A ECON ANTRI LTD.

v.

ROM INDUSTRIES LTD. & ANR.

(Criminal Appeal No. 1079 of 2006)

B AUGUST 26, 2013

[P. SATHASIVAM, CJI., RANJANA PRAKASH DESAI AND RANJAN GOGOI, JJ.]

Negotiable Instruments Act, 1881 – s.142(b) and s.138, C *proviso (c) – Cheque bouncing case – Complaint filed u/s.138 of NI Act – Limitation period – One month period prescribed u/s. 142(b) of NI Act – Manner of calculation – Held: The period should be reckoned by excluding date on which cause of action arose – Where a particular time is given, from a* D *certain date, within which an act is to be done, the day of the date is to be excluded – Inapplicability of the Limitation Act – General Clauses Act, 1897 – s.9 – Limitation Act, 1963.*

Words and Phrases – words 'of', 'from' and 'after'.

E **The question for consideration before this Court was: whether a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 is within or beyond time if it is not filed within one month from the date on which the cause of action arose under clause (c) of the** F **proviso to Section 138 of the NI Act. Reframed in simpler language, the question for consideration was whether for 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** G **action arose.**

Answering the Reference, the Court

HELD:1.1. It is not possible to hold that the word 'of'

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occurring in Section 138(c) and 142(b) of the Negotiable Instruments Act, 1881 is to be interpreted differently as against the word 'from' occurring in Section 138(a) of the N.I. Act; and that for the purposes of Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting day on which the cause of action arises should be included for computing the period of 30 days. The words 'of', 'from' and 'after' may, in a given case, mean really the same thing. The word 'of' is sometimes equivalent of 'after'. Even though Limitation Act is held to be not applicable to the NI Act, the above conclusion can be reached on the basis of Section 9 of the General Clauses Act, 1897 and on the basis of a long line of English decisions that where a particular time is given, from a certain date, within which an act is to be done, the day of the date is to be excluded. Section 9 of the General Clauses Act, 1897 states that in any Central Act or Regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient to use the word 'from' for the purpose of excluding the first in a series of days or any other period of time and to use the word 'to' for the purpose of including the last in a series of days or any other period of time. Sub-Section (2) of Section 9 of the General Clauses Act, 1897 states that this Section applies to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887. This Section would, therefore, be applicable to the N.I. Act. [Paras 22, 24 and 17] [95-A-C; 103-B-D; 104-B-C]

1.2. It is thus held that for the purpose of calculating the period of one month, which is prescribed under Section 142(b) of the N.I. Act, the period has to be reckoned by excluding the date on which the cause of action arose. [Para 25] [104-E]

A *Saketh India Ltd. & Ors. v. India Securities Ltd.* **(1999) 3 SCC 1: 1999 (1) SCR 963 – affirmed.**

SIL Import, USA v. Exim Aides Silk Exporters, Bangalore **(1999) 4 SCC 567: 1999 (2) SCR 958 – overruled.**

B *Danial Latifi and Another v. U.O.I.* **(2001) 7 SCC 740: 2001 (3) Suppl. SCR 419 – held inapplicable.**

Vasantlal Ranchhoddas Patel & Ors. v. Union of India & Ors. **AIR 1967 Bombay 138 – approved.**

C *Haru Das Gupta v. State of West Bengal* **(1972) 1 SCC 639: 1972 (3) SCR 329 and** *Tarun Prasad Chatterjee v. Dinanath Sharma* **(2000) 8 SCC 649: 2000 (3) Suppl. SCR 634 --relied on.**

D *Jindal Steel and Power Ltd. & Anr. v. Ashoka Alloy Steel Ltd. & Ors.* **(2006) 9 SCC 340;** *Subodh S. Salaskar v. Jayprakash M. Shah & Anr.* **(2008)13 SCC 689: 2008 (11) SCR 681;** *State of Himachal Pradesh & Anr. v. Himachal Techno Engineers & Anr.* **(2010) 12 SCC 210: 2010 (8) SCR** E **1025;** *The Member, Board of Revenue v. Arthur Paul Benthall* **AIR 1956 SC 35: 1955 SCR 842;** *The Labour Commissioner, Madhya Pradesh v. Burhanpur Tapti Mills Ltd. and others* **AIR 1964 SC 1687: 1964 SCR 484;** *B.R. Enterprises etc. V. State of U.P. & Ors. etc.* **(1999) 9 SCC 700: 1999 (2) SCR 1111;** F *Kailash Nath Agarwal and ors. v. Pradeshiya Industrial & Investment Corporation of U.P. Ltd. and another* **(2003) 4 SCC 305: 2003 (1) SCR 1159;** *DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and others* **(2003) 5 SCC 622: 2003 (2) SCR 1 and** *Gopaldas Udhavdas* G *Ahuja and another v. Union of India and others* **(2004) 7 SCC 33; 2004 (2) Suppl. SCR 942 – referred to.**

The Goldsmiths' Company v. The West Metropolitan Railway Company **(1904) 1 K.B;** *Cartwright v. MacCormack* [1963] 1 All E.R. 11; *Marren v. Dawson Bentley & Co. Ltd.*

