

(1924) 11 MAD CK 0060
In the Madras High Court

Sankaran Unni and Another

APPELLANT

Vs

Kummakattil Ezhuvan Kandan's son Raman

RESPONDENT

Date of Decision : 28-11-1924

Acts Referred:

Citation : 87 Ind. Cas. 560 : (1925) 21 LW 469 : (1925) 48 MLJ 596

Hon'ble Judges : Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—In this case, the plaintiff obtained a compromise decree, by which if money was paid within the 30th Meenom, 1907 (12th April, 1922) the sum of Rs. 285 was to be taken in full satisfaction of the claim. The decree provided that, in default of such payment, the defendants were to pay the plaintiff the whole of the plaint amount with costs. The defendants put in an application to the Lower Court to have satisfaction entered of the decree, on the ground that he tendered the amount of Rs. 285 to the plaintiff, on the 12th April, 1922, but as the plaintiff did not receive that amount, he sent it by money order to the plaintiff, which again was refused and he therefore had the money ready with him to be deposited in Court to give a challan to make that deposit. That was on the re-opening day of the Court, after the mid-summer holidays, on the 12th June, 1922. The challan was granted and the money was deposited on the re-opening day. The Lower Court has found that the alleged tender out of Court is not true and in revision I must accept that finding. But it has not considered the question whether the deposit into Court on the re-opening day was not a sufficient compliance with the terms of the decree. No doubt the compromise decree says that the money is to be paid to the plaintiff. But when a decree directs money to be paid to a party, Order 21, Rule 1, Civil Procedure Code, lays down that money shall be paid either to the party in person, or shall be deposited into Court. The defendant therefore in this case had the option either of paying the money to the plaintiff, or of depositing the money into Court; and if he had deposited into Court before 12th April, no question could have arisen and the defendant would have been held to have complied with the terms of the decree. Having had that

option, the question then is whether the defendants were not in time, when they deposited the money at the earliest possible opportunity into Court. As 12th April was a holiday, the mid-summer recess having commenced by that time, the earliest day on which the money could be paid into Court, after the 12th April, was the 12th June, and the defendant complied with that condition. It seems to me, therefore, that there was a sufficient compliance with the decree on the part of the defendant and that the Lower Court should have directed the money to be paid over to the plaintiff and entered up satisfaction of the decree. A question similar to this arose in Bombay and it was held by the learned Judges of the Bombay High Court in *Wana Mard Ravji v. Natu Walad Murha* ILR (1910) B 35 that if the plaintiff chose to pay the money into Court, he found that the Court was closed on the due date and he paid it on the earliest day, on which the Court re-opened, such a payment would be a proper compliance with the terms of the decree, for Order 21, Rule 1 of the CPC says that the payment may be made into Court, or into the hands of the party. It is contended that this ruling should not be relied upon by me, because the learned Judges of the Bombay High Court have misapplied Section 10 of the General Clauses Act. It is quite true that the General Clauses Act deals with the general rules of construction of statutes and the words of Section 10 can hardly be applied to a case, where a certain thing is directed to be done by a decree of Court. But as pointed out in *Sambasiva Chari v. Ramasami Reddi* ILR (1898) M 179 : 8 MLJ 265 there is a generally recognised principle of law, under which parties, who are prevented from doing a thing, not by any default of their own, but by the Court itself, are entitled to do it; at the first subsequent opportunity. That is the general principle of equity, quite apart from the terms of Section 10 of the General Clauses Act. In fact, Section 10 is based upon that principle. In this case, the defendant had the option to pay either to the plaintiff directly, or into Court. He was entitled to choose between the two. He was prevented from paying into Court, because the Court was closed on the due date. His payment therefore on the re-opening day must, I think, be held to be a sufficient compliance with the terms of the decree. In this view, the order of the Lower Court must be set aside and the revision petition should be allowed. The decree will be entered as satisfied and the money deposited will be paid over to the plaintiff. The petitioner before me will have his costs in this Court and each party will bear his or their own costs in the Lower Court.