

(1960) 03 AHC CK 0014
In the Allahabad High Court
Case No : Appln. No. 22 of 1957

Raja Ram

APPELLANT

Vs

Bisram

RESPONDENT

Date of Decision : 31-03-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Post Office Act, 1898 — Section 44

Citation : AIR 1960 All 747 : (1960) 30 AWR 379

Hon'ble Judges : J.K. Tandon, J

Bench : Single Bench

Advocate : Ram Jee, for the Appellant; D.N. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

J.K. Tandon, J.—This revision is directed against the order of the learned Judge Small Causes, Sitapur by which he dismissed the applicant's objection u/s 47 of the Code of Civil Procedure. The opposite party has a decree, which apparently was passed upon a compromise arrived at between the applicant and him. The terms of the decree were that the whole of the claim of the opposite party which amounted to Rs. 358/- was decreed but it was further provided that in case the applicant paid into court a sum of Rs. 190/- within one month from 27th April, 1956, the entire decretal amount shall be deemed to have been paid off and the decree shall be taken to have been satisfied in full. The decree further went on to provide that in default of payment as aforesaid the decree-holder will be entitled to execute the decree for the full amount and costs. In brief therefore a decree for the full amount of Rs. 358/- and costs had been awarded with the stipulation attached to it that in case the applicant was able to pay Rs. 190/- within one month from 27th April, 1956 it shall stand discharged in full.

2. The facts as held by the court "below are that the applicant sent a sum of Rs. 190/- through post office by a postal money order addressed to the Judge Small Cause Court, Sitapur, on 26th May, 1956. The money order reached the office of

the Judge on 30th May, 1956 which was late by two days than the period of one month provided by the decree. The decree-holder treating that there was default by the judgment-debtor in fulfilling the stipulation regarding payment of Rs. 190/- within one month held that the entire decretal amount became payable to him (the decree-holder). The applicant feeling dissatisfied with the above order of the learned Judge has come up in revision.

3. The only point that has been urged in support of the revision is that the applicant having delivered the postal money order to the Post Office for transmission to the Judge on 26th May, 1950 there was sufficient compliance of the terms of the decree, in other words, he had not defaulted in fulfilling the obligations which entitled him to an order for full satisfaction of the decree. Since it is not disputed that the money order reached the court into which the money was required to be deposited within one month of 27th April, 1956, on the 30th day of March 1956, the answer to the plea raised by the applicant will depend on how far the post office can under the circumstances be treated to be an agent of the Court so that the delivery of the money order to the post office amounted to making the deposit into the court itself.

4. This is not a case in which the parties had independently agreed that the money shall be sent by money order, on the contrary, the terms of the decree required the amount to be deposited into court which implied that the payment shall be made by depositing the amount through normal channels into the office of the court. All those cases in which the manner of payment through post office is agreed to between the parties have thug no direct relevance. The learned counsel for the applicant relied on the case of The Commissioner of Income Tax, Bombay South, Bombay Vs. Ogale Glass Works Ltd., Ogale Wadi, to support his contention that the post office was the agent of the court.

In it the sending of cheques through post was a part of agreement between the parties, as however is not the case here. The above case is therefore clearly distinguishable. Moreover, the decision" in it was with regard to delivery of a postal article which is governed under the Post Office Act by substantially different provisions. So far as "money Orders" are concerned, the relevant provision is contained in Section 44 of the Post Office Act, 1898 and it is to the effect that a person remitting money through post office by means of a "money order" can require that the amount of the "money order" if not paid to the payee shall be repaid to him or be paid to such person other than the original payee as he should direct.

One clear implication of the above provision; is that the remitter even after the money had been delivered to the post office for transmission by "money order", retains control over it and he can, before the money is paid to the payee, require the post office to pay it back to him Or to pay to such other person other than the original payee as he should direct. The consent of the payee is unnecessary for the carrying out of any such direction or requisition by the remitter which only shows that the post office is not the agent of the payee.

5. In the case of Kirloskar Bros. Ltd. Vs. Commissioner of Income Tax, Bombay, the question arose as to whose agent post office shall be deemed to be as respects any article delivered to it for transmission. It was held in this case that:

"The posting of the cheque in Delhi does not constitute the receipt by the assessee of the cheque at Delhi, when the assessee has not requested the Government to send the cheque by post. It is only in those cases where the receiver nominates the post office as his agent that the posting of letter constitutes the receipt of it by the receiver at the time and at the place where the letter is posted. Where the post office is not nominated as an agent of the receiver then by posting the letter the sender constitutes the post office his agent and when the letter is delivered to the receiver, it is delivered by the agent of the sender and: not of the receiver."

Although this was a case of cheque sent by post, the principle discussed in it applied to the case of a money order with redoubled effect on account of the provisions in Section 44 of the Post Office Act which, as already pointed out earlier, do not constitute the post office an agent of the payee.

6. I do not under the circumstances think that the post office can be held to be the agent of the court in the instant case. Consequently the handing over of the money order to the post office on 26th April, 1956 failed to satisfy the requirement of paying the amount into court as was required by the decree. The order passed by the court below is therefore a correct order. The application is accordingly dismissed with costs.