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(1961) 2Q.B. 135; *Radcliffe v. Bartholomew* **(1892) 1 Q.B.161**; *Stewart v. Chapman* (1951) 2 KB 792; *In re. North. Ex parte Hasluck* **(1895) 2 Q.B. 264**; *Lester v. Garland* 15 Ves. 248 and Ex parte Fallon **(1793) 5 Term Rep 283 – referred to.** A

Halsbury's laws of England **3rd Edn., vol. 37 p. 95 – referred to.** B

Case Law Reference:

1999 (1) SCR 963	**affirmed**	**Para 2**	C
1999 (2) SCR 958	**overruled**	**Para 3**	
1972 (3) SCR 329	**relied on**	**Para 5**	
(2006) 9 SCC 340	**referred to**	**Para 5**	D
2008 (11) SCR 681	**referred to**	**Para 5**	
2010 (8) SCR 1025	**referred to**	**Para 6**	
2000 (3) Suppl. SCR 634	**relied on**	**Para 6**	
1955 SCR 842	**referred to**	**Para 7**	E
1964 SCR 484	**referred to**	**Para 7**	
1999 (2) SCR 1111	**referred to**	**Para 7**	
2003 (1) SCR 1159	**referred to**	**Para 7**	F
2003 (2) SCR 1	**referred to**	**Para 7**	
2001 (3) Suppl. SCR 419	**held inapplicable**	**Para 7**	
(1904) 1 K.B	**referred to**	**Para 10**	G
[1963] 1 All E.R. 11	**referred to**	**Para 11**	
(1961) 2Q.B. 135	**referred to**	**Para 12**	

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A	**(1892) 1 Q.B.161**	**referred to**	**Para 12**
	(1951) 2 KB 792	**referred to**	**Para 13**
	(1895) 2 Q.B. 264	**referred to**	**Para 14**
B	**15 Ves. 248**	**referred to**	**Para 14**
	AIR 1967 Bombay 138	**approved**	**Para 21**
	2004 (2) Suppl. SCR 942	**referred to**	**Para 21**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal C No. 1079 of 2006.

From the Judgment & Order dated 09.08.2004 of the High Court of Madhya Pradesh Bench at Gwalior in Miscellaneous Cr. No. 4385 of 2002.

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Prerna Mehta, Ankur Mody, Vikas Mehta for the Appellant.

Sunil Gupta, Jasbir Singh Malike, Varun Punia, Kamakshi S. Mehlwal for the Respondents.

E The Judgment of the Court was delivered by

(SMT.) RANJANA PRAKASH DESAI, J. 1. On 13/10/2006, while granting leave in Special Leave Petition (Criminal) No.211 of 2005, this Court passed the following order:

F *"In our view, the judgment relied upon by the counsel for the appellant in the case of* ***Saketh India Ltd. & Ors. v. India Securities Ltd. (1999) 3 SCC 1*** *requires reconsideration. Orders of the Hon'ble the Chief Justice may be obtained for placing this matter before a larger* G *Bench."*

Pursuant to the above order, this appeal is placed before us.

2. Since the referral order states that the judgment of this

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Court in *Saketh India Ltd. & Ors. v. India Securities Ltd.*[1] ("**Saketh**") requires reconsideration, we must first refer to the said judgment. In that case, this Court identified the question of law involved in the appeal before it as under:

> *"Whether the complaint filed under Section 138 of the NI Act is within or beyond time as it was contended that it was not filed within one month from the date on which the cause of action arose under clause (c) of the proviso to Section 138 of the NI Act?"*

The same question was reframed in simpler language as under:

> *"Whether for calculating the period of one month which is prescribed under Section 142(b), the period has to be reckoned by excluding the date on which the cause of action arose?"*

3. It is pointed out to us that there is a variance between the view expressed by this Court on the above question in *Saketh* and in *SIL Import, USA v. Exim Aides Silk Exporters, Bangalore.*[2] We will have to therefore re-examine it for the purpose of answering the reference. The basic provisions of law involved in this reference are proviso (c) to Section 138 and Section 142(b) of the Negotiable Instruments Act, 1881 ("**the NI Act**").

4. Facts of *Saketh* need to be stated to understand how the above question of law arose. But, before we turn to the facts, we must quote Section 138 and Section 142 of the N.I. Act. We must also quote Section 12(1) and (2) of the Limitation Act, 1963 and Section 9 of the General Clauses Act, 1897, on which reliance is placed in *Saketh.*

Section 138 of the N.I. Act reads as under:

1. (1999) 3 SCC 1.
2. (1994) 4 SCC 567.

A **"138. Dishonour of cheque for insufficiency, etc., of funds in the account.** Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part,
B of any debt or other liability, is returned by the bank unpaid. either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person
C shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

D Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or
E within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the Cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt
F of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case
G may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

Section 142 of the N.I. Act reads as under:

"142. Cognizance of offences: Notwithstanding anything
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contained in the Code of Criminal Procedure, 1973 (2 of 1974),- A

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque; B

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138; C

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138." D

Sections 12(1) and (2) of the Limitation Act, 1963 reads as under: E

"**12. Exclusion of time in legal proceedings.- (1)** 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. F

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order G appealed from or sought to be revised or reviewed shall be excluded."

