

(1956) 07 MAD CK 0018

In the Madras High Court

Case No : O.P. No. 129 of 1955 and Application No. 1019 of 1956

D.D. Italia and J.D. Italia

APPELLANT

Vs

Free Press Journals (Madras) Ltd.

RESPONDENT

Date of Decision : 02-07-1956

Acts Referred:

Companies (Amendment) Act, 1956 — Section 529, 530
Companies Act, 1913 — Section 229, 230, 230(2), 230(4), 230(5)
Presidency Towns Insolvency Act, 1909 — Section 49

Citation : AIR 1957 Mad 162

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Advocate : A.K. Sreeraman, for the Appellant; Party in person, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Ayyar, J.—On 19th April 1955, an application was made to wind up the Free Press Journals (Madras) Ltd. On 2nd May

1955, an interim receiver was appointed and on 18th July 1935, an order to wind up the company was made.

2. The Free Press Journals (Madras) Ltd, was located in premises belonging to the Dinrose Estate whose proprietors are D. D. Italla and J. D.

Italia. On 12.1-1956 possession of the premises-was delivered to the proprietors by the Receiver. On 4-1-1956 the Dinroze Estate filed a claim

before the Official Receiver for a sum of Rs. 5670, which it alleged was due to it as arrears of rent for the premises occupied by the Free Press

journals (Madras) Ltd.

The receiver made a preferential payment of Rs. 2625 to the Dinroze Estate on the basis that the rent for the period between 2-5-1955 when he

was appointed interim receiver and 12-1-1955 when he handed over possession should be properly treated as part of administration charges. The

Dinroze Estate has now filed this application praying that a further sum of Rs. 1281 should be paid to it in preference to other creditors.

3. In the affidavit filed in support of the application it is alleged that in January 1955, certain creditors of the company now being wound up filed

suite against it and that at their instance the premises were sealed by the order of the Court, that in this manner the premises came to be in custodia

legis and that therefore the claim for rent acquired priority.

4. Mr. Sreeraman next contended that even if the claim to the whole of Rs. 1281 is not allowed the Dinroze Estate is entitled to priority at least in

respect of one month's rent. This is how he put his argument. Section 229 of the Indian Companies Act provides:

In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and

unsecured creditors and to debts provable as are in force for the time being under the law of insolvency with respect to the estates of persons

adjudged insolvent.....

This provision, in Section 229 Justifies the Importation Into the present proceedings of Section 49 of the Presidency Towns Insolvency Act, which

runs (so far as is now material) as follows:

(1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts-

(c) rent due to a landlord from the insolvent; provided the amount payable under this clause shall not exceed one month's rent.

Now, I do not think that Section 239 of the Indian Companies Act justifies resort to Section 49 of the Presidency Towns Insolvency Act because

Section 230 of the Companies Act makes express provision in respect of all categories or heads of claims dealt with in Section 49 of the

Presidency Towns Insolvency Act. Clause (a) of Sub-section (1) of Section 49 assigns priority to all debts due to the Government or to any local

authority.

Similarly, Clause (a) of Sub-section (1) of Section 230 of the Indian Companies Act provides for priority in respect of all revenue, taxes, cesses

and rates, whether payable to the Crown or to a local authority, and, in the

respect, modifying the provision in Clause (a) of Sub-section (1) of

Section 49 of the Presidency Towns Insolvency Act, fixes a period of twelve months as that to which the arrears en-titled to priority relate.

Similarly, Clause (b) of Sub-section (1) of Section 49 of the Presidency Towns Insolvency Act provides for the preferential payment of salary and

wages of clerks, servants and other employees. There is a corresponding provision in Clause (b) of Sub-section (1) of Section 230.

One important difference between the two clauses is that a limit of Rs. 1000 is provided in the Companies Act while a lower limit is provided in the

presidency Towns Insolvency Act. Sub-section (4) of Section 230 of the Companies Act makes provision in respect of the rights of landlords, a

matter dealt with in Clause (c) of Sub-section (1) of Section 49 of the Presidency Towns. Insolvency Act.

5. Now, where the Companies Act makes specific provision in respect of any matter it seems to me that we shall not be justified in invoking the

rules laid down in the Presidency Towns Insolvency Act. All the sections of an enactment must be read in relation to one another. This is perhaps

elementary. But it means that Section 229 must be read subject to the provisions of Section 230.

This matter of principle apart, there are further difficulties in importing Section 49 of the Presidency Towns Insolvency Act into the Companies Act.

Section 230 of the Companies Act grants priority to various classes of claims not dealt with in Section 49 of the Presidency Towns Insolvency Act

and relegates the claim of a landlord for arrears of rent to a more distant and qualified position.

If Section 49 of the Presidency Towns Insolvency Act is imported into the Companies Act, we should be upsetting and interfering with the

directions in Sub-section (2) of s. 230 that the debts previously referred to in that section shall rank equally. We shall also be introducing a further

difficulty. u/s 49(c) of the Presidency Towns Insolvency Act the landlord is entitled to priority only in respect of one month's rent; but by virtue of

sub-sections 4 and 5 of Section 230 a landlord will be entitled to priority - though a qualified one - in respect of a longer period. Section 49 of the

Presidency Towns Insolvency Act cannot therefore be applied to the present proceedings.

6. As regards the argument that the landlord is entitled to priority because the premises was sealed by the order of court and thus came to be in

custodia legis, it is sufficient to say that the reduction into its custody by the law, of any property does not affect the rights inter se of the competing

claimants. The law holds the property Impartially for the benefit of all who are entitled to it and landlords acquire no priority. No authority for

supporting such a claim for priority appears to exist and certainly nothing has been shown to me.

7. In the result, this application is dismissed.