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MP-2145-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE ALOK AWASTHI

MISC. PETITION No. 2145 of 2025

PARTH CREDIT AND CAPITAL MARKET PVT. LTD. AND OTHERS

Versus

*IDEAL ELECTRONICS PVT. LTD. THROUGH DIRECTOR
PA VANKUMAR CHOPARA*

.....
Appearance:

Shri Mini Ravindran, learned counsel for the petitioners.

Shri Abhay Chand Jain, learned counsel for the respondent [CAVEAT].
.....

Reserved on : 03.12.2025

Pronounced on : 27.01.2026
.....

ORDER

With the consent of the parties, heard finally.

2. This petition has been filed by the petitioner/judgment debtor being aggrieved by the order dated 12.04.2025 in Execution Case No. 44/2023 pending before XIIIth District Judge, Indore by which the executing Court rejected the application filed by the petitioner under Order XXI Rule 2 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter to be referred as "CPC").

3. Brief undisputed facts of the case that are necessary for the disposal of the present petition are that a land sale agreement between the respondent and the petitioner for Rs. 35,50,000/- was executed as security against the loan, for which a case No. 69A/2016 was filed for the



enforcement of a specific agreement and another Case No. 97/2020 for the amount of Rs. 1,10,73,972/- was filed for the recovery of the money. During the said period, a compromise was reached on 20.07.2021 for Rs. 5,32,38,000/-, in which, compromise order was passed by the Court below.

4. It was stated that the petitioner had agreed to pay Rs. 5,32,38,000/- to the respondent for the settlement of both the cases and the respondent himself who wanted assistance under a specific agreement, had given up the said assistance and accepted the money and had sought the right to assistance under a specific agreement on the land in lieu of security for receiving the money. Upon settlement, the petitioner promptly paid Rs. 5,00,000/- as an installment.

5. In the compromise application (Annexure-P/1) dated 19.07.2021, in Point No. 6, it is clearly mentioned that "*that if the defendant does not pay the entire amount within one year as per the mutual agreement, then in such a situation, the plaintiff will be entitled to get the sale deed of the agricultural land mentioned in the plaint situated at Badiyakima, whose details have been given in step 2, executed through the court. But the condition will be that the plaintiff will release the agricultural land in proportion to the amount paid by the defendant to the plaintiff within one year, and in respect of the remaining land, the plaintiff will be entitled to get the sale deed registered from the defendant. And if the sale deed is not registered by the defendant, then the plaintiff will be entitled to get the sale deed registered with the help of the Hon'ble Court.*"

6. Further, vide order dated 31.07.2023 passed in M.P. 4318/2023 by



this Court, it has been held that *“Heard the counsel for both the parties and perused the record. Annexure P-2 is compromise order between both the parties passed by IV District Judge, Indore in Case No.69A/2016. According to the terms and conditions of compromise that judgment debtor paid the total amount in installment of four months within a year and if total amount is not paid within a year, then the decree holder may file execution of sale deed before the Court and have right to execute sale deed through Court. But it is the duty of the plaintiff to release the land in proportion to the amount deposited by the defendant in one year.”*

7. In compliance with the compromise dated 20.07.2021, the petitioner satisfied the order by submitting separate cheques of Rs. 5,32,38,000/- in the name of the Court and Rs. 5,32,38,000/- in the name of the respondent in the Court of the Fourth District Judge, Indore, within one year under Order XXI Rule 1 of CPC. It is an admitted fact that the amount has been deposited by the petitioners through cheque on 18.07.2022 within one year and on 25.07.2022, the Court informed the petitioners that the respondent refused to accept the cheque within 90 days which is mentioned in the order sheet dated 24.07.2023 and the cheque has not been dishonoured till date and under Section 266 of the Income Tax Act, any transaction of more than Rs. 20,000/- shall be done through cheque and not in cash.

