
(1916) 03 MAD CK 0063
In the Madras High Court

Nachiappa Chetty

APPELLANT

Vs

Thangavelu Chetty and Others

RESPONDENT

Date of Decision : 16-03-1916

Acts Referred:

Provincial Insolvency Act, 1920 — Section 12(2)

Citation : 34 Ind. Cas. 696 : (1916) 3 LW 495

Hon'ble Judges : Sadasiva Aiyar, J; Moore, J

Bench : Division Bench

Judgement

1. Following the decision in Muthukaruppan Chettiar v. Muthuraman Chettiar (1914) M.W.N. 899 : 1 L.W. 1012, we hold that an order of adjudication on a creditor's application, without the issue of the general notice to creditors, prescribed by Section 12 (2) of the Provincial Insolvency Act, of the date fixed u/s (12) (1) for hearing the petition, is wholly irregular and ought to be set aside.

2. Even if the appellant (petitioner) had somehow got private notice of the presentation of the petition to adjudicate, he is not bound to appear unless the general notice in the local Official Gazette calls upon him and the other creditors to so appear, and the order passed without the issue of such general notice will not be validated by proof that the creditors had private notice, assuming, of course, that the creditors, who had such private notice, could, if they choose, inform the Court that they dispensed with the issue of the general notice in the local Official Gazette.

3. We set aside the order of adjudication and direct the Petition No. 20 of 1914 to be heard and disposed of after complying with all the provisions of Section 12 which have already not been complied with. As the appellant did not take the objection as to want of publication u/s 12 of the Provincial Insolvency Act in the lower Court, there will be no order as to costs hitherto.