

(1972) 07 MAD CK 0012
In the Madras High Court

A.M.S. Veerappa Chettiar and Others	APPELLANT
Vs	
Kalidoss Chettiar and Sons, by Partner Kalidoss Chettiar and Others	RESPONDENT

Date of Decision : 26-07-1972

Acts Referred:

Partnership Act, 1932 — Section 32(3)

Citation : (1973) 86 LW 835 : (1973) 1 MLJ 239

Hon'ble Judges : P.S. Kailasam, J

Bench : Division Bench

Judgement

P.S. Kailasam, J.—The petitioners are the first respondent, fifth respondent and the legal representatives of the second respondent in I.P.

No. 2 of 1965 on the file of the Court of the Subordinate Judge of Mayuram. They seek to file this petition against the : order of the Courts below

declaring the first and second petitioners herein and the second respondent in the main insolvency petition as insolvents as partners of a partnership.

Exhibit B-12 shows that the firm was registered on 11th. December, 1947, with five partners. Regarding the petitioners 1 and 2 and the second

respondent in the main petition, the records of the firm show that the first petitioner ceased to be a partner on 31st December, 1956 and the

second petitioner and the second respondent in the main petition ceased to be partners on 31st December, 1958. This document shows that the

partnership informed the authorities under the Partnership Act that the petitioners 1 and 2 and the second respondent in the main petition ceased to

be partners from 31st December, 1956 and 31st December, 1958. The contention of the learned Counsel for the petitioning creditor who is the

respondent in this petition is that in spite of the entry in the record, petitioners 1

and 2 and the second respondent in the main petition continued to be partners. For this submission, Exhibits B-9, B-10 and B-3 ledgers of the partnership, relating to the years subsequent to their retirement as partners were relied on. Before I deal with these documents, reference may be made to Exhibit A-4 which was strongly relied upon by the learned District Judge as conclusively establishing that petitioners 1 and 2 and the second respondent in the main petition continued as partners. Exhibit A-4 is an application for registration of the firm of the year 1917 by all the partners including the petitioners 1 and 2 and the second respondent in the main insolvency petition. The grievous mistake which the learned District Judge committed was to misread the year of the application for registration as 1967 instead of 1947. From this misreading, the learned Judge jumped to the conclusion that it was indisputable that they continued to be partners till 1967 without realising that they made the application in 1947. Leaving out this document Exhibit A-4, reliance was placed on Exhibits B-3, B-9 and B-10. Exhibits B-3 and B-9 are account books. In Exhibit B-9 there is a ledger page relating to the first petitioner in which the first petitioner is named as a partner. Strong reliance is placed upon this circumstance. But a reading of the entire page shows that certain items were debited to Veerappa Chettiar and these items consist of cash paid, electricity charges and some small amounts paid for buying oil, etc. The other books Exhibits B-3 and B-10 in the ledger pages give only the name of the first petitioner and do not mention him as a partner. These entries also relate to certain amounts of cash and electricity charges and other miscellaneous expenses debited to the first petitioner. It is significant to note that none of these entries relate to any profit that was derived by the partnership or to any amounts paid by the partnership to creditors or other authorities. That these ledger pages have nothing to indicate that the petitioners 1 and 2 and the second respondent in the main insolvency petition continued as partners is obvious. On the other hand, an entry in Exhibit B-10 concludes the case against the respondent petitioning-creditor. In Exhibit P-10 at pages 142, 146 and 147 the profit of the firm is summarised. At page 147 the profits from the handloom and mill goods business is given. At page 148 the gross profit is arrived at and at the end of that page, the net profit is stated to be Rs. 5,142-50. It is stated that

Govindaswamy Chettiar who was the third respondent in the main petition is entitled to half share, that is, 2,571-25 and Rathinam Chettiar who

was the fourth respondent in the main petition is stated to be entitled to another half share, that is, Rs. 2,571-25. This entry was made in the year

