

(1937) 12 MAD CK 0030
In the Madras High Court

Chatlapalli Suryaprakasa Rao

APPELLANT

Vs

Poliseti Venkataratnam and Others

RESPONDENT

Date of Decision : 10-12-1937

Acts Referred:

Citation : AIR 1938 Mad 523 : (1938) 47 LW 388 : (1938) 1 MLJ 342

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—The question involved in this appeal is whether the defendants-judgment-debtors committed default in payment of

the instalments due and payable under the compromise decree obtained by the first respondent, decree-holder in this case. The decree was passed

on the 19th July, 1932, in and by which it was provided that the amount due and payable under the decree should be paid in six instalments of Rs.

1,000 each with interest at 6 per cent, on the decree amount, the first instalment falling due on the 30th September, 1933, and thereafter the

instalments to be paid on the said date each year. It also provided that the amounts paid on the said date each year should be entered upon the

decree and that, if for any reason any two successive instalments are not paid, the balance due with interest at the said rate should be recoverable

from the defendants personally and from the properties charged under the said decree. The defendants failed to pay the first instalment on 30th

September, 1933. When the due date of the second instalment, that is, 30th September, 1934, was about to expire, on 29th September, 1934, the

defendants obtained a chalan. 30th September, 1934, happening to be a Sunday, the money was paid into the Bank on the 1st October, 1934.

The question therefore is whether owing to the non-payment of the amount on 30th September, 1934, the defendants could be said to have committed default in payment of the second instalment and therefore committed default in the payment of two successive instalments in order to entitle the plaintiff-decree-holder to execute the decree for the entire amount payable thereunder. From the provisions of the decree abovementioned, it will be seen that no provision is made as to whom the money is payable. All that the compromise decree provides is that the money under the decree shall be payable in certain instalments. Under Order 20, Rule 1, all money payable under the decree shall be paid (a) into the Court whose duty it is to execute the decree, or (b) out of Court to the decree-holder, or (c) otherwise as the Court which made the decree directs. Clause (c) has no application to this case. Therefore the only clauses that do apply are clauses (a) and (b). The judgment-debtors have therefore the option either to pay the amount of the instalment into Court or out of Court to the decree-holder. In this case the judgment-debtors have exercised the option of paying the amount into Court and they are perfectly entitled to do so. The due date provided in the decree for the payment of the second instalment happening to fall on a Sunday they were entitled to deposit the amount the next day. Therefore the judgment-debtors could not be said to have committed any default in the payment of the second instalment. There is therefore no default as provided in the decree and no forfeiture incurred in order to entitle the plaintiff to execute the whole decree. We therefore set aside the order of the lower Court directing execution of the decree for the entire balance payable thereunder. But in the circumstances of this case we direct each party to bear his or their own costs of this appeal.

2. The order passed by us has reference to a state of facts which existed on the date of the order of the lower Court and will not affect any subsequent default committed by the judgment-debtors.