

(1944) 10 MAD CK 0007
In the Madras High Court

Penugonda Radhakrishnamurthy	Vs	APPELLANT
V.A.Y. Ethirajulu Chetty and Co. and Others		RESPONDENT

Date of Decision : 18-10-1944

Acts Referred:

Arbitration Act, 1940 — Section 39

Citation : AIR 1945 Mad 184 : (1945) 58 LW 10 : (1945) 1 MLJ 54

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This is an appeal from the judgment of Kuppuswami , Ayyar, J., setting aside an order of the Principal

Judge of the City Civil Court under the provisions of Section 39 of the Indian Arbitration Act, 1940, Two applications had been filed in the City

Civil Court for an order extending the time allowed to an umpire for the passing of his award. The umpire awarded the first respondent a sum of

Rs. 600; but the award was not made within the time allowed by law. The principal Judge of the City Civil Court refused the applications on the

ground that by granting them the opposite party would lose valuable rights. The first respondent then appealed to this Court. Kuppuswami Ayyar,

J., considered that the application for extension of time should have been granted, and allowed the appeal. Accordingly he sent the case back to

the City Civil Court to decide the other points raised in the proceedings.

2. A preliminary objection has been taken! It is contended that this appeal does not lie by reason of Sub-section (2) of Section 39 which says that

no second appeal shall lie from an order passed in an appeal under the section, although nothing in the section shall affect or take away a right to

appeal to His Majesty in Council This objection is sound. It is true that Clause 15 of the Betters Patent, if it stood alone, would allow the appeal;

but Clause 44 of the Letters Patent says that the provisions are subject inter alia to the legislative powers of the Governor-General in Legislative

Council. The Indian Arbitration Act is an Act of the Central Legislature and the provisions of Section 39 must prevail.

3. The appeal is dismissed with costs.