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Court, therefore, should be strictly in accordance with the requirements of this sub-section, before the penalty provided therein can be imposed on the tenant. In this view of mine, I am also supported by the decision of Mehar Singh, J., in *Dr. Savitri Gupta* v. *Uma Kumari*, Civil Revision No. 447-D of 1957 (decided on 25th February, 1958).

Under these circumstances, I hold that the order, dated 13th February, 1958, passed by the trial Judge, was not in conformity with the provisions of section 13(5) of the Act and, therefore, non-compliance with the same cannot result in the striking out of the defence of the tenant.

No other point was argued before me.

In the result, this petition is dismissed and the case will go back to the trial Judge for proceeding with the same in the light of the observations made above. In the circumstances of this case, however, the parties shall bear their own costs in this Court as well.

B. R. T.

APPELLATE CIVIL

Before Harbans Singh, J.

BHOLU RAM AND OTHERS,—*Appellants.*

versus

KANHYA AND OTHERS,—*Respondents.*

Execution Second Appeal No. 98 of 1961.

1961

Sept, 11th

Code of Civil Procedure (V of 1908)—Order XX Rule 14—Decree requiring payment into Court by a specified date—Payment of the part of the decree made out of Court—Whether can, under any circumstances, be treated as sufficient compliance with the decree—Order XXI Rule 2—Certification by Court of payment made out of Court—Whether necessary in the Punjab.

Held, that the substance of the matter is the payment of the amount decreed by the Court to the persons to whom the payment is directed to be made and it is, therefore, provided that the payment be made into Court. If the payment is made into Court there can be no doubt about the payment having been made by or before the particular date. However, if the payment is made out of Court and such payment has been proved to have been made before the stipulated date, that should be treated as sufficient compliance, particularly so in cases where for reasons beyond his control the decree-holder is prevented from strictly complying with the terms of the decree. Leaving out the question of certification in the present case, the decree-holder did go to the Court, offered the money that was payable; the same could not be accepted by the Reader nor could any proper order be passed because the Presiding Officer was not there. According to the decree, Rs. 2,500 were to be paid to one of the mortgagees. He contacted him and paid him Rs. 90, towards the money payable to him. That mortgagee executed a receipt and also appeared before the Court to certify the payment, but that could not again be done because the Presiding Officer was absent. On the 14th of March, 1960, the very next date on which the Presiding Officer was present, he submitted another application in writing acknowledge the receipt of Rs. 90 and praying that the balance of Rs. 2,410 be paid to him. If no objection had been raised on behalf of the vendees it is obvious that the Court would have recorded his statement and thus certified the payment. In any case, there is no doubt about the payment of Rs. 90 having been made on the 11th of March, 1960, and this payment, in the circumstances of this case, should be treated as substantial compliance with the decree.

Held, that in the State of Punjab, sub-rule (3) of rule 2 of Order XXI, Code of Civil Procedure, has been repealed by section 36 of the Punjab Relief of Indebtedness Act, 1934 and so far as this State is concerned, for a decree being adjusted by payment out of Court, certification by Court is not necessary. The only matter to be considered in finding out whether a decree has been complied with or not is to see whether the payment, if any, directed by the decree has been made in accordance with the decree or not. Thus where there is a pre-emption decree directing

payment by a fixed date and, as already held, such payment out of Court is sufficient compliance with the decree then all that is necessary to be seen is whether the payment is made on or before the specified date, and the certification does not form an important part of the compliance with the decree.

Execution second appeal, from the order of Shri B. L. Malhotra, Additional District Judge, Gurgaon, dated the 10th January, 1961, affirming that of Shri Dev Raj Khanna, Sub-Judge, 1st Class, Gurgaon, dated the 3rd June, 1960, holding that the plaintiff has substantially complied with the decree and ordering that if plaintiff wants to deposit Rs. 90, he can do so by next day and further ordering that the amount of Rs. 2,410, be paid to Siri Ram, defendant No. 4, after 15 days.

