

APPELLATE CIVIL.

Before U Thein Maung, Chief Justice and U San Maung, J.

THE SOORTEE BARA BAZAAR Co., LTD.
(APPLICANT)

H.C.
1948

Dec. 3.

v.

THE UNION GOVERNMENT OF BURMA
(RESPONDENT).*

*Defence of Burma Act, 1940—Rules 78 and 96 of Defence of Burma Rules—
Clause 13 of the Requisitioning (Claims and Compensation) Order, 1947.*

Held : In view of the fact that the Defence of Burma Act, 1940, Defence of Burma (Repealing) Act, 1947, Defence of Burma Rules and Orders issued under such Rules, expired on the 31st July 1947, no claim under Rule 78 of Defence of Burma Rules or under clause 6 of the Requisitioning (Claims and Compensation) Order, 1947 (which had been issued under Rule 96 of Defence of Burma Rules) could be entertained after the 31st July 1947.

The Union of Burma v. Maung Maung and two others, Bur. L.R. (1949) H.C. 1 (F.B.), followed.

With the lapse of Defence of Burma Rules and Defence of Burma Act the Requisitioning (Claims and Compensation) Order, 1947, has also come to an end.

E. C. V. Foucar for the applicant.

Chan Tun Aung for the respondent.

The judgment of the Bench was delivered by

U THEIN MAUNG, C.J.—The questions which have been referred to us under clause 13 of the Requisitioning (Claims and Compensation) Order, 1947, are :

- “ (1) Whether under the circumstances of the case, a claim can be preferred before the Arbitrator under section 6 of the Requisitioning (Claims and Compensation) Order, 1947.
- (2) Whether the Defence of Burma Act and Rules, and the Requisitioning (Claims and Compensation) Order, 1947, made thereunder have ceased to be in force.”

* Civil Reference No. 6 of 1948 made by the Chief Justice, Rangoon City Civil Court, under clause 13 of the Requisitioning (Claims and Compensation) Order, 1947, in Arbitration Case No. 3 of 1948.

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A Full Bench of this Court has held recently in *The Union of Burma v. Maung Maung and two others* (1) that the Defence of Burma Act, 1940, the Defence of Burma Rules which are mentioned in the Second Schedule to the Defence of Burma (Repealing) Act, 1947 and the Orders made thereunder have expired on the 31st July 1947.

The Requisitioning (Claims and Compensation) Order, 1947, is an order made in exercise of the powers conferred by Rule 96 of the Defence of Burma Rules, which is one of the Rules mentioned in the said Schedule.

The petitioner's claim is based not only on Rule 96 but also on Rule 78 of the Defence of Burma Rules ; but Rule 78 also is among the Rules which are mentioned in the said Schedule and which have expired on the 31st July 1947.

So the learned Advocate for the petitioner has rightly conceded that the questions under reference must be answered against him in view of the said Ruling.

The first question is answered in the negative ; and the second question is answered in the affirmative. The respondent is entitled to the costs of this reference ; Advocate's fee three gold mohurs.