
(1969) 01 MAD CK 0015
In the Madras High Court

N.S.M. Adaikappa Chettiar

APPELLANT

Vs

The Official Assignee, High Court

RESPONDENT

Date of Decision : 03-01-1969

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 49(4)

Citation : (1969) 82 LW 266 : (1969) 2 MLJ 115

Hon'ble Judges : K.S. Venkataraman, J

Bench : Division Bench

Judgement

K.S. Venkataraman, J.—This application raises a question of the application of Section 49 (4) of the Presidency Towns Insolvency Act, III

of 1909. The facts giving rise to the application are these. One Anjali Devi was adjudicated insolvent on a creditor's petition in I. P. No. 12 of

1965. A partnership by name, Messrs. Anjali Pictures consisting of Anjali Devi and her husband P. Audinarayana Rao as partners, was

adjudicated insolvent in I. P. No. 25 of 1965. Her personal estate was sold and after paying the secured and the preferential creditors, a sum of

Rs. 2,24,624-45 is available. (Vide the report dated 29th September, 1968, of the Deputy Official Assignee).

2. The assets of the partnership were sold and only a balance of Rs. 95,308-90 is available from which a dividend of 6 1/2 paise in the rupee can

be paid besides the dividend 5 paise already paid.

3. Certain persons have proved in the insolvency of P. Anjali Devi, as her personal creditors and the amount necessary for paying them in full is Rs.

79,013-68 (amount due to the creditors Rs. 75,063 plus commission). The amount due to the creditors who have proved in the insolvency of the

firm is in the region of Rs. 13,64,311. What the Deputy Official Assignee has proposed in terms of Section 49 of the Presidency Towns Insolvency

Act is to pay the personal creditors (debts to whom amount to Rs. 75,063) in full and make the balance of the personal estate namely Rs.

1,45,610.71, available for distribution to the creditors of the firm. If that is done, a further dividend of 16 1/2 paise in the rupee can be paid in addition to the five paise already paid.

4. The applicant, herein, Adaikappa Chettiar, is one of the firm's creditors. He objects to the payment in full to the creditors in the insolvency of

Anjali Devi. He contends that those creditors are really creditors of the firm and hence cannot get a more favoured treatment than the creditors of

the firm in the application of Section 49 of the Act. Section 49 (4) of the Act reads:

Section 49 (4).--In the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts, and

the separate property of each partner shall be applicable in the first instance in payment of his separate debts. Where there is a surplus of the

separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property,

it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

5. The scheme of Section 49 (4) is clear and there is no controversy about it. The only question in dispute is whether the sum of Rs. 75,063 can be

said to be the separate debt of Anjali Devi or should be held to be partnership debts as contended by Adaikappa Chettiar to use the phraseology

of Section 49 (4). It is stated before me that the debt amounting to Rs. 75,063 were contracted by Anjali Devi, on promissory notes and the

following promissory note dated 14th February, 1964 may be taken as typical.

Rs. 10,000 2, Pughs Road,

Madras-28.

Due date 15th May, 1964 dated 14th February, 1964.

At 90 days (ninety days) after date without grace, I. P. Anjali Devi, residing at No. 2, Pughs Road, Madras-28 promise to pay to Mr. E. A.

Swami, No. 4, Maharaja Surya Rao Road, Alwarpet, Madras-18 the sum of Rs. 10,000 (Rupees ten thousand only) for value received in cash

this day.

Sd. P. Anjali Devi.

6. On the face of this promissory note, the debtor was only Anjali Devi and not the firm. u/s 27 of the Negotiable Instruments Act, it is no doubt

open to a person to bind himself or to be bound by a duly authorised agent acting in his name. But if the parties meant that the firm should be

bound, that should clearly appear on the face of the document. That however is not the case here. In Penumatsa Rangaraju Vs. Sait Devichand

Bhootaji Firm partner Sait Seshmull Kasturji and Another, , under even stronger circumstances, Patanjali Sastri, J., held that a promissory note

executed by a partner would not bind the firm since it did not appear that the firm was meant to be liable though it was clear enough that the

amount was borrowed for the purpose of the firm.