S. D. BAHRI, ADVOCATE, for the Appellant.

Y. P. GANDHI, ADVOCATE, for the Respondents.

JUDGMENT

Harbans Singh, J. HARBANS SINGH, J.—Facts giving rise to this execution second appeal may briefly be stated as follows:—

Two rival pre-emptors Kanhaya and Lehri filed two separate suits in respect of a sale in favour of Bholu Ram and others, hereinafter referred to as vendees. On the 11th of February, 1960, the two suits, which had been previously consolidated, were decided and the Court granted a decree declaring Kanhaya as the superior pre-emptor and directed him to deposit a sum of Rs. 20,090 (Rs. 20,000, being the sale price and Rs. 90, the cost of registration) into Court by the 11th of March, 1960. In default of this payment by Kanhaya, his suit was to be deemed to have been dismissed and the other pre-emptor Lehri was given further time to deposit the money. It was further declared that out of the amount directed to be deposited by the pre-emptors, the vendees, defendants 1 to 3, were to receive

Rs. 16,590, while the balance of the amount of Rs. 3,500 was to be paid to the mortgagees, defendants 4 to 7, out of which Rs. 2,500 were to be paid to Siri Ram, defendant 4. The remaining mortgagees, defendants 5 to 7 were to receive Rs. 1,000. Well in advance of the last date fixed by the decree, Kanhaya, the superior pre-emptor, deposited into Court a sum of Rs. 20,000. On the 11th of March, 1960, however, he realised (as stated by Kanhaya) on seeing the copy of the decree-sheet obtained that day that in fact the amount to be deposited was Rs. 20,090. Unfortunately for him, on that day the Presiding Officer was not there. The previous Presiding Officer having been transferred, his successor had not taken charge. Thereafter immediately he contacted Siri Ram, defendant 4, to whom a sum of Rs. 2,500 was to be paid towards the mortgage money as directed by the decree, and paid him Rs. 90 in cash and obtained a receipt from him, which is on record and is Exhibit 'X'. This receipt acknowledged the payment of Rs. 90 and it further stated that only the balance of Rs. 2,410 out of the total amount of Rs. 2,500 was payable to him. Kanhaya also wrote out an application, Exhibit D. H. 1 in which, after stating the misunderstanding under which he deposited the amount of Rs. 20,000 in the first instance, he went on to say that he had paid Rs. 90 to Siri Ram to whom Rs. 2,500 was due and that he was filing the receipt with the application; and further that he was offering Rs. 90 in cash for being deposited or being kept in the custody of the Court. On the back of this application, the following is the report of the Reader :—

> "This application has been presented today by Kanwar Surinder Singh, (Advocate), who also offers Rs. 90, in cash saying that the same be kept in custody. As the Presiding Officer has not yet taken charge, this application would be presented on his arrival."

This is dated the 11th of March, 1960. This Reader has also been examined as a witness on

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behalf of Kanhaya and has deposed to the presentation of the application, offer of Rs. 90, in cash and also the presentation of the receipt along with the application. The Presiding Officer took charge on the 14th of March, 1960. On that very day, under his orders another report was made by the office stating the factum of the grant of the decree etc. and the fact that Rs. 90, were stated to have been received by Siri Ram and that only Rs. 2,410, were due to him. On that very day, a further application was made by Siri Ram, Exhibit D. H. 2, in which he stated that out of Rs. 2,500, due to him payable under the decree he had already received on the 11th of March, 1960, a sum of Rs. 90, which he had already acknowledged under a receipt and that the balance of Rs. 2,410 may be paid to him. On that day, a third application was filed by the vendee Bholu Ram, that in as much as only Rs. 20,000, had been paid into Court, while Rs. 20,090, had to be paid according to the decree, the suit should be deemed to have been dismissed and that no extension of time should be granted to him. There is just one order passed with regard to all these applications by the Presiding Officer, which is at page 36 of the record, in which it was directed that "Let copies be given for replies. To come up on the 2nd April, 1960". On this day, a detailed reply was put in on behalf of Bholu Ram, vendee, *inter alia*, denying the factum of any money having been paid to Siri Ram and he termed the receipt as fictitious and the story of the payment having been made to Siri Ram as a concoction and opposed to facts. In view of this objection, the trial Court settled an issue as follows:—

