therefore, possibly be held on any principal that when a proceeding is transferred from the Court of a Panchayat of competent jurisdiction to the Court of a Magistrate of competent jurisdiction, the provisions of Criminal Procedure Code would not apply to the latter Court or the proceedings. In this view of the matter we fail to see how the Court of Sessions was not competent to call for and examine the proceedings of the Court of Shri J. P. Gupta, Judicial Magistrate 1st Class, Chandigarh, which Court undoubtedly was an an inferior criminal Court situated within the local jurisdiction of the Sessions Judge/Additional Sessions Judge. We, therefore, are clearly of the view that the order of the Additional Sessions Judge dated September 29, 1978, cannot be said to be without jurisdiction.

(6) No other argument has been advanced before us by the learned counsel for the petitioners.

(7) In the light of the discussion above, we do not find any merit in this petition and dismiss the same.

S. S. Sandhawalia, C.J.—I agree.

N. K. S.

Before Harbans Lal, J.

SHER SINGH, *Petitioner.*

versus

VIJAY KUMAR and another,—*Respondents.*

Civil Revision No. 124 *of* 1979.

October 12, 1979.

Code of Civil Procedure (V of 1908)—*Order* 20 *Rule* 14—*Suit for pre-emption decreed—Pre-emptor depositing decretal amount by cheque on the last date—Such deposit by cheque—Whether a sufficient compliance with Order* 22 *Rule* 14.

Held, that it cannot be disputed that payment in these days in accepted and well established mode of payment in these days in the present state of development of trade and commerce. It is too much

and rather unrealistic to expect any person to carry the amount in silver coins or currency notes in his pocket even if the amount runs into lacs for the purpose of depositing in the court or the treasury. Such a course may be even hazardous from the point of view of security. Cheque only means and connotes that the drawer of the cheque has the same amount of his account in the Bank which can be credited in the account of the drawee and by presenting the cheque, the drawer does everything which is required of him to make the payment. Payment in cash or payment through a cheque are at par. However, the result will not be same if the drawer of the cheque does not have the amount of cheque in his account or for any other reason, the cheque is dishonoured. In that case the presentation of the cheque cannot be treated as the payment. However, barring such an eventuality, the payment of the decretal amount through cheque will be sufficient compliance of Order 20 Rule 14 of the Code of Civil Procedure 1908. (Para 15).

Petition under section 115 C.P.C. for revision of the order of the Court of Shri R. D. Aneja, H.C.S. Sub-Judge 1st Class, Gurgaon, dated the 8th January, 1979, over ruling the objections preferred against the execution proceedings of the decree in question, with no order as to costs.

Claim:—Objection petition of the judgment debtor under Section 47 C.P.C. in execution proceedings of compromise decree dated 27th September, 1976.

Claim in Revision :—To set aside the impugned order of the Lower Court.

G. C. Garg, Advocate, *for the Petitioner.*

K. C. Puri, and C. B. Goel, Advocates, *for the Respondents.*

JUDGMENT

Harbans Lal, J.

(1) The important question of law for determination is; whether the payment of the decretal amount in execution of the pre-emption decree, through cheque by the judgment-debtor, is a valid tender under Order XIX rule 14, Code of Civil Procedure (hereinafter called the Code) ?

(2) The facts are not in dispute. One Jawala Devi sold her land in favour of Capt. Vijay Kumar, respondent No. 1. After the said,

the latter filed a suit for possession and injunction (hereinafter called the first suit) which was decreed on the basis of a compromise on September 27, 1976. In respect of this sale, a suit for pre-emption was filed by Sher Singh, petitioner, against Capt. Vijay Kumar, vendee-respondent. The pre-emption suit was decreed in favour of the petitioner and he was directed to deposit the balance amount of the decretal amount of Rs 11,202 in the Court on or before May 15, 1978. The first suit decreed on the basis of a compromise was to the effect that if the pre-emption suit was decreed and the pre-emptor decree-holder deposited the decretal amount in accordance with law, the suit of Capt. Vijay Kumar, respondent, shall stand dismissed. Otherwise, his suit will be deemed to have been decreed.

