

## APPELLATE CIVIL.

*Before Mr. Justice Kumaraswami Sastri.*

R. GOPALAKRISHNA PILLAI (PETITIONER), PETITIONER,

1923,  
September 10

v.

KUNJITHAPATAM PILLAI AND THREE OTHERS

(RESPONDENTS), RESPONDENTS.\*

*Madras Local Boards Act (XIV of 1926)—Election Rules, rule 4—Application to set aside an election to Taluk Board—Application made more than 14 days after date of election—Application to Court on re-opening day—Chelan obtained on that day—Money paid into Bank three days after—Delay of Treasury officer—Delay caused by accident—Negligence—Nunc pro tunc—Payment into Court, whether necessary—Civil Rules of Practice, rule 131—Effect of producing money in Court and obtaining chelan.*

An application to set aside an election as a member of a Taluk Board held on the 9th May 1922 was filed in the Sub-Court on the 17th July 1922 which was the date on which the Court re-opened after having been closed for summer recess from the 14th May 1922. The applicant brought the money required to be deposited in Court along with the application and applied for a chelan to pay it into the Bank as required by rule 131 of the Civil Rules of Practice. But the money could not be paid into the Bank on that day, owing to the absence of the Treasury officer who was to check the chelan before payment into the Bank. On the next day the applicant presented the chelan to the Treasury officer at 1-50 p.m. as he was delayed by an unforeseen carriage accident, and he could not get to the Bank to pay within time on that day, and had to pay and paid it only on the next day. On objection being taken by the respondent that the application was not validly made under the Election Rules made under the Local Boards Act,

*Held*, that a person is not guilty of negligence when he would in the ordinary course of things have arrived in time for payment and the delay was due to an accident which he could by no means have foreseen. *Arunachala Ayyar v. Subbaramiah* (1923) I.L.R., 46 Mad., 60, referred to;

\* Civil Revision Petition No. 907 of 1922.

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that the rule of law that nobody should be prejudiced by the acts of Courts or its officers is of universal application, and governs applications to set aside elections; it is not a question of excusing delay, but there is no delay at all; *Koilyillai Samban v. Sappanimuthu Samban*, (1923) 17 L.W., 187, referred to; that where a person, who is bound to pay money, produces it in Court and complies with the rule which requires him to take out a chelan and pay the money at a different place and there is a delay in the actual payment of the money into the Treasury or Bank owing to reasons beyond his control, the payment must be deemed to have been made on the date the money was produced and the chelan obtained in Court;

and that the petition was validly presented under rule 4 of the Election Rules made under the Local Boards Act.

PETITION under section 115 of the Civil Procedure Code and section 107 of the Government of India Act to revise the order of C. S. MAHADEVA AYYAR, Subordinate Judge of Cuddalore, in Original Petition No. 10 of 1922.

The first, second and third respondents were elected as members of the Taluk Board in an election held on the 11th May 1922. The petitioner filed an objection petition in the Subordinate Judge's Court of Chingleput on the 17th July 1922, which was the day on which the Court re-opened after it had remained closed for the summer recess from the 14th May 1922. The petitioner had brought with him to Court the sum of Rs. 200, which was required to be deposited along with the petition under the rules made by the Government under the Local Boards Act, 1920. The petitioner applied for and obtained a chelan for payment of the amount into the Branch of the Imperial Bank at Cuddalore; the chelan was issued by the Court only at about 5 minutes to 3 p.m. on that day, and was at once taken to the Treasury officer, who had to check and pass it before payment into the Bank. The Treasury officer was not in his place and the chelan could not be passed on that day; on the next day owing to a carriage accident the petitioner took the

money and chelan to the Treasury officer at 1-40 p.m., the chelan was checked and delivered to the party at 2-40 p.m., and the person taking the money and chelan arrived at the Bank (which was at a distance of  $2\frac{1}{2}$  miles) at 5 minutes after 3 p.m., when the Bank was closed for receipt of money; and the money was paid only on the next day. The respondents objected that the petition was not validly presented in the lower Court as required by the rules as the amount was not paid on the date of filing the petition, and as the amount was not actually deposited in the Court or even tendered to the Subordinate Judge so as to satisfy the rules made under the Local Boards Act, and further that the petitioner was guilty of negligence in making the payment and that the delay could not be excused. The Subordinate Judge upheld the objection that there was negligence with regard to the conduct of the petitioner on the 18th May, and dismissed the petition as incompetent. The petitioner preferred this Civil Revision Petition to the High Court.

