
(1946) 12 MAD CK 0013
In the Madras High Court

Chengalraya Chetty

APPELLANT

Vs

The Official Receiver

RESPONDENT

Date of Decision : 10-12-1946

Acts Referred:

Provincial Insolvency Act, 1920 — Section 33

Citation : AIR 1947 Mad 338 : (1947) 60 LW 103 : (1947) 1 MLJ 103

Hon'ble Judges : Rajamannar, J

Bench : Division Bench

Judgement

Rajamannar, J.—This civil revision petition arises in the insolvency of one Fakir Sahib. The petitioner is one of the creditors of the insolvent.

He tendered proof of his claim which was rejected by the Official Receiver and he thereupon applied u/s 33 of the Provincial Insolvency Act V of

1920 to the Court to accept proof of his debt. Though the Official Receiver refused to contest the. petition the learned Subordinate Judge held that

the claim of the petitioner could not be proved in insolvency because it was a claim by way of contribution and therefore was not provable u/s 34

of the Insolvency Act. On appeal the learned District Judge confirmed the order of the learned Subordinate Judge. He held that the claim made for

contribution cannot be said to be a liquidated claim within the meaning of Section 34 of the Provincial Insolvency Act.

2. The claim is made in respect of an amount which the petitioner paid to discharge a decree in O.S. No. 464 of 1931 on the file of the Court of

the District Munsiff, Tiruppattur which was passed against the petitioner, the insolvent and another. The decree was that these three persons should

pay the plaintiff therein Rs. 250 on account of past mesne profits and mesne profits at the same rate from the date of the plaint till the date of

delivery. The petitioner claims that though the decree ran against all the three persons it was only the insolvent who was really liable and he having

paid the entire decree amount was entitled to recover the same from the insolvent. In the counter affidavit filed by the insolvent it was alleged that

the application was not maintainable, that the debt was not a provable debt and that the remedy was only by way of suit.

3. Section 34(1) of the Provincial Insolvency Act is as follows :

Debts which have been excluded from the schedule on the ground that their value is incapable of being fairly estimated and demands in the nature

of unliquidated damages arising otherwise than by reason of a contract or a breach of trust shall not be provable under this Act.

In my opinion assuming that the petitioner's claim is by way of contribution it does not fall within either category mentioned in the above sub-

section. It cannot be said that the value of the debt is incapable of being fairly estimated. As a matter of fact there is no question of any estimation.

The petitioner's claim is that the debt consists of the entire amount paid by him. It certainly is not a demand in the nature of unliquidated damages.

The claim in contribution is not a claim in damages. Mr. Venugopalachari, the learned advocate for the petitioners drew my attention to the

decision in *Wolmershausen v. Gullick* (1893) 2 Ch.D. 514 in which it was held that the liability of a bankrupt co-surety to contribution, though

unascertained at the time of the bankruptcy proceedings is a debt provable in the bankruptcy. The decision in *Gangadhar v. Kanhai* ILR (1928)

All. 606 proceeds also on the same view. Sub-section (2) of Section 34 of the Provincial Insolvency Act provides :

that all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent or to which he

may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts

provable under this Act.

I have no hesitation in holding that the claim of the petitioner is not a debt which is not provable under this Act. The entire argument of the learned

advocate for the Official Receiver has proceeded as if the insolvency Court is now being called upon to ascertain the mesne profits. Mesne profits

no doubt are in the nature of damages but the Court is not now called upon to

ascertain mesne profits. That has been done before and there is a decree for a certain sum. I fail to see the applicability of the ruling in Siva Panda v. Jujusti Panda (1901) 12 M.L.J. 13 : ILR 25 Mad. 599 and Basanta Kumar Basu v. Ramshanker Ray ILR (1931) Cal. 859 which were cited by the learned advocate for the respondent. He did not address any argument on the only question which arises in this case, namely whether the claim for contribution can be held to be a claim in the nature of unliquidated ""damages.

4. It was not contended before either of the Courts below that the plaintiff's claim was not sustainable on the merits.

5. I therefore set aside the orders of the Courts below and grant the application filed by the petitioner u/s 33 of the Provincial Insolvency Act with costs throughout.