

**(2001) 10 MAD CK 0048**

**In the Madras High Court**

**Case No : O.S. Appeal No's. 15 to 21 of 2000**

Kanakasubbu and Another

APPELLANT

Vs

Suryanarayana Shastri and Others

RESPONDENT

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**Date of Decision : 12-10-2001**

**Acts Referred:**

Presidency Towns Insolvency Act, 1909 — Section 9, 9(2)

**Citation : AIR 2002 Mad 252 : (2002) 1 LW 8 : (2002) 1 LW 18**

**Hon'ble Judges : S. Jagadeesan, J;P. Thangavel, J**

**Bench : Division Bench**

**Advocate : A. Chidambaram, for the Appellant; A. Venkatesan, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

S. Jagadeesan, J.—Since these appeals have been filed against the common order of the learned single Judge dated 8.3.99 in I.P.Nos.96, 97, 104, 105, 106, 108 and 116 of 1994, these appeals are taken up for joint disposal.

2. The appellants are the father and son who had been adjudged as insolvents by the learned single Judge. The respondents in each of the appeal have obtained a decree in the civil court for a sum of Rs.79,020, .1,58,473-25, Rs.78,800, 98,900, Rs.98,000, and, Rs.98,950, Rs.59,200, respectively. After obtaining the decree, they issued notice to the appellants demanding the decree amount. As the appellants failed to pay the same, the insolvency petitions were filed to adjudicate the appellants as insolvents as per Section 9 of the Presidency Towns Insolvency Act, 1909.

3. The learned single Judge ordered the same on the ground that the appellants did not pay the decree amount in spite of the issuance of the notice. Hence the present appeals have been filed.

4. The only contention of the learned counsel for the appellants is that the appellants are possessed of properties and the same were attached by the

decree holders and hence the appellants are not in a position to raise funds. When the appellants are possessed of properties, it is open to the decree holders to execute the decree by bringing out the properties attached. Instead of doing that, the conduct of the respondents in resorting to the insolvency proceedings is nothing but mala fide.

5. The learned counsel for the respondents contended that Section 9, the new provision introduced in the Presidency Towns Insolvency Act contemplates the issue of notice by the decree holder calling upon the judgment debtor to pay the decree debt and the failure on the part of the judgment-debtor to pay the decree amount would make him an insolvent . Hence under this provision the applications have been filed and as the admitted fact that the appellants failed to pay the decree amount, the order of the learned single Judge needs no interference.

6. The only question for consideration is whether the capability of the appellants to discharge the decree amount, as they are owning the property will entice them for annulling the order of adjudication.

7. Though we granted a week's time to show the bona fides of the appellants to discharge the decree debt, at least by bringing out some cash before the court, the appellants did not do so. Hence we have no other option except to decide the cases on merits.

8. Section 9 of the Presidency Towns Insolvency Act deals with the acts of insolvency. In fact this provision was introduced by Amending Act 28 of 1978 which came into force from 1.8.1979. Section 9(2) envisages that a debtor commits an act of insolvency, if the creditor who has obtained a decree or order against him for the payment of money (being a decree or order which has become final and the execution whereof has not been stayed), has served on him a notice (hereafter in this section referred to as the insolvency notice) as provided in Sub-Section (3) and the debtor does not comply with that notice within the period specified therein.

9. There is no dispute in this case that the creditor had issued the notice as prescribed under the Act, calling upon the appellants to discharge the decree debt. As the appellants did not challenge the decree by way of appeal, the said decree have become final and it is always open to the respondents/ decree holders to proceed with the execution. It is also not disputed by the learned counsel for the appellants the validity of the notice issued by the respondents. In such case, the respondents have duly complied with Sub-Section (2) of Section 9 of the Act demanding the decree amount. The fact remains that the appellants did not comply with the demand made by the respondents. The learned single Judge only on this basis has adjudged the appellants as insolvents. We do not see any ground to interfere with the order of the learned single Judge.

10. When the appellants claimed that they have got sufficient means to discharge the decree debts of the respondents, it is always open to them to sell

the property and discharge their decree debts and seek for the annulment of the order, adjudging them as insolvents. The conduct of the appellants without taking any steps to discharge the debt and contesting the proceeding would definitely leads to an inference that they are interested only in delaying their payment of the decree debt.

11. Hence, we confirm the order of the learned single Judge and dismiss the appeals.