

In Re: Kumaraswamy Reddiar

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Court : Chennai

Decided On : Jan-27-1938

Reported in : AIR1938Mad530

Appellant : In Re: Kumaraswamy Reddiar

Judgement :

Pandarang Row, J.

1. This is an appeal from the order of the District Judge of Madura dated 4th December 1937, in A. Section No. 75. of 1937 dismissing the appeal from the order of the District Munsif of Madura dated 27th February 1937. The appellants were sureties who undertook to produce the judgment-debtor in O.S. No. 320 of 1934 in Court on 1st October 1936. There is no doubt that they failed to produce the judgment, debtor on that date. Thereupon the executing Court directed execution to issue against them for enforcing the bond. The excuse put forward by the sureties for the non-production of the judgment-debtor in question was that he was suffering from fever and therefore was unable to appear in Court on the date fixed by the Court. The first Court was of opinion that this did not absolve the sureties from their liability especially in view of the fact that they did not appear in Court on 1st October and ask for further time to produce the judgment-debtor on account of the illness of the judgment-debtor. On the other hand, they were themselves absent on that date and offered no explanation for the non-production of the Judgment- debtor. The learned-District Judge, on appeal was of opinion that

though personally he would have been willing to follow the decision, of the Lahore High Court in *Sardar Singh v. Imperial Bank of Rawalpindi Ltd.*, (1929) 16 A.I.R. Lah 479 the decision of a Bench of the Allahabad High Court reported in *Rameshwar Das v. Sri Lal* (1922) 9 A.I.R. All. 390 was of greater authority.

2. He further stated that, even though it was permissible for him to follow the view of the single Judge of the Lahore High Court, he could not decide in favour of the appellants unless it was established by them that it was physically impossible for the judgment-debtor to appear in Court on the date fixed owing to illness. He observed that the evidence of the village physician who treated the judgment-debtor was to the effect that he was able to move about though suffering from fever and that this was not a case where the production of the judgment-debtor was an impossibility. As observed by the learned District Judge, it might have been inconvenient to produce him but the surety bond did not provide for a contingency of this kind that is to say, of illness which was not so serious as to render the appearance of the judgment-debtor physically impossible, and he was of opinion that the obligation undertaken by the appellant could be successfully avoided only by reasons akin to *vis major*, the death of the judgment-debtor, civil commotion, etc. I am of opinion that the view of the learned District Judge is Tight and that this is not a case in which the sureties are not bound by the obligation which they incurred by executing the bond. The bond itself does not contain any provision which absolves them from the obligation in a contingency of the present kind, that is to say, when the judgment-debtor is ill, but not so ill that his production in Court is impossible. As observed by the learned District Judge, the attitude of utter indifference adopted by the sureties from 1st October 1936 onwards is such that they do not deserve that the law should be stretched to any extent in their favour. I therefore see no reason to interfere in second appeal with the order of the District Judge. The second appeal is therefore dismissed. Leave to appeal is refused.