

**(1936) 01 MAD CK 0022**  
**In the Madras High Court**

Venkatarama Ayyar

APPELLANT

Vs

Ramaswami Ayyer

RESPONDENT

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**Date of Decision :** 31-01-1936

**Acts Referred:**

**Citation :** AIR 1936 Mad 524 : 163 Ind. Cas. 732

**Hon'ble Judges :** Stodart, J

**Bench :** Division Bench

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## **Judgement**

Stodart, J.—The petitioner was the plaintiff in a Small Cause suit and obtained an ex parte decree. The judgment-debtor applied to have the decree set aside on the ground that he was prevented from appearing in Court on the hearing date by a mistake as to the proper date of hearing. Section 17, Provincial Small Cause-Courts Act, requires him to furnish security to the satisfaction of the Court along with his application to set aside the decree. Security was eventually furnished and the decree was set aside and the plaintiff has, as I have said, presented this petition to revise the Court's order.

2. Two grounds are alleged. One is that" the Court did not record findings on the merits of the respondent's case. This is perfectly true, and while it is most desirable in my opinion that the Court should state why it thinks the ex parte decree should be set aside, Order 9, Rule 13, Civil P.C. does not make it obligatory for the Court to state its reasons.

3. The second ground on which this petition is based is that the judgment-debtor's application was barred by limitation for the reason that the security was not furnished until the 30 day prescribed by the Limitation Act had expired. I am not quite certain that that is really the case. Following the usual practice the judgment-debtor when he presented his petition which was 13 days after the decree also furnished a draft of a security bond of Immovable property for the inspection of the Court. The Court apparently was satisfied with this security because it ordered the bond to be engrossed on a stamp paper and re-presented. And this was done and the fair bond was so re-presented on 2nd April

1934 which was still within 30" days of the decree. The bond was not rejected by the trial Court nor was it accepted. Apparently the Court regarded it as conditional security and ordered it to be tested. It was tested and found insufficient whereupon the judgment-debtor furnished additional security. It appears to me that the delay by reason of which the full security was not furnished within the time of limitation was due to the action of the Court and cannot be laid at the door of the judgment-debtor. In this particular case the last day for filing the application was 2nd April. The judgment-debtor presented is draft bond on 15th March. If the Court had ordered him to represent that bond after having it registered within the time allowed there can be no possible doubt that the judgment-debtor could have done so. In that case his application would have been in time even according to the reasoning in *Balakrishna Ayyar v. Pichamuthu Pillai* 1922 15 MLW 186 which is relied on by the petitioner.

4. In the result I dismiss this petition with costs.