
(1916) 01 MAD CK 0034
In the Madras High Court

Venkataswami Naidu

APPELLANT

Vs

Shanmugam Pillai

RESPONDENT

Date of Decision : 06-01-1916

Acts Referred:

Citation : 32 Ind. Cas. 984

Hon'ble Judges : Seshagiri Aiyar, J

Bench : Single Bench

Judgement

Seshagiri Aiyar, J.—Mr. Raja Aiyar contends that no appeal lies against the order of the District Munsif directing the respondent to furnish security and impose a condition that otherwise the petition will stand dismissed. I was somewhat impressed by his argument. On further consideration I think the conclusion come to by the learned Judges who decided the case of Nand Lal v. Kishori 26 Ind. Cas. 895 is more in consonance with justice than than stricter interpretation which Mr. Raja Iyer wants me to adopt. The learned Judges of the Allahabad High Court have held that such an order must be taken to be a conditional dismissal, and as such covered by Order XLIII, Clause (d). It is true that, as contended by the learned Vakil for the petitioner, in case the condition is not complied with the original order decreeing the claim ex parte will stand good. But as the form of the order in the case is that the petition do stand dismissed it is covered by the language of Clause (d) of Order XLIII. I am, therefore, of opinion that there was an appeal to the District Judge.

2. Mr. Raja Iyer has also argued that as Order IX, Rule 13, says the Court should impose such terms as to costs and that as in this case no terms have been imposed at all the order of the Appellate Court is ultra vires. I am not prepared to agree with this contention. It does not follow that because the Court is asked to impose terms there must be some order as to costs. The term may be that there is no order as to costs. In these circumstances I do not think that the Appellate Court's decision offends against Order IX, Rule 13. I dismiss the petition with costs.