
(1954) 08 KL CK 0006
In the High Court Of Kerala
Case No : A.S. No. 144 of 1950

K. Gopala Pillai

APPELLANT

Vs

S.P. Sankara Iyer

RESPONDENT

Date of Decision : 09-08-1954

Acts Referred:

Factories Act, 1948 — Section 75
General Clauses Act, 1897 — Section 10
Provincial Insolvency Act, 1920 — Section 9(1)(c)

Citation : AIR 1954 Ker 2

Hon'ble Judges : Koshi, C.J;Subramania Iyer, J;Kumara Pillai, J

Bench : Full Bench

Advocate : T.K. Kurien, for the Appellant; T.S. Krishnamoorthi Iyer, for the Respondent

Judgement

Koshi, C.J.—This is an appeal from an order of the District Judge of Kottayam holding that a creditor's application to adjudge a debtor as insolvent filed beyond the three months' period prescribed in S. 9(1)(c) of the Travancore Insolvency Act (Act 8 of 1108) but on the next working day of the court after the expiration of the period was a petition filed within time. When the appeal first came up before a Division Bench the case was referred to Full Bench for an authoritative decision as to whether the said period of three months "is a condition precedent or whether it is a period of limitation that can be extended".

Since that order was made a Full Bench of this Court had to consider a similar provision in Section 75 of the Factories Act (Act 8 of 1114) and held that in view of S. 10 of the General Clauses Act (II of 1072) a complaint filed beyond the six months' period prescribed in S. 75, but on the next working day of the Court after the expiration of that period would be a complaint filed within time. - "State v. Govindan Asan", AIR 1952 TC. 188 (FB) (A).

There was no direct decision of any court regarding the bearing of S. 10 of the General Clauses Act on the period prescribed in S. 75 of the Factories Act. The

Full Bench therefore referred to the conflicting decisions of the various High Courts on the reaction of S. 10 of General Clauses Act on the provision in S. 9(1) (c) of the Insolvency Act for guidance and following the view that S. 10 of the General Clauses Act governed the three months" period in S. 9(1)(c) held that the complaint filed on the next working day of the Court after the expiration of the six months" period was a good complaint.

In that case, as here, on the date the prescribed period expired the Court was closed and the complaint was filed, as the petition in this case was filed on the next working day. In our opinion that Full Bench decision correctly decides the question and following the principle enunciated there we hold that the period prescribed in S. 9(1)(c) is a period of limitation to which S. 4 of the Limitation Act (6 of 1100) as well as Section 10 of the General Clauses Act should be made to apply.

2. The appeal will go back to the Division Bench for disposal.