
(1927) 08 MAD CK 0016
In the Madras High Court

M.O. Veerayya Chetty and Another

APPELLANT

Vs

N.S.R. Doraiswamy Reddiar and Others

RESPONDENT

Date of Decision : 18-08-1927

Acts Referred:

Citation : AIR 1928 Mad 393 : 110 Ind. Cas. 737

Hon'ble Judges : Srinivasa Aiyangar, J

Bench : Division Bench

Judgement

Srinivasa Aiyangar, J.—It seems perfectly clear that the order of the lower Courts cannot possibly be upheld. The present revision petition

has been filed by the debtor who was adjudicated an insolvent by the Subordinate Judge of Ramnad on the petition of certain creditors. For the

purposes of the present discussion it is unnecessary to consider who the creditors were. The learned Subordinate Judge before whom the

application came on says this:

The debtor's vakil admits that the 2nd petitioner's debt is true, and that he should pay it, but he is unable to pay it. This itself shows that he has

committed an act of insolvency.

2. On appeal the learned District Judge in effect says the same thing. All that he says is

that the appellants have had to concede that the debt is due to the second petitioner in that case and that they are not in a position to pay it.

3. As very properly observed by the learned vakil for the petitioners, both the lower Courts seem to have taken what can only be regarded as a

layman's view of the matter. The whole scheme of the Provincial Insolvency Act appears to have been entirely neglected in the consideration of the

question. The condition precedent to a debtor being adjudicated an insolvent on the petition of a creditor is that the debtor should be alleged and proved to have committed one or the other of the acts of insolvency set out in Section 6 of the Act. There is really no finding by either of the Courts that any of the acts of insolvency as set out in that section have been committed by the debtors-petitioners in this Court. It is impossible to accede to the view that the mere fact, that a person admits he owes money to a creditor, and also admits that he is unable, I must take it, there and then, to pay the amount can possibly be regarded as the commission of an act of insolvency as defined by the various clauses in Section 6. For reasons which are not far to seek the Legislature has defined the conditions on the happening of which alone such a petition for adjudication can be sustained. Adjudicating a person an insolvent is a matter of serious consequences, and Courts of law should take particular care to see that the provisions of the law in the matter are observed strictly and carefully considered. It seems to me that the strangest part of the view taken by both the Courts is that there should have been no reference at all to Section 6 of the Act or even any reference to any of the matters therein set out. It seems to me that the order cannot be sustained. The petition is therefore allowed.

4. The lower Courts not having considered the petition in this case having regard specially to the provisions of Section 6 of the Act, the order of adjudication is set aside, and the matter is remanded to the Court of first instance for disposal according to law after considering the matters alleged and such proof as may be afforded as regards the allegations and after hearing the parties. The respondents will pay the petitioners their costs of this petition. The other costs will abide and be provided for by the Court of first instance in its final order. As I have disposed of this petition merely on the ground that the order of the lower Courts has been made without any reference to the provisions of Section 6 of the Act, it follows that on the hearing after this remand the petitioners here, the debtors, will be entitled to take to the petition such objections as they are in law entitled to.

5. G.B.P. 1165 of 1926.-Same order as in C.E.P. 1164 of 1926 including the order as to costs.