

v. *Lakshmi Annee* (1), and *Hamanta Kumari Debi v. Midnapur Zamindari Co.* (2), and is not approved of in *Jayappa Lokappa v. Shivangoura Dyamangouda* (3), which deals exhaustively with the point before the Court. The bond is a mere step in judicial proceedings and such proceedings are exempt from the provisions of the Indian Registration Act. In *Dinshah Mulla's Registration Act* at page 94 the learned author supports the view expressed in the Bombay case. Other cases which support this view are *Natesa Chetti v. Vengu Nachiar* (4), *Raminni Varadia Naidu v. Raminni Thappiah Naidu* (5), *Manickammal v. Rathnamal* (6), *Sellappa Koundan v. Guru Moorti* (7), *Ganda Singh v. Buta Singh* (8), *Triloki Nath v. Ram Manorath* (9), *Sohan Lal v. Raghubir Sahai* (10), *Mussummat Jai Lagi v. Alliance Bank of Simla, Limited* (11), and *Sachindra Mohan v. Ramjash* (12).

FAQIR CHAND (with CHANDRA GUPTA) for the Respondent. The security bond is not exempt under the Indian Registration Act. The exemption is for an order and not for any step in judicial procedure. The bond is not a petition in any sense of the term, it does not contain any request for anything to be done and is nothing but a security bond; nor was any order of the Court necessary to render it effective. The Court accepted it as it was. It cannot be treated as a part of the order of the High Court directing execution to be stayed on judgment-debtor furnishing security. It was executed in compliance with that order but was something distinct from that order.

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- (1) (1899) I. L. R. 22 Mad. 508 (P. C.). (7) (1915) 26 I. C. 790.
 (2) (1920) I. L. R. 47 Cal. 485 (P. C.). (8) 88 P. R. 1917.
 (3) (1928) I. L. R. 52 Bom. 72. (9) 1931 A. I. R. (Oudh) 296.
 (4) (1910) I. L. R. 33 Mad. 102. (10) 1930 A. I. R. (All.) 118.
 (5) (1918) 43 I. C. 697. (11) 1930 A. I. R. (Lah.) 855.
 (6) (1914) 22 I. C. 35. (12) 1932 A. I. R. (Pat.) 97

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I rely upon *Lahore Spinning and Weaving Mills Co. v. Uttam Chand* (1), following *Nagaruru Sambayya v. Tangatur Subbayya* (2) which lays down the law correctly—also *Badly Singh v. Panthu Singh* (3).

Miscellaneous First Appeal from the order of Lala Suraj Narain, Senior Subordinate Judge, Ferozepore, dated 9th December, 1930, directing that execution-proceedings for recovery of the decretal amount together with interest be taken against Goverdhan Dass, Surety.

THE ORDER OF THE DIVISION BENCH, REFERRING THE CASE TO A FULL BENCH, DATED 22ND MAY, 1933.

TEK CHAND J.

TEK CHAND J.—The appellants obtained a money decree against Shanker Das and Athar Mal from the Court of the Senior Subordinate Judge, Ferozepore. Against this decree the judgment-debtors appealed to the High Court. The appeal was duly admitted and the record ordered to be printed. Meanwhile the decree-holders had, in execution of the decree of the Senior Subordinate Judge, attached certain immovable property belonging to the judgment-debtors, and the executing Court had ordered the property to be sold. By order of Martineau J., dated the 17th of February, 1923, the sale of the attached property was stayed till the decision of the appeal, on condition of the judgment-debtors furnishing security for payment of the decretal amount with interest at 6 per cent. per annum. In accordance with this order, Goverdhan Das, respondent, executed a security-bond on the 25th of June, 1923, whereby he hypothecated his immovable property worth Rs. 20,000 for the satisfaction of the decree that might be passed by the High Court and also made himself personally liable

(1) 122 P. R. 1919.

(2) (1908) I. L. R. 31 Mad. 330.

(3) (1923) 71 I. C. 474.

for the decretal amount. The bond was not registered but was presented to the executing Court and was duly accepted by it, and the sale proceedings stayed in accordance with the order of the High Court.

The judgment-debtors' appeal against the Senior Subordinate Judge's decree was dismissed by the High Court. They failed to pay the decretal amount to the decree-holders and the latter moved the executing Court to enforce the bond against the surety and his property which had been hypothecated by him under the bond. The surety raised several objections, one of which was that the security-bond was inadmissible in evidence for want of registration. The executing Court overruled all other objections, but following a Single Bench decision of the Chief Court reported as *Lahore Spinning and Weaving Mills Co. Ltd. (in liquidation) v. Uttam Chand (1)*, held that the bond, being unregistered was inadmissible and consequently the decree-holders could not proceed against the immovable property of the surety.

