

(1927) 05 MAD CK 0024
In the Madras High Court

Chinna Nadar

APPELLANT

Vs

A.B.V. Arumugham Chetti

RESPONDENT

Date of Decision : 02-05-1927

Acts Referred:

Citation : AIR 1927 Mad 1196

Judgement

1. The respondent sued the appellant to recover a sum of Rs. 2,293-6-3 with interest and costs. The suit was eventually compromised. By the compromise it was agreed that the appellant was to pay to the respondent Rs. 2,100 in two months from 9th March 1925, that is to say, on or before 9th May 1925. In default, the whole amount claimed in the suit was to be paid by him with interest and costs. It was, of course, the intention that the money should be paid on or before the due date. Where a litigant agrees to accept a lesser sum than is due to him in consideration of payment within a fixed period, time is of the essence of the contract. In this case, however, the parties overlooked the fact that the Court would be closed for the vacation before 9th May. The appellant took advantage of that fact to delay payment till 11th June when the Court re-opened, thus extending the period of two months by one month and two days. The question is whether he was entitled to this advantage. Both the lower Courts found against him. There is a decision of Krishnan, J., in a case exactly similar to this. Sankaran Unni v. Raman A. I. R. 1925 Mad. 743 which is entirely in favour of the appellant. The learned Judge held that under Order 21, Rule 1, Civil P. C., the defendant had the option of paying either to the plaintiff or into Court. and that the deposit made on the re-opening day was sufficient compliance with the terms of the decree. When once it is conceded--and we think that it has to be conceded, there being no distinction in this respect between a compromise, and any other decree--that a party has the option of paying either to the decree-holder or into Court, no further argument is possible. We must follow that ruling and allow the appeal. As regards costs, however, we consider that the appellant should not be allowed any. Had he made an attempt to pay the respondent within the time agreed on and failed, the matter would have been different. As it

is, he made no such attempt. The order will be that each party shall bear his own costs throughout.