

(1939) 04 MAD CK 0019
In the Madras High Court

A. Seetha Ramappa and Others

APPELLANT

Vs

G.C. Ramappa

RESPONDENT

Date of Decision : 12-04-1939

Acts Referred:

Citation : AIR 1939 Mad 890 : (1939) 50 LW 632 : (1939) 2 MLJ 555

Hon'ble Judges : Burn, J

Bench : Division Bench

Judgement

Burn, J.—The order of the learned District Judge in this case cannot be supported. The insolvent's debts exceeded, Rs. 18,000 and his total

assets realised is a little over Rs. 50. In these circumstances the Court was obliged by Section 42(1) to refuse an absolute order of discharge

unless the insolvent satisfied the Court that the fact that the assets were not of a value equal to eight annas in the rupee on the amount of his

unsecured liabilities had arisen from circumstances for which he could not justly be held responsible. There were also allegations that the insolvent

had continued to trade after knowing himself to be insolvent. The learned District Judge did not consider these matters at all. He has made no

reference to Section 42 but he has passed an order which on the face of it is wholly indefensible. He says that the petitioner is given an absolute

order of discharge subject to the condition of paying two annas in the rupee. That is an impossible condition. The only conditions that can be

imposed u/s 41(2)(c) are conditions with respect to any earnings or income which may afterwards become due to the insolvent or with respect to

his after-acquired property. It is not possible to impose a condition that the insolvent shall pay any specified proportion of his debts. The learned

Judge has further ordered that failing that, that is, failing payment of two annas in the rupee, the operation of the order of discharge be suspended

for a period of 18 months. This order of the learned Judge was passed on the 7th of November, 1936 and the contention raised on behalf of the

respondent is that, by the 7th of May, 1938, this had worked itself out, and the respondent had thereby become discharged. There is considerable

confusion in the arguments addressed to us on this point.

2. Learned Counsel for the respondent has observed that u/s 41(2) the Court may (a) grant or refuse an absolute order of discharge; or (b)

suspend the operation of the order of discharge for a specified time; or (c) grant an order of discharge subject to conditions.

3. Learned Counsel appears to be labouring under a delusion that if the Court says ""I will suspend the operation of the order for 18 months"", some

order of discharge will automatically come into existence at the end of 18 months. This is obviously wrong. The operation of an order can only be

suspended after an order has come into existence. It is not possible to suspend the operation of an order which has not yet been passed. Therefore

it follows that if the operation of the order of the respondent's discharge has been suspended by the learned Judge for 18 months, the learned

Judge must have granted him an order of discharge on or before the 7th of November, 1936. But u/s 42(1) of the Act the learned Judge could not

grant him an absolute order of discharge without considering the further matters mentioned in that section.

4. The order of the learned District Judge is therefore set aside and the petition is remanded to the lower Court for disposal according to law. The

appellant will recover the costs of the appeal from the respondent.

5. The Memorandum of Objections preferred by the respondent contending that he ought to have been granted an absolute order of discharge is

dismissed with costs.