The decree-holders have appealed to this Court and it has been argued on their behalf that the security-bond did not require registration and that *Lahore Spinning & Weaving Mills, Co. Ltd. v. Uttam Chand (1)* does not lay down the law correctly. For the respondent Mr. Fakir Chand, while supporting the order of the lower Court on the ground on which it proceeded, has also raised two further contentions, (1) that on a true and proper interpretation of the terms of the bond the surety was not liable for payment of the amount as decreed by the High Court, and (2) that the decree-holders could not proceed against the surety under section 145, Civil Procedure

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Code, but their only remedy was to file a regular suit against the surety. In our opinion both these contentions are without force. The security-bond in question is not an artistically drawn up document, but reading it as a whole, along with the order of Mr. Justice Martineau and the subsequent orders passed by the executing Court, there can be no doubt that the surety undertook liability for satisfying any decree that might be passed by the High Court, whether in confirmation, modification or reversal of the decree of the Senior Subordinate Judge, which was under appeal at the time.

The point raised in the second contention is, I think, concluded by the judgment of their Lordships of the Privy Council in *Raj Raghubar Singh v. Jai Indra Bahadur Singh* (1). The bond created personal liability as well as hypothecated property and was given to the executing Court and not to any particular individual. There can, therefore, be no doubt that that Court is competent to enforce it. In *Depak Datt Chaudhri v. Secretary of State* (2), Jai Lal J. held that in cases like this the decree-holder could proceed in execution-proceedings against the person who had executed a security-bond in proceedings for stay of execution under Order XLI, rule 5 or 6, Civil Procedure Code. See also *Jyoti Prakash Nandi v. Mukti Prakash Nandi* (3) and *Jayappa Lokappa v. Shivangouda Dyamangouda* (4). We, therefore, overrule both these objections and uphold the findings of the lower Court on these points.

The question of the admissibility of the unregistered bond, raised in the appeal, is much more

(1) (1920) I. L. R. 42 All. 158 (P.C.). (3) (1924) I. L. R. 51 Cal. 150.
 (2) 1929 A. I. R. (Lah.) 393. (4) (1928) I. L. R. 52 Bom. 72.

difficult. The prevailing view in this Province before 1919 was that such security-bonds were "steps in judicial proceedings" and, therefore, not compulsorily registrable under section 17 of the Indian Registration Act. In that year, however, Martineau J., sitting in Single Bench, held that these bonds did not fall within any of the exemptions specified in section 17 and, therefore, required registration [*Lahore Spinning and Weaving Mills Co. Limited (in liquidation) v. Uttam Chand* (1)]. In coming to this conclusion the learned Judge followed a ruling of the Madras Court in *Nagaruru Sambayya v. Tangatur Subbayya* (2). Since 1919, *Lahore Spinning and Weaving Mills Co. Limited v. Uttam Chand* (1) has been considered to be the leading authority in the Punjab, though doubts have been entertained frequently about its correctness.

In 1928 the same question arose in Bombay and was considered at great length by a Division Bench, consisting of Marten C. J. and Crump J. in *Jayappa Lokappa v. Shirangouda Dyamangouda* (3). The learned Judges dissented from the view taken in the Madras ruling cited above and held that the bond, being "a part of the judicial proceedings and having been incorporated therewith" did not require registration.

In our opinion the question is not free from difficulty and is of considerable importance, and we think it desirable that it should be settled authoritatively by a larger Bench. We accordingly refer the following question to the Full Bench :—

(1) 122 P. R. 1919. (2) (1908) I. L. R. 31 Mad. 330.

(3) (1928) I. L. R. 52 Bom. 72.

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“ Whether a security-bond, executed in accordance with an order passed under Order XLI, rule 5 or 6 of the Civil Procedure Code, staying execution of a decree pending decision of the appeal, whereby the surety hypothecates his immovable property for satisfaction of such decree as might be passed by the appellate Court and which is duly accepted by the Court and execution stayed accordingly, requires to be registered? ”

The papers shall be laid before the Hon'ble the Chief Justice for constituting a Full Bench to hear the reference.

MONROE J.—I agree.

ORDER OF THE FULL BENCH.

TEK CHAND J.

