

ERODE
 MANICKOTH
 KRISHNAN
 NAIR
 v.
 PUTHIENETH
 CHEMBAK-
 KOSERI
 KRISHNAN
 NAIR.

aside the sale. In the present case, if the petitioner had been a donee of the property from the judgment-debtor while the property was under attachment, the sale would bind him under section 276 of the Civil Procedure Code and in that case he could apply under section 310 A. But it is alleged he became donee prior to attachment. If so, the subsequent attachment and sale cannot affect him, if the gift were valid, and he cannot seek to set aside the sale under section 310 A.

The petition is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Bhaskyam Ayyangar.

1902.
 July 29.

KRISHNAIYAR (SURETY FOR JUDGMENT-DEBTOR), PETITIONER,

v.

KRISHNASAMY AYYAR (DECREE-HOLDER), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, s. 336—Surety that judgment-debtor will apply to be declared insolvent—Due application by judgment-debtor—Liability of surety.

Where a surety enters into a bond, under section 336 of the Code of Civil Procedure, undertaking to produce a judgment-debtor when ordered to do so within a month, in order to render the surety liable for the non-production of the judgment-debtor, the order to produce the judgment-debtor should be made on the surety. A bond providing that the surety will produce the judgment-debtor does not mean that the surety will produce him when the judgment-debtor is directed to appear.

Where a surety entered into a bond that a judgment-debtor would, within a certain time, file a petition in insolvency, and the judgment-debtor, within that time, filed his petition, but subsequently withdrew it :

Held, that the surety was discharged.

EXECUTION PETITION. A decree-holder sought to execute his decree against petitioner, who had stood as surety that the judgment-debtor would, within one month's time, file a petition in insolvency. The judgment-debtor, within the time limited, duly filed his petition.

* Civil Revision Petition No. 28 of 1902, Presented under section 622 of the Code of Civil Procedure, praying the High Court to revise the order of the Court of the District Mansif of Palghat, dated 19th November 1901, in Execution Petition No. 1370 of 1901 (in Original Suit No. 28 of 1901).

The judgment-creditor had not applied to petitioner to produce the judgment-debtor. Petitioner accordingly opposed the application on these grounds, and contended that his liability had ceased when the judgment-debtor filed his petition in insolvency. The District Munsif passed the following order :—“The surety undertook to get the judgment-debtor to put in an insolvent petition by 2nd November and to produce him whenever ordered within that date. On 26th October petitioner put in an insolvent petition and appeared by vakil. The Court directed that he must appear in person. It was the duty of the surety to have produced him by 2nd November in obedience to the order passed on 28th October. Warrant will issue.”

Against that order the surety filed this petition.

T. V. Seshayiri Ayyar for petitioner.

C. V. Anantakrishna Ayyar for respondent.

JUDGMENT.—Following the decisions in *Imbichunni Nayar v. Lalji Ram Doss Saif*(1), *Dwarakadas Parshotamdas v. Isabhuidaudkhan*(2) and *Koylash Chandrashaha v. Christophoridi*(3), I hold that the decree in this case cannot be executed against the petitioner, the surety, inasmuch as the judgment-debtor applied within one month to be declared an insolvent. The fact that he withdrew his application subsequently does not affect the question. Further, the surety's bond only provides that the petitioner is to produce the judgment-debtor when ordered to do so within one month. The meaning is quite clear that the surety should have been ordered to produce the debtor. It does not mean that when the debtor is directed to appear, as in this case, the surety will produce him. The District Munsif acted with material irregularity, if not illegally, in ordering execution to issue against petitioner. I accordingly allow this petition with costs both here and in the Court below, and, setting aside the order of the District Munsif, dismiss the application of the decree-holder to execute the decree against petitioner.

(1) I.L.R., 24 Mad., 560.

(2) I.L.R., 19 Bom., 210.

(3) I.L.R., 15 Calc., 171.