

(1950) 03 MAD CK 0018

In the Madras High Court

Case No : Civil Revision Petition No. 336 of 1949

Karuppiyah Nadar

APPELLANT

Vs

Veerabadran Chettiar and Others

RESPONDENT

Date of Decision : 24-03-1950

Acts Referred:

Provincial Insolvency Act, 1920 — Section 9

Citation : AIR 1951 Mad 456 : (1950) 2 MLJ 761

Hon'ble Judges : Panchapagesa Sastri, J

Bench : Single Bench

Advocate : T. Krishna Rao, for the Appellant; V. Ramaswamy Iyer and T.L. Venkatarama Iyer, for the Respondent

Final Decision : Allowed

Judgement

Panchapagesa Sastri, J.—This case raises a question which is said to be of one of first impression really because the learned counsel on both

sides have not been able to find an exact case on the point. The question relates to the validity of a petition filed to adjudicate respondents 1 to 3

as insolvents. The petitioner, one Karuppiyah Nadar, was carrying on business in partnership with another person. The firm's name appears to have

been S. K. S. K. N. Karuppiyah Nadar. Respondents 1 to 3 had business dealings with that firm and they were indebted to the firm to the extent of

Rs. 5347-6-2 as on 3-5-1947. Karuppiyah Nadar filed this petition, I. P. No. 4 of 1947, wherein he stated in Para. 3 that

the respondents were carrying on business in partnership and the petitioner is doing commission business in cotton and in the course of business

between the petitioning creditor and the respondents, the respondents became indebted to the petitioner in Rs. 6344-6-2 as shown by the extract

of accounts submitted.

The extract of accounts contains this heading : ""Peredu of respondents in the cotton shop of Rajapalayam S. K. S. K. M. Karuppiyah Nadar."" The

act of bankruptcy alleged was, among other things, the creation of a mortgage in favour of respondent 4, with a view to defeat and delay the

creditors. Acts of suspension of business were also alleged. The respondents contended that the debt was due not to Karuppiyah Nadar in his

individual capacity but it was really a partnership debt due to the firm of which Karuppiyah was only one of the partners. To meet this objection an

amendment was sought for by the petitioner to the effect that the petitioner may be described as ""the firm S. K. S. K. M. Karuppiyah Nadar of

which Karuppiyah Nadar is the managing partner. If the amendment is to be allowed it is not disputed that the petition would be a proper petition.

The trial Court allowed the amendment. The trial Court did not proceed to dispose of the petition on the merits because even before that stage, an

appeal would appear to have been filed, (it is stated, under 3. 75 of the Act) to the appellate Court, The appellate Court disallowed the

amendment on the ground that the application was made beyond three months from the act of bankruptcy and the application in fact introduced a

new debt and a new creditor which was not permissible. It, therefore, dismissed the petition. Against that the petitioning creditor has come up in

revision.

2. It is contended for the petitioner that the original petition itself disclosed that the debt is due to the partnership firm because the extract which

was appended to the petition and which was referred to in the body of the petition as showing the amount due contains indications that it

represents the result of transactions between the firm and the respondents. On a fair reading of petition, it is argued hat it must be taken that it was

a partnership debt which was the foundation of the petition. It is submitted that the petitioner was stated o be Karuppiyah Nadar without any

indication hat he was a partner or a managing partner of the firm and acting on behalf of the firm. The language of Para. 3 is somewhat ambiguous.

Standing by itself, it would be ordinarily understood as containing an averment that the petitioner was exclusively entitled to the debt in question.

But reference to the extract which also forms part of Para. 3 creates an

ambiguity because, the extract, as pointed out, shows that the debt was due to the partnership. Whatever may be the case, the amendment was sought in order to clarify the position. The real question, therefore, that arises for decision now is whether the amendment is permissible because it is the same debt which was the foundation for the insolvency petition, or not permissible, because it really introduces a new debt. Reference has been made to certain English decisions and to the decision of this Court in *S.Rm.Rm. Chockalingam Chettiar Vs. A.R.P.L.S.P. Muthiah Chettiar (deceased) and Others*, . The test that is laid down is described in the Language of Wright J. as follows :

Every debt sought to be added, as ground of the petition after three months from the date of the act of bankruptcy, is unavailable for that purpose, but if within that period a debt has been made ground of the petition, and it afterwards becomes desirable to add another party to the petition in respect of that debt, leave may be given to join that other party as a petitioner where it will not lead to any injustice "" The idea is put in slightly different language by Vaughan-Williams J. :

Is the effect of the amendment to introduce a debt which, after the same period has elapsed, would not be a debt upon which the petition could be founded ?

In the present case it is true that a debt due to a partnership cannot be taken to be a debt due exclusively to any individual partner but nonetheless

it is not correct to say that it is in no sense due to that partner. A firm under Indian law is merely a compendious expression for the persons who

form the partners. The debt due to a firm is really due to the partners. Therefore, while it may be incorrect to describe a debt due to A because it is

really a debt due to A, B and C the partners of the firm, it would be incorrect to hold that a new debt is sought to be taken advantage of as

foundation for the petitioning creditor's debt merely because the same debt due to the partnership and therefore due also to A is now sought to be

described as a debt due to A, B and C, all the partners. This, in my opinion, is a case where really an identical debt in question continues to be the

foundation of the petition for insolvency. Only the partners who ought to have been added in the first instance are now sought to be added or,

where the rules permit, it is made clear that the petition is on behalf of the firm

with respect to the partnership debt. Applying the principle laid down by Wright J., I am of opinion that the amendment was properly allowed by the trial Court and the lower Court was wrong in upsetting that order. In the result, I allow the civil revision petition, set aside the order of the appellate Court and restore that of the trial Court. The petitioner will get his costs in the Court below and in this Court. The petitioner will get his costs from respondents 1 to 3.