

1957

Present : Sinnetamby, J.V. KAILAYAR, Appellant, and K. KANDIAH *et al.*, Respondents*S. C. 258—C. R. Point Pedro, 1,640*

Computation of time—Consent decree—Act to be done within a period from a certain date—Meaning of words “within” and “from”.

Where a consent decree awarded certain rights to the plaintiff if he deposited a sum of money “within a period of four weeks from today” —

Held, that where an act is to be done within a specified time from a certain date, the day of that date has to be excluded for the purpose of computation of time.

APPPEAL from a judgment of the Court of Requests, Point Pedro.

V. *Arulambalam*, for the plaintiff appellant.

K. *Sivasubramaniam*, for the defendant respondent.

March 27, 1957. SINNETAMBY, J.—

This appeal relates to the correct interpretation that should be placed on a consent order entered in this case. The plaintiff had sought to pre-empt a certain share of land sold by the 1st and 2nd defendants to the 3rd and 4th. Judgment was entered by consent in the following terms.

“ Judgment for the plaintiffs, declaring them entitled to pre-empt a 1/24th share of the land sold and conveyed by the 1st and 2nd defendants to the 3rd and 4th defendants on payment of the market value Rs. 200. The amount of Rs. 200 should be deposited within a period of 4 weeks from today i.e., 25.4.56, and if the amount of Rs. 200 is not so deposited the plaintiff's action will stand dismissed with costs, but if the amount is deposited within this period of 4 weeks, the deed referred to is set aside and the conveyance is to be entered in favour of the plaintiff and the costs of such conveyance will be borne by the 1st and 2nd defendants ”.

These are the relevant portions of the consent order. This judgment was entered on the 25th April, 1956. The plaintiffs deposited the sum of Rs. 200 on the 28th May, 1956. The 23rd, 24th, 25th, 26th and 27th were public holidays.

If the day on which the order was made, namely the 25th April, is excluded the last day on which payment had to be made was the 23rd May, but that being a public holiday it was conceded that payment on the 28th would have been within time, but if the 25th April was to be included in computing the 4 weeks, it was said that the plaintiffs were one day too late.

The question that arises for decision is “ what is the meaning to be attached to the words ‘ to be deposited within a period of 4 weeks from today ’ ”. The relevant words are “ within ” and “ from today ”.

The learned Commissioner of Requests, having considered the meaning attached to the words “ within ” in the case of *Imperial Tea Company v. Aramady*¹, came to the conclusion that the 25th April should be included in computing the 4 weeks. He held, and with that finding I agree, that the Interpretation Ordinance has no application.

In my view, however, he misunderstood the effect of the judgment he purported to follow. That was a tenancy case and it is well settled law that where a tenancy commences at the beginning of a month, notice to be valid must have the effect of terminating the tenancy on the last day of the month. In that particular case, the parties proceeded to trial on the basis that the tenancy commences from the first of a month. The landlord gave notice on the 28th February, requiring the tenant to vacate the premises let within one month from the said date. The learned judge who decided that case held that the words “ within a month ” meant not later than a month and that the tenant had the whole of the last day of the month within which to leave the premises. Obviously, therefore, in computing the period, the 28th February, which was the day on which notice was given, was excluded. That case, therefore, does not support the view taken by the learned judge.

Quite apart from that, however, there are other authorities which support the contention that when the words “ from ” and “ within ” are used, they exclude the day from which the period is to commence. Wharton's Law Lexicon, 1938 Edition, at page 440 makes the following observations “ ‘ From ’ ordinarily excludes the day from which time should be reckoned ” and refers to the case of *South Staffordshire etc.*

¹ (1923) 25 N. L. R. 327.

Co. v. Sickness etc. Association ¹. In that case, the plaintiff, a Tramcar Co., effected with the defendant an insurance for personal injury in respect of accidents caused by vehicles "for 12 months from November 24th, 1887". On November 24th, 1888 injuries were caused and the claim was made for damages. It was decided that the word "from" excluded November 24th, 1887 and that the Insurance Co. was liable.

In *Stewart v. Chapin* ² it was held that the rule in regard to computation of time was that where an act was to be done within a specified time from a certain date, the day of that date was to be excluded.

Having regard to these authorities, the learned Commissioner of Requests has in my view erred in holding that the deposit was not within time.

I accordingly set aside the order appealed from dismissing the plaintiff's action. The plaintiff will be entitled to the rights reserved to him by the consent order of the 25th April, 1956. The appellant will be entitled to costs both here and in the Court below.

Appeal allowed.
