
(1945) 02 MAD CK 0046
In the Madras High Court

Chinni Venkatachalam Chetti

APPELLANT

Vs

Kencham Bindu Madhava Rao and Others

RESPONDENT

Date of Decision : 23-02-1945

Acts Referred:

Madras Debt Conciliation Act, 1936 — Section 19(iv)

Citation : AIR 1945 Mad 411 : (1945) 58 LW 335 : (1945) 2 MLJ 66

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—This is a petition by the unsuccessful plaintiff in O.S. No. 395 of 1939 on the file of the Court of the District Munsiff, Nellore. The decree dismissing his suit was confirmed on appeal by the District Judge of Nellore and the plaintiff has accordingly approached this Court with the present petition. The suit was upon a promissory note which was admitted, during the trial before the District Munsiff, to have been true and supported by consideration. In both the Courts, however, the suit has been dismissed on the ground that the provisions of Section 19(iv) of the Madras Debt Conciliation Act prevents its being filed. That section says that a suit for the recovery of any debt which has been deemed to have been duly discharged under Sub-section (ii) of Section 10 cannot be entertained by any Civil Court. Sub-section (ii) of Section 10 provides that where a statement is not submitted to the Board in compliance with the provisions of Sub-section (i), the debts which ought to be included in that statement shall be deemed for all purposes and on all occasions to have been duly discharged. Sub-section (i) of Section 10 provides that a notice should be issued by the Board calling upon every creditor of a debtor to submit a statement of the debts owed to him by the debtor. Such statement must be drawn up in a certain manner and must be submitted within two months from the date of service or publication of the notice as the case may be.

2. A notice in this case was served on the 12th December, 1938. According, therefore, to the strict language of Section 10(i) of the Act, the statement ought

to have been submitted to the Board on or before the 12th February, 1939. However, the notice itself is in these terms, that the creditors are requested to submit to the, Board a statement in writing on or before the 16th February, 1939, at the Board's office. The notice concludes by calling the attention of the creditors to Section 10(ii) of the Act and to the penalty which will be exacted in case they do not comply with the Act. On the 16th February, the Board was due to meet at Kaluvoy; but there was no meeting of the Board owing to a sudden change of arrangements. A clerk was left at Kaluvoy with instructions to receive any statement that may be handed in. The present petitioner did not file any statement on that day. On the 27th February, the Board met. It appears from the orders passed in May that on that day, statements were received from the present petitioner and from other creditors. But no statements were received from creditors 4, 6 and 7. Therefore on that day, the debts due to these creditors were declared to be formally discharged for non-compliance with the provisions of Section 10(i). No definite statement is made as to what should happen to the creditors who filed statements on the 27th February. The matter of the application remained open with the Board until the 5th May, when it was finally closed.

3. It is argued first against the petitioner in this petition that because he did not file his statement on or before the 12th February, his debt was automatically discharged. It seems to me impossible to accept this argument. The discharge of the debt is a penalty for non-compliance with the terms of a notice and the terms of this particular notice gave the petitioner time until the 16th February. It is impossible therefore to accept the argument that because he did nothing on the 12th February, he has lost all his right of suit.

4. The real point of the case, it seems to me, is this whether on or after the 16th February, the Board was satisfied that the petitioner was for good and sufficient cause unable to comply with the direction to file his statement by the 16th February. There is no considered order of the Board on this matter. The matter does not appear to have been discussed at any length at any time before the Board nor was any specific application ever put in by the petitioner or any other creditor. We have simply the information that on the 27th February, the Board discriminated between the case of some creditors and that of others and that on the 16th February, in the B diary of the case, it is recorded that the application was adjourned to the 27th February at Nellore owing to the sudden change of camp. It seems to me that the only possible inference from these facts is that the Board, without of course giving this matter any elaborate attention, had realised that because they did not in fact meet at Kaluvoy on the 16th February, it was reasonable to give a further opportunity to the creditors to file their statements on the 27th. Those who did not were considered finally by the Board to have failed to comply with the notice, and the case of those who did were adjourned for further consideration. It seems to me quite unreasonable to hold that on facts of this kind, the Board must be held not to have granted any extension of time.

5. It was argued for the respondent here that the Board has no jurisdiction after the 16th February to grant any extension of time, an argument which seems to me quite unmaintainable in view of the language of the proviso which says provided that, if the Board is satisfied that any creditor was, for good and sufficient cause, unable to comply with such directions, it may extend the period for the submission of his statement of the debt owed to him. The use of the word "was" shows that the Board had jurisdiction, after the period of expiry, to decide whether it could be extended or not.

6. Finally it is argued for the respondent that this Court ought not to interfere with what is essentially a finding of fact, as to what particular action was taken by the Board. It is of course a question of fact to decide what action the Board took at any particular time but in the discussion of this matter by the learned District Judge, the finding of fact is so influenced by the learned Judge's views of the law and the powers and jurisdiction of the Board that it cannot be called a pure finding of fact at all, I consider therefore that it is within the powers of this Court u/s 115, Civil Procedure Code, to interfere in this matter.

7. In the result, the decree of the Court below will be set aside and in so far as all the other issues raised in the case have already been decided in favour of the plaintiff, he will be granted a decree as prayed for with costs throughout.