, there can be no prejudice to the appellant.

Coming back to the judgment of Mohd. Azmi FCJ in *Majlis Peguam (supra)*, the learned judge made the following observations on para. 8 of the Schedule to CJA 1964 of his judgment.

In our view, it is obvious that Parliament intended that the High Court should be conferred with outright additional general powers to be exercised judicially whenever circumstances demand, in accordance with any existing written law or rules of court, relating thereto.

Again at p. 291 the following is most instructive:

We therefore hold that merely because para 8 of the schedule to the 1964 Act has conferred a general power of abridgment, it does not follow that Parliament is precluded from conferring express power of abridgement in any particular legislative provision. Similarly, it does not mean that Parliament cannot prohibit such general power from being invoked either expressly or by necessary implication. In this case, we are more than satisfied that the prescribed time in s. 15(5) is intended to be mandatory and as such, the court ought not to exercise its general power under para 8 of the 1964 Act to abridge the period of posting. The general powers in the Schedule are discretionary, and like any other discretions, they must be exercised in a way which in all the circumstances best reflect the requirement of justice which for the purpose of ss. 15(5) and 17 requires the court to take into account not only the interest of the petitioner and the Bar Council and Bar Committee but also the interest of the general public for whose benefit the provision of s. 17 has been specially enacted.

And further, at p. 291-292:

The rule is that a prescribed time in any written law is always presumed and construed as mandatory unless there is express power in that particular law to abridge or extend. The general provision in para 8 of the Schedule is a power-conferring provision which has no pre-condition except that it must be exercised in accordance with any existing written law or rules of court relating thereto. Apart from the interpretation legislation and the 1976 Act itself,

there is no other legislation or rules of court relating to the subject matter under discussion. As such, the general power under para 8 must be exercised in accordance with and not contrary to the mandatory provision of s. 15(5). In addition, even if the general discretionary power in para 8 to abridge or extend were applicable, it must be exercised judicially, not arbitrarily or capriciously, and it ought not to be exercised unless the requirement of justice is satisfied. Thus, even assuming for one moment that the provision of s. 15(5) had nothing to do with third party rights, and could be construed as not obligatory, the court must exercise the discretion in accordance with correct principle. We accordingly rule that the learned trial judge erred in law in holding that the High Court had power to abridge the time period of three months prescribed by s. 15(5) of the 1976 Act, by virtue of the powers conferred by para 8 of the Schedule to s. 25(2) of the 1964 Act.

I think, it would be quite fair for me to summarise the judgment as follows: Paragraph 8 of the Schedule to CJA 1964 is a general power conferred by Parliament on the High Court. However, the fact that the general power exists does not prevent Parliament from conferring "express power" of abridgment in a particular statute. The provisions in ss. 15(3) and 16(1) are such provisions. Section 15(5) requiring the notice to be posted for three months with no provision for abridgment is a mandatory provision. The reason is that, besides the absence of the clause conferring power to the court to abridge the period, the notice is addressed to the world at large so that anyone reading it would know the time period by which he has to lodge a caveat, if he wants to. Therein, in my view, lies the rational of the judgment.

This is made clear by the concurring judgment of Edgar Joseph Jr. FCJ and I shall quote the relevant parts from the headnote [1997] 2 MLJ 271:

(6) (Per Edgar Joseph Jr. FCJ) It should be noted that under the Act, no power is given to the court to abridge the time period of posting prescribed in s. 15(5) and this is emphasized by the contrast s. 15(5) displays when it is compared with ss. 15(3) and 16(1) wherein time is mentioned and the words 'or such shorter time as the court may allow' occur. In such a situation, the presumption that a deliberate change of wording denotes a change in meaning, can be invoked (see p 295D), *Ricket v. Metropolitan Ry Co.* [1867] LR 2 HL 175 followed.

(7) (Per Edgar Joseph Jr FCJ) The purpose of s. 15(5) is to give notice to the world at large that a particular individual has petitioned to the court to be admitted and enrolled as an advocate and solicitor to enable any member of the public who wishes to object to enter a caveat under s. 17 of the Legal Profession Act. The three-month period is incorporated into s. 15(5) as a reasonable period of time for such notice and it is not for the court to query legislation but merely to give effect to the will of Parliament as expressed in the law. As no hearing date is specified in the notice that a petitioner has petitioned, allowing an abridgement of the time period could frustrate the purpose of s. 15(5). Hence, the time period under s. 15(5) is mandatory (see PP 295E, G and 296C-D).

(8) (Per Edgar Joseph Jr. FCJ) It should be recognized that para 8 of the Schedule is a general measure and speaks about powers of the High Court to enlarge or abridge time prescribed by any written law, whereas s. 15(5) is a specific measure with no power given to enlarge or abridge time. There is thus an apparent conflict between these two measures, and in such a situation, the specific measure overrides the general measure (see p 296F-G; *Lee Lee Cheng (f) v. Seow Peng Kwan* [1960] MLJ 1 followed.

