

(1966) 03 MAD CK 0011
In the Madras High Court

M. Ratchaganadan, Proprietor of M. Arokiasami and son	APPELLANT
Vs	
Kishindas Shamdass under by Shyam Sunder and Another	RESPONDENT

Date of Decision : 10-03-1966

Acts Referred:

Citation : (1966) 79 LW 617 : (1966) 2 MLJ 548

Hon'ble Judges : M. Anantanarayanan, O.C.J.

Bench : Single Bench

Judgement

M. Anantanarayanan, O.C.J.

1. The appeal is from the judgment of Venkataraman, J., in an insolvency proceeding before the learned Judge, and, the learned Judge allowed the

proceedings and adjudicated the appellant (Ratchaganadan) as insolvent, u/s 13 read with Section 9(d)(ii) and (iii) of the Act, mainly on his

conclusion of fact that the appellant (insolvent) departed from his dwelling house or usual place of business, and also secluded himself, under such

circumstances as to warrant the inference that he did so with intent to defeat or delay his creditors. Since most of the facts are not in dispute, it is

sufficient for us to deal with the matter fairly briefly, on the merits of the evidence adduced before the learned Judge.

2. As far as the present respondent (petitioning-creditor) is concerned, he had to meet a preliminary ground of absence of the requisite territorial

jurisdiction in the Court, but we do not propose to dilate on this, for the simple reason that it appears to be very clear to us that, on the materials

placed before us and on the principles of law applicable, the adjudication of the appellant cannot be sustained. For the purpose of argument,

therefore, we shall assume that the learned Judge had the requisite jurisdiction.

We shall also take for established the main facts, viz., that the appellant, who was a cashewnut merchant at Panruti, apparently with very substantial property, had also an address at Madras which was 52, Ayyappa Chetty Street, Mannady, Madras and that the appellant did borrow Rs. 5,000 from the present respondent, a firm of indigenous bankers, furnishing this address at Madras. There has been controversy between the parties whether the rubber-stamp bearing this address in the hundi (Exhibit P-1), was a stamp affixed at the instance of the respondent for a technical purpose or a stamp truly indicating that the appellant had such a branch place of business at Madras. However that might be, and assuming that the appellant had such an address at Madras, it is clear enough from the evidence of the appellant (R.W. 1) and the rest of the record, that this place really belonged to one Govindasami and that the telephone at the place belonged to that person Govindasami the reputed friend of the appellant. Hence it may Very, well be that this was not an actual branch, but a convenient address furnished by the appellant as is also indicated by the pass book of the appellant with the Indian Bank, Kothawalchavadi Branch.

3. The other facts are very simple, and the record is quite clear and definite. The broker who transacted this loan on behalf of the respondent

(P.W. 2) tried to establish contact with the appellant, both at Madras and at Panruti, when the loan became due and was not paid. The learned

Judge has stressed certain possibilities for his view that the facts spoken to by the broker might justify the inference that the appellant had not

merely departed from his usual place of business and absented himself, but that he had secluded himself, so as to deprive the creditors of the

means of communicating with him. But we are afraid, that, as the records stand, such an inference would appear to be quite unwarranted. The

notice, Exhibit P-2, dated 20th December, 1962, sent by post, was returned unserved. But, admittedly, that relates to the Madras address alone.

As we have pointed out earlier, the Madras address might merely have been a nominal and convenient designation, for the purpose of loan

transactions at Madras. There seems to be no doubt that the real place of business of the appellant was at Panruti that he was having factory

there, and that he had extensive properties there, both a number of houses as

well as lands. Hence, the fact that the notice, Exhibit P-2, was returned unserved, relating to the Madras address is of no significance whatever as at Panrutti the addressee was perhaps temporarily absent. As far as the evidence of the broker Prabhat Singh (P.W. 2) is concerned, his failure to contact the appellant at No. 52, Ayyappa Chetty Street, Madras, is, again, not significant, for the very simple reason that this was merely a nominal address for the purposes of the transactions of the appellant at Madras; it is perfectly possible, and even probable, that he was using this place, which belonged to his friend Govindasami, as an address for purposes of account transactions and that it was not a branch office at all.

4. The real gravamen of the charge against the appellant is that this Prabhat Singh (P.W. 2) also went to Panrutti to the business place or quarters of the appellant, and could not find the appellant there. Nor was he able to obtain information where the appellant was. He went to Pondicherry in order to contact the father-in-law of the appellant; there again he drew blank. But we must point out that the evidence, in this regard falls far short of the requirements of Section 9(d)(ii) and (iii) of the Act, earlier referred to. The broker does not say that he found the factory, or the place of business, shut up or abandoned. On the contrary, both the factory and the Office appear to have been working, and persons like the Manager, were available there. The broker, apparently, did not proceed to the house of the appellant, In order to make any enquiry at that house, of the members of the family of the appellant, where he had gone. The plea of the appellant, that he was then away at Tiruchirappalli on private business, may be perfectly true, as far as we can judge.

