

(1923) 01 MAD CK 0020
In the Madras High Court

Lakshminarayana Aiyar

APPELLANT

Vs

C.R. Subramania Aiyar and Another

RESPONDENT

Date of Decision : 23-01-1923

Acts Referred:

Provincial Insolvency Act, 1920 — Section 35

Citation : AIR 1923 Mad 585 : (1923) 45 MLJ 129

Hon'ble Judges : Oldfield, J

Bench : Division Bench

Judgement

Oldfield, J.—This is an appeal against an order by the District Judge of Tanjore West annulling the adjudication of the appellant-debtor u/s

35, Provincial Insolvency Act. The Lower Court has given two reasons for its order. First, that the debtor was not resident on the date of the

presentation of the petition within its Jurisdiction; secondly that he was not proved to be, as Section 10 requires, unable to pay his debts.

2. As regards the question raised by each of these grounds of decision, it must be pointed out that the amount of proof, which can be expected of

the debtor, the burden undoubtedly being on him, will vary very greatly with reference to the circumstances of the case.

3. Here the debtor throughout has alleged that he was, at the date of the petition, a resident in West Tanjore District, and there is the verified

statement in his petition to that effect and also a counter-affidavit filed in the present proceedings in the Lower Court. It is further not shown that he

was cross-examined in any way on his allegations. Against that there is only the fact that the present respondent first creditor, did not actually deny

the residence in the district and has never said where in his opinion the debtor in fact resides, but only in his petition u/s 35 put the debtor to proof

of his residence in the following terms. ""The alleged insolvent has not given prima facie proof of his right to present the petition or that the District Court has jurisdiction to entertain the same."" The contentions of the opposing creditor being thus indefinite, in our opinion, it was not necessary for the Lower Court to complain of the absence of additional affirmative evidence on the part of the debtor. It in fact proceeded mainly with reference to the returns on certain processes addressed to it. There is first the return dated January 1920, that he was not to be found in his house at Tiruppapuliur, South Arcot District, because he had left it for a place in the West Tanjore. That return, however, so far as it is evidence on the material point, the debtor's possession of a house and residence in Tiruppapuliur, does not necessarily involve more than that the process server adopted for his purpose, the assertion of the present respondent, at whose instance the process was issued, that the debtor was residing in Tiruppapuliur, and further this piece of evidence, so far as it is admissible, relates to a date 8 months before the date of the presentation of the debtor's petition. Next reference has been made by the lower Court to the fact that, when another notice was sent on 25-3-1920, the return was that the debtor had gone away and his whereabouts were unknown. There is also the fact that the insolvent in his counter-petition in these proceedings gave his address as Kuttalam in the Mayavaram Taluk. That is no doubt just outside the border of the West Tanjore District; but it is very near to the adjoining border of East Tanjore District. We have been referred to definition of ""reliance"" adopted by two learned Judges of the Calcutta High Court for the purpose of construction of Order IX, Civil-Procedure Code in Kumud Nath Roy Chowdhury v. Jotindra Nath Chowdhury ILR 38 C. 394 . But we are not prepared to adopt those definitions as exhaustive. We can quite understand that a person, especially a person in the financial position of the debtor, may not have any permanent or continuous residence. It is, in our opinion, sufficient that we have no reason for doubting that he has remained, as he said, within the limits of the District of West Tanjore, though he may have occasionally gone outside the district and returned to it. It should be said that the debtor in the Lower Court and in his ground of appeal here was foolish enough to rely on a case of residence in a house in Kuttalam, which belonged to him and which he had let to somebody else. That he has given a bad reason

in support of his contention does not debar us from holding that it is sufficiently supported otherwise by his own statement in his petition and his counter-affidavit, which has not been shown to be incorrect.

4. Turning to the second ground, on which the Lower Court annulled the adjudication, that the debtor was not proved to be unable to pay his

debts, we refer to the proviso to section 24(1)(a), Provincial Insolvency Act, showing that the debtor can, for the present purpose, be required to

furnish only such proof as to satisfy the Court that there are prima facie grounds for believing his allegation. The facts as set out in his petition and

those facts were not disputed in the Lower Court and are not disputed here, are that his debts amount to over Rs. 40,000 and his assets to over

Rs. 51,000. No doubt there is, on these figures, a balance of about Rs. 8,000 in his favour. But he has contended further that, all his properties

being under attachment by the 2nd respondent and his petition for permission to execute a private sale of the properties having been ""practically

negated,"" the surplus of assets over debts is only apparent. We have not been given the exact terms of the proposal for a private sale or of the

order of the Court rejecting it. It is however sufficient that properties are under attachment and presumably would be sold and that it is accordingly

not possible for the debtor to realize the price himself or to use time for the payment of his debts.

5. There is next the material consideration that the realization by the debtor under pressure or by the Official Receiver or otherwise by the Court by

public sale is not likely to be advantageous and it is even less likely to result in the property fetching a fair price. That is the common experience of

private sales under pressure and of Court sales. It is of course impossible to say with any accuracy how far the price, which would be realized in

these circumstances, would be less than the fair value of the properties, if realized with reference to ordinary consideration. It is not in our opinion

clear that the margin between them, it is not disputed, would be the fair value of the properties and the debts will not be wiped out in the course of

an immediate realization. There is enough in the undisputed allegations of the debtor as to his circumstances to satisfy the requirements of the

provision of law already referred to, and there is nothing in evidence on the other side. We therefore must dissent from the Lower Appellate

Court's conclusion that the debtor has failed to prove inability, to pay his debts.

6. These findings entail the success of the appeal and the setting aside of the Lower Court's order with costs throughout. The case will go back to

the Official Receiver who will proceed with the administration of the estate.

7. In Appeal Against Appellate Order No. 37 of 1922:

The order annulling the adjudication of the present appellant debtor having been set aside, we must set aside the decision of the Lower Appellate

Court in A.A.A. O. No. 37 of 1922 and remand the appeal to it for disposal on the merits.

8. Costs to date will be costs in the cause and be provided for in the order to be passed.