

**(1945) 11 MAD CK 0019**  
**In the Madras High Court**

K. Chunilal Sowcar

APPELLANT

Vs

K.N. Srinivasa Rao and Another

RESPONDENT

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**Date of Decision :** 21-11-1945

**Acts Referred:**

**Citation :** AIR 1946 Mad 362 : (1946) 1 MLJ 59

**Hon'ble Judges :** Bell, J

**Bench :** Division Bench

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**Judgement**

Bell, J.—This Civil Revision Petition purports to be filed u/s 75 of the Provincial Insolvency Act against an order of the District Court on

appeal from the order of the Subordinate Judge of Chingleput made in insolvency petition No. 7 of 1943.

2. The petitioning creditor is the petitioner here. He filed an insolvency petition under section 9 on 10th December, 1943. In accordance with the

High Court Rule made u/s 79 of the Act with regard to notices (Rule 21), notices of the date fixed for the hearing of the petition u/s 19(1) of the

Act were sent to all creditors and to the debtor within the time laid down by Rule 21(3). The date fixed for the hearing of the petition was 9th

February, 1944. For some reason or another the actual hearing was apparently postponed until the 24th March, 1944, when an order of

adjudication was passed. In the meantime, on 29th February, 1944, an amendment to Rule 21, Sub-rule 3 had been made making Rule 21(3) read

to the effect that notices of the date fixed for the hearing of an insolvency petition must be served not only on the creditors and the debtor but also

on any transferee, the transfer in whose favour is alleged to be an act of insolvency within the meaning of clauses (a), (b) or (c) of Section 6 of the

Act.

3. The order of adjudication was therefore made in the absence of the alienee and without any notice of the date of hearing having been given to him. The insolvent had appealed against the adjudication order to the District Court. In that Court, the alienee, the present respondent, filed a petition to be added as a party to the appeal on the strength of the above amendment to the rules. The learned District Judge held that he was entitled not only to notice but also to come on record and to contest the petition before the lower Court. He felt that the proper course was to set aside the order of the insolvency Court and to remand the petition for fresh disposal on hearing whatever contentions the newly added alienee desired to put forward. He made an order accordingly.

4. The petitioner now says that this order was made without jurisdiction in that the amendment to the rule is not retrospective in the sense in which it was understood by the learned District Judge.

5. The principles are, I think, reasonably well settled. With regard to the retrospective operation of statutes, the general principle is that they are not retrospective unless the intention of the Legislature that they should be so construed is expressed in plain and unambiguous language "" because it manifestly shocks one's sense of justice that an act legal at the time of doing it, should be made unlawful by some new enactment."" See Maxwell on the ""Interpretation of Statutes"" 8th edition, page 5. With regard, however, to alterations in procedure, somewhat different principles apply. As is said in *Janakinath Singha Roy v. Nirodbaran Ray* (1929) ILR 57 Cal. 148 at p. 152 :

No person has any vested interest in procedure and it is well settled that matters of procedure apply to a pending suit if the law is changed during the pendency of the suit.

6. In *Gopeshwar Pal v. Tibanchandra Chandra* (1914) ILR 41 Cal. 1125 at 1141 it is stated by a Full Bench:

The law as amended may regulate the procedure in suits in which the plaintiff could comply with its provisions, but cannot (in our opinion) govern suits where such compliance was from the first impossible. The effect is to regulate not to confiscate.

7. The general principle, I think, is that the statutes and rules are not to be

considered retrospectively so as to deprive any person of a vested right.

In In the matter of the petition of Ratansi Kalianji and Ors. (1877) ILR 2 Bom. 148 at 206 there is a reference to the words of Lord Wens-leydale

in Attorney-General v. Sillem (1864)10 H.L. 704 : 11 E.R.1200 where he said :

The right of the suitor is to bring the action and to have it conducted in the way and according to the practice of the Court in which he brings it and

if any Act of Parliament, or any rule founded on the authority of the Act of Parliament, alters the mode of procedure, then he has a right to have it

conducted in that altered mode. That, therefore, takes away nothing. The right of action does not constitute a title to keep all the consequences of

the right as they were before. It gives a right to have the action conducted according to the rules then in force with respect to procedure.

8. And then again at page 207 there is a reference to the view of Wilde, B., in another case there referred to where he says:

The right of the suitor is to bring an action and have it conducted according to the practice of the Court. Pending the action the procedure may be

varied, but his right is to have his action conducted according to the existing course of procedure, whatever that may be".

9. And then the Bombay Bench says that the learned Baron:

Is evidently referring to proceedings to be taken after the statute introducing change of procedure comes into operation and there is nothing in his

judgment to indicate that he considered that the effect of a proceeding already had and concluded would be altered by a statute annexing greater

or less effect to a similar proceeding taken subsequently to the statute.

10. With regard to the alterations in procedure, Maxwell concedes at page 199 as follows:

The general principle, however, seems to be that alterations in procedure are retrospective unless there be some good reason against it,

11. And again at page 200 he says:

A new procedure would be presumably inapplicable, where its application would prejudice rights established under the old.

12. On the facts of this case, the petitioner filed his petition in full accordance with the rules prevailing in December, 1943 and he gave the requisite

notices to those persons to whom notices had to be given, of the date fixed for hearing, namely, 9th February, 1944. The matter was then out of

his hands. He could do no more under the existing rules. If the petition had been heard on 9th February, 1944, no question of course would arise

at all. Does the fact that the rule as to notices was amended between the date fixed for hearing and the date of the actual hearing Vender it

necessary or just that the petition, as the District Judge has ordered, should be reopened and that the petitioner, who did all that he was required to

do, should be compelled once more to give notices of some new date fixed for hearing and incur all the consequent expense and trouble?

13. In my opinion the amended rule, was not retrospective in that sense and the learned Judge's order remanding the matter for rehearing was

incorrect and is set aside. The appeal of the insolvent will be disposed of in the usual course according to law. The petition is allowed with costs.