

(1933) 01 MAD CK 0042
In the Madras High Court

G. Kuppaswamy Chetty

APPELLANT

Vs

Pahkiri Pillai and Others

RESPONDENT

Date of Decision : 11-01-1933

Acts Referred:

Citation : AIR 1933 Mad 342

Hon'ble Judges : Walsh, J

Bench : Division Bench

Judgement

Walsh, J.—In this case the properties of a judgment-debtor were attached and the respondents' sureties executed a bond for the

production of the articles. The petitioner applied for the arrest of these persons on the ground that they did not produce the articles. The lower

Court dismissed the petition mainly on two grounds: firstly that the bonds were defective as the list of articles attached had not been initialed by the

parties on each page, and secondly that there must be a notice to the sureties to produce the articles for any valid order of execution to be taken

against them and there was no such notice in the case of the first surety. The matter was taken in appeal to the District Court, which found that the

appeal did not lie and that finding is not contested before me. The learned District Judge remarked however that

he was not at all satisfied with the manner in which the lower Court dismissed the execution petition on the merits. The surety bond is not

incomplete in law by reason of the attachment list annexed to it having been signed by only one surety even though the surety who has not signed

was the one who took charge of the moveables.

2. He was of opinion that it is a matter for evidence. Then he said:

While I agree that the issue of a notice was necessary on the analogy of Section 145, the petition ought not to have been dismissed without calling upon the decree-holder to pay batta for notice.

3. He is evidently here under a misapprehension that the petition was one for notice on the sureties to produce the articles. The petitioner simply

prayed for their arrest. From the decision in *Raj Raghubar Singh v. Jai Indra Bahadur Singh* AIR 1919 PC 55 which has been followed in

Sankunni Variar v. Vamdevan Nambudripad AIR 1226 Mad 1005 it is clear that while a separate suit to enforce a bond of this nature is not

necessary yet action on the bond does not fall u/s 145, Civil P.C. Their Lordships have in *Raj Raghubar Singh v. Jai Indra Bahadur Singh* AIR

1919 PC 55, laid down the procedure to be followed where they say:

It remains therefore that here is the unquestioned liability and there must be some mode of enforcing it and that the only mode of enforcing it must

be by the Court making an order in the suit upon an application to which the sureties are parties that the properties charged be sold unless before a

day named the sureties find the money.

4. In that case it was a question of finding money and in the present case it is a question of producing the articles or money for which the sureties

rendered themselves liable on the bond. Hence the petition to arrest the sureties without having obtained an order of Court under the bond is

premature and was rightly dismissed. In these circumstances this revision petition is dismissed with costs one set. The second appeal does not lie.