8. The decree holder himself has accepted on 04.10.2023 in response to the application dated 20.09.2023 submitted by the judgment debtor that on 18.07.2022, a cheque of Rs. 5,32,38,000/- has been deposited by the judgment debtor and has also accepted that the petitioner had given a



facility to the debtor on humanitarian grounds that if the judgment debtor pays the amount of the last installment of Khasra No. 8/1/2 and 11/1/2 through Demand Draft with interest @ 12% from the date of decree within three days, then in such a situation, he was ready and willing to release the land of both the above mentioned Khasra numbers in lieu of the amount of the last installment.

9. It was also stated that the respondent had demanded interest from the decree dated 18.07.2021 but there was no condition fixed in the agreement regarding interest, yet the decree holder had requested the court that the question of interest does not arise from 20.07.2021, then if the Court wishes, the judgment debtor is ready and willing to pay interest from 20.07.2021.

10. That, the petitioner has filed an application under Section 47 of CPC before Trial Court in respect of execution filed by the respondent, which was to be resolved first, but the Trial Court did not consider it passed an order in aid of a specific agreement, not treating the cheque deposited by the petitioner as payment in accordance with law, being aggrieved with the aforesaid, present petition is filed.

11. Learned counsel for the petitioner argued that two civil suits were instituted between the parties, first Civil Suit No. 69A/2016 for specific performance of contract and another Civil Suit No. 97B/2020 for recovery of money. During the pendency of the said suits, the parties arrived at a settlement on 19.07.2021, pursuant to which a compromise decree was passed on 20.07.2021. As per the terms of the compromise decree, a total



sum of Rs. 5,32,38,000/- was agreed to be paid by the petitioner to the respondent within a period of one year, in three installments at intervals of four months each. It was further agreed that the land in question would be released in favour of the petitioner in proportion to the amount paid out of the decretal amount within one year. It was also agreed that in the event of failure to pay the said amount within the stipulated period of one year, the Decree Holder would be entitled to seek execution of the sale deed through the Court and have the same executed in his favour, in terms of compromise decree.

12. It is further argued that the compromise decree did not stipulate the payment of interest or the mode by which the Decree Holder was to receive the payment. Hence, under the terms of the compromise, the Judgment Debtor had the discretion to deposit the said amount in Court either by cheque or in cash and the only requirement was that the whole amount was to be deposited within a period of one year. The Judgment Debtor/petitioner also had the discretion to get the land released mentioned in the decree by paying the entire amount within one year.

13. It is also submitted that on 04.05.2022, the Decree Holder/Respondent filed execution proceedings in Execution Case No. EX A 35/2022, which was a premature execution, as under the terms of the compromise decree, the Decree Holder/Respondent could file for execution only after the lapse of one year in case of non-payment of the compromise amount. It is submitted that on 18.07.2022, the Judgment Debtor/Petitioner filed an application under Order XXI Rule 2 of CPC, stating that the entire



amount under the compromise decree had been tendered by way of cheques in the name of the Court and the Decree Holder/Respondent, and the same was also informed to the Decree Holder, as reflected in the proceedings dated 18.07.2022 and 25.07.2022. An application was also filed in Execution Case No. EX A 44/2023 for the release of the land, as the amount under the compromise decree had been deposited by cheques in Court. However, in Execution Case No. EX A 35/2022, after the expiry of 90 days, on 25.07.2023, the Decree Holder refused to accept the cheques tendered by the Judgment Debtor/petitioner before the Trial Court.

14. Learned Trial Court has erred in holding that payment by cheque is not a valid tender, it constitutes a valid tender, equivalent to Demand Draft, challan, or any other valid mode of payment. Even after the Court recognized the validity of the cheque, the petitioner remains ready and willing to pay the compromise decree amount. The petitioner also submitted that he is willing to deposit the decretal amount before the Court by way of Demand Draft along with interest from cheque tendered date 18.07.2022.

15. In support of his submission, counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of *K. Saraswathy Vs. Somasundaram Chettiar* reported in *AIR 1989 SC 1553*, *Commissioner of Income Tax, Bombay Vs. Messrs Ogale Glass Works Ltd. Ogale Wadi* reported in *AIR 1954 S.C. 429* and *Damadilal and Others vs Parashram and Others* reported in *AIR 1976 SC 2229*, to contend that cheque is a valid tender and the encashment of the payment dates back to the date of issue of Cheque.



