

1946

Present : Jayatileke J.

ARULANANDAM *et al.*, Petitioners, and KUMARIAH *et al.*,
Defendants.

180—Application in revision in C.R. Mallakam, 13,392.

Postponement—Allowed on terms—One party to pay costs of the day to the other on or before a certain day—Computation of time-limit for payment.

Where, on the trial date, the plaintiffs were not ready and agreed to pay a sum of money to the defendants as costs of the day on or before a subsequent date, namely, February 6, and further agreed that the action should be dismissed if that sum was not paid—

Held, that payment could be made on February 6 during the course of that day, at any rate during the ordinary working hours of that day.

A PPLICATION to revise an order of the Commissioner of Requests, Mallakam.

S. J. V. Chelvanayagam (with him P. Navaratnarajah and Shanmuganayagam), for the petitioners.

H. W. Thambiah, for the 1st and 2nd respondents.

V. K. Kandasamy, for the 3rd respondent.

October 2, 1946. JAYETILEKE J.—

This case was fixed for trial on January 23, 1946. On that day Mr. Vanniasingham who appeared for the plaintiff stated that he was unable to proceed with the trial as the Surveyor was not present and also as the commission had not been executed correctly by the Surveyor. He moved to issue another commission on Mr. Sabapathy. His application was allowed on terms.

The first plaintiff who was present in court agreed to pay Rs. 25 to the defendants as costs of the day on or before February 6 and he further agreed that the action should be dismissed with costs if that sum was not paid. On February 6 the case was called on the trial roll and again in the course of the day. The plaintiffs were not present and

the learned Commissioner dismissed their action with costs as the costs which they agreed to pay had not been paid. The affidavit of Chellatamby shows that a sum of Rs. 25 was handed to him by the plaintiffs and he was requested to proceed to the Mallakam Courts and pay the amount to the defendants. He says in the affidavit that he reached the Courts at about 12 noon and he found that the case had been called and dismissed. Mr. Chelvanayagam states that the order made by the learned Commissioner is wrong and he relies on the judgment of this Court in *Weerasinghe v. Barlis*¹ according to which he says that the plaintiffs had time to make the payment till 12 midnight on the 6th February. In the course of his judgment Mr. Justice Keuneman said "where however the order made permits the payment to be made on the day of trial, I do not think we should impose any restriction which prevents the party from making the payment during the course of that day, and at any rate during the ordinary working hours of that day". I am of opinion that the order made by the learned Commissioner cannot be supported. I would accordingly set aside the order and send the case back for trial in due course. I make no order as to the costs of this application.

Order set aside.
