

(1917) 01 MAD CK 0023
In the Madras High Court

Venkataswami Naidu

APPELLANT

Vs

Shanmugam Pillai

RESPONDENT

Date of Decision : 10-01-1917

Acts Referred:

Citation : AIR 1918 Mad 257 : 43 Ind. Cas. 1 : (1917) 6 LW 757

Hon'ble Judges : Oldfield, J; Bakewell, J

Bench : Division Bench

Judgement

1. We are of opinion that the expression "rejecting an application" in Order XLIII, Rule 1(d), signifies an immediate rejection and not a conditional or prospective rejection. The latter interpretation would lead to the dilemma pointed out under similar circumstances in Nannhu Mal v. Gulabo (1903) A.W.N. 225.

2. We respectfully agree with the principle laid down in the judgment of the Allahabad High Court in Jagarnath Sahi v. Kamta Prashad 23 Ind. Cas. 138. We think that it was the duty of the District Munsif to adjourn the case in order to take security and only to pass final orders after the party had tendered or failed to furnish sufficient security, and that the order made may be construed as contemplating further proceedings on the application. The decisions of this Court under the Succession Certificate Act (VII of 1889), Venkataswami Naik v. Chinna Narayana Naik 5 M.L.J. 28 and Ariya Pillai v. Thangammal 7 Ind. Dec. 313, were prior to the present Rules of Practice of 1905. The Letters Patent Appeal is allowed and the case, is remanded to the District Munsif in order that a final order may be passed, and in so doing he will provide for the costs of the petitioner in the District Court and here.