

(1977) 04 MAD CK 0017

In the Madras High Court

Case No : O.S. Appeal No. 7 of 1974

B.C. Munirathinam Naidu

APPELLANT

Vs

Meena Financiers, Madras and Another

RESPONDENT

Date of Decision : 26-04-1977

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 9

Citation : AIR 1978 Mad 46 : (1977) ILR (Mad) 169 : (1977) 90 LW 539

Hon'ble Judges : Ramaprasada Rao, O.C.J.;Suryamurthy, J

Bench : Division Bench

Advocate : M. Velusami, for the Appellant; P.B. Ramanujam, for the Respondent

Final Decision : Dismissed

Judgement

Suryamurthy, J.—This is an appeal by the respondent in I. P. No. 79 of 1972, who was adjudicated as an insolvent, on a petition filed by

one of his creditors. The appellant was adjudicated as insolvent, because it was found that his property had been attached and had remained under

attachment for more than 21 days in execution of a decree of this Court for the payment of the money. Several other grounds were urged by the

creditor for adjudicating him as an insolvent and were found in his favour, and, therefore, they do not survive for consideration now. The ground on

which the appellant was adjudicated as insolvent is also not impugned in this appeal. The argument of the learned counsel for the appellant was

confined to the question of jurisdiction. It is contended by the learned counsel for the appellant that the appellant has not ordinarily resided or had a

dwelling house or carried on business either in person or through an agent within one year before the date of presentation of the insolvency petition

within the limits of the ordinary original civil jurisdiction of this Court and that,

therefore, the order passed by the learned Judge of this Court on the original side is without jurisdiction. The petition for adjudicating the appellant as insolvent was filed under Sections 9(d)(ii) and (iii). 9(e) and 9(g) of the Presidency Towns Insolvency Act. In that petition it is alleged that the appellant ""is residing at No. 166-A, Poonamallee High Road, Madras"", and was residing within the jurisdiction of this Court within a year before the date of presentation of this petition. It is also alleged that he ""is carrying on business at No. 364, Poonamallee High Road, Madras-29, as Film Distributor as sole proprietor under the name and style of Sri Satyanarayana Pictures"". The petition for adjudicating the appellant was presented on 10-7-1971 and filed on 14-8-1972. In the counter-statement filed by him, the appellant has not specifically denied the allegation in the petition regarding his residence and place of business. It is only in the additional counter-statement filed after the commencement of the enquiry by the learned trial Judge that the contentions to escape from the jurisdiction of the Court have been put forward. In the counter statement filed by him, the appellant has admitted that he ""has a temporary residence at Shenoy Nagar, Madras, to facilitate his temporary stays at Madras for business and for his personal work."" Therefore, it is evident that on the date of his filing the counter statement, the appellant had a dwelling house at Shenoy Nagar, Madras, and was also carrying on business at Madras.

2. The appellant has examined the karnam of Muthirampedu as R. W. 2 to prove that he has been residing in Muthirampedu for about 7 or 8 years. The president of the Panchayat Board at Muthirampedu has been examined as R. W. 3 to corroborate the evidence of R. W. 2 on this aspect. Deposing as R. W. 1. the appellant has also endeavoured to make out that he has been residing only in Muthirampedu, and not in the City of Madras, R. W. 4. the brother-in-law of the appellant, has gone into the witness, box to swear that the appellant is not doing any business at No. 162, Shenov Nagar and that it is he (R. W. 4) who has been paying the rent for the premises in Shenoy Nagar. The phone in that premises is in the name of the wife of the appellant. R. W. 4 has not filed any document to prove that he has been paying the telephone charges or the rent for the premises. The premises were admittedly in the occupation of the appellant prior

to the alleged occupation by R. W. 4. The receipts for the rent which R. W. 4 claims to have paid to the landlady have not been filed. There is nothing to show that R W. 4 attorned to the landlady and that the landlady agreed to treat him as a tenant. R. W. 4 is an interested witness. No reliance can be placed on his mere word that he is a tenant of the premises bearing door No. 162, Shenoy Nagar. The best evidence, viz., the receipts for the payment of rent by R. W. 4 to the landlady not having been filed, the evidence of R. W. 1 and R. W. 4 have to be rejected.

