

(1928) 01 MAD CK 0015
In the Madras High Court

S.R.M.S. Raman Chetty

APPELLANT

Vs

A.R.M. Ramaswami Pillai

RESPONDENT

Date of Decision : 17-01-1928

Acts Referred:

Citation : 110 Ind. Cas. 205 : (1929) 29 LW 327 : (1929) 56 MLJ 64

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—The petitioner is an executing decree-holder, and to bring his application within time he must establish that the batta

memorandum filed by him on 11th July 1922 was an application to take a step-in-aid of execution. This, the Lower Court has held, he cannot

establish and hence the petition.

2. On 3rd July, 1922 he applied for the arrest of the judgment-debtor. The arrest was ordered on 10th July 1922. Then in accordance with Rule

166 of the Civil Rules of Practice the applicant brought into Court the necessary fees with the memorandum in question which contains in columns

1 and 5 the statement ""Batta for arrest.

3. Were it simply a matter of applying the words of Article 182 in the Indian Limitation Act to the circumstances of this case I do not think that

there would be any difficulty. Applying to a Court to take a step-in-aid is asking a Court to go forward, to do something more, in fact, to take

another step. The steps in this process are clearly defined. There is the application for arrest, its scrutiny, the adjournment for a period within which

the fee must be paid, the receipt of the fee, and the order for process to issue. This batta memorandum is a direct application that the Court shall

receive the fee and art implied application that it shall issue process. It is a step-in-aid; which seems to be the view taken in Vijiaraghavalu Naidu v.

Srinivasalu Naidu ILR (1905) Mad. 399.

4. In A.L.A.R. Arunachalam Chettiar, through his Authorised Agent, Pichappa Chettiar Vs. Latchumanan Chettiar and Others, a similar batta

memorandum came up for consideration; at least so I presume from the phrase ""batta memos. for warrant of arrest," although the actual paper is

neither quoted in the judgment nor to be found in the record.

5. The learned Judge considered various rulings and held that in the batta memorandum referred to in Vijiaraghavalu Naidu v. Srinivasalu Naidu

(I.L.R. 1905) Mad. 399 there was a distinct application for process Over and above what is now in the form. I do not think so myself, and in my

opinion, as observed above, the entry in the memorandum ""batta for arrest of plaintiff"" is an application for the issue of warrant, which I believe

was also the view of the learned Judges in Vijiaraghavalu Naidu v. Srinivasalu Naidu ILR (1905) Mad. 399 though no doubt it is difficult to apply

rulings which contain no citation of the document in question. In fact for that reason alone I should be prepared to ignore the case-law and trust to

the plain interpretation of the statute. It is quite possible that the memorandum referred to in A.L.A.R. Arunachalam Chettiar, through his

Authorised Agent, Pichappa Chettiar Vs. Latchumanan Chettiar and Others, did not even contain these words ""Batta for arrest of plaintiff.

6. I had thought of referring the matter to a Bench, but on a consideration of the cases I hold that Vijiaraghavalu Naidu v. Srinivasalu Naidu ILR

(1905) Mad. 399 is clear authority (of Alagamuthu Pillai v. Devasagaya Fernandez (1915) 3 L.W. 34) which is not cited in A.L.A.R.

Arunachalam Chettiar, through his Authorised Agent, Pichappa Chettiar Vs. Latchumanan Chettiar and Others, . I allow this petition with costs.

The batta memorandum is an application to take a step-in-aid, and the petitioner's present application is not barred by limitation and must be

proceeded with in due course.