1959-60 and the account was sent to the Income Tax Office on 7th September, 1960. These entries which are in the account books and which

are relied upon by the petitioning-creditor himself would conclusively prove that in 1960 the two partners were only Govindaswamy Chettiar and

Rathinam Chettiar, respondents 3 and 4 in the main insolvency petition. On the documentary evidence, therefore, I have no hesitation in reversing

the finding of the Courts below that petitioners 1 and 2 and the second respondent in the main insolvency petition continued to be partners on the

date when the petitioning-creditor filed his petition for adjudicating the respondents in the main petition as insolvents. Mr. N. C. Raghavachari, the

learned Counsel for the respondent petitioning-creditor, submitted that even on this finding the petitioning-creditor is entitled to get the respondents

in the main petition declared as insolvents by virtue of the provisions of Section 32 (3) and Section 72 of the Partnership Act. Section 32 (3) of the

Partnership Act provides as follows:

Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by

any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement.

2. The effect of this sub-section is that a retiring partner will continue to be liable as a partner to third parties for any act done by any of the

partners which would have been an act of the firm if done before the retirement until public notice is given. The liability of a retiring partner

continues till public notice is given. The provision relating to public notice is Section 72. It requires that a public notice of retirement of a partner

should be given to the Registrar of Firms and by publication in the official gazette and in at least one vernacular paper circulating in the district

where the firm is having its principal place of business. Though notice of retirement was given to the Registrar of Firms and entries made in the

books, there was no publication in the official gazette and in the vernacular papers. The result is that there was no proper publication u/s 72 and the

retired partners would be liable as partners. But the question that now arises is whether the liability as partners would extend to being adjudicated

as insolvents on behalf of the firm for the act of the firm at a subsequent date. In *Firm Mukand Lal Veer Kumar and Another Vs. Purushottam*

Singh and Others, the liability of the partners is stated as follows:

We think that in order to support an adjudication against a firm, there must be proof that each of the partners has committed some act of

insolvency. If however, a joint act of insolvency is relied upon it must be shown to be the act of all the partners. An ... order for adjudication can

also be made against a firm if there was an act of insolvency by an agent of the firm which was such as must necessarily be implied to the firm.

The first part of the statement requires that each of the partners should have committed an act of insolvency. Admittedly, in this case, the petitioners

1 and 2 and the second respondent in the main insolvency petition have not committed any individual act of insolvency. The second part of the

statement states that when a joint act of insolvency is relied on, it must be shown to be the act of all the partners. This statement also will not help

the petitioning-creditor, for, the act relied on as the act of the partnership is suspension of business by refusing to pay the creditors. On that date,

as already pointed out, petitioners 1 and 2 and the second respondent in the main petition were not partners, and the act of the partnership which

continued after their retirement cannot be said to be the act of the erstwhile partner. The third part of the statement is not applicable to the facts of

the present case. The requirement is that there must be proof that each of the partners has committed some act of insolvency and if a joint act of

insolvency is relied upon, it must be shown to be the act of all the partners. While such is the position, it cannot be stated that the act of the

partnership in suspending payment to the creditor could be fastened on the partners who had retired long ago.

3. It was urged by Mr. N. G. Raghavachari, learned Counsel for the respondent petitioning-creditor that the words in Section 32 (3) of the

Partnership Act that a retired partner will continue to be liable as partner would also include his liability to be adjudicated as an insolvent. The

learned Counsel could not produce any authority in support of his contention. I do not think that the liability created under this section on a retired

partner would extend to his being liable to be adjudicated as an insolvent. On the finding that the petitioners 1 and 2 and second respondent in the main insolvency petition ceased to be partners long before the relevant date and that they are not liable for being adjudicated as insolvents for the act of the other partners who continued to be in the partnership after the petitioners 1 and 2 and the second respondent in the main petition retired, this Civil Revision Petition is allowed with costs throughout. The order of adjudication so far as the petitioners 1 and 2 and the Legal Representatives of the second respondent in the main insolvency petition is concerned, will stand set aside.