

## **K. Saraswathy Alias K. Kalpana (Dead) By ... vs P.S.S. Somasundaram Chettiar on 1 May, 1989**

**Equivalent citations: 1989 AIR 1553, 1989 SCR (2) 819, AIR 1989 SUPREME COURT 1553, 1989 (4) SCC 527, (1989) 2 APLJ 66, (1989) 2 JT 480 (SC), (1990) 67 COMCAS 67, 1989 2 JT 480, (1990) 1 RENCRA 349, (1990) 1 BLJ 669, (1990) BANKJ 235, (1990) 2 CIVLJ 20, (1990) 1 MAD LJ 55, (1990) 1 RRR 274, 1989 ALL CJ 440, (1989) 2 MAD LW 475, (1989) 2 CURCC 349**

**Author: R.S. Pathak**

**Bench: R.S. Pathak, Sabyasachi Mukharji, Misra Rangnath**

PETITIONER:

K. SARASWATHY ALIAS K. KALPANA (DEAD) BY LRS.

Vs.

RESPONDENT:

P.S.S. SOMASUNDARAM CHETTIAR

DATE OF JUDGMENT 01/05/1989

BENCH:

PATHAK, R.S. (CJ)

BENCH:

PATHAK, R.S. (CJ)

MUKHARJI, SABYASACHI (J)

MISRA RANGNATH

CITATION:

1989 AIR 1553

1989 SCR (2) 819

1989 SCC (4) 527

JT 1989 (2) 480

1989 SCALE (1) 1179

ACT:

Practice and Procedure: Court order providing for deposit of amount--Payment by cheque whether valid.

Original Side Rules--Madras High Court: Order XXXI Rules 1-6--Depositing Money into Court--Payment of money by cheque--Whether due compliance.

HEADNOTE:

The appellant filed a civil suit in the High Court for specific performance of a contract to sell the suit property

by the respondents to her. The High Court held the appellant liable to discharge the mortgage and directed her to deposit in Court a sum of Rs.3.5 lakhs with interest for the purpose. The appellant paid the amount direct to the mortgagee, which the High Court refused to accept as due compliance with its decree.

The appellant preferred appeals to this Court, which were disposed of on 29th November, 1979 with the direction that the appellant was to deposit within six months from the date of the order, the entire sum of Rs.3.15 lakhs together with interest.

Purporting to comply with the aforesaid order of this Court, appellant deposited a sum of Rs.2,42,822.19 on 11 April, 1980 and filed two Civil Misc. Petitions in the High Court for a declaration that the payment was in compliance with the order of this Court and claimed as set off of the amount of Rs.5,96,687.19 paid by her earlier to the South Indian Bank, which she was entitled to recover from the respondent.

The time limit fixed for fulfilling the two conditions set out in this Court's order dated 29th November, 1979 having fallen on 29th May, 1980 and the High Court not having passed orders on the appellant's two CMP's the appellant paid into the High Court a sum of Rs.6.02 lakhs on 29th May, 1980 by cheque purporting to comply with the first condition of this Court's order.

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The High Court dismissed the appellant's CMP and refused to grant the declaration that the appellant had complied with the order of this Court dated 29th November, 1979, on the ground that the appellant was bound to comply with the Original Side Rules of the High Court which prescribed the procedure to be followed in depositing money into Court particularly Order XXXI Rules 1 to 6 which aimed at securing the deposit of the money in the Reserve Bank of India to the credit of a particular proceeding, on or before the specified date.

In the appeal to this Court, on the question; whether payment made by the appellant on 29th May, 1980 by cheque of the amount of Rs.6.02 lakhs together with the amount deposited earlier on 11th May, 1980 was in due compliance with this Court's order dated 29th November, 1979.