*T. R. Ramachandra Ayyar* and *S. Ramaswami Ayyar* for petitioner.

*S. Muthiah Mudaliyar* and *C. Padmanabha Ayyangar* for respondents.

#### JUDGMENT.

After stating the facts, his Lordship proceeded:— Rule 131 of the Civil Rules of Practice requires a person desirous of paying money into Court to bring into Court a lodgment schedule in the form prescribed by the rules, containing the various particulars mentioned therein. Thereupon an order for lodgment and counterfoil receipt are to be issued to the payer. Rule 132 states that the payer shall deliver the money and the order and the counterfoil receipt to the Bank or Treasury officer mentioned therein who is to retain the order and return the receipt duly signed by him

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to the payer, which receipt the payer should return to the Court. Rule 133 provides that if the Bank or the treasury is closed, the money may, with the leave of the Judge, be paid to the officer of the Court and the officer of the Court will send it to the Bank the next day. As the Bank was open at the time of the presentation of the petition, the vakil, in pursuance of the Rules of Practice, obtained a lodgment schedule. The Judge on receipt of the petition passed an order for the issue of chelans and chelans were issued on that day. As there is a branch of the Imperial Bank of India at Cuddalore, the chelans issued by the Court had to be taken to the officer in charge of the treasury, checked by him and then taken to the branch of the Imperial Bank. The chelans were issued at about 5 minutes to 3 and they were taken at once to the treasury, but the Treasury officer was not there. As the Bank would not receive the money after 3 o'clock it was impossible to pay the money into the Bank on that day. The money was returned to the vakil for the petitioner. He and the members of his family were then staying at Tiruvendipuram about four miles from the Court-house and the Treasury office and he took the money with him in order that it may be paid the next morning. The money was sent the next day from Tiruvendipuram to the Treasury officer with the chelans and the Treasury officer returned the chelans at about 2-40. As the Bank was about  $2\frac{1}{2}$  miles from the Treasury office, the person taking the chelans and the money to the Bank arrived at the Bank at 5 minutes after 3, but the Bank would not receive the money and it was therefore paid the next day. On the 18th the person taking the money to the Treasury officer went in a jutka. There was an accident to the horse and it was therefore about 1-50 p.m. when the person reached the Treasury office. There would have been, however, ample time to have

gone to the Bank if the Treasury officer had not taken nearly an hour to return the cheques to the person who brought the money. The Subordinate Judge is of opinion that so far as the 17th is concerned the delay was unavoidable but thinks that the delay on the 18th has not been properly explained.

There can be little doubt that if there was no accident to the horse, there would not have been a delay of five minutes on the 18th and that the money would have been received by the Bank. The trouble was that owing to the delay the person who had the money reached the Bank at 3-5 while according to the rules of the Bank no money would be received after 3 p.m. I do not think that the view taken by the Subordinate Judge is correct. It is not reasonable to hold that a person is guilty of negligence when he would, in the ordinary course of things, have arrived in time for payment and the delay of five minutes was due to an accident which he could by no means have foreseen. In this connexion I need only refer to the judgment of the Chief Justice in *Arunachala Ayyar v. Subbaramiah*(1). The learned Chief Justice observes :

“The question to be considered by the Court is not whether by some human possibility, being wise after the event, he could not have got there in time and once the Court is satisfied, as was the fact in this case, that the man did try to get there and that he would have got there in time but for the intervention of an inevitable accident for which he was in no way responsible, it is the duty of the Court, in my judgment, to set aside the judgment, mulcting, in proper cases, the delinquent man in costs.”

It is no argument to say that where a man leaves in time and would in the ordinary course have reached the Bank in time, he would in spite of the accident have reached before the Bank was closed if he had started earlier, or if the jutka horse had run faster. The question remains

(1) (1923) I.L.R., 46 Mad., 60.

