

(1946) 03 MAD CK 0010
In the Madras High Court

N.P. Ganapathy Naicker and Others

APPELLANT

Vs

A.M. Govindarajulu Naidu

RESPONDENT

Date of Decision : 22-03-1946

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 17

Citation : AIR 1947 Mad 70 : (1946) 59 LW 500 : (1946) 2 MLJ 217

Hon'ble Judges : Yahya Ali, J

Bench : Division Bench

Judgement

Yahya Ali, J.—This revision petition arises out of an application made by the petitioners herein, in the Court of the Subordinate Judge of

Vellore to accept the security tendered by them and to permit them to file fair bonds. With the details of the matter itself we are not concerned. It is

sufficient to mention that, when an application was made in the second appeal arising out of a suit, for stay of execution of the decree, this Court

ordered that the petitioners should furnish security to the satisfaction of the lower Court within one week of the reopening of that Court after the

summer recess. The draft security bond, prepared on plain unstamped papers, was filed on the day when the Court of the Subordinate Judge

reopened after the summer recess. It took some time for getting it tested, with the result that the week's time given in the order of this Court

elapsed. But the learned Subordinate Judge dismissed the petition, holding that it was incumbent upon the petitioners to file a registered and

completed security bond within the time allowed and that the time would not get automatically extended if it was found necessary to get the bond

tested.

2. For this purpose, the learned Subordinate Judge relied on the decision of King, J. in Puthiottil Chathiyelan Kanna Kurup Vs. Mayimmoli Raman

Nayar, . That was a case which turned exclusively upon the language of Section 17 of the Provincial Small Cause Courts Act. The learned Judge

took the view that in Section 17 an alternative is given, namely, that if the decree was to be set aside, the decree amount should be deposited or

adequate security furnished. It was considered by King, J. that if on an interpretation of Section 17, no deposit of the decree amount could be

made after the lapse of thirty days it should be equally assumed that the security which was only an alternative, should also be furnished in a

completed form within the same specified period. In taking this view the learned Judge followed the decision of Ramesam, J., in Balakrishna Iyer v.

Pichamuthu Pillai (1921) 15 L.W. 186, which is also a case which arose u/s 17 of the Provincial Small Cause Courts Act. King, J., in the decision

just cited however took note of the fact that under the general law a different view had been taken in this Court. In a short note case reported in 52

M.L.J. 53, Jackson, J., held that, where security was ordered to be furnished within a particular time in an application for stay of sale, if security,

was tendered within the time, even though tested after the time, and it proved to be eventually sufficient the petitioner must be deemed to have

complied with the order of the Court and no petition for extension of time was necessary. This view was followed by Happell, J., in a recent

decision in Rangaswami Nadar Vs. Pitchaimani Nadar by next friend A.K.P. Chinna Nadar, . The learned Judge was of the opinion that if security

is tendered within the time given, it is a sufficient compliance with the order and the appeal cannot be rejected unless the security is tested and

rejected, even though the testing is after the time fixed for furnishing it: the testing of the security itself need not be within the time. It is not necessary

to consider the cases that have arisen under the Provincial Small Cause Courts Act, which, as pointed out, have proceeded upon the particular

language of Section 17, but, the general principle is as laid down by Jackson, J. and Happell J. in the cases mentioned above. In practical working,

it will amount to a denial of the relief to the party if it should be held that in such circumstances the entire process of tender, testing, approval by

Court and registration should be completed within the limited time that will usually be allowed to the party. It would be sufficient, in my opinion, if

the party concerned carries out the order of the Court directing him to furnish security and, in doing so, does all that lies in his power within the time by way of tendering security. If in the end the security that is furnished within the prescribed time is found after testing to be insufficient and is rejected, then the requirements of the order have not been satisfied. In such a case, the Court will be entitled to reject the application for accepting the security. In this view, it is not material to consider whether the draft security bond in this case could be furnished on plain unstamped papers or whether it should have been stamped with the requisite stamp, especially when as stated in the District Munsiff's order what was required to be filed was a registered security bond and production of a registered security bond duly approved by the Court within a week was physically impossible.

3. This revision petition is allowed with costs. The petition in the lower Court will be restored and proceeded with according to law and in the light of the directions given in this order.