

1971

Present : Samerawickrame, J.

W. D. A. PERERA, Petitioner, and W. GONADUWA, Respondent

*S. C. 679/69—Application in Revision and/or Restitutio in Integrum
in C. R. Colombo, 97044*

*Civil Procedure—Postponement—Agreement to pre-pay costs before a certain date,
which was a public holiday—Payment made into Court on the day after the
holiday—Effect.*

Defendant's application for postponement was allowed upon the following terms :—

“ Trial re-fixed for 11.9.69. Defendant to pre-pay Rs. 75 before 11.9.69.
If not so paid, of consent judgment for plaintiff as prayed for. ”

The defendant tendered the money in Court on 11th September 1969, and submitted that he was unable to pay the money on the previous day because it was a Poya holiday.

Held, that the undertaking to pay costs *simpliciter* did not imply payment into Court. Accordingly, the failure to make payment on 10th September 1969 brought into operation the consequence provided for in the agreement.

APPPLICATION in revision and/or *restitutio in integrum* in respect of an order of the Court of Requests, Colombo.

N. R. M. Daluwatte, with *S. D. Jayawardena* and *George Perera*, for the defendant-petitioner.

A. Sivagurunathan, for the plaintiff-respondent.

Cur. adv. vult.

May 5, 1971. SAMERAWICKRAME, J.—

This is an application by way of revision to set aside a consent order entering judgment for the plaintiff.

On 25th July, 1969, the defendant moved for a postponement of the trial and the learned Commissioner of Requests allowed a postponement and refixed trial for 11th September, 1969. The record reads :

“ Trial refixed for 11.9.69. Defendant to pre-pay Rs. 75 before 11.9.69. If not so paid, of consent judgment for plaintiff as prayed for. ”

10th September, 1969, was a Poya holiday. The defendant failed to make payment before 11.9.69 and he tendered the money in Court on 11.9.69 and submitted that he was unable to pay the money on the previous day because it was a Poya day. Learned counsel for the petitioner relied on the case of *Madan Gopal v. Rallis*¹. In that case the Court granted a postponement on 19th December and ordered that the plaintiff should pay a sum of Rs. 500 as costs by the end of the month and that in default of payment within that time the suit should stand dismissed. 30th and 31st December and 1st January were public holidays and the plaintiff sought to tender the money on the 2nd of January. It was held that the order of the Court was ambiguous and that therefore such construction must be given to the order as would cause the least prejudice or harm to a litigant or a person affected by the order. It was therefore held that the payment on 2nd January was in terms of the order. The order in the present matter however, is by no means ambiguous and is definite and stated that costs should be paid before 11.9.69. Moreover, in *Simon Singho v. William Appuhamy*² the

¹ *A. I. R. 1957 Calcutta 598.*

² (1925) 26 N. L. R. 408.

agreement was that costs should be paid before 20th July which was a Sunday. Bertram, C.J. stated that a person is relieved from responsibility to make a payment in the nature of a judicial act on a Sunday. An undertaking to pay costs *simpliciter* does not imply payment into Court. He accordingly held that the failure to make payment on 20th July brought into operation the consequence provided for in the agreement. I am therefore of the view that no ground has been made out for the intervention of this Court. The application is dismissed with costs.

Application dismissed.