Section 9 of the General Clauses Act, 1897 reads as under: H

A **"9. Commencement and termination of time.-**

(1) In any [Central Act] or Regulation made after the commencement of this 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".

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

5. In *Saketh* cheques dated 15/3/1995 and 16/3/1995 issued by the accused therein bounced when presented for encashment. Notices were served on the accused on 29/9/1995. As per proviso (c) to Section 138 of the NI Act, the accused were required to make the payment of the said amount within 15 days of the receipt of the notice i.e. on or before 14/10/1995. The accused failed to pay the amount. The cause of action, therefore, arose on 15/10/1995. According to the complainant for calculating one month's period contemplated under Section 142(b), the date '15/10/1995' has to be excluded. The complaint filed on 15/11/1995 was, therefore, within time. According to the accused, however, the date on which the cause of action arose i.e. '15/10/1995' has to be included in the period of limitation and thus the complaint was barred by time. The accused, therefore, filed petition under Section 482 of the Code of Criminal Procedure, 1973 (**"the Code"**) for quashing the process issued by the learned Magistrate. That petition was rejected by the High Court. Hence, the accused approached this Court. This Court referred to its judgment in *Haru Das Gupta v. State of West Bengal.*[3] wherein it was held that the rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded; the effect of defining the

H 3. (1972) 1 SCC 639.

period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. Referring to several English decisions on the point, this Court observed that the 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. This Court observed that this principle is also incorporated in Section 9 of the General Clauses Act, 1897. This Court further observed that there is no reason for not adopting the rule enunciated in *Haru Das Gupta,* which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. This Court went on to observe that ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Following the said rule in the facts before it, this Court excluded the date '15/10/1995' on which the cause of action had arisen for counting the period of one month. *Saketh* has been followed by this Court in *Jindal Steel and Power Ltd. & Anr. v. Ashoka Alloy Steel Ltd. & Ors.*[4] In *Subodh S. Salaskar v. Jayprakash M. Shah & Anr.,*[5] there is a reference to *Jindal Steel & Power Ltd.*

6. We have heard learned counsel for the parties at some length. We have also carefully perused their written submissions. Ms. Prerna Mehta, learned counsel for the appellant submitted that *Saketh* lays down the correct law. She submitted that as held by this Court in *Saketh* while computing the period of one month as provided under Section 142(b) of the N.I. Act, the first day on which the cause of action has arisen has to be excluded. The same principle is applicable in computing the period of 15 days under Section 138(c) of the N.I. Act. Counsel submitted that *Saketh* has been followed by this Court in *Jindal Steel and Power Ltd.* and *Subodh S. Salaskar.* Counsel also relied on Section 12(1) of the Limitation Act, 1961 which provides that the first day on which cause of

4. (2006) 9 SCC 340.

5. (2008) 13 SCC 689.

A action arises is to be excluded. In this connection counsel relied on *State of Himachal Pradesh & Anr. v. Himachal Techno Engineers & Anr.*,[6] where it is held that Section 12 of the Limitation Act is applicable to the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act"), which is a statute
B providing for its own period of limitation. Counsel submitted that the N.I. Act is a special statute and it does not expressly bar the applicability of the Limitation Act. Counsel submitted that if this Court reaches a conclusion that the provisions of the Limitation Act are not applicable to the N.I. Act, it should hold
C that Section 9 of the General Clauses Act, 1897 covers this case. Counsel submitted in *Tarun Prasad Chatterjee v. Dinanath Sharma*[7] Section 12 of the Limitation Act is held to be in pari materia with Section 9 of the General Clauses Act. Counsel submitted that in the same judgment this Court has
D held that use of words 'from' and 'within' does not reflect any contrary intention and the first day on which the cause of action arises has to be excluded. Counsel submitted that in the circumstances this Court should hold that *Saketh* lays down correct proposition of law.

E 7. Shri Sunil Gupta, learned senior counsel for the respondents, on the other hand, submitted that the provisions of the N.I. Act provide for a criminal offence and punishment and, therefore, must be strictly construed. Counsel submitted that it is well settled that when two different words are used in
F the same provision or statute, they convey different meaning. [*The Member, Board of Revenue v. Arthur Paul Benthall*[8], *The Labour Commissioner, Madhya Pradesh v. Burhanpur Tapti Mills Ltd. and others*[9], *B.R. Enterprises etc. V. State of U.P. & Ors. etc.*[10], *Kailash Nath Agarwal and ors. v. Pradeshiya*

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6. (2010) 12 SCC 210.
7. (2000) 8 SCC 649.
8. AIR 1956 SC 35.
9. AIR 1964 SC 1687.

H 10. (1999) 9 SCC 700.