TEK CHAND J.—The facts of the case, which has given rise to this reference, are set out in detail in the referring order and it is not necessary to recapitulate them at length here. Briefly stated they are, that during the pendency of a First Appeal filed in this Court by Shankar Das and others against a decree passed against them by the Senior Subordinate Judge, Ferozepore, in a suit instituted by the present appellants, Kasturi Lal and others, for recovery of a certain sum of money, an order was passed under Order XLI, rule 5, Civil Procedure Code, staying execution of the decree on condition of the judgment-debtors' furnishing security for payment of the amount which might be found due on appeal. In accordance with this order the present respondent, Goverdhan Das, executed a security-bond, hypothecating his immovable property worth Rs. 20,000 for the satisfaction of the decree which might be passed by the High Court, and also making himself personally liable for the same. The bond was addressed to the

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executing Court and was drawn up substantially according to Form No. 2, prescribed in Appendix G of the Code of Civil Procedure. It was duly presented to the executing Court, which accepted it and stayed execution. After some time the First Appeal was dismissed by the High Court. The judgment-debtors failed to pay the decretal amount, and the decree-holders moved the executing Court to realize the amount from the property of the surety, mentioned in the bond. The surety objected that as the bond affected immovable property of the value of over Rs. 100 it was compulsorily registrable under section 17 of the Registration Act, and being unregistered was inadmissible in evidence and consequently the Court could not proceed against the property. This objection was upheld by the executing Court, following a Single Bench decision of the Punjab Chief Court reported as *Lahore Spinning and Weaving Mills Co. Limited (in liquidation) v. Uttam Chand* (1). On appeal the matter came before a Bench of two Judges who being doubtful of the correctness of the above ruling, referred to the Full Bench the following question :—

“ Whether a security-bond, executed in accordance with an order passed under Order XLI, rule 5 or 6 of the Civil Procedure Code, staying execution of a decree pending decision of the appeal, whereby the surety hypothecated his immovable property for satisfaction of such decree as might be passed by the appellate Court, and which is duly accepted by the Court and execution stayed accordingly, requires to be registered? ”

As pointed out in the referring order there is a

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sharp conflict of judicial opinion on the point. The Madras High Court has held that such bonds are compulsorily registrable (*Nagaruru Sambayya v. Tangatur Subbayya* (1)). The Bombay High Court, on the other hand, has dissented from this view. It examined the question at great length in *Jayappa Lokappa v. Shivangouda Dyamangouda* (2) and came to the conclusion that the bond being "a part of the judicial proceedings and having been incorporated therewith did not require registration." In the Punjab the prevailing view before 1919 was that security bonds of this kind were steps in judicial proceedings and not compulsorily registrable under section 17 of the Indian Registration Act. In that years, however, Martineau J., sitting in Single Bench, preferred to follow the Madras case cited above and held that the registration was necessary.

After hearing arguments and giving the matter careful consideration, I venture to think that the view taken by the Bombay High Court in *Jayappa Lokappa v. Shivangouda Dayamangouda* (2) is correct. It was pointed out in that case, that documents of this kind are not executed between the decree-holder and the surety, but between the surety and the Court, and are steps in judicial proceedings, and as such they fall within the purview of the broad general principle repeatedly laid down by their Lordships of the Privy Council, that proceedings of Courts do not require registration. See *Bindesri Naik v. Ganga Saran Sahu* (3) and *Pranal Annee v. Lakhshmi Annee* (4), as explained by Lord Buckmaster in

(1) (1908) I. L. R. 31 Mad. 330. (3) (1898) I. L. R. 20 All. 171 (P.C.).
 (2) (1928) I. L. R. 52 Bom. 72. (4) (1899) I. L. R. 22 Mad. 508 (P.C.).

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(1). In the first of these cases it was remarked by Lord Watson that "the provisions of section 17 of the Act do not apply to proper judicial proceedings, whether consisting of pleadings filed by the parties, or of orders made by the Court." In the second case, their Lordships held that where a document embodying the terms of an agreement between the parties is submitted to a Court and acted upon judicially, it is "in itself a step of judicial procedure not requiring registration." It was observed that "the objection founded upon its non-registration does not, in their Lordships' opinion, apply to its stipulations and provisions in so far as these were incorporated with, and given effect to by, the order made upon it by the Subordinate Judge." Following this decision, it was held by the Punjab Chief Court in *Robert Skinner v. Mrs. James Skinner* (2), that where an order is passed in terms of an agreement embodied in a document addressed to the Court, the terms of the agreement must be considered to have been impliedly incorporated in the order and, therefore, exempt from registration. It was also observed in that case that under such circumstances the document embodying the terms of the agreement must be taken to form "a part of the pleadings of the parties and being incorporated as such into the judicial record did not require registration in order to make it admissible in evidence."

