

(1939) 03 MAD CK 0003
In the Madras High Court

Govada Balabharathi Co-operative Credit Society	APPELLANT
Vs	
Alapati Venkatakrishnayya and Another	RESPONDENT

Date of Decision : 15-03-1939

Acts Referred:

Citation : AIR 1940 Mad 932 : (1940) 52 LW 454 : (1940) 2 MLJ 388

Hon'ble Judges : Somayya, J

Bench : Division Bench

Judgement

Somayya, J.—Balabharathi Co-operative Credit Society of Govada had to get some money from one Ramatulasamma. The society, proceeded u/s 51 of the Madras Co-operative Societies Act of 1932 to recover the dues and an award was passed directing payment of the sum due. The award was being executed against the property of the debtor. At that stage, another creditor of the debtor who is the first respondent in this Civil Revision Petition filed I.P. No. 105 of 1934 to adjudicate Ramatulasamma as an insolvent and applied for the appointment of a receiver u/s 20 of the Provincial Insolvency Act. The Subordinate Judge before whom the application was made rejected the application holding that the Co-operative Credit Society had a first charge upon the entire estate of the debtor. The matter was taken up on appeal, and the Districts Judge held that the Co-operative Society had no prior charge over the general estate of the debtor and that the prior charge refers only to the interest of the member in the share capital of the Society. By the time the appeal was decided by the District Judge, the properties of Ramatulasamma had been sold by the Sale Officer under Rule 22 of the Rules made under the Act, and hence, there was no scope for the appointment of a receiver of

the properties. The District Judge, therefore, dismissed the appeal with a direction that the appellant before him might take necessary steps as regards the sale proceeds in the hands of the society.

2. The application out of which the present revision arises, was filed in the Subordinate Judge's Court u/s 51(1) of the Provincial Insolvency Act

and Section 151 of the Civil Procedure Code, requesting the Court to call for the entire sale proceeds of about Rs. 2,100 or at least the balance

due after deducting the amount due to the society. The Subordinate Judge dismissed the application holding that neither Section 51(1) of the

Provincial Insolvency Act nor Section 151 of the CPC applied to this case. On appeal, the District Judge came to the conclusion that Section

51(1) of the Provincial Insolvency Act applies and that the Co-operative Society was bound to remit the sale proceeds to the Insolvency Court.

The Appellate Court held that the Cooperative Society is not entitled to the benefit of the execution against the receiver in the insolvency because

the assets were realised after the date of the admission of the Insolvency Petition.

3. This revision petition is filed in this Court by the Cooperative Credit Society. It is argued that Section 51(1) of the Provincial Insolvency Act

applies only where execution of a decree has issued against the properties of the judgment-debtor. It is said that in this case the property was sold

not in execution of a decree but that it was sold in execution of an award under the Co-operative Societies Act (Madras Act VI of 1932).

4. The expression "decree" is not defined in the Provincial Insolvency Act and u/s 2, Clause 2, of the Act:

Words and expressions used in this Act and defined in the Code of Civil Procedure, 1908 and not hereinbefore defined shall have the same

meanings as those respectively attributed to them by the said Code.

5. u/s 2(2) of CPC decree means:

The formal expression of an adjudication which so far as regards the Court expressing it conclusively determines the rights of the parties with

regard to all or any of the matters in controversy in the suit.

6. What is urged is that the Registrar or Arbitrator is not deciding a suit. The Registrar or the Arbitrator in passing the award under the Act is

certainly acting as a Court.

7. So, the real question is whether a proceeding under the Act is a "suit". The procedure laid down under the Co-operative Societies Act is a

substitute for an ordinary suit in a Civil Court and the requirements of a suit are, I think, satisfied in a proceeding under the Co-operative Societies

Act.

