

(1935) 02 MAD CK 0026
In the Madras High Court

Gangu Veerabrahmam

APPELLANT

Vs

Gangu Jagannadhacharyulu and Another

RESPONDENT

Date of Decision : 27-02-1935

Acts Referred:

Provincial Insolvency Act, 1920 — Section 6(g)

Citation : (1935) 42 LW 427 : (1935) 69 MLJ 184

Hon'ble Judges : Cornish, J

Bench : Division Bench

Judgement

Cornish, J.—The appeal is by a creditor against the dismissal of his petition to have the respondents, his debtors, adjudicated insolvent.

Three acts of insolvency were alleged in the petition. But the only one with which we are concerned with in this appeal is u/s 6(g) of the Provincial

Insolvency Act, namely, that the debtor gave notice to a creditor the petitioner, that he had suspended or was about to suspend payment of his debts.

2. It appears from the counter-affidavit filed by the first respondent, which in its material particulars is adopted by the second respondent, that the

debtors are artisan goldsmiths and that they had incurred debts amounting to Rs. 2,400, of which a sum of Rs. 1,040 represented a mortgage debt

on their property. In order to meet their creditors the respondents sold their property and offered to make a rateable distribution among their

unsecured creditors, after satisfying the mortgage-debt, of the balance of the sale proceeds. The amount so available for distribution was three

annas nine pies in the rupee for each creditor. The petitioner in his affidavit says that the respondents ""have intimated to the petitioner their intention

of not paying anything to this petitioner unless the petitioner agrees to accept in full settlement the small amount which they ""offered"". This allegation

is not disputed in the counter-affidavit of the respondents nor was any evidence called to disprove it.

3. The question is, what was the effect of this intimation given by the respondents to the petitioner. The learned District Judge has correctly stated

the proposition, but he has failed to apply the proper test for determining it. The true test, as stated in *Crook v. Morley* (1891) A.C. 316 is, what

effect would the notice produce on the mind of a creditor receiving it as to the intention of the debtor with regard to his creditors? Would it convey

to the creditor that the debtor was about to stop, payment or had stopped payment? In the same case, Lord Watson referring to the provision in

the English Bankruptcy Act, which is identical in terms with Clause (g) of the Provincial Insolvency Act, said:

It appears to me that any notice will be sufficient...which is expressed in terms calculated to convey to its recipients the information that their debtor

has suspended or is about to suspend payment of his debts. A declaration of his inability to pay his debts may be made by a debtor to one or more

of his creditors, in terms and under circumstances which do not suggest that he means to stop payment of his debts as they fall due. But that such a

declaration may be couched in language which clearly implies that the debtor means to pay nobody in full, and to place his assets at the disposal of

his creditors, does not appear to me to be doubtful.

4. Lord Macnaghten in *Clough v. Samuels* (1905) A.C. 442 has stated the rule again:

It is enough if notice is given to any one of the creditors. No particular form is required. There is nothing said in the Act about the debtor's

intention. The question is what effect would the communication have on the minds of the persons to whom it is addressed...All that is required is

that a communication proceeding from the debtor, made seriously, should give the creditors or any of the creditors to understand from the state of

the circumstances as disclosed at the time that the debtor has suspended or that he is about to suspend payment.

5. In *The Mercantile Bank of India, Ltd., Madras v. Official Assignee of Madras* ILR (1913) 39 Mad. 250 a message from the agent of the

debtors on the eve of insolvency to a creditor Bank that it had better put its board on the debtor's godowns was held to be, in the circumstances,

a notice that the debtors were about to suspend payment.

6. Now applying these criteria to the present case, we feel No doubt that the intimation given by the debtors to the petitioner amounted to a notice

that they had suspended or were about to-suspend payment of their debts. The debtors were in insolvent circumstances. The sale of their property

was the last resource available to them for meeting their creditor's claims and the sale proceeds were far from sufficient to pay those claims in full.

We think it clear that when the debtors informed the petitioner that they could pay no more than three annas nine pies in the rupee to their creditors

they in effect gave notice that they were about to suspend payment of their debts. That was an act of insolvency. It has been suggested that the

petition is a vindictive one, and there seems some foundation for the imputation. But we have no concern with the petitioner's motives, or whether

the adjudication is likely to benefit him. He has satisfied the conditions imposed by the Act for filing a petition and for having the debtors

adjudicated on that petition. The appeal is accordingly allowed, and the order will be that the respondents be adjudicated insolvents., Costs out of

the estate. Discharge to be applied for within one year.