Allowing the Appeal and setting aside the order of the High Court, this Court

HELD: 1. Payment by cheque is an ordinary incident of present day life, whether commercial or private, and unless it is specifically mentioned that payment must be in cash there is no reason why payment by cheque should not be taken to be due payment if the cheque is subsequently encashed in the ordinary course. [823D-E]

In the instant case, there is nothing in the order of this Court providing that the deposit by the appellant was to be in cash. The terms of the order dated November 29,

1979 are conclusive in this respect and it is the intent of that order which will determine whether payment by cheque within the period stipulated in that order was excluded as a mode in satisfaction of the terms of that order. The time for payment of governed by the order of this Court. [823E-F]

2. Payment on the cheque being honoured and encashed relates back to the date of the receipt of the cheque, and in law the date of payment is the date of delivery of the cheque. [823F]

Commissioner of Income Tax, Bombay South, Bombay v. Messrs Ogale Glass Works Ltd. Ogale Wadi, A.I.R. 1954 S.C. 429 referred to.

In the instant case, there is nothing to suggest that the cheque was not honoured in due course and that the Bank had at any time declined to honour it for want of funds in the ordinary cause. [823G]

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3. The conditions set forth in the order of this Court dated 29th November, 1979 have been complied with by the appellant substantially and she is entitled to the benefit of that order. [824C-D]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 111(N) of 1981.

From the Judgment and Order dated 21.10.1980 of the Madras High Court in Application No. 2875 of 1980. Abdul Kareem, A.T.M. Sampath and P.N. Ramalingam for the Appellant.

S. Govind Swaminathan, Rajendra Chowdhary, N.S. Sivam and K. Madhavan for the Respondents.

T.S. Krishnamoorthi Iyer, S. Balakrishnan and M.K.D. Namboodiri for the Intervener.

The Judgment of the Court was delivered by PATHAK, C J: The appellant herein filed Civil Suit No. 18 of 1968 in the High Court for specific performance of a contract to sell the suit property by the respondent herein to her. A question which arose for decision was whether the appellant should discharge the mortgage of the suit property created by the respondent in favour of the South Indian Bank. The High Court held that the appellant was liable to discharge the mortgage and directed her to deposit in Court a sum of Rs.3,50,000 with interest for the purpose. The appellant paid the amount direct to the mortgagee. The High Court refused to accept the payment made directly to the mortgagee as due compliance with its decree and against that order of the High Court the appellant preferred civil Appeals Nos. 1993-1994 of 1977. This Court disposed of the said appeals by the following order dated 29 November, 1979:

"We direct that a decree be passed that the plaintiff-Appellant do deposit within six months from today the entire sum of Rs.3,45,000 together with interest due upto

date at the rate of 11 per cent, together with an undertaking that she would give up all her rights under the mortgage decree passed in her favour in C.S. No. 154 of 1968 except to the extent of the amount actually paid to the South Indian Bank for taking the assignment. If these two conditions are fulfilled, the appeals will stand allowed and a final decree for specific performance passed. In the event of non-compliance with either of these conditions the appeals will stand dismissed with costs."

Purporting to comply with the above order of this Court, the appellant deposited a sum of Rs.2,42,822.19 on 11 April, 1980 in the High Court with the undertaking to give up all her rights decreed in C.S. No. 15 of 1968 and filed C.M.P Nos. 2424 and 2425 of 1980 in the High Court for a declaration that the payment as mentioned above was in compliance with the order of this Court and she claimed a set off of the amount of Rs.5,96,687.19 paid by her earlier to the South Indian Bank which she was entitled to recover from the respondent in accordance with the second condition of the order of this Court dated 29 November, 1979. The time limit fixed for fulfilling the two conditions set out in this Court's order dated 20 November, 1979 having fallen on 29 May, 1980 and the High Court not having passed orders on her C.M.Ps. Nos. 2424-2425 of 1980 till then, she paid into the High Court a sum of Rs.6,02,000 on 29 May, 1980 by cheque purporting to comply with the first condition set out in this Court's order aforesaid.