7. As against this Sri P. N. Venugopal, learned Counsel for the appellant, relies on the following answers given by Anjali Devi in her public

examination.

Q. Apart from the borrowings from Rajashree Pictures, did you make independent borrowing for the pictures?

A. No.

Q. You did not borrow from others for the pictures?

A. Not in my personal capacity, I borrowed only for the pictures.

Q. For the firm you did borrow?

A. Yes.

Q. From whom did you borrow the money?

A. I am not able to give the details and the names of persons from whom moneys have been borrowed for the business. At the time of borrowing

the money, I have been asked to sign on certain papers and I have implicitly obeyed my husband.

8. The learned Counsel submits that according to the above answers, Anjali Devi borrowed the money only for the pictures and on that basis the

learned Counsel contends that even the so-called personal borrowings should be considered only as borrowings of the firm.

9. These submissions are unacceptable. In the first place, apart from the statement of the insolvent extracted above there is nothing to show that

that statement is true. Actually the Deputy Official Assignee states on an examination of the accounts of the firm that the debts amounting to Rs.

75,063 except one for a sum of Rs. 7,500 due to Swami, do not find place in the account books of the firm at all. The particular debt of Rs. 7,500

however finds place in the day book under several dates and the corresponding entry in the ledger was posted up after adjudication. Thus at most

only the sum of Rs. 7,500 can be taken to have been utilised for the pictures. But even in respect of the sum of Rs. 7,500 on the assumption that it

was utilised for the pictures, it would not follow that the firm is the debtor of the creditor concerned. The debtor whose name appears in the

negotiable instrument is only Anjali Devi, and she and she alone can be proceeded against by the creditor on the promissory note. Besides the

decision of Patanjali Sastri, J., quoted above, it may be useful to reproduce Lindley on Partnership pages 233 and 234 of the 12th Edition:

Effect of having had the benefit of a contract.--It is an erroneous but popular notion that if a firm obtains the benefit of a contract made with one of

its partners, it must needs be bound by that contract. Now, although the circumstance that the firm obtains the benefit of a contract entered into by

one of its members tends to show that he entered into the contract as the agent of the firm, such circumstance is no more than evidence that this

was the case, and the question upon which the liability or non-liability of the firm upon a contract depends is not--has the firm obtained the benefit

of the contract but did the firm, by one of its partners, or otherwise, enter into the contract?

A leading case on this head is *Empty v. Lye* 15 East 7. There a partner drew bills in his own name, and sent them to an agent of the first in order

that he might get them discounted. They were discounted, and the money obtained was remitted by the agent, and was paid to the account of the

firm. It was held that the firm was neither liable for the amount of the bills on the bills themselves, nor for their proceeds on the common counts.

There was no loan to the partnership; no contract with it; and no liability attached to the firm by the fact that the partner who alone was liable had

applied the money after he got it for the benefit of his co-partners as well as for the benefit of himself.

Again, in *Beavan v. Lewin* 1 Sim. 376, one partner borrowed money, and executed warrants of attorney to confess judgment. The money which

he obtained was applied by him for the benefit of the partnership and was obtained in part with the knowledge of his co-partner, in order that it

might be so applied. But it was held that the partnership was not liable for the money; the loan having been clearly made to the one partner against

whom alone judgment was to be entered and not to the firm through him.

Money borrowed by one partner.--So, in ordinary cases, when one partner borrows money without the authority of his co-partners, the contract

of loan is with him and not with the firm; and the nature of that contract is not altered by his application of the money. The lender of the money has,

therefore, no right to repayment by the firm, although the money may have been applied for its benefit, unless he can bring himself within the

equitable doctrine referred to below.

10. The exception referred to is the doctrine of subrogation where the amount lent to the partner is utilised to pay off the debts of the firm. Here,

however, there is no evidence that the amount of Rs. 7,500 lent to Anjali Devi was utilised for paying off the debts of the firm; and further that will

only in be an additional right in equity to the creditors and will not detract from his right u/s 49 (4) of the Act to be paid in full from the separate

property of the partner Anjali Devi. Accordingly this application is dismissed, but without costs.