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for consideration is whether even in cases where there is no negligence and where the applicant has complied with the rules, the application should be dismissed because the money was not paid into Court with the application whatever the reason may be.

Rule 4 of the Election Rules framed by the Government under the Madras Local Boards Act enacts that the amount should be deposited at the time of the presentation of the petition and that if it was not deposited the petition should be dismissed. The contention of the respondents is that in such cases the money should be paid in and that even if the chelans had been taken and the money paid into the Bank a few minutes later, the petition would still have to be dismissed as the presentation of the petition and the payment of the money were not simultaneous. This construction, so far as I can see, has nowhere been placed on the rules. In *Krishnaji Reddiar v. Muthuveera Reddiar*(1), KRISHNAN, J., though he held that no question would arise as to the Court excusing the delay the provision in the rule being mandatory, took the view that if the failure to pay the money was due to any action taken by the Court, the petition would be proper. The Rules of Practice are binding on all Civil Courts and where the rules provide that a chelan must be obtained and money paid into the Bank, unless at the time of making the application to receive the money the Bank is closed, it is difficult to see how the Court could receive the money in violation of the Rules of Practice which have the force of law and are binding on all Civil Courts. The Subordinate Judge in paragraph 12 of his judgment observes that the vakil was perfectly justified in putting in a lodgment schedule and taking out the chelan without

(1) (1923) 44 M.L.J., 344.

tendering the money to the Judge. It cannot therefore be said that the petition ought to be dismissed because the money was not paid in cash. It is argued that although the vakil produced the money before the Judge he did not formally ask the Judge to receive the money; but it seems to me that no object would be gained by making a request which under the Rules of Practice the Judge is bound to refuse. I am of opinion that where a person who is bound to pay money produces the money in Court and complies with the rule which requires him to take out a chelan and pay the money at a different place and there is a delay in the actual payment of the money into the Treasury or Bank owing to reasons beyond the control of the person making the payment, the payment must be deemed to have been made on the date the money is produced and the chelan obtained. To hold otherwise would be to penalise a party for events beyond his control. In *Koilpillai Samban v. Sappanimuthu Samban*(1), which was a case under section 17 of the Provincial Small Cause Courts Act, the provisions of which have been held to be mandatory, RAMESAM, J., observes as follows:—

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“I hold that when the party has applied for a chelan and the delay in issuing the chelan is the delay of the officers of the Court and after the issue of the chelan he deposited the money immediately, the maxim *nunc pro tunc* applies and the application for chelan (in such circumstances) is equivalent to deposit.”

With these remarks I entirely agree. Whether the payment is to be made under the Small Cause Courts Act or under the Election Rules it will, in my opinion, be contrary to all principles of justice to require a man to comply with the rules which insist on the taking out of a chelan and paying the money to a different officer and then to dismiss the application on the ground that

(1) (1923) 17 L.W., 187.

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the money ought to have been paid to the Judge himself or to hold that the payment to the officer contemplated by the rules would not be equivalent to the compliance with the rules where the delay in payment is entirely due to causes beyond the control of the person taking out the chelan. The Subordinate Judge finds that if the money had been paid on the 18th of July, i.e., the next day, the delay would have been justified, but he thinks that because it was not paid on the 18th owing to the accident which happened to the jutka which caused the person making the payment to be five minutes late in the Bank, there was no ground for excusing the payment the very next day. I have already given my reasons for holding that the accident was one which the person could not have foreseen and that there was no negligence on the part of the person making the payment.

It has been argued that the provision of section 5 of the Limitation Act would not apply and that consequently the Court has no power to excuse the delay. The question is not one of excusing any delay. The question is whether in the present case the rule of law that nobody should be prejudiced by the acts of the Court or of its officers is one of universal application. It does not depend upon any of the provisions of the Limitation Act and this rule is applied to cases under Order XXI, rule 89, of the Civil Procedure Code, to set aside sales on depositing the money into Court.

In the result, I set aside the order of the Subordinate Judge and direct him to restore the petitions to his file and dispose of them according to law. The respondents will pay the petitioners their costs of these petitions in this Court.