

(1945) 01 MAD CK 0040
In the Madras High Court

Garpati China Basava Satyanarayana	APPELLANT
Vs	
The Hindu Religious Endowments Board and Others	RESPONDENT

Date of Decision : 30-01-1945

Acts Referred:

Citation : AIR 1945 Mad 300 : (1945) 58 LW 297 : (1945) 1 MLJ 331

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—On the day on which A.S. No. 49 of 1943 on the file of the Subordinate Judge of Guntur was posted, the vakil for the

appellant was absent; but the party presented a petition sent by the vakil to the Court to the effect that he had been laid up with malaria for

sometime and ha(l been confined to bed without taking food, and that as he was not in a fit position to stir from his bed, he prayed for a week"s or

ten days" adjournment. The" Court thought the request unreasonable and said that the vakil should have engaged somebody else to argue the

appeal. It therefore summarily dismissed the appeal.

2. In second appeal, it is argued, on the authority of Patinhare Tarkat Rama Mannadi v. Vellur Krishnan Menon I.L.R.(1902)Mad. 267, that the

Court should not have disposed of the appeal in a summary fashion as if the appellant had been absent; but should have disposed of the appeal on

its merits. It is difficult to see how a Court can satisfactorily dispose of an appeal on the merits, when there is nobody to argue the appellant"s case.

An examination of documents and depositions by the Court is not likely to result in a satisfactory disposal of the appeal. However, it was held in

Patinhare Tarkat Rama Mannadiv. Vellur Krishnan Menon¹, that if a pleader is

present in Court but unable to argue the appeal, the party is nevertheless present in Court through his pleader and that the appeal cannot be therefore dismissed for default. If the facts of this case correspond with those in *Patinhare Tarkat Rama Mannadi v. Vellur Krishuan Menon*,¹ I should be bound to follow it. They do not, however. The appellant's vakil was clearly not present in Court if his affidavit was true; because on the very day of the hearing, he wrote that he was unable to move out of his bed. The party was no doubt physically present in Court; but, as has been pointed out in many cases, the mere physical presence of a party does not mean his presence for the purpose of conducting the proceedings. He had no intention of conducting the appeal, and, in fact, could not do so; for he had engaged a vakil to appear for him and had not revoked his vakalat. As the vakil who was authorised to appear for the appellant was absent, the Court was bound to treat the appeal as one in which the party was absent and to dismiss it for default. The disposal of the lower appellate Court was therefore correct.

3. This appeal is dismissed with costs.