3. We agree with the conclusion of the learned trial Judge that the appellant has a dwelling house at No. 162, Shenoy Nagar and used to stay there whenever he came to the City. The fact that he has a permanent residence at Muthirampedu is not inconsistent with his having another residence at Madras. The endeavour of R. W. 1 to get over his admission in the first counter statement filed by him that he was having a temporary residence at Shenoy Nagar, Madras, to facilitate his temporary stays at Madras, by trotting out the explanation that it is not correct, (which is not an explanation at all) betrays his total lack of veracity and disregard for consistency. He would like us to believe that it was his counsel who made such an averment in the counter-statement despite the instructions given to him to state that whenever he visited Madras he used to stay in the house of his brother-in-law. We are not prepared to believe that his counsel drafted the counter-statement containing any averment that was not based on the instructions of the appellant.

4. Even in the execution proceedings initiated to recover the amount due under the decree in C. S. No. 122 of 1965, the residential address of the appellant has been given as Nos. 166-A and 364, Poonamallee High Road. The notices were not served personally on the appellant and were returned with the endorsement that he was reported "to be not at home and gone out." Even after the insolvency proceedings had been initiated, the appellant has not taken any steps to have the ex parte order passed in the execution proceedings set aside on the ground that there was no proper service of notices on him, and that the affixture of the notices on the aforesaid premises was not sufficient notice to him, as he was not residing in or carrying on any business from the aforesaid premises. Therefore, we have no hesitation in coming to the conclusion that the appellant

has a residence within the City of Madras, as found by the learned trial Judge.

5. The appellant was carrying on business as a Film Distributor under the name and style of Satyanarayana Pictures and another business in the

manufacture of bricks under the name and style of Rajalakshmi Brick Works, at No. 364, Poonamallee High Road, Madras. He has endeavoured

to make out that he has wound up his business in 1954 and lives in Muthirampedu village. He has not discharged the debts contracted by him in the

course of the aforesaid trades he carried on. The business carried on by him in the City of Madras within the jurisdiction of this Court should be

deemed to be carried on by him so long as the liabilities contracted by him in his business remain undischarged.

6. "Business" is a much wider term than "Trade". The word "Business" covers a continuous occupation involving liabilities to others and involves

dealings carried on frequently and systematically and over a considerable period and should be deemed to exist from the time of its commencement

and till all the assets are realised and liabilities are discharged or otherwise settled. There is no definition of the word "Business" in the Presidency

Towns Insolvency Act. In Section 2, Clause (13) of the Income Tax Act, 1961. "Business" is defined as follows: "Business" includes any trade,

commerce or manufacture or any adventure or Concern in the nature of trade, commerce or manufacture." This definition is inclusive and not

exhaustive and has an extending force and does not limit the meaning of the term LALA INDRA SEN, IN RE., and COMMISSIONER OF

INCOME TAX, BOMBAY Vs. NATIONAL MUTUAL LIFE ASSOCIATION OF AUSTRALASIA., . "Trade" is not only in the etymological

or dictionary sense, but in legal usage, a term of the widest scope; and the word "Business" has even a wider content than the word "Trade". The

trend of judicial decisions has been in favour of enlargement rather than restriction of the connotation of trade and business. (Vide Smith Barry v.

Cordy. (1946) 28 Tax Cas 250 and Mazagaon Dock Ltd. Vs. The Commissioner of Income Tax and Excess Profits Tax, . "Business" involves

continuous exercise of an activity. So long as the liabilities incurred in the course of a business remained undischarged, the business activity should

be deemed to continue.

7. In In re Dagnall. Ex parte Soan and Morley -- (1896) 2 QB 407, it was held by

Vaughan Williams, J. that, "".....as long as a woman trading separately from her husband had not paid the trade debts which she had incurred, so long she was continuing to trade. It seems to me that trading is not completed until you have performed all the obligations that the fact of trading imposed upon you. And that was the view that was taken in the older cases.

8. In *In re Clark. Ex parte Pope & Owles*. (1914) 3 KB 1095 a similar view has been taken, and the decision in *In re Dagnall, Ex parte Span and Morley*, (1896) 2 QB 407 was held to be perfectly right.