5. The law on this subject has been stated in a number of decisions, the principles of which are conveniently and tersely set forth by Mulla in his Law of Insolvency, Lecture IV, page 120, paragraph 119 of the 1958 Edition. The pertinent extract is as follows:

Absenting oneself is not act of insolvency, unless it be With intent to defeat or delay creditors. Whether the intention exists is a question of fact.^{1/2} If a trader shuts up his shop during business hours, or departs from his dwelling house, Without leaving instructions Where he is to be found if creditors call, or without making arrangements for carrying on his

business, he must be presumed to have left to avoid his creditors; but the absence may be satisfactorily accounted for, and the presumption may be rebutted. No Such presumption however arises Where the debtor has left a representative behind....

6. The difficulty of applying the criteria to the present meagre facts on record will at once be evident. We need not stress that insolvency is a status

to which no person should be reduced, unless an act of insolvency is fully established to the satisfaction of the Court. A creditor, in particular,

ought not to be permitted to utilise this mode, of obtaining an adjudication as insolvent, as a kind of pressure, in order to realise a debt more

economically or by swifter means. In the present case, as far as Prahhath Singh's evidence about Panrutti is concerned, it is clear that the creditor

himself never went there, and that only the broker did so. Even P.W. 2 found the factory and the place of business intact and working, and there

were representatives of the absent debtor; if they could not furnish any relevant information, P.W. 2 could have proceeded to the house of the

appellant in the same town, and made enquiries of the members of the family, which clearly he did not do.

7. We did not want to leave the matter merely there, for it could be Said that the record does nevertheless justify some suspicion against the

appellant that his absenteeism could be a device, to put it in one word. Hence we were also concerned with the general situation of the debtor, in

order to judge if it would be at all likely that the debtor had secluded himself from creditors, with intent to defeat or delay their claims. Further, u/s

13(4)(b) "" if the debtor appears and satisfies the Court that he is able to pay his debts,"" the Court has the power and duty to dismiss the petition.

For judging the general situation, this appeal was adjourned twice, and particulars were called for, as elaborately as we could do so, concerning

the total assets and estate of the appellant, the total Indebtedness of the appellant and the extent to which he could be characterised as solvent to-

day. We found, certainly, to our surprise, that the appellant has a large number of houses at Panrutti and substantial landed properties and, in the

light of a report that his wife, may lay claim to certain of these properties as properties held in her own right, an affidavit from the wife has also

been filed, disclaiming any such pretensions on her part. Naturally, at the

moment we are not embarking upon a meticulous enquiry into the assets and liabilities of the appellant, and our conclusions can only be approximate and tentative. Even so, the inference seems to be irresistible that the appellant has a very substantial estate, perhaps worth between three to four lakhs of rupees, even on a conservative estimate, while the total of his liabilities, as placed before us, is within two lakhs of rupees. It may be that these conclusions may have to be modified by a thorough enquiry, but, as broad indications, we do not doubt their truth. We thus find that the appellant is a man possessed of assets substantially exceeding his liabilities, and we have no doubt that he is in a position to satisfy all his creditors within reasonable time.

8. Our attention has been drawn to a passage in the judgment of Rankin, C.J., in *Pratapmall Rameshwar v. Chunilal Jahuri* I.L.R.Cal. 34 and 346

to the effect that the test is not whether the debts could be paid if liquidation is proceeded with, but whether the debtor could fully satisfy his

creditors, provided of course that some reasonable time was given. We must also take judicial notice of the appreciating values of the immovable

properties to day, particularly in urban or semi-urban areas, and the ease with which such properties could be sold, and converted into liquid cash.

We have no doubt that if the data made available to us are correct, the appellant can fully satisfy his creditors in cash, within a quite reasonable

period. On that inference, we must hold that it is most unlikely that his temporary absence on the occasion in question was due to an intention to

defeat or delay this particular creditor, or his creditors in general. Further, since the hundi was only of the value of Rs. 5,000 this is quite a small

claim against a fairly wealthy man, as far as we can judge.

9. For these reasons, we are unable to support the order of adjudication of the learned Judge (Venkataraman, J.) on the facts and on the principles

of law applicable to those facts. The appeal will therefore have to be allowed, and the order of adjudication set aside. Needless to say, this does

not imply that other creditors of the appellant are not at liberty to take such action as is available to them in law, with regard to their claims. We

must carefully refrain from expressing any view on that matter, one way or the other.

10. The parties will bear their own costs. The costs of the Official Assignee will

come from the assets in his hands.