

of opinion that the claim is good to the extent of one-half of the paramba and that the other half of it and the three saw-pits are liable to be sold as the property of the judgment-debtor." It was ordered as follows:—"That a moiety of the paramba and trees belonging to the claimant be released from attachment. Claimant's three pits have not been attached. Judgment-debtor's three pits, which are under attachment, will be put up to sale, the claimant's claim thereto being rejected." The District Munsif held that even though the property might be the joint property of plaintiff and second defendant, plaintiff, as senior member of the tarwad, was entitled to recover the saw-pit leased by him. He also held that second defendant held possession as assignee of plaintiff's tenant. He decreed that on plaintiff's paying second defendant compensation for improvements the property should be surrendered to plaintiff by second and third defendants. This was confirmed by the District Judge on appeal.

MOIDIN
KUTTI
v.
KUNHI
KUTTI ALI.

Second defendant preferred this second appeal.

J. L. Rosario for appellant.

C. Sankaran Nayar for respondent.

JUDGMENT.—Having regard to the terms of the order made in the claim proceedings and to the fact that it was not proved that the plaintiff actually received notice of the claim proceedings, we are of opinion that the plaintiff is not a party against whom an order has been made within the meaning of section 283, Code of Civil Procedure, and that the order is not conclusive as against him. We do not think the decision of the Full Bench (*Netietom Perengaryprom v. Tayanbarry Parameshwaren Nambudri*(1)) precludes us from adopting this view. Moreover it seems doubtful whether, having regard to the observations made in the judgment of the Privy Council in *Sardhari Lal v. Ambika Pershad*(2), this decision is good law. The Bombay and Calcutta High Courts have adopted a different view from that taken by the Full Bench in the case referred to (*Shivappa v. Dod Nagaya*(3) and *Kedar Nath Chatterji v. Rathal Das Chatterji*(4)). See, however, (*Surnamoyi Dasi v. Ashutosh Goswami*(5)).

The second appeal is dismissed with costs.

(1) 4 M.H.C.R., 472.

(2) 15 I.A., 123.

(3) I.L.R., 11 Bom., 114.

(4) I.L.R., 15 Calc., 674.

(5) I.L.R., 27 Calc., 714.

APPELLATE CIVIL.

*Before Mr. Justice Moore.*1902.
January 23.

ALAGAPPA CHETTI (JUDGMENT-DEBTOR), PETITIONER,

v.

SARATHAMBAL AND OTHERS (CREDITORS), RESPONDENTS.*

Civil Procedure Code—Act XIV of 1882, ss. 336, 344—Arrest of judgment. debtor—Petition under s. 336—Release on furnishing security to apply to be declared insolvent within a month—Failure to apply within that time—Subsequent application under s. 344—Maintainability.

A judgment-debtor, who had been arrested, was released under section 336 of the Code of Civil Procedure on furnishing security that he would, within one month, apply to be declared an insolvent. The month passed and he failed to make the application. He was not arrested again, and, at a subsequent date, applied under section 344 to be declared an insolvent :

Held, that he was entitled to do so.

PETITION for a declaration of insolvency under section 344 of the Code of Civil Procedure. A decree had been passed against petitioner in the court of the District Munsif at Madura, and was sent for execution to the court of the District Munsif at Sivaganga. Petitioner was arrested on 22nd January 1899, and on 29th January filed a petition in the court at Sivaganga under section 336, stating his intention to apply to be declared an insolvent and asking that he might be released on security being furnished that such application would be duly made. On 1st February 1899, petitioner was released on security being given that he would apply within a month. On 2nd March 1899, the District Munsif of Sivaganga extended the time until 20th March, on which date petitioner filed his application in insolvency. It appears to have been subsequently ascertained that the insolvency petition ought to have been presented to the Madura Court, and on 6th May 1899 the present petition was there filed. The District Munsif held that it was out of time. On appeal, the District Judge said :—“ As I read section 336 of the Code of

* Civil Revision Petition No. 92 of 1900 under section 622 of the Code of Civil Procedure, praying the High Court to revise the order of H. Moberley, Acting District Judge of Madura, passed on 22nd January 1900, in Civil Miscellaneous Appeal No. 15 of 1899 against the order of A. Narayanan Nambiyar, District Munsif of Madura, dated 20th October 1899, in Insolvent petition No. 6 of 1899.

Civil Procedure, if a judgment-debtor, who has been arrested in execution of a decree and released on furnishing security that he will within one month apply to be declared to be an insolvent, fails to put in his application within the time agreed upon, he is debarred from again claiming the privilege of that section; and his only remedy is to allow himself to be arrested and when he is under arrest or in prison, apply under section 344 of the Code." He dismissed the petition.

Petitioner preferred this Civil Revision petition.

P. S. Sivaswami Aiyar for petitioner.

JUDGMENT.—The order of the District Judge cannot be upheld. The petitioner was arrested on the 22nd January 1899 but was released under section 336, Civil Procedure Code, on his furnishing security that he would within one month apply to be declared an insolvent. For reasons that need not be considered he did not apply to a court having jurisdiction till the 6th May 1899 when he made the present application to the District Munsif of Madura, who rejected it as out of time. On appeal, his order was confirmed by the District Judge. It does not appear that there is any question as to a bar by limitation in a case of this sort. As the petitioner did not put in his application to be declared an insolvent within the prescribed time he was liable to be committed to jail and if this had been done he would certainly have had to put in a fresh application under the third clause of paragraph (b) of the proviso to section 336, Civil Procedure Code. He was not, however, so arrested and it is therefore still open to him to apply under section 344, Civil Procedure Code, to be declared an insolvent on the strength of the permission given to him to do so on the 23rd January 1899.

This appeal is allowed, the order of the District Judge is set aside with costs and the appeal is sent back to him for decision of the other points raised.