16. Per Contra, learned counsel for the respondent opposed the submissions made by counsel for the petitioner and contended that as per the conditions under the compromise decree, total amount Rs. 5,32,38,000/- was to be paid in three installments of 4-4 months, within a period of one year and not by the way of cheque in the court. Also, in execution proceeding Case No. EX A 35/2022, an application under order XXI Rule 2 of CPC filed by the judgment debtor was decided along with several other application by the Court below vide order dated 20.02.2023. Hence, the present petition is barred on the ground of doctrine of *res judicata* as the petitioner did not challenge order dated 20.02.2023 as has also been recorded in order dated 31.07.2023 passed in M.P. No. 4318/2023.

17. To bolster of his argument, he has relied upon the judgment of Hon'ble Apex Court in *Satyadhyan Ghosal and Ors. Vs Sm. Deorajin Debi and Anr. AIR 1960 SC 941, Smt. J. Yashoda Vs.Smt. K. Shobha Rani, AIR 2007 SC 1721, Hariom Agrawal Vs. Prakash Chand Malviya, AIR 2008 Supreme Court 166 and Rashid Khan Vs. State of M.P., 2011 (3) MPLJ.*

18. He further contended that there is a limited scope of interference under Article 227 of Constitution of India and the interference can only be made when there is a jurisdictional error in the order. Where, there is a speaking order, it cannot be challenged under Article 227 of Constitution of India. It has been further argued that judgment debtor had to give the compromise decree amount directly to the decree holder and not to deposit before the Court. Only if there was no other option left then only the decree holder could have deposited the amount in the court.



19. Heard the counsel for both parties and perused the record.

20. From the perusal of record and arguments advanced by the learned counsel for the parties, following issues arise for consideration before this Court:-

(i) Whether the present petition cannot be entertained on account of being barred by the principle of *res judicata* ?

(ii) Whether the cheques tendered by the petitioner on 18.07.2021 in satisfaction of the compromise decree dated 20.07.2021 constitutes valid tender? If yes, Whether on account of such submission of cheque, the petitioner had satisfactorily complied with the terms and condition of the compromise decree so as to avoid execution of compromise decree for specific performance initiated by the respondent ?

21. So far as issue relating to doctrine of *res judicata* of the petition is concerned, learned counsel for the respondent has drawn attention of this Court towards order dated 20.02.2023 passed in Case No. EX A 35/2022 to contend that vide this order application under Order XXI Rule 2 of CPC of the petitioner had already been rejected and the same was not challenged by the petitioner and now, he is filing petition against rejection of application under Order XXI Rule 2 of CPC in Execution Case No. EX A No.44/2023, and hence the petition cannot be entertained on account of doctrine of *res judicata*.

22. To appreciate the argument of the respondent, relevant excerpt of order sheet dated 20.02.2023 are being reproduced as hereunder :-



"अभिलेख के अवलोकन से स्पष्ट है कि डिक्रीधारी द्वारा यह निष्पादन आवेदन पत्र दिनांक 21.05.22 को इस आशय का प्रस्तुत किया है कि समझौता आदेश दिनांकित 20.07.21 के पालन में 8 माह हो चुके हैं, किंतु निर्णीतऋणी ने कोई भी किश्त अदा नहीं की है। अतः डिक्रीधारी के पक्ष में विक्रय पत्र का निष्पादन कराया जावे। निष्पादन आवेदन पत्र में सर्वे नंबर 13/2 का भाग रकबा 0.60 सर्वे नंबर 13/2 का रकबा 1.40, सर्वे नंबर 11/2/2 का पार्ट रकबा 0.92 तथा सर्वे नंबर 12 पार्ट रकबा 0.47 सर्वे नंबर 11/2/1 का रकबा 0.50 को सेल लेटर जारी किया जावे, क्योंकि उक्त वर्णित सर्वे नुम्बरों की कृषि भूमियों की 8 माह की कुल राशि 3,26,25,000/- रुपये होती है तथा 8 माह की किश्तों को राशि 3,54,52,000/- अदा की जानी थी, जो अदा नहीं की गई है। इस कारण सेल लेटर जारी कर उक्त वर्णित कृषि भूमियों का कब्जा डिक्रीधारी को दिलाया जावे।