9. In *In re Raynolds Ex parte White Brothers Ltd.*, (1915) 2 KB 186, Swinfen Bady L. J., has observed that, ""Debts incurred during that period

remained unpaid, and where a person is a trader and contracts debts the trading continues as long as the debts remain unpaid. A person cannot

escape from liability already incurred as trader by putting up his shutters and ceasing to trade. In *In re Dagnall*. (1896) 2 QB 407, Vaughan

Williams. J., said: ""whether a person is carrying on a trade or not is a question of fact;"" -- that is a question of trade --""and if it were not for the

decision in *Ex parte McGeorge. In re Stevens*, (1882) 30 Ch D 697"" which he explains -- ""I should have said without any hesitation that as long as

a woman trading separately from her husband had not paid the trade debts which she had incurred, so long she was continuing to trade. It seems

to me that trading is not completed until you have performed all the obligations that the fact of trading imposed upon you."" So that, on the first

point, the trading continued until the debts were paid.

10. Lord Alverstone, C. J., held in *In re Worsley*, (1901) 1 QB 309, that a married woman who has sold the business carried on by her separately

from her husband must be deemed to be still ""carrying on"" the business within Section 1, Sub-section (5) of the Married Women's Property Act,

1882, so long as the debts she has incurred in the business remain unpaid; and therefore, in such a case, she is subject under that Sub-section, in

respect of her separate property, to the bankruptcy laws, so that a receiving order may be made against her at the instance of a trade creditor.

11. In *In re Alien. Ex parte Shaw*, (1915) 1 KB 285, it has been held that the liability under the judgment against the married woman, who

incurred a liability while carrying on business, was a trade obligation and that,

not having discharged it, the debtor was still carrying on business and was liable to bankruptcy proceedings.

12. In *Theophile v. Solicitor-General*, (1950) 2 All ER 405, Lord Porter observed that, "...there is a series of cases beginning with *Re, Reynolds*, (1896) 2 QB 407 and ending with *Re Reynolds*, (1915) 2 KB 186 which in unbroken sequence have decided that trading does not cease when, as the expression is, "the shutters are put up," but that it continued until the sums due are collected and all debts paid. It is true that all the decisions have been given in respect of married woman's trading and that a distinction has been made between the earlier Acts, where the expression was as a trader", and the later, where the phrase "carrying on trade" is found, but it is the later, not the earlier, phrase which has been adopted in the Act of 1914. It was suggested on behalf of the appellant that the decisions had application to married woman only, because the wording was first used in the Married Women's Property Act, 1882. and transferred therefrom to the Bankruptcy and Deeds of Arrangement Act 1913, and thence to the present Act. I cannot follow why the same wording should have one significance when employed of married woman and another in the case of all other persons engaged in trade. More particularly, I think that the meaning placed on the words in the cases referred to must be followed when it is remembered that the Acts of Parliament have been passed since *Re Dagnall*, (1896) 2 QB 407 and *Re Worsley*, (1901) 1 QB 309 were decided and that those cases have been followed and approved in *Re Clark*, (1914) 3 KB 1095, *Re Alien*, (1915) 1 KB 285 and *Re Reynolds*, (1915) 2 KB 186. In my opinion, those cases were rightly decided, and are conclusive of the present question.

13. The principles enunciated in the decisions referred to above are applicable to the definition of the words "carrying on business" used in the Presidency Towns Insolvency Act.

14. In *Gokuldoss Goverdhan Doss (dead) and Another Vs. Dwarakadoss Goverdhan Doss (dead) and Others*, a Bench of this Court has referred with approval to the decision in *Ex parte Banford*. (1809) 15 Ves 449 where the Lord Chancellor laid down that so long as a trader did not pay the debts he had contracted while engaged in the trade he was to be regarded as still engaged in the trade. Spencer J., has further observed that,

In *In re Clark. Ex parte Pope and Owles*, (1914) 3 KB 1095 a similar meaning was given by three learned Judges of the Court of Appeal to the words "carrying on business" and in this Court in petition No. 150 of 1916 our learned Chief Justice took the view that the meaning of "carrying on business" as understood by the Court of Appeal in England was the same in this country and that the language used by the English Court of Appeal was expressed in terms so general as to mean that, so long as there are debts of the business being discharged and assets being got in, a business must be regarded as still being carried on.

15. We follow the principles laid down by the Bench of this Court in the aforesaid decision and hold that as the appellant has not yet discharged the liabilities incurred by him in the course of the two businesses he was carrying on within the limits of the original jurisdiction of this Court in the City of Madras, he should be deemed to be carrying on a business in the City of Madras and that, therefore, this Court exercising jurisdiction under the Presidency Towns Insolvency Act on the original side is rightly seized of the case. Therefore, the order of adjudication passed by the learned single Judge is confirmed, and this appeal is dismissed with costs. Costs will come out of the estate.