
(1931) 10 MAD CK 0038
In the Madras High Court

Kathayan Chettiar

APPELLANT

Vs

Govindaswami Chettiar and Others

RESPONDENT

Date of Decision : 28-10-1931

Acts Referred:

Citation : AIR 1932 Mad 416 : 137 Ind. Cas. 320

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—The suit was to recover the money due on a promissory note Ex. A executed by defendant 1 on 12th May 1924. The consideration for the promissory note consisted of the money due on a prior promissory note Ex. B dated 9th March 1929 plus a sum of Rs. 60 advanced to defendant 1. Defendant 1 became an insolvent on 21st November 1922. He was discharged by an order of Court on 19th March 1924. It will be seen that the suit promissory note Ex. A was executed by defendant 1 after his discharge but Ex. B which forms one of the items of consideration for Ex. A was executed before he became an insolvent. Section 44(2), Prov. Ins. Act, provides that an order of discharge shall release the insolvent from all debts provable under the Act; and the debt due under Ex. B being a debt provable under the Act, it became discharged by the force of the section. The lower Court therefore gave a decree to the plaintiff with respect to the sum of Rs. 60 and the interest due on it.

2. In this revision petition to revise the lower Court's order it is argued that a decree should have been passed with regard to the amount covered by Ex. B also. I fail to see how this plea can be maintained in view of Section 44(2) of the Act. In 2 Halsbury 269 the law applicable to the case is stated thus:

An order of discharge, except in the cases mentioned below, has the effect of releasing the bankrupt from all debts provable in bankruptcy, even although the creditor is the Crown; and a promise to pay a debt barred by an order of discharge without fresh consideration is "nudum pactum."

3. In support of this position *Heather v. Webb* [1877] 2 C.P.D. 1, is cited. But reliance is placed by the learned advocate for the petitioner on *Jakiman v. Cook* [1879] 4 Ex.D. 26. That decision is easily distinguishable. It was held in that case that an agreement entered into after discharge to pay one of the creditors in full in consideration of the creditor agreeing to supply further goods was a valid agreement and would support an action. In this connexion attention may be drawn to the decision in *Naoroji Nusser wanji Thoonthi v. Ka'zi Siddick Mirza* [1896] 20 Bom.636. There is nothing in the present case to show that Ex. A with respect to the sum of Rs. 60 was executed for the purpose of reviving Ex. B. In fact the evidence shows that when the suit promissory note was executed the petitioner never had in his mind the insolvency of defendant 1. In these circumstances, the plea now advanced cannot be accepted. The lower Court's decision is right and this civil revision petition is dismissed with costs.