
(1940) 07 MAD CK 0024
In the Madras High Court

H.M. Ebrahim Sait

APPELLANT

Vs

The Mettupalayam Narayani Bank, Limited and Others

RESPONDENT

Date of Decision : 26-07-1940

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 9(e)

Citation : AIR 1940 Mad 958 : (1940) 52 LW 474 : (1940) 2 MLJ 495

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This is an appeal against an order passed by Mockett, J., adjudicating the appellant an insolvent. It is said

that the person who filed the application for adjudication had no authority in law to do so and that there was no act of insolvency. Both these

questions were raised before the learned Judge who has dealt with them fully in his judgment and we agree with his conclusions.

2. The petitioning creditor was the Mettupalayam Narayani Bank, Limited, which had obtained a decree against the appellant in the Court of the

Subordinate Judge of Coimbatore for a sum of some Rs. 56,000. The decree was transferred to Madras for execution and execution proceedings

were duly instituted. On the 4th March, 1939, the Bank attached the appellant's residence. The attachment continued until the 30th March, 1939,

when the petition for adjudication was filed. The application was signed by V. Palaniappa Chettiar, who was the Director in charge of the Bank

and also held the office of Secretary. On the 20th October, 1937, the Board of Directors passed this resolution:

M.R. Ry. The Director, V. Palaniappa Chettiar Avergal shall take charge on 28th November, 1937, as Director-in-charge, Secretary and attend

to the duties. It has been decided that, till appointment of another Secretary, the said V. Palaniappa Chettiar Avergal himself shall attend to all the affairs and Court proceedings relating to the Nidhi.

3. This resolution remained in force at the time of the filing of the insolvency petition in this case. The first contention of the appellant is that this resolution gave Palaniappa Chettiar no authority to act in insolvency on behalf of the Bank.

4. It is difficult to imagine what wider power could be given than was given here. Palaniappa Chettiar was authorized to attend to all the affairs of the Bank, including Court proceedings relating to the Bank. Therefore he had the authority to attend, to institute, and conduct all proceedings in Court with which the Bank was concerned. A petition in insolvency involves proceedings in Court and we agree with the learned Judge that Palaniappa Chettiar had full authority to file the petition.

5. Mr. Ramaswamy Aiyar has suggested that this view is inconsistent with the decisions of the Courts in England in *In re, A Debtor* (1915) 1 K.B.

287, *In re A Debtor Ex parte The Petitioning Creditors v. The Debtor* (1917) 2 K.B. 808 and *Guthrie v. Fisk* (1824) 3 B. C. 178 : 107 E.R. 700.

A glance at these cases shows that they have no bearing here. In the first case it was held that a resolution of an incorporated company authorizing

one of its officers to present a petition in bankruptcy against a particular debtor did not authorize the officer to present a petition founded on an act

of bankruptcy committed after the date of the resolution. The decision in *In re A Debtor Ex parte The Petitioning Creditor v. The Debtor* (1917) 2

K.B. 808, far from helping the appellant is against him. There a Division Bench held that a company could give general authority to one of its

officers to present a petition in bankruptcy in the future in respect of acts of bankruptcy which might not have been committed at the date when the

authority was given. It was pointed out that the decision in *In re A Debtor* (1915) 1 K.B. 287, dealt with the particular set of facts and did not

mitigate against the contention that there could be a general authority to act in bankruptcy proceedings. In *Guthrie v. Fisk* (1824) 3 B. C. 178 : 107

E.R. 700, authority was given "to sue". It was held that this did not give authority to institute bankruptcy proceedings. In the resolution now under

consideration the authority is not confined to the institution of suits. There is no

limitation on the agent's powers to institute proceedings in Court.

6. The second contention is that inasmuch as there were two previous attachments subsisting when the Bank presented its attachment it could not rely on its own attachment. In other words it is said that because there had already been an act of insolvency committed as the result of a previous attachment for more than three weeks there could not be a second act of insolvency of the same nature. Section 9(e) of the Presidency Towns Insolvency Act says that a debtor commits an act of insolvency if any of his property has been sold or attached for a period of not less than 21 days in execution of the decree of any Court for the payment of money. A debtor can commit more than one act of insolvency and the three attachments here constituted three different acts of insolvency. There is no substance whatever in this contention.

7. The appeal will be dismissed with costs in favour of the opposing creditors, one set.