(3) In execution of the pre-emption decree, Sher Singh, petitioner, filed an application on May 15, 1978, in the executing Court for deposit of Rs 11,202 as balance decretal amount on which the executing Court issued the challan. The decree-holder instead of depositing the said amount, in cash, in the treasury, deposited a cheque for this amount along with the challan on the same day. The amount of the cheque was, however, credited to the Government on the next day, that is, May 16, 1978.

(4) Capt. Vijay Kumar, respondent No. 1, in these circumstances filed an execution application to execute the decree passed on September 27, 1976, on the basis of a compromise, on the ground that the decree-holder in the pre-emption suit, had failed to make a valid tender according to the terms of the decree and therefore, the said suit shall be deemed to have been dismissed, and he was entitled to possession of the land, in dispute. It was in these execution proceedings, that the pre-emption decree-holder, the petitioner, took up the objection that he had made a valid tender of the decretal amount through cheque on May 15, 1978 and thus the decree had been legally and validly executed. The trial Court rejected the objection filed by the petitioner and held that the tender of the decretal amount through a cheque in execution of the pre-emption decree, was not valid and as a consequence, the suit stood dismissed.

(5) The decree in a pre-emption suit has to be in terms of the direction as contained in Order XX rule 14 of the Code, the relevant part of which is reproduced below:

> "14. Decree in pre-emption suit.—(1) Where the Court decrees a claim to pre-emption in respect of a particular sale of

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 such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs."

(2) ... ...
... ...
(a) ... ...
... ...
(b) ... ...
... ..."

In the present case also, it was specifically provided that the decretal amount was to be paid by the petitioner on or before May 15, 1978. The crux of the controversy is as to what is the import of the direction in the said provision that the purchase-money, if not already paid into Court at the time of the passing of the decree shall be so paid. This provision has been interpreted in a number of cases by this Court, reference to which has been made in the judgment of the executing Court and also cited by the learned counsel on both sides during arguments before me. A close perusal of all those judgments leaves no manner of doubt, that this provision has to be interpreted strictly.

(6) In *Sheo Ram* v. *Jhabar and others* (1), it was held by Kapur, J., that the mere fact that the judgment-creditor in a pre-emption suit was in possession of money at the time of making the application for depositing the same in treasury, was not sufficient compliance of the provision and that the tender could be completed only if the money was actually produced before the Courts.

(1) A.I.R. 1951 Pb. 309.

(7) In *Kali Charan* v. *Ravi Datt and others* (2), Tek Chand, J., also held that the mere offer to pay does not constitute a valid tender and the tenderer should be not only ready to pay the money, but also produce and actually offer the decretal amount in the Court.

(8) In *Des Raj* v. *Des Raj and another* (3), the decree-holder made an application for deposit of the decretal amount in the pre-emption suit on the last day which had been specified in the decree. Thereon, the Court called for the report of the office for the next day when the amount was deposited. It was held by Pandit, J., that the mere making of an application for the deposit of the money on the last date just before the rising of the Court could not be interpreted as compliance of the decree.

(9) In *Sham Singh* v. *Pal Singh* (4), the decree-holder went to the executing Court with the decretal amount for depositing the same on the last date. As the Presiding Officer was on leave, he went to the Treasury Officer, but the latter refused to accept the amount without the order of the Court on the application. The decree-holder thereafter went to the Tahsildar who had been entrusted with the powers of the Court, to obtain the requisite order on his application. After getting the orders when the decree-holder went to the treasury for depositing the amount, the same had already been closed. Approach to the Treasury Officer did not prove successful as at that time, tender was not accepted. In view of these peculiar circumstances, this was held by Kapur, J., to be a sufficient compliance of the mandate of law as the decree-holder in spite of his best efforts, could not make the tender as the Presiding Officer was on leave.