"Has the decree-holder complied with the decree?" Evidence was recorded on the 14th of May, 1960. As already indicated, Fateh Chand, Reader, supported the allegations of Kanhaya as given above. Shri Maman Singh, Clerk, of Rao Gajraj Singh, Advocate, appeared as D.H.W. 2, and stated that Kanhaya came to Rao Gajraj Singh, Advocate, on the 11th of March, 1960, with the

copy of the judgment and decree which he obtained on that day and on being told that he was to deposit Rs. 20,090, while he had deposited only Rs. 20,000, he was asked to bring the mortgagee and also the money. He brought the mortgagee and he paid Rs. 90, and a receipt marked 'X' was got written from him. Thereafter the application, Exhibit D.H./1 was taken to the Court and was presented through Kanwar Surinder Singh, Advocate, and money was offered to the Reader to be kept in safe custody which the Reader refused to accept. Siri Ram appeared as D.H.W. 3, and confirmed the payment having been made to him as alleged and also the fact that he went with Kanhaya to the Court on the 11th of March, 1960. D.H.W., 4, Kanhaya, who appeared as his own witness. On the other side Bholu Ram appeared as his own witness, but he had nothing to say with regard to the actual facts.

The learned trial Court came to the conclusion that the payment of Rs. 90, was made to the mortgagee and Kanhaya came to the Court with the offer of Rs. 90, to be deposited and that there was thus substantial compliance with the decree. These findings were upheld by the lower appellate Court. These findings of fact have to be accepted and are not open to challege in second appeal.

The main point urged on behalf of the learned counsel for the appellants Bholu Ram, etc., vendees, was that even if the allegations of Kanhaya are accepted as correct, this did not amount to compliance with the decree which had directed the payment into Court on or before the 11th March, 1960. His main reliance was on the wording of Rule 14, Order XX, Code of Civil Procedure hereinafter referred to as the Code. Sub-rule (1) of this rule runs thus:—

> "Where the Court decrees a claim to pre-emption in respect of a particular sale of

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"property and the purchase-money has not been paid into Court, the decree shall,

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment *into Court* of purchase-money, together with costs (if any) decreed against the plaintiff on or before the day referred to in clause (a), the defendant shall deliver possesssion of the property to the plaintiff * * * * *, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs."

He urged that as in the present case the pre-emption decree directed payment of the purchase-money into Court by the date fixed and that any payment made by the decree-holder pre-emptor outside the Court cannot be taken to be compliance with the decree, because such payment outside the Court cannot be treated to be a payment into Court. In the alternative, he urged that such payment out of Court could in special circumstances be treated as equivalent to payment into Court if and only if such payments are certified under Order XXI, rule 2 of the Code on or before the date fixed by the Court under clause (a) of sub-rule (1) of rule 14 of Order XX of the Code.

The first point to be examined, therefore, is whether a payment out of Court can, under any circumstances, be treated as sufficient compliance with the decree passed under rule 14 of Order XX, which directs the payment of the purchase-money into Court. The earliest reported case on the point is a Division Bench judgment of the Punjab Chief Court reported as *Sher Shah and others* v. *Sher Jang* (1). Section 18 of the Punjab Laws Act, 1872, as amended by Act XII of 1878, was substantially in the same terms as rule 14 of Order XX. Payment

(1) 21 P.R. 1889.

in a pre-emption case was to be made into Court by the decree-holder by a fixed date. In that case, instead of making the payment into Court the decree-holder deposited in Court a sum representing two-thirds share of the purchase-money due to one of the vendees and filed a receipt from the other vendee for the balance; the latter vendee was present in Court and admitted the receipt of the money. Upon this the Court ordered the receipt to be filed with the record. Rattigan and Roe, JJ., while dealing with this question observed as follows:—

> "We are of opinion that the payment having been certified in Court, and a written acknowledgment of the fact having been filed by the parties in Court, the requirements of the section quoted above have been substantially complied with. A 'payment' in a legal sense, means no more than the satisfaction of an obligation, and when the vendees certified in Court that the obligation on the part of decree-holder to pay them the purchase-money had been discharged, and filed an acknowledgment to that effect in Court, the payment or discharge may, without any straining of language, be held, we think, to have been made in Court."

