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For these reasons we allow the appeal and the suit will be dismissed with costs both in this Court and in the Court below against the plaintiff-respondents.

G.R.

APPELLATE CIVIL.

Before Mr. Justice King and Mr. Justice Krishnaswami Ayyangar.

1938, September 20.

M. PARAMASIVAM PILLAI (FIRST PLAINTIFF), APPELLANT,

v.

A.V.R.M.S.P.S. RAMASAMI CHETTIAR AND ANOTHER (THIRD DEFENDANT AND FIFTH PLAINTIFF), RESPONDENTS.*

Surety bond—Stay of proceedings pending appeal—Surety bond executed as a condition of, providing for payment of specified amount in event of appellant's failure in that appeal—Failure of appellant in that appeal but success in Letters Patent Appeal therefrom—Enforceability of liability under bond in case of—Code of Civil Procedure (Act V of 1908), Appx. G, Form No. 2—Modification of, so as to provide for more appeals than one—Desirability of.

In a suit upon a mortgage a receiver was appointed at the instance of the mortgagee. The third defendant in the suit filed an appeal, Civil Miscellaneous Appeal No. 375 of 1931, in the High Court against the order appointing the receiver and along with the appeal filed an application for stay of further proceedings by the receiver. Stay was ordered on condition of the third defendant giving security for one year's income from the mortgaged property fixed at a sum of Rs. 1,600. In accordance with that order the third defendant executed a surety bond which provided: "If the C.M.A. No. 375 of 1931 preferred by me to the High Court against the order appointing receiver is decided in favour of the said first

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* Appeal Against Order No. 378 of 1936.

plaintiff, I shall pay into Court the one year's net income of Rs. 1,600-7-4 as aforesaid." Civil Miscellaneous Appeal No. 375 of 1931 was allowed by a single Judge but a Letters Patent Appeal against the decision therein was allowed with the result that the final decision of the High Court on the question of the validity of the order appointing the receiver was to confirm it. On an application by the mortgagee who obtained a decree in his suit for the recovery from the third defendant of the sum of Rs. 1,600 referred to in the surety bond executed by him,

held that, on the true interpretation of the surety bond, the decree-holder was not entitled to proceed against the surety.

There was nothing in the surety bond which extended the liability of the surety to the contingency of there being an appeal against Civil Miscellaneous Appeal No. 375 of 1931.

Raj Raghubar Singh v. *Jai Indra Bahadur Singh*(1) explained and distinguished.

Modification of Form No. 2 in Appendix G of the Code of Civil Procedure by using language appropriate for dealing with all possible eventualities, due provision being made in certain circumstances for more appeals than one, suggested.

APPEAL against the order of the Court of the Subordinate Judge of Tuticorin, dated 14th April 1936 and made in Execution Petition No. 8 of 1935 in Original Suit No. 42 of 1929.

K. V. Sesha Ayyangar for appellant.

K. S. Ramabhadra Ayyar for first respondent.

Second respondent was not represented.

The JUDGMENT of the Court was delivered by KING J.—The question in this appeal is whether in the circumstances of this case the decree-holder in Original Suit No. 42 of 1929 on the file of the Subordinate Judge's Court of Tuticorin can proceed against the first respondent to recover from him the sum of Rs. 1,600 referred to in the surety bond

KING J.

(1) (1919) I.L.R. 42 All. 158 (P.C.).

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executed by him in 1932. The facts are that Original Suit No. 42 of 1929 was a suit upon a mortgage and in that suit at the instance of the mortgagee a receiver had been appointed. There was an appeal by the third defendant against this order appointing the receiver which was numbered as Civil Miscellaneous Appeal No. 375 of 1931 in the High Court. When the appeal was filed, an application was also filed for stay of further proceedings by the receiver and stay was granted on condition that the third defendant should give security for one year's income from the mortgaged property fixed at a sum of Rs. 1,600. In accordance with that order the third defendant executed a surety bond the terms of which are now in dispute. The actual sentence in which his liability is expressed runs as follows :

> "If the Civil Miscellaneous Appeal No. 375 of 1931 preferred by me to the High Court against the order appointing receiver is decided in favour of the said first plaintiff, I shall pay into Court the one year's net income of Rs. 1,600–7–4 as aforesaid."