निर्णीतऋणी द्वारा दिनांक 11.02.23 को एक आपति इस आशय की प्रस्तुत की कि आपसी राजीनामे में किश्तों की राशि तय नहीं हुई है और डिक्रीधारी द्वारा मनमाने ढंग से किश्तों का पैमाना तय करते हुये यह समय पूर्व निष्पादन आवेदन प्रस्तुत कर दिया है। अर्जदार द्वारा स्वयं बजावरी में 5 लाख रुपये की राशि मुकदमा नंबर 695/16 के पेटे दिया जाना स्वीकृत किया है। अतः इस निष्पादन प्रकरण को निरस्त किया जावे, जिसका जवाब डिक्रीधारी द्वारा इस आशय का प्रस्तुत किया गया है कि शीघ्र तौर पर निर्णीतऋणी द्वारा 5,32,38,000/- चेक दिनांक]18.07.22 को न्यायालय के समक्ष प्रस्तुत किया, किंतु उक्त राशि को चार-चार माह की तीन किश्तों में दिया जाना था। अतः विक्रय पत्रों का निष्पादन कराया जाये।

पुनः दिनांक 11.02.23 को निर्णीतऋणी द्वारा यह आवेदन पत्र प्रस्तुत किया गया कि किश्तों में राशि देना तय नहीं हुआ था, बल्कि एक वर्ष के भीतर राशि भुगतान का तय हुआ था। अतः निष्पादन



आवेदन पत्र निरस्त किया जावे।

अभिलेख के अवलोकन से यह स्पष्ट है कि राजीनामा आदेश दिनांक 20.07.21 एवं पारित डिक्रीके अनुसार चार-चार माह की तीन किश्तों में 5.32.38,000/- रुपया की राशि दिया जाना उभयपक्ष के मध्य तय हुआ, किंतु उक्त राशि किश्तों में नहीं दी गई है, बल्कि विलंब से दी गई है, इस कारण यह स्पष्ट है कि उक्त राजीनामा आज्ञा का पालन निर्णीतऋणी द्वारा नहीं किया गया है।

उपरोक्त परिस्थिति को दृष्टिगत रख निर्णीतऋणी की आपत्ति निरस्त की जाती है। 5 लाख रुपया का जो चेक दिया जाना बतलाया गया है, उसे डिक्रीधारी ने स्वीकार किया है। अतः आदेशित किया जाता है कि डिक्रीधारी आगामी पेशी दिनांक तक जिन भूमि खसरा नंबरों का निष्पादन करना चाहता है, उनका विक्रय का प्रारूप न्यायालय में प्रस्तुत कर दे।

प्रकरण विक्रय पत्र के प्रारूप की प्रस्तुति हेतु दिनांक 27.02.23 को प्रस्तुत हो।"

23. Having perused the order sheet (Annexure P/3) and in light of arguments advanced by the respondent and from bare perusal of order-sheet dated 20.02.2023, it is ascertained that there is no mention of application under Order XXI Rule 2 of CPC which was filed by the petitioner on 18.07.2022. On the contrary, it is apparent from the order dated 20.02.2023 that the executing merely rejected objection of petitioner filed on 11.02.2023, but application under Order XXI Rule 2 of CPC was not decided. Thus, it is established that application under Order XXI Rule 2 of CPC is still pending in the Case No. EX A 35/2022, the present petition is in no way barred from being entertained on account of principle of *res judicata*.

24. Now, coming for determination of the issue No. 2, application



under Order XXIII Rule 3 of CPC and Compromise Decree dated 02.07.2021 (Annexure P/2) have been perused and it is found that it was agreed that the Judgment Debtor/Petitioner shall pay the total amount of Rs. 5,32,38,000/- in four installments in four months each and it was also agreed on the point that total amount was to be paid within a year, and if the total amount is not paid within a year, then, after a lapse of one year, the Decree Holder/Respondent may file for execution of the sale deed before the Court and shall have the right to execute the sale deed through the Court with respect to land with regards to which amount remained unpaid. It was agreed too that it was the duty of the Decree Holder/Respondent to release the land in proportion to the amount deposited by the Judgment Debtor/Petitioner within a period of one year.