(10) In *Pritam Singh and others* v. *Sant Singh and others* (5), the decree-holder deposited the amount in the Bank one day after the last date as the Bank was closed on the last day. It was held by Gurdev Singh, J., that the decree-holder must be held to be aware of the fact that the Bank would be closed on the last day and it was not a case where suddenly a holiday had been declared. It was the duty of the decree-holder to tender the money in the Court

(2) 1957 P.L.R. 204.
(3) 1968 Current Law Journal 6.
(4) A.I.R. 1955 Punjab 140.
(5) 1971 P.L.J. 361.

or to the judgment-debtor before the expiry of this period and it was held that the mere possession of the money by the decree-holder was not enough unless it had been duly tendered.

(11) In *Dalawar Singh and others* v. *Sawan Singh* (6), the tender of the decretal amount by the decree-holder in the Court on the last day was held to be a valid compliance though under the orders of the Court, the money was actually deposited in the treasury on the next day.

(12) It has not been disputed that if the decretal amount is deposited by the decree-holder in the treasury or the Bank on the last day specified in the decree, after obtaining an order of the Court on the application, the same would be a full and valid compliance of the direction as contained in rule 14 of the Order XIX of the Code and that it is not necessary that the payment must be made in the Court itself. Normally and generally, the amount is not received in the office of the Court; only direction is issued to the treasury by issuing a challan under the signature of the Presiding Officer of the Court, to receive the amount to be deposited. The treasury, in such a case, acts as an agent of the Court and performs the duty as a representative of the Court to receive the deposit in compliance of the order. In the present case, the application for deposit of the decretal amount was made by the decree-holder petitioner on the last day specified in the decree. The Court passed the order thereon and also issued the challan on that very day. It was on that very day that the decree-holder made the deposit in the treasury concerned by tendering the cheque equivalent to the decretal amount. It is also not disputed that the cheque was accepted by the treasury, but the case of the respondent is that the amount of the cheque was credited under the appropriate head not on that day, but the next day and, therefore, it should be held that tender of the amount had not been made according to the direction in the decree. According to the learned counsel for the petitioner, the payment in currency notes or coins as well as through cheque is one and the same and as the cheque had been presented on the last day as specified, it was a valid tender. Emphatic reliance has been placed on *Kirloskar Brothers Ltd.* v. *Commissioner of Income-tax* (7) and *Mohidoon Bi and others* v. *Khatoon Bi and others* (8).

(6) 1973 P.L.J. 348.

(7) A.I.R. 1952 Bombay 306.

(8) A.I.R. 1966 Madras 435.

(13) In *Kirloskar Brothers' case* (supra), the payment of the amount of tax had been made by cheque which had been given within time, but was encashed subsequently. It was held by the Division Bench as follows:

> "A payment under a cheque relates back to the date of the cheque. So it is immaterial when a cheque is cashed, what is material is when the cheque was given, and the payment is made when the cheque was given and not when the cheque was cashed at the instance of the creditor. Consequently even when a cheque is accepted by a creditor as a conditional payment, the preference by the creditor of accepting a cheque rather than cash operates as a payment to the creditor when the cheque is given although the liability of the debtor may revive in the event of the cheque not being ultimately cashed."

(14) In *Mahideen Bi's case* (supra), also, the same view was taken and it was held that the issuing of the cheque was as good as payment in cash. The learned counsel has also relied upon rule 80 of the Central Treasury Rules, Volume 1, wherein it has been provided that in case of payment by cheque, the payment is to be deemed to have been made on the day the cheque is presented. As against this proposition, a contrary view has been canvassed on the basis of a Full Bench judgment in *Thakur Das and others* v. *Tulsi Das* (9), wherein in execution of a decree for pre-emption, the decree-holder deposited two promissory notes of the Government of India, one of the year 1854-55 and the other of the year 1865, both for Rs 500 and both carrying interest at 4 per cent. On facts, it was observed by the Court as under:

> "It is not admitted or found what their aggregate value was with or without the interest due on Rs. 1,000 at the time of this deposit, it is admitted that they were not endorsed by the plaintiff to the defendant."