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It is noteworthy that neither of these two Privy Council decisions was noticed in *Nagaruru Sambayya v. Tangatur Subbayya* (3). This was, perhaps, due

(1) (1920) I. L. R. 47 Cal. 485 (P.C.). (2) 91 P. R. 1915.

(3) (1908) I. L. R. 31 Mad. 330.

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to the fact that in that Court, as in some other Courts in India, a very narrow interpretation was at one time put on the rule laid down in *Bindesri Naik v. Ganga Saran Sahu* (1) and *Pranal Annee v. Lakshmi Annee* (2), and according to that interpretation the observations of their Lordships would not be applicable to documents like the one which was under consideration in *Nagaruru Sambayya v. Tangatur Subbayya* (3). In *Hemanta Kumari Debi v. Midnapur Zamindari Co.* (4), however, their Lordships explained the true significance of their earlier decisions and thus put an end to the judicial controversy which had raged in India in that connection for some years. Accordingly the Madras High Court reconsidered the question in *Poorvanayi Ayissa v. Kundron Choken* (5), and laid down that where the terms of the agreement had been incorporated in a decree or order, registration of the agreement was unnecessary, even with regard to immovable property outside the scope of the particular suit in which the decree (or order) was passed, as the entire agreement must be considered to have been incorporated in the decree (or order), the decree (or order) being sufficient evidence of its terms.

It is no doubt true that in the case before us the terms of the bond were not embodied in so many words in the Court's order, but I do not think that this circumstance makes any difference. As pointed out by the learned Judges of the Bombay High Court in the case referred to above, "the Court's order is none the less based on the surety bond, and were the order

(1) (1898) I. L. R. 20 All. 171 (P.C.). (3) (1908) I. L. R. 31 Mad. 330.

(2) (1899) I. L. R. 22 Mad. 508 (P.C.). (4) (1920) I. L. R. 47 Cal. 485.

(5) (1920) I. L. R. 43 Mad. 688.

written out *in extenso* it would of necessity refer to the bond which had been made an exhibit in the case." It must be held, therefore, that the case falls within the rule enunciated by the Privy Council, and the decree-holders can move the Court to realize the decretal amount from the immovable property of the surety mentioned in the bond, even though it had not been registered.

In *Lahore Spinning and Weaving Mills Co. Limited (in liquidation) v. Uttam Chand* (1) Martineau J. distinguished the case of a bond submitted to the Court under Order XLI, rule 5, from a petition embodying the terms of a compromise, on the ground that the compromise "has to be followed by a decree, but a security-bond requires no order of the Court to render it effectual." With all deference, I find myself unable to accept this view. It seems to me—and this was frankly admitted by the learned counsel for the respondent—that it is not the execution of the bond which effects the transfer of rights in the immovable property described therein, so as to make it available for the satisfaction of the decree which might be passed by the appellate Court, but it is the *order* of the Court accepting the bond which creates these rights. Even if the bond had been duly registered immediately after its execution, it would not become operative until and unless it was accepted by the Court. If by reason of the insufficiency of the security or on other grounds the Court chose not to accept the bond, it would remain a wholly ineffectual and inoperative document, despite the fact that it contained all the terms of the transaction and had been duly executed and registered.

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For the foregoing reasons I hold that *Lahore Spinning and Weaving Mills Co., Limited (in liquidation) v. Uttam Chand (1)*, was not correctly decided and must be overruled. I would accordingly answer the question in the negative, and hold that the non-registration of the security bond is no bar to the decree-holders asking the Court to realize the decretal amount from the immovable properties described in the bond.

JAI LAL J.

JAI LAL J.—I agree.

MONROE J.

MONROE J.—I agree.

A. N. C.

APPELLATE CIVIL.

Before Tek Chand and Agha Haidar JJ.

RAM DITTA MAL (ASSIGNEE) Appellant

versus

OFFICIAL RECEIVER, LAHORE, AND OTHERS—

Respondents.

Civil Appeal No. 973 of 1931.

Provincial Insolvency Act, V of 1920, sections 4, 53. Transfer of property more than two years prior to adjudication—Jurisdiction of Insolvency Court—itsself to try questions of title raised thereupon by Official Receiver—or to relegate the parties to ordinary tribunal—Onus probandi.

Held, that under sections 4 and 53 of the Provincial Insolvency Act, 1920, an Insolvency Court can try a question of title raised on the basis of a transfer which took place more than two years prior to the adjudication of the transferor as an insolvent.

Section 53 of the Act does not control or restrict the jurisdiction, conferred upon the Court by section 4, to decide all questions of title.