8. Under Rule 15, Clause (1) of the Rules made under the Madras Co-operative Societies Act the reference u/s 51 of the Act is required to be in

writing. This corresponds to the plaint in an ordinary suit; the other clauses of r. 45 show that the subsequent procedure is substantially the same as

that followed in an ordinary suit. But Mr. V. Subramaniam, the learned Counsel for the petitioner, relies upon the decision of the Full Bench in

Rajagopala Chettiar v. The Hindu Religious Endowments Board (1933) 66 M.L.J. 43 : ILR 57 Mad. 271. The decision was rendered under the

Hindu Religious Endowments Act and it was held that a proceeding u/s 84(2) of the Act was not a suit. There are various provisions in that Act

where the proceedings are referred to as suits, but the proceeding u/s 84(2) is referred to as a petition and the decision of the Full Bench may be

distinguishable on this ground. But the decision lays down that an adjudication in a proceeding will be a decree only where the proceeding starts

with a plaint. I do not, therefore, wish to base my judgment on the question whether a proceeding under the Madras Co-operative Societies Act is

or is not a decree within the meaning of Section 2(2) of the Civil Procedure Code* and therefore covered by Section 51(1) of the Provincial

Insolvency Act, though my own view is that an award under the Madras Co-operative Societies Act is a decree as used in Section 51(1) of

Provincial Insolvency Act.

9. u/s 28(7) of the Provincial Insolvency Act the order of adjudication relates back to and takes effect from the date of the presentation of the

petition. u/s 28(2) on the making of an order of adjudication the whole property of the insolvent vests in the Court or in the Receiver and shall be

divisible among the creditors. Reading Section 28(2) and Section 28(7) together, the result is that on an adjudication the properties of the insolvent

vest in the Receiver with effect from the date of the presentation of the petition. There are similar provisions in the Presidency Towns Insolvency

Act and in the English Bankruptcy Act. If matters stood there all dealings with

the property after the date of the insolvency petition would be null

and void but certain provisions are enacted to protect persons who deal bona fide with the insolvent before the date of actual adjudication. A

payment by the insolvent to any of his creditors, a payment or delivery to the insolvent, any transfer by the insolvent for valuable consideration and

any contract or dealing by or with the insolvent for valuable consideration, are protected provided that the transaction took place before the date

of the order of adjudication and the person with whom such transaction takes place had not at that time notice of the presentation of any insolvency

petition by or against the debtor. (See Section 55 of the Provincial Insolvency Act.) Then we have Section 51 of the Act which provides for sales

in execution of the property of the insolvent. u/s 51 (3):

A person who in good faith purchases the property of the debtor under a sale in execution shall in all cases acquire a good title to it against the

receiver.

10. This does not restrict the sales to those held in execution of a decree but applies to sales in execution in general. Therefore, the sale in

execution of an award of the Registrar or the Arbitrator under the Madras Co-operative Societies Act gives a good title to the purchaser who in

good faith purchased it as against the Receiver, in insolvency. Section 51(1) deals with the assets realised in execution. The clause itself begins with

the expression ""where execution of a decree has issued against the property of the debtor"" and provides that in such a case no person shall be

entitled to the benefit of the execution against the Receiver except in respect of assets realised in course of the execution by sale or otherwise

before the date of the admission of the petition. It appears to me that both Sections 55(1) and 55(3) refer to the same classes of cases; under

Clause (3) the sale itself is good and under Clause (1) the sale proceeds go to the receiver if realised after the date of the admission of the petition

and to the creditor if realised before that date. There is no reason to suppose that a decree-holder under an award under the Act is intended to be

placed on any higher footing than an ordinary decree-holder.

11. If the contention advanced by Mr. Subramanian is correct, then the protection given u/s 51(1) will not apply. If the award under the Madras

Co-operative Societies Act is not a decree, then the whole of Section 51(1)

becomes inapplicable. In such a case there is no other provision in the Act which will give the society any immunity even to the extent to which such immunity is provided in the case of executions of decrees by Section

51(1). The acceptance of the argument far from benefiting the petitioner, is against him.

12. I think, therefore, that Section 51(1) should be held to apply to all execution sales and should not be confined to assets realized in execution of

decrees"" as restricted by the decision of the Full Bench in *Rajagopala Chettiar v. The Hindu Religious Endowments Board* (1933) 66 M.L.J. 43 :

ILR 57 Mad. 271.

13. In either view therefore whether the word ""decree"" as used in Section 51 of the Provincial Insolvency Act is to be understood in a general

sense or in the restricted sense, I think the same result follows so far as this revision is concerned.

14. This Civil Revision Petition is therefore dismissed with costs.