

(1936) 04 MAD CK 0017
In the Madras High Court

Doddi Abdul Nabi Saib

APPELLANT

Vs

Kallappa Rajappa Patel and Others

RESPONDENT

Date of Decision : 07-04-1936

Acts Referred:

Citation : AIR 1936 Mad 800 : 165 Ind. Cas. 83 : (1936) 44 LW 284 : (1936) 71 MLJ 371

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The respondents are unrepresented.

2. The learned Judge has disposed of the matter without sufficient advertence to the provisions of the Insolvency Act. The order of adjudication

was made on the 12th September, 1932 and the period fixed within which the Insolvent was to apply for his discharge, was six months from that

date. The application for an absolute discharge u/s 41, out of which this appeal arises, was made by the insolvent on the 3rd March, 1933, that is,

within the time limited. Whether the Court shall grant or refuse an absolute order of discharge, must be determined with reference to the terms of

Section 42; but the learned Judge, in rejecting the debtor's application, seems to have relied upon grounds not indicated in, or warranted by, that

section. There was no opposition to the petition on the part of the creditors who were made parties. Then as regards the Receiver, whose report,

Section 42 provides, shall be deemed to be evidence, he reported inter alia first that the insolvent had been rendering him proper assistance in the

administration of the estate, and secondly, that he had not made any fraudulent transfers of his property to defeat or delay his creditors or

committed any act of bad faith. The insolvent's assets, as is conceded, are not of a value equal to eight annas in the rupee; therefore, to be entitled to an absolute discharge, he should bring himself within the qualifying clause of Section 42(1)(a). The question is, has he satisfied the Court that the inadequacy of his assets has arisen from circumstances for which he cannot justly be held responsible? On the material before us, there is little reason to doubt that the debts shown were trade debts incurred in the course of a business, which had been carried on both by his father and himself. It has not been shown that he was guilty of any of the acts mentioned in Clauses (c) to (f) of Section 42; there is nothing to suggest that he continued to trade, knowing himself to be insolvent or contracted any debt recklessly or brought on his insolvency by any sort of rash and hazardous speculation. The learned Judge gives two reasons for refusing the application. He says "how he (the insolvent) got such extensive credit is a mystery," thereby meaning, that fraud must be inferred from the very fact that the debts were incurred. It is needless to point out that this statement of the learned Judge proceeds upon a misapprehension of the law. The second ground on which the order is based, is that the insolvent uttered a falsehood in stating that the debts were contracted by his father. In point of fact, this observation of the Judge is not correct, for, although the insolvent seems to have taken some part in the business, it has not been denied that it was carried on by his father also. Further, this is scarcely a ground admissible u/s 42, upon which the order of discharge can be refused. The receiver in his report made a recommendation that a discharge might be granted but its operation be suspended for a year. More than two years have since elapsed and we think that in the circumstances, the proper order to make is, to grant an absolute order of discharge.

3. The Lower Court's order is set aside and that appeal is allowed.