C.M.Ps. Nos. 2424 and 2425 of 1980 filed by the appellant in the High Court were dismissed by a Single Judge by an order dated 6 June, 1980 against which the appellant preferred Petitions for Special Leave to Appeal Nos. 947-48 of 1981. The appellant also filed another C.M.P. No. 2875 of 1980 in the High Court for a declaration that she had complied with the aforesaid order of this Court dated 29 November, 1979 which was dismissed by the High Court. Civil Appeal No. 111 of 1981 has been preferred against the judgment and order of the High Court in C.M.P. No. 2875 of 1980. The only question decided against the appellant by the High Court in C.M.P. No. 2875 of 1980 was with regard to the deposit of the amount stipulated in the first condition of the order of this Court dated 29 November, 1979. The crucial issue was whether the payment made by the appellant on 29 May, 1980 by cheque of the amount of Rs.6,02,009 together with the amount deposited earlier on 11 April, 1980 was in due compliance of the first condition of this Court's Order dated 29 November, 1979. The High Court found that the simple delivery of the cheque on 29 May, 1980 could not be deemed to be deposit of the specified sum of 29 May, 1980 in satisfaction of the order of this Court when the amount of the cheque had been realised only on 16 June, 1980. The High Court held that the appellant was bound to comply with the Original Side rules of the High Court which prescribed the procedure to be followed in depositing the money in Court, and in particular, Order 31, rules 1 to 6 thereof which were aimed at securing the deposit of the money in the Reserve Bank of India to the credit of a particular proceeding on or before the specified date. Accordingly, the High Court refused to grant the declaration that the appellant had complied with the order of this Court dated 29 November, 1979.

It is contended before us on behalf of the appellant that the cheque for Rs.6,02,000 was tendered in Court on 29 May, 1980 and that it was duly honoured by the Bank and money was realised under the cheque, and therefore it must be taken that payment had been effected by the appellant on 29 May, 1980 within the time stipulated by this Court in its order dated 29 November, 1979. In

Commissioner of Income Tax, Bombay South, Bombay v. Messrs Ogale Glass Works Ltd. Ogale Wadi, A.I.R. 1954 S.C. 429 it was laid down by this Court that payment by cheque realised subsequently on the cheque being honoured and encashed relates back to the date of the receipt of the cheque, and in law the date of payment is the date of delivery of the cheque. Payment by cheque is an ordinary incident of present-day life, whether commercial or private, and unless it is specifically mentioned that payment must be in cash there is no reason why payment by cheque should not be taken to be due payment if the cheque is subsequently encashed in the ordinary course. There is nothing in the order of this Court providing that the deposit by the appellant was to be in cash. The terms of the order dated 29 November, 1979 are conclusive in this respect and it is the intent of that order which will determine whether payment by cheque within the period stipulated in that order was excluded as a mode in satisfaction of the terms of that order. The time for payment is governed by the order of this Court.

It is alleged on behalf of the respondent that there was no money on the date of delivery of the cheque to support payment of it and that it was subsequently when arrangements were made that the cheque was realised. Now, the High Court has not found that if the cheque was presented for encashment on the date it was delivered the cheque would not have been encashed. There is nothing to suggest also that the cheque was not honoured in due course and that the Bank had at any time declined to honour it for want of funds in the ordinary course. In any event, there is nothing to suggest that, under the arrangements made for payment of the cheque, even if it had been encashed on the date it was delivered the cheque would not have been encashed. There is no finding by the High Court that on 29 May, 1980 the cheque would not have been realised. That being so, the question whether the appellant had wrongly stated that her counsel had offered to pay cash to the High Court office on 29 May, 1980 ceases to be relevant. We also see no substance in the objection taken before the High Court that in the letter dated 29 May, 1980 addressed by counsel for the appellant forwarding the cheque for Rs.6,02,000 there was a request for the return of the cheque in case it was found that the appellant was entitled to the set-off claimed by her. The application of the appellant claiming adjustment was pending in Court, and no conclusion can be drawn against her on the ground that she had requested a return of the cheque in the event of the adjustment being allowed by the Court.

We are of the view that the conditions set forth in the order of this Court dated 29 November, 1979 in the facts and the circumstances of the case have been complied with by the appellant substantially and she is entitled to the benefit of that order.

The appeal is allowed, the order dated 21 October, 1980 of the High Court is set aside and the application by the appellant for a direction to the respondent to execute the sale deed in her favour is allowed. In the circumstances of the case, there is no order as to costs.

N.V.K.  
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Appeal allowed.