

(1925) 04 MAD CK 0043
In the Madras High Court

Kallukutti Parambath Perachan

APPELLANT

Vs

Puthen Peetikakkal Kuttiali

RESPONDENT

Date of Decision : 22-04-1925

Acts Referred:

Citation : AIR 1926 Mad 123 : (1925) 22 LW 542 : (1925) 49 MLJ 595

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—In this case the insolvency petition was put in on the 8th January, 1920, and the petitioner was adjudicated an insolvent on

the 4th of June, 1920. Meanwhile, Act V of 1920 had come into force on the 25th of February, 1920. At the time of adjudication the Court fixed

one year as the period within which he should apply for discharge. This order was based obviously u/s 27 of Act V of 1920 as the old Act III of

1907 contained no such provision. He not having applied within one year the District Munsif of Calicut annulled the order of adjudication and the

District Judge of South Malabar affirmed the order on appeal. The present revision petition before me is against the order of the District Judge.

2. It has been contended before me that as the petition was filed under the old Act the petitioner obtained a vested right to an unconditional order

of discharge and the District Munsifs Court had no jurisdiction to impose a condition that discharge must be applied for within one year u/s 27 of

the new Act. It is true that in Chhatrapat Singh Dugar v. Kharag Singh Lachmiram ILR (1916) C 535. the Privy Council held that where an

application under the Insolvency Act complies with all the conditions specified by the Act the petitioner is entitled to an order of adjudication and

the dismissal of his petition amounted to an abuse of the process of Court. But I do not see how this decision helps the petitioner. For some reason

or other the petition did not come on for final disposal before the 25th of February and by the time it did so come on, the new Act had come into

force. What order should be passed on the insolvency petition seems to me to be a matter of procedure and it cannot be said that by the mere

filing of a petition under the old Act the petitioner acquired a vested right to a particular kind of order which cannot be affected by the new Act.

The order actually passed was a perfectly proper order under the new Act. It may be that if a condition was improperly annexed it may be ignored

as a nullity [vide *Ram Chandra v. Syatna Charan* (1913) 19 CLJ 83 but I do not see any way to hold in this case that the condition was improperly

annexed or was passed without jurisdiction. I do not see how the remarks of Macleod, C.J. in *Laxmi Bank, Ltd. Poona v. Ram Chandra* ILR

(1921) B 757. help the petitioner. All that was said in that case was there was no material difference between Act III of 1907 and the Act of

1920 in the matter of what was required to be proved before it is decided that the petitioner had a right to present his petition. Nor does the

decision in *Aiyapparaju v. Venkatakrishnayya* (1922) 44 MLJ 303. help the petitioner. It is not decided in that case that when a petition was filed

under the old Act and when the new Act had come into force by the time the petition comes on for disposal the old Act is applicable and not the

new Act. What was held there was that a creditor's right to apply for adjudicating his debtor an insolvent based on an alleged fraudulent transfer

by the debtor had become barred under the old Act and therefore that the new Act could not revive the barred right and the District Court had no

power u/s 78 of Act V of 1920 to excuse the delay so as to revive the barred right. This proceeds on a well-known and perfectly intelligible

principle that a new Act cannot revive a right barred under an old Act. This decision does not therefore help the petitioner. See also *Pulpati*

Hanmayya Vs. Ravuri Ramayya and Another, . My conclusion is in accordance with the decision in *S. Rangiah Chetti v. Annasami Alwar Aiyangar*

(1922) 18 LW 836. where it is observed that any orders passed under the old Act or rights obtained thereunder will be unaffected by the new

Act. In the present case we have neither.

3. A second point raised by the petitioner is that the adjudication should not be annulled without notice to all the creditors and he relied on a decision in *In the matter of Rajnarayan Pal* (1874) 13 Ben LR 25. In that case the petition for annulment was filed on the ground that the insolvent had come to a settlement with all their creditors and objection; was properly taken for the Official Assignee that notice should be given to all the creditors having regard to the nature of the ground but I do not see how that decision applies here. Even if it does, it is for the creditors to complain. They have not chosen to appear and oppose the annulment in all the three Courts. I take it they are apparently satisfied with the annulment. Anyhow I do not see how this objection can be taken by the petitioner. I may add that a preliminary objection was taken that the revision petition does not lie as an appeal lies u/s 75(1) proviso. As I have come to a conclusion against the petitioner on the merits it may not be necessary to deal with this objection, but I think the objection is well founded. The words "" of any nature whatsoever "" in Section 4 of the new Act shows that all questions which arise in the course of insolvency may be dealt with by the Court for the purpose of doing complete justice and in such a case a Second Appeal lies to the High Court on a question of law. It, therefore, seems to me that the revision petition is not competent.

4. The result is the petition is dismissed with costs.