Though some doubt was cast on the soundness of this view by Chief Justice, Donald Johnstone in *Abdul Fatteh* v. *Fatteh Ali and others* (1), yet it was not expressly dissented or differed from.

In the second case the dispute was between two rival pre-emptors as to the fact, whether the superior pre-emptor had complied with the decree or not and it was held that the second pre-emptor was entitled to call upon the superior pre-emptor to strictly comply with the decree and inasmuch

(1) 73 P.R. 1916.

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as payment by the superior pre-emptor to the vendees was not got certified within the time fixed, the case was different from the one reported in 1889 and consequently such payment was not sufficient compliance with the decree. The matter was considered by a Division Bench of the Allahabad High Court in *Sukhpal Singh* v. *Abdul Rahman and others* (1). In that case the decree did not in terms direct the payment into Court but the judgment was not based on that point alone. It was observed at page 160 as follows:—

> "In any event, we are of the opinion that the plaintiff Sukhpal Singh, having paid the full amount due to the vendees into the hands of the vendees out of Court and the latter having duly certified that payment within the period allowed by the decree, he has fully complied with the spirit as well as the letter of the decree."

In *Suraj Mal* v. *Bheerulal and others* (2), the learned Single Judge of that Court approved the view taken in *Sher Shah and others* v. *Sher Jang* (3) and *Sukhpal Singh* v. *Abdul Rahman and others* (1), and dissented from the observation made in *Abdul Fatteh* v. *Fatteh Ali and others* (4). In *Suraj Mal's case*, payment was made out of Court within the stipulated time but the receipt was produced in Court after the stipulated date for the reason that the Courts were closed during the intermediate period on account of vacation. At page 314 of the report, the learned Judge observed as follows:—

> "In my opinion, there seems to be no valid reason to hold such compliance to be insufficient where there is no room to doubt that such payment had in fact

(1) A.I.R. 1921 All. 159.
(2) A.I.R. 1958 Raj. 311.
(3) 21 P.R. 1889.
(4) 73 P.R. 1916.

been made to the judgment-debtor within the time allowed by the decree though outside the Court. * * * *. It is also true that in the present case the receipt was filed not within the stipulated time but on 2nd July, 1945, when the Court re-opened after the summer vacation. With all respect, the substance of the matter, however, seems to me not to be the certification of the payment made as has been emphasized in some of the cases discussed above, but the actual factum of payment within the stipulted period particularly where the application for certification has been made within time under Order 21, rule 2, Code of Civil Procedure as in this case."

The other question whether the party could or could not make the deposit during vacation was left undecided. There is no decided case to the contrary. At least none has been brought to my notice by the learned counsel for the appellant and it has also been noticed in *Suraj Mal's* (1) case that there was no such case brought to the notice of the learned Single Judge there.

The learned counsel for the appellant urged that all these cases were wrongly decided and that no payment out of Court can be treated to be equivalent to payment into Court as directed by a decree framed in accordance with rule 14 of Order XX of the Code.

I feel that, as has been observed by the learned Judge of the Rajasthan High Court in *Suraj Mal's case,* (1) the substance of the matter is the payment of the amount decreed by the Court to the persons to whom the payment is directed to be made. It is provided that the payment be made into Court. If payment is made into Court there can be no doubt about the payment having been made by or before the particular date. However

(1) A.I.R. 1958 Roy 311.