Industrial & Investment Corporation of U.P. Ltd. and another[11], *DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana and others*[12]]. Counsel pointed out that Section 138(a) provides a period of 6 months from the date on which the Cheque is drawn, as the period within which the Cheque is to be presented to the bank. Section 138(b) provides that the payee must make a demand of the amount due to him within 30 days of the receipt of information from the bank. Section 138(c) uses the words 'within 15 days of the receipt of notice'. Using two different words 'from' and 'of' in the same Section at different places clarifies the intention of the legislature to convey different meanings by the said words. According to counsel, seen in this light, the word 'of' occurring in Section 138(c) and Section 142(b) is to be interpreted differently as against the word 'from' occurring in Section 138(a). The word 'from' may be taken as implying exclusion of the date in question and may well be governed by the General Clauses Act, 1897. However, the word 'of' is different and needs to be interpreted to include the starting day of the commencement of the prescribed period. It is not governed by Section 9 of the General Clauses Act, 1897. Thus, for the purposes of Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting date on which the cause of action arises should be included for computing the period of 30 days. Counsel further submitted that Section 138(c) and Section 142(b) prescribe the period within which certain acts are required to be done. Section 12(1) of the Limitation Act cannot be resorted to so as to extend that period even by one day. If the starting point is excluded, that will render the word 'within' of Section 142(b) of the N.I. Act otiose. Counsel submitted that the word 'within' has been held by this Court to mean 'on or before'. *[Danial Latifi and Another v. U.O.I.*[13]] Therefore, the

11. (2003) 4 SCC 305.

12. (2003) 5 SCC 622.

13. (2001) 7 SCC 740.

A complaint under Section 142(b) should be filed on or before or within, 30 days of the date on which the cause of action under Section 138(c) arises. Counsel submitted that there is no justification to exclude the 16th day of the 15 day period under Section 138(c) or the first day of the 30 days period under B Section 142(b) as has been wrongly decided in *Saketh*. This would amount to exclusion of the starting date of the period. Such exclusion has been held to be against the law in *SIL Import USA*. Counsel further submitted that the provisions of the Limitation Act are not applicable to the N.I. Act as held by this C Court in *Subodh S. Salaskar*. Counsel pointed out that by Amending Act 55 of 2002, a proviso was added to Section 142(b) of the N.I. Act. It bestows discretion upon the court to accept a complaint after the period of 30 days and to condone the delay. This amendment signifies that prior to this amendment the courts had no discretion to condone the delay D or exclude time by resorting to Section 5 of the Limitation Act. The statement of objects and reasons of the Amending Act 55 of 2002 confirms the legal position that the N.I. Act being a special statute, the Limitation Act is not applicable to it. Counsel submitted that the judgment of this Court on the Arbitration Act E is not applicable to this case because Section 43 of the Arbitration Act specifically makes the Limitation Act applicable to arbitrations. Counsel submitted that in view of the above, it is evident that *Saketh* does not lay down the correct law. It is *SIL Import USA* which correctly analyses the provisions of law F and lays down the law. Counsel urged that the reference be answered in light of his submissions.

8. It is necessary to first refer to *SIL Import USA* on which heavy reliance is placed by the respondents as it takes a view G contrary to the view taken in *Saketh*. In *SIL Import USA*, the complainant-Company's case was that the accused owed a sum of US $ 72,075 (equivalent to more than 26 lakhs of rupees) to it towards the sale consideration of certain materials. The accused gave some post-dated Cheques in repayment thereof. H Two of the said Cheques when presented on 3/5/1996 for

encashment were dishonoured with the remark "no sufficient funds". The complainant sent a notice to the accused by fax on 11/6/1996. On the next day i.e. 12/6/1996 the complainant also sent the same notice by registered post which was served on the accused on 25/6/1996. On 8/8/1996 the complainant filed a complaint under Section 138 of the N.I. Act. Cognizance of the offence was taken and process was issued. Process was quashed by the Magistrate on the grounds urged by the accused. The complainant moved the High Court. The High Court set aside the Magistrate's order and restored the complaint. That order was challenged in this Court. The only point which was urged before this Court was that the Magistrate could not have taken cognizance of the offence after the expiry of 30 days from the date of cause of action. This contention was upheld by this Court. This Court held that the notice envisaged in clause (b) of the proviso to Section 138 transmitted by fax would be in compliance with the legal requirement. There was no dispute about the fact that notice sent by fax was received by the complainant on the same date i.e. 11/6/1996. This Court observed that as per clause (c) of Section 138, starting point of period for making payment is the date of receipt of the notice. Once it starts, the offence is completed on failure to pay the amount within 15 days therefrom. Cause of action would arise if the offence is committed. Thus, it was held that since the fax was received on 11/6/1996, the period of 15 days for making payment expired on 26/6/1996. Since amount was not paid, offence was committed and, therefore, cause of action arose from 26/6/1996 and the period of limitation for filing complaint expired on 26/7/1996 i.e. the date on which period of one month expired as contemplated under Section 142(b). The complaint filed on 8/8/1996 was, therefore, beyond the period of limitation. The relevant observations of this Court could be quoted hereunder:

> "**19.** The High Court's view is that the sender of the notice must know the date when it was received by the sendee,

A for otherwise he would not be in a position to count the period in order to ascertain the date when cause of action has arisen. The fallacy of the above reasoning is that it erases the starting date of the period of 15 days envisaged in clause (*c*). As per the said clause the starting date is B the date of "the receipt of the said notice". Once it starts, the offence is completed on the failure to pay the amount within 15 days therefrom. Cause of action would arise if the offence is committed.

