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was effected by him at a time when he was liquidator. Whatever looseness or irregularity there may be in such a procedure neither the company nor its shareholders complain of it and we do not see how a person in the position of a judgment-debtor should be allowed to do so.

The result is that the application of 2nd July 1923 was a proper application and though not represented immediately after having been amended, was a step in aid for execution.

The present application is therefore in time. The appeal is allowed with costs here and in the Lower Appellate Court. The appellant will be permitted to proceed with the execution of the decree in accordance with law. Costs in the first Court will abide the result.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Jackson.

1927, December 19.

GOPALAKRISHNASWAMI NAICKER (PETITIONER), PETITIONER,

v.

V. SRINIVASA AYYANGAR AND OTHERS (RESPONDENTS), RESPONDENTS.*

Guardians and Wards Act (VIII of 1890), *ss.* 34 (*a*), (*d*), 35 *and* 36—*Application to District Court by ward, after attaining majority, for assignment bond executed by guardian and sureties—Jurisdiction of Court to assign—Inquiry by Court* —Prima facie *inquiry into accounts—Duty of Court to inquire.*

Where an application is made to a District Court by a ward after attaining majority, for the assignment of a bond executed

* Civil Revision Petition No. 366 of 1927.

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by the guardian and sureties under section 34 (*a*) of the Guardians and Wards Act, the Court should not reject the application on the ground that it had no jurisdiction to entertain it after the ward had attained majority; but it is bound to make some kind of *prima facie* inquiry, for the purpose of satisfying itself whether the engagement of the guardian has been kept up; and, if, on a perusal of the accounts, the Court has reason to think that at least in some respects the engagement by the guardian has not been kept the Court should assign the bond in the name of the ward for taking action against the guardian and the sureties.

There is nothing in section 35 of the Act, making it inapplicable to the case of a ward applying for an assignment of the bond after attaining majority.

PETITION under section 115, Civil Procedure Code, praying the High Court to revise the order of District Court of Ramnad, in I.A. No. 242 of 1926 in O.P. No. 437 of 1912.

The material facts appear from the judgment.

S. Varadachari and *K. S. Champakesa Ayyangar* for petitioner.

P. N. Appuswami Ayyar and *V. Ramaswami Ayyar* for respondents.

The JUDGMENT of the Court was delivered by

RAMESAM, J.

RAMESAM, J.—This is a revision petition against the order of the District Judge of Ramnad on an application under the Guardians and Wards Act for the assignment of a security bond executed by a guardian and sureties under section 34 (*a*) of the Act. That section shows that the guardian and sureties engage themselves duly to account for what may be received in respect of the property of the ward. The learned District Judge rejected the petition holding that as the wards had attained majority he had no jurisdiction to act under section 35 and for this position he relies upon the decision in *Subbarami Reddi* v. *Pattabhirama Reddi*(1). In that case the guar-

(1) (1927) I.L.R., 50 Mad., 80.

dian was discharged after filing his accounts in Court and it was held that the Court had no jurisdiction to hold an enquiry and ascertain what amount is really due by the guardian. The application was filed under section 41 and in the course of the judgment it is observed, that a Court acting under section 41 (4) was not bound to make the declaration mentioned in section 41 (4). This is true. But there is the further observation.

"The whole scheme of the Act seems to provide for matters of this kind, i.e., disputes between the minor and the guardian, by way of suit During the minority sections 35 and 36 provide for suits being filed by a next friend of the minor in case of misconduct on the part of the guardian, and there can be no doubt that, when the minor attains majority he can bring a suit against his guardian. There being no provision at all for any enquiry into accounts by the Court I think the opinion expressed by the Calcutta High Court is the correct one."

We are not able to agree with everything that seems to be implied in these sentences. Now, taking sections 35 and 36 for consideration we first observe that section 35 deals with a case where an administration bond was taken and section 36 where such a bond was not taken. In the case of section 36 we have got these words,

. . . . Any person, with the leave of the Court may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian. . . . .

It is clear that this section relates only to cases where the ward continued to be a ward and has not ceased to be a ward. But when we come to section 35 we have not got words like "next friend and during the continuance of the minority of the ward." On the other hand, the language in section 35 except the very last clause is perfectly general and can apply to a case where the ward was a minor or to a case where the ward has ceased to be a minor. The section was intended to cover both the cases, and the last clause "shall be entitled to recover thereon as trustee for the ward in

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respect of any breach thereof" no doubt applies only to a case where the bond was assigned to some person during the minority of the ward and may not strictly refer to a case where the bond was assigned to the ward after he attained majority. Even then it is not that it produces any anomalous result but it only looks like a surplusage. There is nothing in section 35 making it inapplicable to the case of a ward attaining majority and applying for an assignment of the bond. The Court below also relied on the judgment in *Krishna Chettiar* v. *Venkatachalapathi Chettiar*(1). In that case all that was decided was that there is no right of suit as for breach of a condition unless there is a preliminary order of the Court. If the matter rested there that case would have given no difficulty, but there are some further observations that the preliminary order should be an order to exhibit accounts or to pay the specified balance and at page 309 we have got the following observations:

> "In the case of bonds under the Guardian and Wards Act the proper course appears to be to get an order to pay against the guardian under section 34 (*d*) or a decree against him, and if he fails to satisfy the order or decree, then to sue the surety in respect of this breach as to which there will be no defence."

This observation is strictly *obiter dictum* and perhaps was not necessary for the decision of the case. Anyhow we are not able to agree with this observation. It has been decided in *Hari Krishna Chettiar* v. *Govindarajulu Naicker*(2), that there can be no order to pay under section 34 (*d*) except in respect of the amounts that appear due according to the accounts filed by the guardian. So there is some inconsistency between the recent decision and these observations in *Krishna Chettiar* v. *Venkatachalapathi Chettiar*(1). In the present case, the District Judge says "an assignment of

(1) (1919) I.L.R., 42 Mad., 302. (2) (1926) 50 M.L.J., 273.

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the bond can be made only on being satisfied that the engagement of the bond has not been kept up." This is true; but to be satisfied that the engagement of the bond has not been kept up, the Court has to make some kind of *prima facie* enquiry and the ward should not be referred to a regular suit for the purpose of satisfying the Court that the engagement has not been kept up. All that section 35 says is, "on being satisfied that the engagement of the bond has not been kept up." If on a perusal of the accounts a Court has reason to think that at least in respect of some moneys received in respect of the property of the ward they have not been duly accounted for, it is reasonable to hold that there is ground for being satisfied that the engagement has not been kept up. We are therefore unable to agree with the reasoning of the District Judge on this part of the case also.

The result is we set aside the order of the District Judge and direct him to dispose of the case according to law in the light of the above observations. The petitioner will be entitled to costs in this Court and costs in the Court below will abide the result.

K.R.