

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

S. PERUMAL NADAN AND FOUR OTHERS (DEFENDANTS—
PETITIONERS), APPELLANTS,

1915.
April 15.

v.

SIVANAMJI NADACHI (PLAINTIFF—COUNTER-PETITIONER),
RESPONDENTS.*

*Ex-parte decree—Setting aside, application for—Deposit of money into Court—
Time for depositing, granted—Extension of time till a certain date—Deposit not
made on that date—Dismissal of application on that date, legality of—Jurisdic-
tion of Court—Time granted by Court for performance of any act till a certain
date, meaning of.*

When time is granted by a Court for the performance of any act till a certain date, it includes that date.

Where, on an application by a defendant to set aside an ex-parte decree in a Small Cause Suit, the Court granted time to the applicant till a certain date to deposit the decree amount, but dismissed the same as no deposit was made before the application was taken up for orders on that date,

Held, that the Court had no jurisdiction to pass the order dismissing the application.

Dwkins v. Wagner (1832) 3 Dowl., 535, *Know v. Simmonds* (1791) 3 Bro.C.C., 358 and *Isaacs v. Royal Insurance Co.* (1870) L.R., 5 Ex., 296, followed.

APPEAL preferred under section 15 of the Letters Patent against the order of AYLING, J., in *Perumal Nadan v. Sivanamji Nadachi*(1), preferred against the order of T. SRINIVASA AYYANGAR, the Subordinate Judge of Tuticorin, in Miscellaneous Petition No. 1514 of 1912 in Small Cause Suit No. 1505 of 1912.

The facts of the case appear from the judgment.

A. Swaminatha Ayyar for the appellant.

M. D. Devadoss for the respondent.

The following judgment of the Court was delivered by
OLDFIELD, J. :—The learned Subordinate Judge dismissed the
appellant's petition to set aside the decree of the Small Cause Suit,

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AYYAR, JJ.

* Letters Patent Appeal No. 32 of 1914.

(1) Civil Revision Petition No. 302 of 1913. This petition was dismissed by AYLING, J.

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because appellants having been called on to deposit money and the time granted for doing so having been extended until 3rd December 1912, no deposit was made before the petition was taken up for orders on that date. *Dawkins v. Wagner*(1), *Know v. Simmonds* (2) and *Isaacs v. Royal Insurance Co.*(3) are authorities for holding that when time is given for the performance of any act till a certain date, it includes that date. The learned Subordinate Judge therefore had no jurisdiction to pass his order of dismissal before 4th December 1912. We must allow the Letters Patent Appeal and set aside the Subordinate Judge's order dismissing the petition before him; costs to abide the result of the Small Cause Suit.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

T. RAMAN NAIR (MULLAPALLI TARWAD MANAGER)
(FIRST DEFENDANT), APPELLANT—PETITIONER,

v.

GOPALA MENON AND FOUR OTHERS (COUNTER-PETITIONERS
Nos. 22 TO 26), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), O. XL, r. 4—Receiver, misappropriation of income by—Property, meaning of—Wilful default, meaning of—Death of receiver—Application against legal representatives, if maintainable.

Under Order XL, rule 4 of the Code of Civil Procedure (Act V of 1908), an application can be made for execution being levied against the properties of a receiver in the hands of his legal representatives, in respect of his misappropriation of the income of the properties entrusted to his charge.

APPEAL and Civil Revision Petition against the order of V. K. DESIKA ACHARIYAR, the Subordinate Judge of Palghat, in Execution Application No. 1319 of 1913 in Original Suit No. 28 of 1907 in Appeal Suit No. 20 of 1910 (Civil Miscellaneous Petition No. 293 of 1910), respectively.

(1) (1832) 3 Dowl., 535.

(2) (1791) 3 Bro.C.C., 358.

(3) (1870) L.R., 5 Ex., 296.

* Appeal Against Order No. 128 of 1914 (and Civil Revision Petition No. 269 of 1914).