C **20.** If a different interpretation is given the absolute interdict incorporated in Section 142 of the Act that no court shall take cognizance of any offence unless the complaint is made within one month of the date on which the cause of action arises, would become otiose."

D 9. Undoubtedly, the view taken in *SIL Import USA* runs counter to the view taken in *Saketh.* What persuaded this Court in *Saketh* to take the view that in computing time, the rule is to exclude the first day and include the last can be understood if we have a look at the English cases which have been referred E to in the passage quoted therein from *Haru Das Gupta.*

10. We must first refer to *The Goldsmiths' Company v. The West Metropolitan Railway Company.*[14] In that case, under a special Act, a railway company was empowered to take lands compulsorily for the purpose of its undertaking, and the powers F of the company for this purpose were to cease after the expiration of three years from the passing of the Act. The Act received the Royal assent on 9/8/1899. On 9/8/1902 the railway company gave notice to the plaintiffs to treat for the purchase of lands belonging to them which were scheduled in the special G Act. The question was whether the notice was served on the plaintiffs within three years. It was held that the notice was served within the prescribed time because the day of the

H 14. (1904) 1 K.B, at p.1, 5.

passing of the Act i.e. 9/8/1899 had to be excluded. The relevant observations of the Court may be quoted as under:

> *"The true principle that governs this case is that indicated in the report of Lester v. Garland[15], where Sir William Grant broke away from the line of cases supporting the view that there was a general rule that in cases where time is to run from the doing of an act or the happening of an event the first day is always to be included in the computation of the time. The view expressed by Sir William Grant was repeated by Parke B. in Russell v. Ledsam[16], and by other judges in subsequent cases. The rule is now well established that where a particular time is given, from a certain date, within which an act is to be done, the day of the date is to be excluded."*

11. The second case referred to is *Cartwright v. MacCormack*[17]. In that case, the plaintiffs met with an accident at 5.45 p.m. on 17/12/1959. He was run into by the defendant driving a motor car. He issued his writ in this action claiming damages for personal injuries. The defendant initiated third party proceedings against the respondent insurance company, alleging the company's liability to indemnify him under an instrument called a temporary cover note admittedly issued by the insurance company on 2/12/1959. The insurance company *inter alia* contended that the policy had expired before the accident happened. The insurance company succeeded on this point. On appeal the insurance company reiterated that the cover note issued by the insurance company contained the expression 'fifteen days from the date of commencement of policy'. On the same note date and time were noted as 2/12/1959 and 11.45 a.m. It was argued that the fifteen days started at 11.45 a.m. on 2/12/1959 and expired at the same time on

15. 15 Ves. 248; 10 R.R. 68.

16. 14 M. & W. 574.

17. [1963] 1 All E.R. 11.

A 17/12/1959. The accident occurred at 5.45 p.m. on 17/12/1959 and, therefore, it was not covered by the insurance policy. The Court of Appeal treated the expression 'fifteen days from the commencement of the policy' as excluding the first date and the cover note was held to commence at midnight of that date.
B It was observed that the policy expired fifteen days from 2/12/1959 and these words *on the ordinary rules of construction exclude the first date and begin at midnight on that day,* therefore, the policy would cover the accident which had occurred at 5.45 p.m. on 17/12/1959.

C 12. The third case referred to is *Marren v. Dawson Bentley & Co. Ltd.*[18]. In that case on 8/11/1954 an accident occurred whereby the plaintiff was injured in the course of his employment with the defendants. On 8/11/1957, he issued a writ claiming damages for the injuries which he alleged were
D caused by the defendants' negligence. The defendants pleaded, *inter alia*, that the plaintiff's cause of action, if any, accrued on 8/11/1954 and the proceedings had not been commenced within the period of three years thereof contrary to Section 2(1) of the Limitation Act, 1939. It was held that the
E day of the accident was to be excluded from the computation of the period within which the action should be brought and, therefore, the defendants' plea must fail. While coming to this conclusion reliance was placed on passages from *Halsbury's laws of England*[19]. It is necessary to quote those passages:

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> *"207. 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 rule is*
G *especially reasonable in the case in which that person is not necessarily cognisant of the act or event; and further in support of it there is the consideration that in case the period allowed was one day only, the*

18. (1961) 2 Q.B. 135.

H 19. 2nd ed., vol 32 p. 142.

consequence of including that day would be to reduce to a few hours or minutes the time within which the person affected should take action. A

208. In view of these considerations the general rule is that, as well in cases where the limitation of time is imposed by the act of a party as in those where it is imposed by statute, the day from which the time begins to run is excluded; 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." B C

Reliance was also placed in this judgment on *Radcliffe v. Bartholomew*[20]. In that case on June 30 an information was laid against the appellant therein in respect of an act of cruelty alleged to have been committed by him on May 30. An objection was taken on the ground that the complaint had not been made within one calendar month after the cause of the complaint had arisen. it was held that the day on which the alleged offence was committed was to be excluded from the computation of the calendar month within which the complaint was to be made; that the complaint was, therefore, made in time. D E

13. The fourth case referred to is *Stewart v. Chapman*[21]. In that case, an information was preferred by a police constable that Mr. Chapman had on 11/1/1951 driven a motor car along a road without due care and attention contrary to Section 12 of the Road Traffic Act, 1930. At hearing, a preliminary objection was taken that the notice of intended prosecution had not been served on the defendant within fourteen days of commission of offence in accordance with Section 21 of the Road Traffic Act, 1930, inasmuch as although the alleged offence was committed at 7.15 a.m. on 11/1/1951, the prosecutor did not send the F G

20. (1892) 1 Q.B. 161.

