

(1926) 09 MAD CK 0003
In the Madras High Court

V. Venuswami Iyengar and Another

APPELLANT

Vs

K. Varadaraja Iyer and Others

RESPONDENT

Date of Decision : 23-09-1926

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 8

Citation : AIR 1927 Mad 511 : 100 Ind. Cas. 440

Hon'ble Judges : Srinivasa Iyengar, J

Bench : Single Bench

Judgement

Srinivasa Iyengar, J.—This is an application for an order that the 2nd plaintiff, the Official Assignee, should be directed to furnish security for

the costs of the suit of the 6th defendant. The 6th defendant claims to be the receiver appointed for the 1st defendant on his insolvency in the

Dindigul Sub-Court. The only provision of law under which such orders for security can be made is Rule 8 of Order 22, Civil Procedure Code.

The rule is to the effect that no suit shall abate simply because of the insolvency of the plaintiff unless one of two things happens, that is, unless such

assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof

within such times as the Court may direct. Clause 2 of that rule deals with the consequences of the failure on the part of the assignee to furnish the

security. Under Clause 1 it is perfectly clear that the security required to be furnished by the Official Assignee should be at the time when electing

to proceed with the suit he brings himself on the record as plaintiff. No doubt, there is also the further provision that the Court can for special

reasons relieve him from such obligation and direct that he be at liberty to come on record and continue the suit even without furnishing the security.

Such an order has been made in this case, the order being to the effect that he need not furnish any security But apart from that altogether, and

dealing with the present application as a fresh application for a direction to the Official Assignee to furnish such security, I am satisfied that no such

order can be made at present.

2. There is also good reason for the rule being to that effect. If the Official Assignee considering the cause of action in the case and probability of

success or failure should make up his mind to proceed with the suit only in the event of the Court relieving him from the obligation to furnish

security and then is allowed to come on the record and prosecute the suit, it would be wrong that he should thereafter be required to furnish any

security. On the other hand, if he is required at the very commencement to furnish security, the Court not excusing him, then it will be for him to

make up his mind whether he will go on or not. Now in this case without any such security as is now applied for, the option was given to the

Official Assignee to continue the suit and on that option he has brought himself on the record and has been prosecuting the suit ever since. I am,

therefore, clearly of the opinion that the stage at which any party to the suit could insist on the Official Assignee furnishing the security has long

since passed. The learned vakil for the applicant has asked me to treat this as an application now made for such an order. As I said, no such

application is now sustainable. There is no provision for it and therefore, in my view the application fails and it is dismissed, with costs.