

(1974) 12 MAD CK 0004
In the Madras High Court

Miss C. Pushpam

APPELLANT

Vs

D. Jeevaraj, Proprietor, Usha Decorators

RESPONDENT

Date of Decision : 17-12-1974

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 12(1)(c)

Citation : (1975) 88 LW 142 : (1975) 1 MLJ 344

Hon'ble Judges : S. Mohan, J

Bench : Division Bench

Judgement

S. Mohan, J.—In this application, the petitioning creditor seeks to amend the main insolvency petition filed on 7th October, 1972 by stating

that he had come to know that one G. Shyamala, wife of G. Chandriah, residing at Sannadhi Street, Kaladipet, Madras, had obtained a decree

against the debtor in O.S. No. 4286 of 1964 on the file of the City Civil Court, Madras and filed E.P. No. 2832 of 1972 in the City Civil Court,

Madras, and obtained orders of attachment on 29th December, 1972 on the property of the insolvent-debtor viz., 61, Muthu Mudali Street,

Royapettah and effected attachment on 30th December, 1972. The original cause of action on which the petition for insolvency is based, is the

debtor had departed from his dwelling house, from his usual business place at Muthu Mudali Street, Royapettah and is otherwise absenting himself

with the intention to defeat and delay his creditors.

2. Learned Counsel for the petitioning-creditor submits before me that the petition for amendment was filed on 12th February, 1973 and the actual

attachment was effected on 30th December, 1972 and therefore it was possible for him to file a fresh insolvency petition on that date and if that be

so no prejudice would be caused to the respondent (the debtor) by amending the petition, including the ground relating to attachment. In support of that, he cites the decision in S.Rm.Rm. Chockalingam Chettiar Vs. A.R.P.L.S.P. Muthiah Chettiar (deceased) and Others, . In that case what had happened was on 24th November, 1930, a petition for insolvency was filed by the creditor alleging that certain amount to be due by the insolvent was pending enquiry before an arbitrator. On 28th November, 1930 by an award that amount due became ascertained. In those circumstances, the amendment, Was sought to include the fact relating to the award and the amendment was allowed holding ""all that was necessary was to allow the petitioning-creditor to amend his petition by adding that the inchoate right which he had previous to the petition became perfected in virtue of the award delivered four days later"". I am unable to see how the decision would help the applicant. That was a case, as seen above, where notwithstanding the pendency of the arbitration proceedings, the petitioning-creditor alleged that the debt was due which undoubtedly Was an inchoate right, which became ascertained on the award being passed. But the position is entirely different here. Learned Counsel cited another decision in P.L.S.P.L. Palaniappa Chettiar Vs. Y.P.R.Y.N.Y. Chidambaram Chettiar and Others, , wherein it is stated ""If the amendment were allowed to remain, the petitioning creditor would be enabled to substitute new grounds for those which he had set up originally but which are of no avail to him now and this is bound to cause serious injury and grave injustice to the other party which cannot be compensated by ""costs"". On this, it is contended that so long as no prejudice is caused to the respondent (the debtor) the amendment had to be allowed. I am unable to agree. Lastly the learned Counsel relied on the decision in Gunnis and Company v. Mohamad Ayyub Sahib ILR (1914) Mad. 555 : (1914) 24 M.L.J. 562, wherein it is said that "" Leave to amend a petition by inserting new causes of action should not be given at a time when by doing so the Court would be depriving the defendant of the plea of limitation."" In this case, no question of limitation arising, the amendment ought to be allowed is the submission. Here again, I am unable to agree.

3. Mr. Padmanabhan, learned Counsel for the respondent is right in his submission that Section 12 (1) (c) of the Presidency Towns Insolvency Act

makes this a condition precedent, in other words, the act of insolvency on which the petition is grounded should have occurred within three months before the presentation of the petition. Therefore, the fact that the petitioning creditor could have filed a fresh petition is not the test. On the date of presentation of the petition, if this cause of action was available and if either by mistake or by inadvertence this had not been taken as a ground, certainly it would have been open to the petitioning creditor to come by way of amendment. But as rightly contended by the learned Counsel for the respondent, the cause of action itself was not available and therefore by this amendment petition a new cause of action is sought to be introduced. This contention is well justified on the language of Section 12 (1) (c). For these reasons, I dismiss the above application. There will be no order as to costs.