
(1951) 04 MAD CK 0021
In the Madras High Court
Case No : A.A.A.O. No. 218 of 1950

Parol Abu Packer

APPELLANT

Vs

Pokkyarath Sivasankara Kurup

RESPONDENT

Date of Decision : 27-04-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 51

Citation : AIR 1952 Mad 161 : (1951) 64 LW 756 : (1951) 2 MLJ 175

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : S. Venkatachala Sastry, for the Appellant; K. Kuttikrishna Menon and V. Balakrishna Eradi, for the Respondent

Final Decision : Allowed

Judgement

Govinda Menon, J.—It is clear that before the appellant was ordered to be arrested, no notice was given to him and therefore the order of

the learned Judge to the effect, viz., ""means proved, arrest by 6th June 1950"" cannot be justified in view of the proviso to Section 51 of the Civil

Procedure Code, which lays down that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless,

after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, etc. So it is clear that before an order

for arrest is made, the Judgment-debtor should be given an opportunity of showing cause why he should not be arrested. The preamble to the

District Munsiff's order clearly states that the respondent has been given no notice at all. Such being the case, the order appealed against is

unsustainable and has to be set aside. I set aside the orders of the lower Courts and remand R.E.P. No. 112 of 1950 to the trial Court for

restoration to its original number on the file and disposal, after giving notice to the respondent, expeditiously. As this point was not taken in the lower Court, nor even in the grounds of appeal to this Court, I direct each party to bear his own costs in this second appeal.