25. This Court also finds that under the said compromise application and decree, installment amount has not been prescribed, no consequence upon failure to pay installment has been prescribed, no mode or manner of payment has been prescribed and it has also not been prescribed that Decree Holder/ Respondent is entitled to any interest over the agreed amount in the case that the installment is delayed. Hence, in the considered opinion of this court the only material condition under the said compromise deed is that the total amount of Rs. 5,32,38,000/- which was to be paid under the compromise decree was to be paid within one year and only thereafter the respondent became entitled to seek execution of the compromise decree for specific performance with respect to land in regards to which the amount remained unpaid. At the same time, it remained the duty of the



respondent/Decree Holder to release the land in proportion to the amount actually deposited by the Defendant/Petitioner within one year.

26. This Court, in the preceding paragraphs, has held that, under the terms of the compromise decree, the Decree Holder/Respondent is entitled to seek specific performance from the Executing Court only after the expiry of one year. Furthermore, prior to seeking specific performance, the Decree Holder/Respondent may take recourse to the Executing Court for specific performance only in respect of the proportion of the land corresponding to the amount which has not been received by him. In the case at hand, it is evident from a perusal of the record that, undisputedly within the stipulated period of one year, on 18.07.2022, the Judgment Debtor/Petitioner deposited a sum of Rs. 5,32,38,000/- before the learned Court below by way of a cheque drawn in the name of the Court and the Decree Holder/Respondent came to the knowledge regarding the same on 25.07.2022 as is evident from order-sheet dated 25.07.2022. The record further reveals that the said cheques were never dishonored. However, the Decree Holder did not collect the cheques from the Court within a period of 90 days despite having knowledge of the same, whereas, he refused to accept the same, while demanding payment of the decretal amount along with interest at the rate of 12% per annum from the date of the decree in his reply to Execution filed by the petitioner in Case of EX A No. 26/2023.

27. In the aforesaid factual matrix, it is apposite to refer to following judgments of Hon'ble Apex court, to adjudicate the issue that whether such submission of cheques satisfied the condition stipulated in the compromise



decree for payment of compromise amount within one year.

28. On this aspect, the law laid down by A Three-Judge Bench of Hon'ble Apex Court in the case of *K. Saraswathy Alias K. Kalpana (Dead) By LRs Vs. P.S.S. Somasundaram Chettiar* reported in *AIR 1989 SC 1553* has been held as hereunder:-

“5. It is contended before us on behalf of the appellant that the cheque for Rs.6,02,000 was tendered in Court on 29 May, 1980 and that it was duly honoured by the Bank and money was realised under the cheque, and therefore it must be taken that payment had been effected by the appellant on 29 May, 1980 within the time stipulated by this Court in its order dated 29 November, 1979. In Commissioner of Income Tax, Bombay South, Bombay v. Messrs Ogale Glass Works Ltd. Ogale Wadi, AIR 1954 S.C. 429. It was laid down by this Court that payment by cheque realised subsequently on the cheque being honoured and encashed relates back to the date of the receipt of the cheque, and in law the date of payment is the date of delivery of the cheque. Payment by cheque is an ordinary incident of present-day life, whether commercial or private, and unless it is specifically mentioned that payment must be in cash there is no reason why payment by cheque should not be taken to be due payment if the cheque is subsequently encashed in the ordinary course. There is nothing in the order of this Court providing that the deposit by the appellant was to be in cash. The terms of the order dated 29 November, 1979 are conclusive in this respect and it is the intent of that order which will determine whether payment by cheque



