

(1919) 10 MAD CK 0037
In the Madras High Court

Surinarayana Iyer

APPELLANT

Vs

T. Soundararaja Iyengar and Another

RESPONDENT

Date of Decision : 21-10-1919

Acts Referred:

Citation : 55 Ind. Cas. 618

Hon'ble Judges : Krishnan, J

Bench : Single Bench

Judgement

Krishnan, J.—Though I was inclined to doubt the correctness of the ruling in Ramasami v. Kurisu 13 M.P 178 I think it must now be taken as settled by the decision of Seshagiri Aiyar and Moore, JJ, in Akuli Achiah v. Challapalli Lakshinarasimham 53 Ind. Cas. 926 : (1919) M.W.N. 687 : 37 M.L.J. 433 : O.L.W. 474 that the provision in Section 17 of the Provincial Small Cause Courts Act requiring the deposit of the decree amount or the giving of security for it at the time of the prosecution of the application to set aside the ex parte decree is not mandatory but only directory.

2. The deposit must, in other words, be made or security furnished as and when the Court directs. The Court has, therefore, the power to let the deposit to be made as it thinks fit and to give time for it, provided of course that the deposit is made before the hearing of the petition.

3. One sentence in the judgment of my learned brothers, where they say we express no opinion whether this deposit after the time allowed for the application is valid or not, has given room to some argument before me that they did not decide that the Court can give, time beyond the 30 days fixed for applications to set aside ex parte decrees under the Limitation Act. But reading the judgment as a whole, I think it shows that they recognised that the Court could allow any proper time as it thinks necessary, as the provision was held to be directory only, There is no time fixed for the deposit under the section, if we do not consider the time of the presentation of the application as that time. If that point of time is not to be taken as fixed for the deposit, it can be made at any time the Court

fixes for it before the hearing. The objection that the deposit was not made in this case within the time must, therefore, be overruled, as the deposit was made within the time allowed by the Court. The Court was no doubt very indulgent in the matter of fixing time but that is not a question on which I should interfere.

4. The further objection that the execution costs incurred by the decree-holder were not deposited before the decree was set aside, is also not a valid objection to the order setting aside the decree, as those costs cannot be held to come within the expression "the amount due under the decree" in Section 17.

5. It was next urged that there was no sufficient cause shown for the defendants' absence on the hearing date. The learned Subordinate Judge has accepted the cause shown as sufficient and, though perhaps it is not a very satisfactory cause, I am not prepared to interfere with the discretion of the Subordinate Judge.

6. The order setting aside the ex parte decree must, therefore, be upheld. On the merits, the finding that Exhibit A, the document, seen on, is not proved to be genuine is one of fact and the learned Subordinate Judge has given some reasons for it and I must accept it in revision.

7. The suit was on that finding rightly dismissed against the 1st defendant. The case, however, stands on a different footing against the 2nd defendant. He, having transferred Exhibit A to the plaintiff and having received consideration for it and having agreed to repay if plaintiff failed to recover from the 1st defendant, is clearly liable for the suit amount. There must be a decree against him for it and costs.

8. In the result the civil revision petition is dismissed with costs against the 1st defendant but allowed with costs in this Court only against the 2nd defendant.