

1957 *Present* : Weerasooriya, J., and Sinnetamby, J.

M. CHELLIAH, Appellant, and B. V. SELVANAYAGAM, Respondent

S. C. 470—D. C. Jaffna, 83 M

Appeal—Tendering security for costs of appeal—Time limit—Hypothecation of cash security—Civil Procedure Code, ss. 756 (1), 757.

Where extension of time is allowed by Court beyond the period specified in section 756 (1) of the Civil Procedure Code for tendering security for costs of appeal, and cash in the amount ordered is accordingly deposited, failure to hypothecate the sum of money in terms of section 757 within the extended time is a fatal irregularity.

Quaere, whether the Court can extend the time for tendering security for costs of appeal beyond the period specified in section 756 (1) of the Civil Procedure Code.

APPPEAL from a judgment of the District Court, Jaffna.

C. Ranganathan, for the plaintiff-appellant.

A. Nagendra, for the defendant-respondent.

March 6, 1957. WEERASOORIYA, J.—

Mr. Nagendra who appears for the defendant-respondent takes the preliminary objection that the appellant has failed to tender security for costs of appeal within the period of 20 days specified in section 756 (1) of the Civil Procedure Code.

¹ (1891) 1 Q. B. 402.

² (1951) 2 A. E. R. 613.

The petition of appeal was lodged on the 18th of November, 1955, and the Court fixed security for costs at Rs. 100 in cash or Rs. 200 in immovable property. On the 29th November, 1955, the proctor for the plaintiff-appellant filed a security bond hypothecating certain immovable property but the proctor for the respondent having objected to the security, the Court on the 3rd July, 1956, ordered that security in cash be deposited on the 17th July, 1956. At the date of that order the period specified in section 756 (1) had long expired. But even if the appellant can rely on that order as one giving him a further extension of time for furnishing security till the 17th July, 1956, despite the fact that the statutory period for doing so had already elapsed, it does not avail him since, although he deposited cash Rs. 100 on the 17th July, 1956, he failed to hypothecate that sum of money by bond in terms of section 757 of the Civil Procedure Code until the following day. That omission would also be fatal to this appeal.

The objection taken by Mr. Nagendra is sustained and the appeal is rejected with costs.

SINNETAMBY, J.—I agree.

Appeal rejected.