within the period stipulated in that order was excluded as a mode in satisfaction of the terms of that order. The time for payment is governed by the order of this Court.”6. It is alleged on behalf of the respondent that there was no money on the date of delivery of the cheque to support payment of it and that it was subsequently when arrangements were made that the cheque was realised. Now, the High Court has not found that if the cheque was presented for encashment on the date it was delivered the cheque would not have been encashed. There is nothing to suggest also that the cheque was not honoured in due course and that the Bank had at any time declined to honour it for want of funds in the ordinary course. In any event, there is nothing to suggest that, under the arrangements made for payment of the cheque, even if it had been encashed on the date it was delivered the cheque would not have been encashed. There is no finding by the High Court that on 29 May, 1980 the cheque would not have been realised. That being so, the question whether the appellant had wrongly stated that her counsel had offered to pay cash to the High Court office on 29 May, 1980 ceases to be relevant. We also see no substance in the objection taken before the High Court that in the letter dated 29 May, 1980 addressed by counsel for the appellant forwarding the cheque for Rs.6,02,000 there was a request for the return of the cheque in case it was found that the appellant was entitled to the set-off claimed by her. The application of the appellant claiming adjustment was pending in Court, and no conclusion can be drawn against her on the ground that she had requested a return of the cheque in the event of the adjustment being allowed by the Court.”



29. In a recent judgment delivered in the case of Vijay Laxmi Singh & Ors. Vs. Registrar of Cooperative Societies, Govt. of NCT of Delhi & Anr. decided on 20.04.2022 in W.P.(C) No. 6312/2022, the Division Bench of High Court of Delhi has taken note of the dictum of Three Judges' Bench of the Hon'ble Apex Court in the case of K. Saraswathy alias K. Kalpana (Dead) By LRs (Supra) and observed as follows :-

“The learned counsel for the respondents submits that since the payment was made through cheques and the money has not been realized, therefore, the petitioners were deemed to be in arrears. The said argument has only is stated to be rejected because tendering of cheques by the petitioners for the requisite amount and acceptance of the same by the respondents is as good as cash being tendered, in view of the provisions of the Negotiable Instruments Act, 1881 as well as the dicta of the Supreme Court in Damadilal and Others v. Parashram and Others, (1976) 4 SCC 855 and K. Saraswathy alias K. Kalpana (Dead) By LRs v. P.S.S. Somasundaram Chettiar, (1989) 4 SCC 527. The latter held, inter alia, that, “...Payment by cheque is an ordinary incident of present-day life, whether commercial or private, and unless it is specifically mentioned that payment must be in cash there is no reason



why payment by cheque should not be taken to be due payment if the cheque is subsequently encashed in the ordinary course...”

In Damadilal and Others v. Parashram and Others (supra), the question before Supreme Court was whether the payment by cheque was a proper tender. The court held that it is well-established that a cheque sent in payment of a debt on the request of the creditor, unless dishonoured, operates as a valid discharge of the debt and if the cheque was sent by post and was honoured on presentation, the date of payment is the date when the cheque was posted.”

30. Similarly, in the case of *Commissioner of Income Tax, Bombay South, Bombay v. Messrs Ogale Glass Works Ltd. Ogale Wadi* reported in *AIR 1954 SC 429*, Hon’ble Apex Court has observed as follows :-

“It is said in Benjamin on Sale, 8th Edition, page 788:-

The payment takes effect from the delivery of the bill, but is defeated by the happening of the condition, i.e., non- payment at maturity.”

In Byles on Bills, 20th Edition, page 23, the position is summarised pithily as follows:’ A cheque, unless dishonoured, is payment.” To the same effect are the passages to be found in Hart on Banking, 4th Edition, Volume I, page 342. In Felix Hadley & Co. v. Hadley



(3), *Byrne J. expressed the same idea in the following passage in his judgment at page 682:*

In this case I think what took place amounted to a conditional payment of the debt; the condition being that the cheque or bill should be duly met or honoured at the proper date. If that be the true view, then I think the position is exactly as if an agreement had been expressly made that the bill or cheque should operate as payment unless defeated by dishonour or by not being met; and I think that that agreement is implied from giving and taking the cheques and bills in question."

*The following observations of Lord Maugham in *Bhokana Corporation v. Inland Revenue, Commissioners* are also apposite:*

"Apart from the express terms of section 33, sub-section 1, a similar conclusion might be founded on the well known common law rules as to the effect of the sending of a cheque in payment of a debt, and in the fact that though the payment is subject to the condition subsequent that the cheque must be met on presentation, the date of payment, if the cheque is duly met, is the date when the cheque was posted."