(9) (Per Edgar Joseph Jr. FCJ) It follows that the words of s. 25(2) of the Act, ' The High

Court shall have the additional powers set out in the Schedule' are not merely declaratory of the powers of the High Court but are power-conferring words. The decision of the Federal Court in *Pahang South Union Omnibus Co. Bhd v. Minister of Labour & Manpower & Anor* [1981]2 MLJ 199, to the contrary, on this point, disapproved, since it had treated the word 'power' in s. 25(2) and in para 1 of the Schedule to the Act as though it means no more than jurisdiction (see pp 2971 and 298A-B); *Lee Lee Cheng (f) v. Seow Peng Kwan* [1960] MLJ 1 followed.

(10) (Per Edgar Joseph Jr FCJ) Section 25(2) of the Act and the proviso thereto, read in conjunction with para 8 should be interpreted to mean that the exercise of the power under para 8 should be made in accordance with written laws or rules of court relating to the same. The proviso does not mean that if no written laws or rules of court exist that the general power conferred by para 8 cannot be exercised (see p 297B); *Damodaran v. Vasudevan* [1975] 2 MLJ 231 and *Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 followed.

(11) (Per Edgar Joseph Jr FCJ) Hence, s. 15(5) is mandatory, and thus prohibits the court form abridging the time limit therein by resorting to its general power under para 8 of the Schedule. To hold otherwise would be in direct contradiction of s. 25(2) of the Act and therefore not in accordance with written law (see p 298C-D).

It is to be noted that whereas Mohd. Azmi FCJ spoke of "express power", Edgar Joseph Jr. FCJ spoke of "specific measure". They mean the same thing ie, general provision and specific provision.

So, we see that while para. 8 confers a general power on the court to extend and abridge time, that power may be taken away by specific provision in a particular statute.

Has that power been taken away in the instant appeal? First, there is a complete silence in s. 145 about extension of time, contrary to s. 15 of the Legal Profession Act 1976 where subsection 15(3) contains such provision but subsection 15(5) does not, followed by s. 16(1) which contains that provision again. So, it appears to me that there is a stronger ground for saying that the general power has been taken away in s. 15(5) than in s. 145.

Secondly, unlike the posting of the notice as required by s. 15(5) of the LPA 1976 which is addressed to the world at large to enable people to know and to file a caveat if anybody wants to, the proviso to s. 145(1) only talks about the time of payment of the rate. The world is not involved. It only concerns the appellant.

Thirdly, on the facts of this case, to read the proviso to s. 145(1) as mandatory and denying the court the power to extend time under para. 8 would lead to grave injustice to the respondent through no fault of theirs. The respondent had not been notified of the new rate at the time they had to file the originating motion as the rate was not yet due from the respondent to the appellant. In short, the condition imposed by the proviso, as at the time of the filing of the originating motion, was incapable of performance yet.

Under such circumstances I do not think it can be said that, first, the general power has been removed by the proviso to s. 145(1) and, secondly, it was not a proper exercise of the discretion on the part of the learned judge that the respondent be allowed to pay on 6

February 1997 instead of 31 December 1996, the day the originating motion was filed.

In the circumstances, I would answer the questions posed in the following manner:

On Question (a):

Whether the time for payment of the rate as provided by s. 145(1) can be extended or not depends on whether at the time of filing the originating motion, the amount has been made known to the respondent. If the amount had not been made known to the respondent the condition requiring payment at that point of time is incapable of performance. So, the interest of justice requires that the time may be extended by the court so as not to frustrate the right of appeal of the respondent.

On Question (b)

Whether the general power of the court to extend time under para. 8 of the Schedule to the CJA 1964 is applicable or not to a statute that does not provide the power for the extension of time will depend on the provision of the statute. If from the wording of the statute, the time prescribed for the doing of an act is mandatory and the condition to be fulfilled exists during the period and is capable of performance, the general power to extend time under para. 8 of the Schedule to the CJA 1964 is not applicable. But, as in this case, where the condition ie, the payment of the rate has not existed because the amount thereof is not yet known to the respondent and is therefore incapable of performance by the respondent, the interest of justice requires that the general power to extend may be ordered by the court.

In the circumstances of this case, I am of the view that the learned judge was right to make the order for the extension of time for the respondent to pay the rate so as not to frustrate the respondent's right of appeal through no fault of theirs. I would therefore dismiss the appeal with costs and order that the deposit be paid to the respondent towards their taxed costs.

Both my learned sister, Siti Norma Yaakob, CJ (M) and my learned brother, Steve Shim Lip Kiong, CJ (SS) who have had sight of this judgment concur that for all the reasons given therein, that the appeal be dismissed with costs and that the deposit be paid out to the respondent to account of their taxed costs.