**(1940) 05 MAD CK 0004**

**In the Madras High Court**

Alagu Sundarammal APPELLANT

Vs

Ko. So. Thiruvengadathu Aiyangar RESPONDENT

**Date of Decision :** 03-05-1940

**Acts Referred:**
Provincial Insolvency Act, 1920 — Section 42(1)(a)

**Citation :** AIR 1941 Mad 100(1) : (1940) 52 LW 380 : (1940) 2 MLJ 379

**Hon'ble Judges :** Horwill, J

**Bench :** Division Bench

## Judgement

Horwill, J.—The petitioner was a close relative and a creditor of the respondent. The suit debt was incurred in 1928 in Devakottah, where

both the petitioner and the respondent were living. The respondent has a son-in-law in the South Arcot District and while on a visit to him, filed an

insolvency application under the summary procedure and omitted to mention the petitioner as his creditor. During the course of the insolvency

proceedings, he made an endorsement on the pronote of the petitioner which saved limitation; but he failed to draw the attention of the Insolvency

Court to the existence of this debt. The lower Court has found that he played a fraud upon the petitioner and deliberately concealed the existence

of this debt in order that the insolvency proceedings might be decided to his advantage. The procedure being on the summary side, many

formalities were dispensed with and very little publication was given to the insolvency. Nothing was, of course, known about the insolvent''s life at

Devakottah and neighbourhood and whether he had any property there. It is the petitioner''s case that the respondent has property and that if she

had been a party to the insolvency proceedings, she would have been able to prove so. Although no dividend was presumably declared, yet the.

 

Insolvency Court (that of the Subordinate Judge of Cuddalpre) granted an absolute discharge without any hesitation in spite of the prohibition contained in Section 42(1)(a) of the Provincial Insolvency Act.

2. The position on the findings given by the learned Subordinate Judge - with which I agree - is therefore that the insolvent by his fraud prevented the petitioner from appearing in the Insolvency Court and obtaining a share of the assets, if there were any, and now, when a suit is filed, he pleads the bar of these very insolvency proceedings in which he would not allow the petitioner to participate Section 44(1)(c) of the Provincial Insolvency Act would, I think, apply to a case like this. This was a debt in respect of which the respondent obtained forbearance by a fraud; for it was on account of his fraud that the petitioner was unable to appear in the insolvency proceedings and proceed against his assets.

3. The petition is therefore allowed and the suit decreed in favour of the plaintiff. The petitioner is entitled to her costs in this Court as well as in the lower Court.

 