In the case before us none of the cheques has been dishonoured on presentation and payment cannot, therefore, be said to have been defeated by the happening of the condition subsequent, namely dishonour by non-payment and that being so there can be



no question, therefore, that the assessee did not receive payment by the receipt of the cheques. The position, therefore, is that in one view of the matter there was, in the circumstances of this case, an implied agreement under which the cheques were accepted unconditionally as payment and on another view, even if the cheques were taken conditionally, the cheques not having been dishonoured but having been cashed, the payment related back to the dates of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques. On the footing, then, that the assessee received payment as soon as the cheques were delivered to it the question still remains as to when and where the assessee received such payment.”

31. The following excerpts of the another case of Hon’ble Apex Court, **Damadilal And Others vs Parashram And Others** reported in AIR 1976 SC 2229, is worth to be quoted here as under:-

“13. This is what the High Court held on the validity of tender of rent by cheque:”

The question is as to whether, instead of presenting the cash, if a cheque is sent to the landlord, that is sufficient tender of the arrears of rent or not.....

In the highly deve-loped society, payment by cheque has become more convenient mode of discharging one's obligation. If a cheque is an instrument which represents and produces



cash and is treated as such by businessmen, there is no reason why the archaic principle of the common law should be followed in deciding the question as to whether the handing over of the cheque is not a sufficient tender of the arrears of rent if the cheque is drawn for that amount. It is no doubt true that the issuance of the cheque does not operate as a discharge of the obligation unless it is encased, and it is treated as a conditional payment, yet, in my view, this is a sufficient tender of the arrears if the cheque is not dishonored. In the present day society, I am of the view, an implied agreement should be inferred that if the payment is made by a cheque, that mode of payment would be accepted."

On the ground of default, it is not disputed that the defendants tendered the amount in arrears by cheque within the prescribed time. The question is whether this was a lawful tender. It is well established that a cheque sent in payment of a debt on the request of the creditor, unless dishonoured, operates as valid discharge of the debt and, if the cheque was sent by post and was met on presentation, the date of payment is the date when the cheque was posted. The question however still remains whether in the absence of an agreement between the parties, the tender of rent by cheque amounts to a valid discharge of the obligation. Earlier, we have extracted a passage from the High Court's



Judgment on this aspect of the case. We agree with the view taken by the High Court on the point. Rent is payable in the same manner as any other debt and the debtor has to pay his creditor in cash or other legal tender, but there can be no dispute that the mode of payment can be altered by agreement. In the contemporary society it is reasonable to suppose such agreement as implied unless the circumstances of a case indicate otherwise. In the circumstance of this case, the High Court, in our opinion, rightly held that the cheque sent to the plaintiffs amounted to valid tender of rent. The second contention urged on behalf of the appellants must also be rejected."

32. In the case of *K. Saraswathy (Supra)*, the law laid down by a Three-Judges Bench of Hon'ble Apex Court, that tendering a cheque is a valid form of payment unless cash is specifically required by a Court order. When a cheque is encashed in the usual course, the payment is considered to have been made on the date of the cheque was given.

33. In view of the law laid down by the Hon'ble Supreme Court in *Commissioner of Income Tax, Bombay v. Messrs Ogale Glass Works Ltd., Ogale Wadi (supra)*, it stands conclusively established that where payment is made by cheque pursuant to the creditor's request for remittance, the post office acts as the agent of the creditor. Though a cheque constitutes a conditional payment, upon its encashment the payment relates back to the date and place of its delivery. Accordingly, the act of posting the cheque



constitutes receipt of income at the place from which it is posted. Applying this settled principle, the receipt of income in such circumstances is deemed to have occurred at the place of posting of the cheque, and not at the place where it is ultimately received by the assessee.

34. Similarly, Hon'ble Apex Court in the case of **Damadilal And Others (Supra)**, has observed that tendering rent by cheque constitutes a valid tender, especially in contemporary society where it is a standard business practice. Unless a cheque is dishonoured or there is an express agreement to the contrary, it is treated as a valid discharge of the debt.