It was held that the decree-holder by delivering the two promissory notes into the Court did not pay the decretal amount into the Court. It was also held,—

> "As to the first question we are of opinion that it should be answered in the affirmative. The plaintiff by delivering

(9) 70 Punjab Record 1890.

the 2 Promissory Notes into Court did not pay the amount of the purchase money, viz., Rs. 1,000 into Courts, even if it be conceded that their value was Rs. 1,000. The most that could be said is that he delivered the equivalent of that amount by depositing securities convertible into Rs. 1,000. If a plaintiff may deposit the equivalent instead of paying money, there seems no reason why that equivalent should not take other forms, such as jewels, or grain or other securities, such as the Promissory Notes or bonds or mortgage deeds of private individuals. We consider that the terms of the section require that the deposit should be of money, and that the plaintiff has failed to deposit money."

(15) In my considered opinion, the promissory notes and the cheque cannot be treated on the same footing. The value of the Government promissory notes continues to fluctuate which, of course, is not the case with the amount of a cheque. Besides, it cannot be disputed that the payment by cheque is an accepted and well established mode of payment in these days in the present state of development of trade and commerce. It is too much and rather unrealistic to expect any person to carry the amount in silver coins or currency notes in his pocket even if the amount runs into lacs for the purpose of depositing in the Court or the treasury. Such a course may be even hazardous from the point of view of security. Cheque only means and connotes that the drawer of the cheque has the same amount in his account in the Bank, which can be credited in the account of drawee and by presenting the cheque, the drawer does everything which is required of him to make the payment. In my view, the payment in cash or the payment through a cheque are at par. However, the result will not be the same if the drawer of the cheque does not have the amount of the cheque in his account or for any other reason, the cheque is dishonoured. In that case, the presentation of the cheque cannot be treated as the payment. However, barring such an eventuality, the payment of the decretal amount through cheque will be sufficient compliance of the provision of law.

(16) It was contended by the learned counsel for the respondents, that in the present case, the cheque was not presented by the petitioner in the Court along with the application, but the same was only presented to the Bank? This fact is not disputed on the

other side. However, the same is immaterial. Even if the amount were deposited in the Bank, in cash, the same would not have been actually produced in the Court. Tender of deposit, in cash, or through cheque and the acceptance of the same by the Bank or the treasury, as the case may be, is to be deemed the deposit before and the acceptance by the Court, as the Bank or the treasury functions and complies with the order of the Court as expressed in the challan issued under the signature of the Presiding Officer.

(17) For the reasons mentioned above, it is held that the deposit of the decretal amount was validly and legally made by the petitioner. Consequently, the execution application filed by the respondent has to be dismissed. The result is that the revision petition is allowed and the impugned order is set aside. In the peculiar circumstances of this case, there will be no order as to costs.

N. K. S.

Before R. N. Mittal, J.

DAYA RAM,—*Petitioner.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 3054 *of* 1978.

October 19, 1979.

Punjab Gram Panchayat Act (IV of 1953)—*Sections* 3(q), 4 *and* 5—*Gram Sabha area divided into several sub-divisions (Majras)—Each sub-division declared a Gram Sabha area—None of such sub-divisions shown as a revenue estate in revenue records—Constitution of Gram Sabha area for each of such sub-divisions—Whether legal.*

Held, that from a reading of sections 4(1) and 5(1) of the Punjab Gram Panchayat Act, 1952, it is clear that the Government can declare any village with a population of not less than five hundred to constitute one or more Sabha areas. It can also declare a group of villages with a similar population to constitute one or more Sabha areas. The Government may also establish a Gram Panchayat by name in every Sabha area. Thus, for constituting a Gram Sabha