(1936) 09 MAD CK 0042

In the Madras High Court

Karuppana Goundar and Another — APPELLANT

Vs

V.C.T.N. Chidambaram Chettiar and Another — RESPONDENT

Date of Decision : 15-09-1936

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 55(4)

Citation : AIR 1936 Mad 963 : (1936) 44 LW 647 : (1936) 71 MLJ 646

Hon'ble Judges : Cornish, J

Bench : Division Bench

Judgement

Cornish, J.—The appellants are the sureties upon a bond given by them to the Court in pursuance of the provision in Section 55(4), Civil Procedure Code.

2. The respondent, a decree-holder having arrested his judgment-debtor, that person expressed his intention of taking the benefit of the Insolvency Act, the decree debt being for Rs. 2,000. Accordingly, the appellants entered into a bond whereby they undertook to produce the debtor before the Court whenever directed:

To cause him to file an insolvency petition within one month from that date, and to get him to prosecute it to its very end and also to produce him in the meantime.

3. In short the bond appears to have been so framed as to carry into effect the purpose for which security can be required by the Court u/s 55(4), namely, to ensure that a debtor who on his arrest, and in order to be released from arrest expresses an intention to apply to be declared an insolvent shall carry out that intention. It so happened that the debtor presented his insolvency petition and was duly adjudicated an insolvent. But failing to apply for his discharge within the prescribed time his insolvency has been annulled. In these circumstances the decree-holder has sought to make the sureties liable, and both the lower Courts have enforced this liability. The construction which the lower Courts have put upon the bond is that it ensured the proper conduct of the insolvency up to the

final discharge. In my judgment this is to put an undue and unnatural strain upon the language of the bond. The undertaking was that the debtor should prosecute the insolvency petition to its very end. The plain meaning of that I think is that the debtor was to prosecute his insolvency petition until its termination which might be its dismissal by the Court u/s 25 or an order of adjudication made by the Court u/s 27. These were the only two ends for the debtor''s insolvency petition. The sureties might have extended their liability beyond that point, as they did in the case reported in Kandaswami Chettiar Vs. A.R.M. Annamalai Chettiar, . But they have not done so in the present case, and having regard to the object contemplated by Section 55(4) of the Civil Procedure Code, there was no necessity for them to do so. In my judgment, therefore, the liability undertaken by the sureties upon the present bond was satisfied by the adjudication of the judgment-debtor upon his petition. It follows that the lower Court''s order must be set aside and this appeal is allowed with costs throughout.