35. In these judgments, observation has been made that when a statute confers protection or rights, and the opposite party accepts benefits arising from that relationship (such as rent or payment), the law recognizes continuity of rights and obligations. Acceptance by conduct is sufficient to establish legal recognition, even in the absence of a fresh agreement.

36. If the present case is tested on the anvil of dictum of law as laid down in the cases cited hereinabove, it is clear that the petitioner/Judgment Debtor, within the stipulated period of one year, deposited a sum of Rs. 5,32,38,000/- on 18.07.2022 before the learned Court below by way of a cheques drawn in the name of the Court and the Decree Holder/Respondent. The said cheques were never dishonoured. Since the compromise decree did not prescribe cash payment as the mandatory mode, the cheque deposited by the Judgment Debtor on 18.07.2022, in compliance of the decree, constitutes a valid tender in terms of Order XXI Rule 1 of the CPC which expressly provides for the deposit of the decretal amount before the Court, and a



cheque, being a negotiable instrument, constitutes payment. Accordingly, tender of payment by cheque through a banking mode amounts to a valid tender in the eye of law. Thus, in the considered opinion of this Court, the decree stood satisfied upon presentation of cheques before Executing Court and respondent cannot get benefit of his own fault of not presenting the cheques for encashment despite getting the knowledge of the same well within time.

37. So far as the judgments relied by learned counsel for the respondent are concerned, in the case of **Satyadhan Ghosal (Supra)**, Hon'ble Apex Court has held that doctrine of *res judicata* does apply at different stages of the same proceedings, but in the present case, on perusal of the order-sheet dated 20.02.2023, it is evident that no application under Order XXI Rule 2 of CPC has been decided. Hence, this petition is in no way barred being entertained on account of doctrine of *res judicata*.

38. As far as the law relied upon by counsel for the respondent in the cases of **Smt. J. Yashoda (Supra)**, **Hariom Agrawal (Supra)** & **Rashid Khan (Supra)** is concerned, the same are not applicable to this case as the factual matrix in each of these cases, is materially and substantially different from the facts of the instant case

39. Apart that the respondent was ready to before the trial Court to take the amount with interest, but in the form of Demand Draft only. The compromise decree dated 20.07.2021 does not prescribe any specific mode of payment nor did it contemplate payment of interest. The only condition stipulated was that the entire compromise amount was required to be paid



within a period of one year. The material on record unequivocally demonstrates that the petitioner tendered the entire decretal amount within the stipulated period by way of cheques and duly informed the decree holder thereof. The said tender was neither disputed nor shown to be invalid, nor was the cheque dishonoured at any point of time.

40. The Executing Court failed to appreciate that payment by cheque constitutes a valid tender in the eyes of law and that refusal by the decree holder to accept such payment does not render the tender illegal or ineffective. The impugned order further overlooks the binding terms of the compromise decree and travels beyond the scope of execution by introducing conditions not agreed upon between the parties. Such an approach is impermissible in execution proceedings.

41. This Court also finds no merit in the objection raised on behalf of the respondent regarding doctrine of *res judicata* or maintainability, as the issue relating to satisfaction of the decree on account of lawful tender within the stipulated time, was neither finally adjudicated earlier nor barred from consideration. The Executing Court, therefore, committed an error resulting in failure of justice, warranting interference under the supervisory jurisdiction of this Court.

42. Accordingly, this Miscellaneous Petition succeeds and impugned order dated 12.04.2025 passed in the Execution Case No. 44/2023 by the XIIIth District Judge, Indore is hereby quashed.

43. The petitioner/judgment debtor is directed to deposit decretal amount of Rs. 5,32,38,000/- before the Executing Court by way of new



cheque alongwith simple interest at the rate of 12% per annum from 18.07.2022 within a period of 30 days from the date of passing of this order. The petitioners' old cheque be returned to him by the concerned Executing Court.

44. If the petitioner fails to comply with the aforementioned directions, the executing Court shall proceed with execution proceedings in accordance with law without further reference to this Court.

45. With the aforesaid observations and directions, this Miscellaneous Petition stands allowed and disposed of.

(ALOK AWASTHI)
JUDGE

Vindesh