21. (1951) 2 KB 792. H

A notice of intended prosecution by registered post; until 1.00 p.m. on 11/1/1951 and it was not delivered to the defendant until 25/1/1951 at about 8.00 a.m. This submission was rejected observing that in calculating the period of fourteen days within which the notice of an intended prosecution must be served
B under Section 21 of the Road Traffic Act, 1930, the date of commission of the offence is to be excluded.

14. In *re. North. Ex parte Hasluck*[22], the execution creditor obtained judgment on 19/5/1893. An order was made authorizing sale of the bankrupt's goods. The purchase money
C thereunder was paid to the sheriff on July 18. The sheriff retained the money for fourteen days in compliance with Section 11 of the Bankruptcy Act, 1890. In August, the solicitor of the execution creditor paid over the said money to the execution creditor. Application was filed by the trustee in bankruptcy for
D an order calling upon the execution creditor and his solicitor to pay over to the trustee, the proceeds of an execution against the bankruptcy goods on the ground that at the time of the sale they had notice of prior act of bankruptcy on the part of the bankrupt. Under Section 1 of the Bankruptcy Act, 1890, a debtor
E commits an act of bankruptcy if execution against him has been levied by seizure of his goods, and the goods have been held by the sheriff for twenty one days. The time limit of twenty one days was an allowance of time to the debtor within which to redeem if he can. It was under these circumstances it became
F necessary to ascertain whether there was, in fact, a holding by the sheriff for twenty one days prior to the sale. If there was, then neither the execution creditor, nor his solicitor could be heard to say that they had no notice of such possession and the act of bankruptcy thereby constituted. Vaughan Williams,
G J. held that if the goods were seized on June 27 and sold on July 18, if June 27 is excluded, there was no holding by the sheriff for 21 days and consequently there was no act of bankruptcy and therefore execution creditor is not bound to hand over the money on the ground that he received it with

H 22. (1895) 2 Q.B. 264.

notice of an act of bankruptcy. On appeal the same view was reiterated. Rigby L.J referred to *Lester v. Garland*[23] where Sir W. Grant expressed that if there were to be a general rule, it ought to be one of exclusion, as being more reasonable than one to the opposite effect.

15. We shall now turn to *Haru Das Gupta,* where this Court has followed the law laid down in the above judgments. In that case, the petitioner therein was arrested and detained on 5/2/1971 by order of District Magistrate passed on that day. The order of confirmation and continuation, which has to be passed within three months from the date of detention, was passed on 5/5/1971. The question for decision was as to when the period of three months can be said to have expired. It was contended by the petitioner that the period of three months expired on the midnight of 4/5/1971, and any confirmation and continuation of detention thereafter would not be valid. This Court referred to several English decisions on the point apart from the above decisions and rejected this submission holding that the day of commencement of detention namely 5/2/1971 has to be excluded. Relevant observations of this could read as under:

> *"These decisions show that courts have drawn a distinction between a term created within which an act may be done and a time limited for the doing of an act. The rule is well-established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded. (See Goldsmiths Company v. the West Metropolitan Railway Company). This rule was followed in Cartwright v. Maccormack where the expression "fifteen days from the date of commencement of the policy" in a cover note issued by an insurance company was construed as excluding the first date and the cover note to commence at midnight of that day, and also in Marren v. Damson Bentley & Co. Ltd. a case for compensation for injuries*

23. 15 Ves. 248.

A *received in the course of employment, where for purposes of computing the period of limitation the date of the accident, being the date of the cause of action, was excluded. (See also Stewart v. Chadman and In re North, Ex parte Wasluck). Thus, as a general rule the effect of*
B *defining a period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. [See Halsbury's Laws of England, (3rd Edn.). Vol. 37, pp. 92 and 95.] There is no reason why the aforesaid rule of construction followed*
C *consistently and for so long should not also be applied here."*

16. We have extensively referred to *Saketh*. The reasoning of this Court in *Saketh* based on the above English decisions and decision of this Court in *Haru Das Gupta* which aptly lay
D down and explain the principle that where a particular time is given from a certain date within which an act has to be done, the day of the date is to be excluded, commends itself to us as against the reasoning of this Court in *SIL Import USA* where there is no reference to the said decisions.

