

APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Krishnan.

B. F. SALDANHA (RESPONDENT—APPELLANT), PETITIONER,

v.

HENRY HART (PETITIONER—SECOND RESPONDENT),
RESPONDENT.*

Civil Procedure Code (Act V of 1908), O. XLI, r. 10—Security for costs—Pauper appellant—Jurisdiction of Court to order a pauper appellant to furnish security for costs of respondent.

The Court has jurisdiction to order an appellant, who has been given leave to appeal *in forma pauperis*, to furnish security for the costs of the respondent under Order XLI, Rule 10, Civil Procedure Code.

Seshayyengar v. Jainulavadin (1880) I.L.R., 3 Mad., 60, followed.

Khemraj Shrikrishnadas v. Kisanlala Surajmal (1918) I.L.R., 42 Bom., 5, dissented from.

PETITION under section 15 of Act V of 1908 praying the High Court to revise the order of A. NARAYANA NAMBIYAR, acting District Judge of South Kanara, in I.A. No. 264 of 1919 (in Appeal Suit No. 223 of 1919).

The material facts appear from the Judgment.

K. Ramanatha Shenai for the petitioner.

B. Sitarama Rao for the respondent.

The JUDGMENT of the Court was delivered by

AYLING, J.

AYLING, J.—Following the decisions in *Seshayyengar v. Jainulavadin*(1) and *Srinivasa Sastrial v. Subramania Aiyer*(2) we must hold that the order of the District Judge calling for security from the pauper appellant under Order XLI, Rule 10, was not without jurisdiction. We have been referred to the decision of the Bombay High Court in *Khemraj Shrikrishnadas v. Kisanlala Surajmal*(3) but we see no reason to question the decision of this Court in *Seshayyengar v. Jainulavadin*(1) the correctness of which apparently has never been doubted by later Benches of this Court, and with which we are also disposed to agree.

This petition is dismissed with costs.

K.R.

* Civil Revision Petition No. 54 of 1920.

(1) (1880) I.L.R., 3 Mad., 56.

(2) (1907) 17 M.L.J., 583.

(3) (1918) I.L.R., 42 Bom., 5.