

1954

*Present : Pulle J. and Swan J.*

ARUNASALAM CHETTIAR, Appellant, and  
MURUGAPPA CHETTIAR, Respondent

*S. C. 352—D. C. Colombo, 18,106*

*Interest—Tender of debt due—Liability to pay interest thereafter—Minor—Debt due to him—Mode of payment.*

A debtor is not liable to pay interest after he makes tender of the money due to his creditor. Where the creditor is a minor, the offer to pay may be made to the natural guardian of the minor, especially if the minor is of a very tender age. If the natural guardian is not the duly appointed curator it is for him or her to take the necessary steps to have the appointment made.

**A**PPPEAL from a judgment of the District Court, Colombo.

*N. E. Weerasooria, Q.C.*, with *M. Ramalingam*, for the defendant appellant.

*S. J. V. Chelvanayakam, Q.C.*, with *R. Manicavasagar*, for the plaintiff respondent.

*Cur. adv. vult.*

July 19, 1954. SWAN J.—

The only question to decide in this case is whether the appellant is liable to pay the respondent interest at the Loan Board rate as ordered by the District Judge, or any interest at all. The other point taken in the petition of appeal, namely that the respondent could not maintain the action as there was no privity of contract between him and the appellant was not pressed.

In November 1929 one Vellasamy Pillai deposited with the appellant for the benefit of the respondent who was a minor of very tender age at the time a sum of Rs. 11,500. The appellant agreed to hold the same in deposit for the respondent and pay it to him together with what is known as "Chetty" interest. On 11th August, 1932, Proctor R. Muttusamy acting on behalf of the appellant wrote letter D5 to Sekappi Atehy the appellant's mother and natural guardian inquiring who was the appellant's lawful guardian as his client was ready and willing to pay over the money he held for the respondent's benefit and obtain a discharge of his obligations. The letter ends with the following sentence:— "Kindly note that unless payment is received on or before the 21st August my client will not pay interest thereon thereafter, and also will deposit it in Bank".

To this letter Sekappi Atehy replied through Mr. S. Krishnaswamy, Advocate, by D7 dated 28th September, 1932, to the effect that she was the guardian of her son and was willing to receive the money.

The appellant, wisely I would say, refused to pay the money to Sekappi Atehy. On 25th September, 1933, Proctor Muttusamy wrote letter D8 informing Sekappi Atehy that his client had deposited the sum of Rs. 13,217.42 on 10th August, 1932, in the Mercantile Bank of India. He requested her "to obtain the appointment of a duly constituted lawful guardian and curator, or if any has already been appointed to get the said guardian to appoint by special Power of Attorney some responsible person in Ceylon to receive payment of the said sum of Rs. 13,217.42". To this letter there was no reply.

The money was not deposited in the Bank in a separate account but the copies produced by the Bank of the appellant's own account show that in July 1932 two sums of Rs. 10,000/- and Rs. 5,000/- were paid to the appellant's credit and that thereafter there was always a balance standing to the appellant's credit sufficient to meet a demand for Rs. 13,217.42.

The appellant appears to have done all that was possible to return the money to the respondent, but nobody seems to have taken sufficient interest in the respondent to obtain payment. It has been contended on behalf of the respondent that the appellant could have filed a curatorship case or an ordinary action and deposited the money in court. Even if the appellant could have adopted either of these courses I do not think he was under any obligation to do so. It was the respondent's mother's duty to have taken the necessary steps to have a curator

appointed. The basis of the judgment under appeal in effect is that the appellant was under a duty to file a curatorship case and to deposit the money in court.

As regards D5 it has been argued that it does not constitute a valid tender in as much as Sekappi Atchy was not a person lawfully entitled to receive payment on behalf of the respondent. When money is due to a minor the only person to whom an offer to pay it can be made is the natural guardian of the minor specially if the minor is of a very tender age. If the natural guardian is not the duly appointed curator it is for him or her to take the necessary steps to have the appointment made. *Vander Linden* in his *Institutes of the Laws of Holland* (Cap 4, Section 1) says :—

“This parental power with us is possessed not only by the father but also by the mother, and after the death of the father by the mother alone. It consists of the entire direction of the maintenance and education of their children, and the management of their estates.”

In *Ramalingam Chettiar v. Mohamed Adward*<sup>1</sup> Soertsz S.P.J. relying upon this passage held that in a case where certain minors were sued for damages on a breach of a covenant to warrant and defend title by their deceased father notice of action given by the vendee to their mother was sufficient notice to them, as the mother was their natural guardian.

I would therefore hold that the offer to pay Sekappi Atchy was a good tender to the respondent. In the result I would allow the appeal. Judgment will be entered for the respondent for Rs. 13,217.42 and half costs of action. The appellant will be entitled to the costs of appeal.

PULLE J.—I agree.

*Appeal allowed.*

<sup>1</sup> (1938) 41 N. L. R. 49.

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