E

17. It was submitted that in *Saketh* this Court has erroneously placed reliance on Section 12(1) and (2) of the Limitation Act, 1963. Section 12 (1) states that in computing the period of limitation for any suit, appeal or application, the
F day from which such period is to be reckoned, shall be excluded. In Section 12(2) the same principle is extended to computing period of limitation for an application for leave to appeal or for revision or for review of a judgment. Our attention was drawn to *Subodh S. Salaskar* wherein this Court has held
G that the Limitation Act, 1963 is not applicable to the N.I. Act. It is true that in *Subodh S. Salaskar,* this Court has held that the Limitation Act, 1963 is not applicable to the N.I. Act. However even if the Limitation Act, 1963 is held not applicable to the N.I. Act, the conclusion reached in *Saketh* could still be reached with the aid of Section 9 of the General Clauses Act, 1897.
H

Section 9 of the General Clauses Act, 1897 states that in any Central Act or Regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient to use the word 'from' for the purpose of excluding the first in a series of days or any other period of time and to use the word 'to' for the purpose of including the last in a series of days or any other period of time. Sub-Section (2) of Section 9 of the General Clauses Act, 1897 states that this Section applies to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887. This Section would, therefore, be applicable to the N.I. Act.

18. Counsel, however, submitted that using two different words 'from' and 'of' in Section 138 at different places clarifies the intention of the legislature to convey different meanings by the said words. He submitted that the word 'of' occurring in Sections 138(c) and 142(b) of the N.I. Act is to be interpreted differently as against the word 'from' occurring in Section 138(a) of the N.I. Act. The word 'from' may be taken as implying exclusion of the date in question and that may well be governed by the General Clauses Act, 1897. However, the word 'of' is different and needs to be interpreted to include the starting day of the commencement of the prescribed period. It is not governed by Section 9 of the General Clauses Act 1897. Thus, according to learned counsel, for the purposes of Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting date on which the cause of action arises should be included for computing the period of 30 days..

19. We are not impressed by his submission. In this connection, we may refer to *Tarun Prasad Chatterjee*. Though, this case relates to the provisions of the Representation of the People Act, 1951 (for short 'the RP Act, 1951'), the principle laid down therein would have a bearing on the present case. What is important to bear in mind is that the Limitation Act is

A not applicable to it. In that case the short question involved was whether in computing the period of limitation as provided in Section 81(1) of the RP Act, 1951, the date of election of the returned candidate should be excluded or not. The appellant was declared elected on 28/11/1998. On 12/1/1999, the B respondent filed an election petition under Section 81(1) of the RP Act, 1951 challenging the election of the appellant. The appellant filed an application under Order VII Rule 11 of the CPC read with Section 81 of the RP Act, 1951 praying that the election petition was liable to be dismissed at the threshold as C not maintainable as the same had not been filed within 45 days from the date of election of the returned candidate. While dealing with this issue, this Court referred to Section 67-A of the RP Act, 1951 which states that for the purpose of the RP Act, 1951 the date on which a candidate is declared by the returning officer under Section 53 or Section 66 to be elected D shall be the date of election of the candidate. As stated earlier, the appellant was declared elected as per this provision by the returning officer on 28/11/1998. Section 81 of the RP Act, 1951 which relates to presentation of petition reads thus:

E *"**81. Presentation of petitions.** — (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five* F *days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.*

G ***Explanation**.—In this sub-section, 'elector' means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.*

* * *

H

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

Before analyzing this provision, this Court made it clear that it was an accepted position that the Limitation Act had no application to the RP Act, 1951. This Court then referred to sub-clause (1) of Section 9 of the General Clauses Act, 1897, which states that 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 words 'from' and for the purpose of including last in a series of days or any other period of time to use the word 'to'. This Court observed that Section 9 gives statutory recognition to the well established principle applicable to the construction of statute that ordinarily in computing the period of time prescribed, the rule observed is to exclude the first and include the last day. This Court quoted the relevant provisions of Halsbury's Laws of England, 37th Edn., Vol.3, p. 92. We deem it appropriate to quote the same.

"Days included or excluded — When a period of time running from a given day or even to another day or event is prescribed by law or fixed as contract, and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last-mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as 'from such a day' or 'until such a day' are equivocal, since they do not make it clear whether the inclusion or the exclusion of the day named may be intended. As a general rule, however, the effect of defining a period in such a manner is to

A *exclude the first day and to include the last day."*

The further observations made by this Court are pertinent and need to be quoted:

B *"12. Section 9 says that in any Central Act or regulation made after the commencement of the General Clauses Act, 1897, 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 period of time,*
C *to use the word "to". The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word "from" is used indicating the beginning, the opening day is to be excluded and if the last day is to be included the word "to" is to be used. In*
D *order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. For instance, if a*
E *policy of insurance has to be good for one day from 1st January, it might be valid only for a few hours after its execution and the party or the beneficiary in the insurance policy would not get reasonable time to lay claim, unless 1st January is excluded from the period of*
F *computation."*

It was argued in that case that the language used in Section 81(1) that "within forty-five days from, but not earlier than the date of election of the returned candidate" expresses a different intention and Section 9 of the General Clauses Act
G has no application. While rejecting this submission, this Court observed that:

"We do not find any force in this contention. In order to apply Section 9, the first condition to be fulfilled is
H *whether a prescribed period is fixed "from" a particular*

When the period is marked by terminus a quo and terminus ad quem, the canon of interpretation envisaged in Section 9 of the General Clauses Act, 1897 require to exclude the first day. The words "from" and "within" used in Section 81(1) of the RP Act, 1951 do not express any contrary intention."