Civil Miscellaneous Appeal No. 375 of 1931 was allowed but there was a Letters Patent Appeal against the decision of the learned Judge who decided it and that Letters Patent Appeal was also allowed so that the final decision of the High Court on the question of the validity of the order appointing the receiver was to confirm it. The decree-holder accordingly brought this application before the Court of first instance contending that on a true interpretation of the bond he was entitled to proceed against the surety. The learned Subordinate Judge rejected his application on the authority of two decisions of the Madras High Court. The decree-holder accordingly filed the present appeal.

The argument of the learned Counsel for the appellant has been reinforced by the citation of a large number of authorities but there is no clear authority which can deal with the facts of the present case and the only certain proposition of law which can be deduced from all the authorities cited is this, that each bond must be interpreted according to its own terms. We are of opinion that the terms of this bond are absolutely explicit. The bond definitely says that if a particular appeal (the number of which is given) is decided in favour of the plaintiff, the executant of the bond shall pay the money into Court. We do not find any language in this bond which extends the liability of the surety to the contingency which is not anywhere referred to of there being a second appeal against Civil Miscellaneous Appeal No. 375 of 1931. It may be, no doubt, that if the parties had drafted this bond more carefully and had thought of every possible eventuality, they would have made it clear that the surety shall be liable or not according to the final decision of the High Court in the matter. But although that might well be said to be the only reasonable conclusion at which the parties could have arrived had they discussed the matter in all its aspects, we have to deal with the bond as it has actually been drafted and if the decree-holder has permitted the surety to sign a bond which does not protect him in all the emergencies in which he intended to be protected, that is his misfortune and a misfortune which we cannot correct.

There is only one of the authorities quoted to which we think it necessary to refer and that is a decision of their Lordships of the Privy Council in *Raj Raghubar Singh* v. *Jai Indra Bahadur Singh*(1). That was

(1) (1919) I.L.R. 42 All. 158 (P.C.).

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a case in many respects similar to this one because the parties referred in the bond specifically only to the order which the immediate appellate Court was about to pass. Their Lordships of the Privy Council held that to make the bond in that case applicable only to the immediate appellate decision would lead to strange results, and they set out the hypothesis of the appellate Court and the second appellate Court both giving decisions contrary to the decision which they actually gave. They thereupon describe the surety bond as a form of wagering contract in which the liabilities of the surety depended upon the chances of the decisions given by two appellate Courts. But this is clearly not in our opinion an authority for holding that all security bonds are to be interpreted not according to their plain terms but in such a way as to make them the most reasonable bonds that the parties might have contemplated executing. Their Lordships say on page 165:

> "It would be strange indeed if the language of the instrument had been such as to create a kind of wagering contract of this nature."

They then go on with words which appear to us to be of vital importance:

> "But there is really no difficulty in the language of the instrument."

They point out that the bond relates not only to the immediate appeal judgment of the appellate Court but to any order which the appellate Court might pass at any time and they show how after the appellate Court's judgment had been set aside by the second appellate Court the appellate Court did pass later orders in accordance with the orders of the second appellate Court, and therefore that within the plain meaning of the terms of the bond the liability of the surety was clear. As already pointed out, in the

present case there is no reference to any such contingency as a further order by the High Court whether by the original Judge or by any Bench which might sit in appeal over his decision. The words are clear and explicit: "If a particular Civil Miscellaneous Appeal (the number of which is given) is decided in a particular way."

We are accordingly of opinion that there are no sufficient reasons for differing from the interpretation of this bond at which the learned Subordinate Judge has arrived and this appeal must accordingly be dismissed with costs.

We would like however to point out that it is very probable in this case that what might or would have been the real intention of the parties has not been correctly expressed in the bond which has been signed. We feel that may be due in some measure to a too rigid adherence to the forms of bonds which are provided by Appendix G of the Code of Civil Procedure. We notice that Form No. 2 in that appendix which deals with a security bond to be given on an order being made to stay execution of a decree deals in terms only with one appeal and one appellate Court. We think it likely that much time might be saved in hearing appeals of this kind and possibly much real injustice might be obviated if parties and Courts which order the execution of such bonds could be guided by a different form modifying the form actually given in Appendix G and using language appropriate for dealing with all possible eventualities, due provision being made in certain circumstances for more appeals than one.

A.S.V.