

APPELLATE CIVIL.

*Before Mr. Justice Phillips and Mr. Justice
Madhavan Nair.*

SHARIBA BEEBY (RESPONDENT-PLAINTIFF), PETITIONER,

1927.
November 16.

v.

ABDUL SALAM AND ANOTHER (PETITIONERS-DEFENDANTS
1 AND 2), RESPONDENTS*

*Indian Limitation Act (IX of 1908), art. 164—Substituted
service, whether "due service" within article.*

Substituted service under Order V, rule 20, Civil Procedure Code is as effectual as personal service and is hence "due service" within article 164 of the Limitation Act; *Doraiswami Ayyar v. Balasundaram Ayyar*, (1926) 52 M.L.J., 477, and *Narasimha Chettiar v. Balakrishna Chetty*, (1926) 52 M.L.J., 512, followed. *Vitta Venkatachalam v. Sivapuram Subbayya*, (1927) 54 M.L.J., 448, dissented from.

PETITION under section 115 of Act V of 1908, and section 107 of the Government of India Act, praying the High Court to revise the order of the Court of the District Munsif of Dindigul, dated 12th March 1927, in I.A. No. 705 of 1926 in O.S. No. 5 of 1925.

The facts appear from the judgment.

N. S. Srinivasa Ayyar for petitioner.—The lower Court has wrongly restored the case purely on a consideration of the merits of the case. Substituted service which was effected in this case is as good as personal service under Order V, rule 20, Civil Procedure Code. It is "due service" within the meaning of article 164 of the Limitation Act; see *Doraiswami Ayyar v. Balasundaram Ayyar*(1), *Narasimha Chettiar v. Balakrishna Chetty*(2). *Vitta Venkatachalam v. Sivapuram Subbayya*(3) is wrong.

* Civil Revision Petition No. 607 of 1927.

(1) (1926) 52 M.L.J., 477.

(2) (1926) 52 M.L.J., 512.

(3) (1927) 54 M.L.J., 448.

K. G. Srinivasa Ayyar for respondent.—I rely on the last quoted case for the position that substituted service is not due service. Moreover, the question whether substituted service was properly effected or not has not been tried by the lower Court.

SHARIBA
BERRY
v.
ABDUL
SALAM.

JUDGMENT.

This is an application against an order restoring a suit to file which had been decreed *ex parte*. The defendants are said to have been served by substituted service, but they did not appear, and not until a year after the date of the decree did they apply to set it aside. The District Munsif has merely found, because he thinks that the defendants had a good defence to the suit, that they could not have had notice and if they had been properly served they would not have failed to appear, and finding that they could not have been properly served he restored the suit. If however substituted service was effected under Order V, rule 20, such service is as effectual as if it had been made on the defendant personally and must be deemed to be due service within the meaning of article 164 of the Limitation Act. This view has been held in two previous cases, *Doraiswami Ayyar v. Balasundaram Ayyar*(1) and *Narasimha Chettiar v. Balakrishna Chetty*(2), to the latter of which one of us was a party. The contrary view was taken by SRINIVASA AYYANGAR, J., in *Vitta Venkatachalam v. Sivapuram Subbaya*(3), but in coming to his conclusion he had not adverted to the provisions of Order V, rule 20, clause 2, and with all respect we are unable to accept his view as against the provisions of that section.

A further contention is raised that no revision petition under section 115, Civil Procedure Code, can be entertained in the present case. As, however, the

(1) (1926) 52 M.L.J., 477.

(2) (1926) 52 M.L.J., 512.

(3) (1927) 54 M.L.J., 442.

SARIBA
BEBBY
v.
ABDUL
SALAM.

District Munsif has refused to take evidence merely because he thinks that certain facts are probable, we think that this is certainly a material irregularity in the exercise of his jurisdiction. There are allegations in the respondent's affidavit to the effect that he was fraudulently kept out of knowledge of the proceedings in Court, and the question of whether substituted service was duly effected has not been tried by the District Munsif. We must, therefore, set aside his order and remand the petition to him for fresh disposal after admitting any evidence on this point which may be adduced and in the light of the above remarks.

Costs of this petition will abide the result.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Jackson.

MACHANJEERI AHMED (DEPENDANT), PETITIONER,

v.

K. GOVINDA PRABHU (PLAINTIFF), RESPONDENT.*

Provincial Insolvency Act (V of 1920), ss. 78 and 28 (2)—Adjudication, not annulled—Suit by a creditor against insolvent in a Civil Court—Leave of insolvency Court obtained prior to suit—Limitation—Computation of time—Time during which insolvency proceedings are pending, whether can be deducted.

In computing the period of limitation for a suit or proceeding, the benefit of section 78 of the Provincial Insolvency Act (V of 1920), can be invoked by a party, who institutes the suit or proceeding in an ordinary Civil Court

* Civil Revision Petition No. 843 of 1927.