(1955) 10 MAD CK 0022

In the Madras High Court

Case No : Petition No. 133 of 1954 and Application No. 802 of 1955

M.R. Krishnamurthy and another APPELLANT

Vs

The Official Assignee of Madras RESPONDENT

Date of Decision : 18-10-1955

Acts Referred:
Presidency Towns Insolvency Act, 1909 — Section 102, 52

Citation : (1955) 10 MAD CK 0022

Hon'ble Judges : Balakrihna Ayyar, J

Bench : Single Bench

Advocate : V. Thyagarajan for Mr. M.A. Rajagopalan, for the Appellant;

Final Decision : Dismissed

Judgement

Balakrihna Ayyar, J.—Two divided brothers had been carrying on a business in partnership under the name and style of M. Rangayya Chetti & Sons in sugar, rice and other articles at No. 14, Anna Pillai Street, G.T., Madras. That business appears to have been a fairly substantial one (sic) 11th October, 1953. the brothers were adjudicated insolvents by an order made on 7th March, 1955. The insolvents have now filed an application praying for leave to carry on a business in sugar, rice etc., in a portion of No. 14, Anna Pillai Street, G.T. Madras, under the name and style of M. Rangayya Chetti & Sons. In the affidavit filed in support of the application, the first insolvent stated that he and his brothers had filed their schedule and also produced all the accounts in their possession before the Official Assignee. In respect of some other books, he stated that they were in the possession of Palaniappa Chettiar, who had been in management of the business as a mortgagee. He has eleven children and his daughter-in-law and granddaughters are dependent on him. His brother, the other insolvent, has twelve children and has a daughter-in-law to maintain. The total strength of that family is fifteen. A relation of theirs, one V. Balanarasimhulu Chetti has offered to lend them Rs. 2000 in order to enable them to run a business on condition that he is paid interest at 12 per cent per annum. The affidavit continues:

We submit that having regard to the heavy responsibility in the shape of the two families as stated above, this Hon''ble Court may be pleased to permit us to carry on the business under the name and style of M. Rangiah Chetty and Sons with the amount to be advanced by the said V. Balanarasimhulu Chetti on terms aforesaid. We undertake to keep regular accounts of the business so carried on and shall not involve the Official Assignee or the State in any commitment whatsoever.

2. The affidavit went on that out of such monies as they might earn, the Court might order them to pay a reasonable allocation. In connection with the business of M. Rangiah Chetti and Sons, there is a telephone on the premises which is very valuable to the business. The District Manager, Telephone, Madras, has informed the insolvents that he would remove the phone if evidence were not produced before him to show that they are carrying on business.

3. The learned Official Assignee has filed a report in which he mentions that the account books for the period from 1st April 1953 to 31st July 1954, which are really the most important ones, have not been produced before him. The insolvents informed him that those books are in the hands of Palaniappa Chettiar, but he in his turn denied that. In the schedule of affairs, the insolvents have disclosed unsecured liabilities in a sum of Rs. 167,608. This amount is exclusive of a claim (or Rs. 39,000 filed by Palaniappa Chettiar. The only assets disclosed by the insolvents are two house properties in George Town. The first of them has been mortgaged in favour of the Indian Bank for about Rs. 65,000 and there is a further mortgage for Rs. 20,000 in favour of the wife of Palaniappa Chetti. The other house has been mortgaged in favour of Palaniappa Chetti and his wife for Rs. 90,000. The Official Assignee has been realising a rent of about Rs. 570 per month from both these houses.

4. But then a suit No. 1672 of 1955 has been Bled by the major sons of the insolvents in the City Civil Court containing the usual allegations about the debts contracted by the insolvents and putting forward the plea that the alienations would not bind them. In paragraph 10 of his report the Official Assignee says,

In these circumstances, I submit that the insolvents are not entitled to carry on business as though they have obtained their discharge from the insolvency.

And in paragraph 12,

It would be impossible to allow the insolvent to trade again in the old firm''s name; the Official Assignee is entitled to sell the goodwill of the insolvents'' firm with all its perquisites like telephone etc, and the insolvents are not entitled to trade-much leas trade in the old firm''s name-ignoring completely the insolvency, and especially when their conduct and dealings have yet to be investigated.

5. Mr. Thyagarajan, the learned Counsel for the insolvents, contended that the creditors would not be in anyway and certainly not materially-affected by insolvents'' prayer being granted. The value of the goodwill attaching to the

name of Rangiah Chetti & Sons would be negligible, if it is not actually a negative quantity. He wants permission for the insolvent to use the name, since it is only in that way they can have the use of the telephone; and a telephone is absolutely necessary if the business they desire to start anew is to be successful. He also commented strongly on the fact that both the insolvents have large families to maintain and that it could not possibly be the intention of the law that the family of an insolvent should be driven to destitution, and that an insolvent should have no incentive to rehabilitate himself. All this is true enough. But then, the goodwill of the business which the insolvents were carrying on vests in the Official Assignee and he is entitled to realise its value for the benefit of the creditors. Apparently with this name goes the right to what I may call the lease of the telephone. I can see no justification for permitting the insolvents to use the old trade name and the telephone and hold up to that extent the realisation of the assets of the estate. Mr. Thyagarajan pointed out that in any case it would take long months if not years to complete the administration of this estate and there would be no real loss to the creditors if the insolvents were allowed to trade in their old name and allowed to have the telephone for a year. But as I shall presently show, the matter is not so simple as that.

6. It has next to be remarked that under sub-clause (a) of Cl. (2) of S. 52 of the Presidency Towns Insolvency Act all the property that an insolvent might acquire subsequent to his adjudication will also vest in the Official Assignee. That statutory vesting cannot be abrogated by any order that I might pass is this case. Besides under S. 102 of the Act, any undischarged insolvent obtaining credit to the extent of Rs. 50 or upwards from any person without informing such person that he is an undischarged insolvent is a criminal offence. If I were to grant the leave asked for it seems to be very likely that it is liable to be abused and innocent people taken in. It is not possible for me to say straightaway and at once that the conduct of the insolvents has been such that every indulgence should be shown to them. The learned Official Assignee reports that no stock-in-trade was handed over to him and that the accounts for the crucial period have not been produced before him. No doubt, the insolvents have an explanation, for this; but how far that explanation is good has yet to be investigated

7. Mr. Thyagarajan referred me to an unreported judgment of Krishnaswami Nayudu, J., in Application 445 of 1955 in Petition 58 of 1955 in which the insolvent prayed for permission to carry on his normal business and for a direction to the Official Assignee to hand over to the insolvent his stock-in-trade and other moveables including certain machinery. The learned Judge fixed the value of the stock-in-trade and the machinery and other articles lying in the premises and directed the Official Assignee to sell them to one Sammandhi Ammal for Rs. 1500. He also permitted the insolvent to carry on the business on his own account. With respect I find considerable difficulty in following the reasoning behind that order.

8. An undischarged insolvent does not need the leave of the Court to carry on a

business. But then he would do so subject to two statutory limitations. One is that before he obtains credit in a sum of Rs. 50 and upwards, he should disclose to the person with whom he is dealing that he is an undischarged insolvent. The other is that the acquisitions he makes in the course of such trade would vest in the Official Assignee for the benefit of the creditors. From neither of these conditions can I give the insolvents any exemption or indulgence. Nor can I in the present case permit them to use the old trade name. In the result, the application is dismissed. No costs.