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if the payment is made out of Court and such payment has been proved to have been made before the stipulated date that should be treated as sufficient compliance, particularly so in cases where for reasons beyond his control the decree-holder is prevented from strictly complying with the terms of the decree. Leaving out the question of certification in the present case, the decree-holder did go to the Court, offered the money that was payable; the same could not be accepted by the Reader nor could any proper order be passed because the Presiding Officer was not there. According to the decree, Rs. 2,500, were to be paid to one of the mortgagees. He contacted him and paid him Rs. 90, towards the money payable to him. That mortgagee executed a receipt and also appeared before the Court to certify the payment, but that could not again be done because the Presiding Officer was absent. On the 14th of March, 1960, the very next date on which the Presiding Officer was present, he submitted another application in writing acknowledging the receipt of Rs. 90 and praying that the balance of Rs. 2,410, be paid to him. If no objection had been raised on behalf of the vendees, it is obvious that the Court would have recorded his statement and thus certified the payment. In any case, I feel that in the present case, there is no doubt about the payment of Rs. 90, having been made on the 11th of March, 1960, and this payment, in the circumstances of this case, should be treated as substantial compliance with the decree.

With regard to the question of certification, sub-rule (1), of rule 2, of Order XXI of the Code provides that where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty, it is to execute the decree and the Court shall record the same accordingly. Sub-rule 2, of this rule authorises even the judgment-debtor to file an application to the

Court passing the decree that after giving notice to the decree-holder and hearing him if he opposes it, it records the adjustment of payment. Sub-rule (3) of this rule runs as follows:—

> "A payment or adjustment which has not been certified or recorded as aforesaid shall not be recognised by any Court executing the decree."

In view of sub-rule (3), therefore, if payment out of Court is not certified by the decree-holder nor any application is made by the judgment-debtor under sub-rule (2), within 90 days as provided in Article 174 of the Indian Limitation Act, such payment cannot be pleaded as a defence in execution of a decree, because such payment cannot be recognised by the Court. In the State of Punjab, however, by virtue of section 36 of the Punjab Relief of Indebtedness Act, 1934, sub-rule (3) of this rule has been repealed. The result, therefore, is that irrespective of the fact whether a payment or adjustment has been certified either at the instance of the decree-holder under sub-rule (1), or within 90 days of the adjustment at the instance of the judgment-debtor under sub-rule (2), such payment can be pleaded as a defence if the decree-holder takes out an execution of the decree. See in this respect *Murli Dhar* v. *Firm Basheshar Lal, Moti Lal* (1) and *Daru Mal* v. *Todar* (2). Thus so far as the State of Punjab is concerned for a decree being adjusted by payment out of Court, certification by Court is not necessary. The only matter to be considered in finding out whether a decree has been complied with or not is to see whether the payment, if any, directed by the decree has been made in accordance with the decree or not. Thus where there is a pre-emption decree directing payment by a fixed date and, as already held, such payment out of Court is sufficient compliance with the decree then all that is necessary to be seen is whether the payment is made on or before

(1) A.I.R. 1938 Lah. 126.
(2) A.I.R. 1938 Lah. 602.

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the specified date, and the certification does not form an important part of the compliance with the decree. However, in the present case, it is to be noted that on the 11th of March, 1960, receipt executed by the morgagee was filed in Court and this was specifically testified to be correct by the mortgagee in his application dated the 14th of March, 1960, and in his statement on oath.

In view of all this, I feel that the finding of the Courts, below that there has been substantial compliance with the decree, is sound and there is no force in this appeal and the same is dismissed. In the peculiar circumstances of this case, there will be no order as to costs.

B. R. T.

LETTER PATENT APPEAL

Before G. D. Khosla, C.J. and A. N. Grover, J.

AMAR NATH,—*Appellant.*

versus

THE DEPUTY CUSTODIAN-GENERAL, PUNJAB AND OTHERS,—*Respondents.*

Letter Patent Appeal No. 136 of 1959.

1961

Sept., 18th

Administration of Evacuee Property Act (XXXI of 1950) as amended by the Administration of Evacuee Property Act (LXXXXI of 1956)—Section 48—Scope and ambit of—Time-barred debts—Whether recoverable.

Held, that a different language has been employed in the amended section 48 of the Administration of Evacuee Property Act, 1950, as amended by Act 91 of 1956, and what has to be seen is whether any sum was payable to the Custodian in respect of any evacuee property "under any agreement, express or implied, lease or other document or *otherwise howsoever*". The words italicised are of the widest amplitude. The word "due", which appeared in the previous section, has been omitted which would show that the Parliament intended effecting a change in the law after the previous judicial pronouncements in which