This Court concluded that a conjoint reading of Section 81(1) of the RP Act, 1951 and Section 9 of the General Clauses Act, 1897 leads to the conclusion that the first day of the period of limitation is required to be excluded for the convenience of the parties. This Court observed that if the declaration of the result is done late in the night, the candidate or elector would hardly get any time for presentation of election petition. Law comes to the rescue of such parties to give full forty-five days period for filing the election petition. In the facts before it since the date of election of the returned candidate was 28/11/1998, the election petition filed on 12/1/1999 on exclusion of the first day from computing the period of limitation, was held to be in time.

20. As the Limitation Act is held to be not applicable to N.I. Act, drawing parallel from *Tarun Prasad Chatterjee* where the Limitation Act was held not applicable, we are of the opinion that with the aid of Section 9 of the General Clauses Act, 1897 it can be safely concluded in the present case that while calculating the period of one month which is prescribed under Section 142(b) of the N.I. Act, the period has to be reckoned by excluding the date on which the cause of action arose. It is not possible to agree with the counsel for the respondents that the use of the two different words 'from' and 'of' in Section 138 at different places indicates the intention of the legislature to convey different meanings by the said words.

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 & Ors. v. Union of India &*

A *Ors.*[24] which is approved by this Court in *Gopaldas Udhavdas Ahuja and another v. Union of India and others*[25], 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
B 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
C 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
D 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, where any goods are seized under sub-
E 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
F 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.
G 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

24. AIR 1967 Bombay 138.

H 25. (2004) 7 SCC 33.

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:

> *"... ... ...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 v. Laxman Savleram, AIR 1938 Bom 447, Dharamraj v Addl. Deputy Commr., Akola, AIR 1957 Bom 154, Puranchand v. Mohd Din. AIR 1935 Lah 291, Marakanda Sahu v. Lal Sadananda, AIR 1952 Orissa 279, and Liquidator Union Bank, Mal, v. Padmanabha Menon, (1954) 2 Mad LJ 44.The material words in sub-s. (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 Willims v. Burgess and Walcot, (1840) 12 Ad and El 635. 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 9th December, 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*

A *of execution must be excluded, Reliance was placed on Ex parte Fallon, (1793) 5 Term Rep 283 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*
B *two provisions. In Stroud's Judicial Dictionary, Vol. 3, 1953 Edition 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*
C *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".*

Relevant extracts from *Halsbury's laws of England*[26] were quoted. They read as under:

D

"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.

E

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
F arises is excluded in the computation."

In the circumstances, it was held 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
G 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

H 26. 3rd Edn, Vol. 37 p. 95.

N.I. Act, the complaint has to be made within one month of the date of which cause of action arose. The view taken in *Vasantlal Ranchhoddas Patel* meets with our approval.

22. In view of the above, it is not possible to hold that the word 'of' occurring in Section 138(c) and 142(b) of the N.I. Act is to be interpreted differently as against the word 'from' occurring in Section 138(a) of the N.I. Act; and that for the purposes of Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting day on which the cause of action arises should be included for computing the period of 30 days. As held in *Ex parte Fallon*[27] the words 'of', 'from' and 'after' may, in a given case, mean really the same thing. As stated in Stroud's Judicial Dictionary, Vol. 3 1953 Edition, Note (5), the word 'of' is sometimes equivalent of 'after'.

23. Reliance placed on *Danial Latifi* 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 N.I. 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).

24. We may, at this stage, note that learned counsel for the appellant relied on *State of Himachal Pradesh* where, while considering the question of computation of three months' limitation period and further 30 days within which the challenge to the award is to be filed, as provided in Section 34(3) and proviso thereto of the Arbitration Act, this Court held that having regard to Section 12(1) of the Limitation Act, 1963 and Section 9 of the General Clauses Act, 1897, day from which such period

27. (1793) 5 Term Rep 283.

A is to be reckoned is to be excluded for calculating limitation. It was pointed out by counsel for the respondents that Section 43 of the Arbitration Act makes the Limitation Act, 1963 applicable to the Arbitration Act whereas it is held to be not applicable to the N.I. Act and, therefore, this judgment would B not be applicable to the present case. We have noted that in this case reliance is not merely placed on Section 12(1) of the Limitation Act. Reliance is also placed on Section 9 of the General Clauses Act. However, since, in the instant case we have reached a conclusion on the basis of Section 9 of the C General Clauses Act, 1897 and on the basis of a long line of English decisions that where a particular time is given, from a certain date, within which an act is to be done, the day of the date is to be excluded, it is not necessary to discuss whether *State of Himachal Pradesh* is applicable to this case or not D because Section 12(1) of the Limitation Act is relied upon therein.

25. Having considered the question of law involved in this case in proper perspective, in light of relevant judgments, we are of the opinion that *Saketh* lays down the correct proposition E of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142(b) of the N.I. Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that *SIL Import USA* does not lay down the correct law. Needless to say that F any decision of this Court which takes a view contrary to the view taken in *Saketh* 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.

Bibhuti Bhushan Bose Reference answered.