

(1925) 12 MAD CK 0003
In the Madras High Court

Official Assignee of Madras		APPELLANT
	Vs	
Narayana Goundan and Others		RESPONDENT

Date of Decision : 15-12-1925

Acts Referred:

Citation : AIR 1926 Mad 1137

Hon'ble Judges : Coutts-Trotter, C.J.;Ramesam, J

Bench : Full Bench

Judgement

Coutts-Trotter, C.J.—This is a perfectly plain ease. It is to my mind an audacious attempt to evade the plain provisions of the Insolvency

Law in this Court. The insolvent was adjudicated and, of course, his estate vested in the Official Assignee who brought proceedings calling upon

certain persons whom he alleged to be debtors to the bankrupt's estate to discharge their obligations. While these proceedings were pending, an

arrangement was come to, to which the Official Assignee was a party whereby, on payment of certain sums of money into the hands of the Official

Assignee for distribution among the creditors, a composition was arrived at and the bankrupt got his discharge. It is now sought by the Official

Assignee to go on with those pending applications against the debtors to the bankrupt's estate for the benefit of the creditors who have accepted

what they have already had as a full discharge in satisfaction of their claims. It is obvious that such a thing cannot be done. A Bankruptcy Court,

both in England and in India, does very often pass conditional orders of discharge which keep alive remedies on one side or the other. Such have

been some of the eases which have been mentioned to us where funds already in the hands of the debtors are earmarked for certain purposes on

the one hand and where orders are passed keeping open the remedy to the bankrupt's estate conditional until certain other debtors of the bankrupt whose money has not been collected are made to pay their debts. Here no provision was made in the order of discharge for keeping alive the seisin of the bankrupt's estate in the hands of the Official Assignee, still less in the form of safeguarding his rights of suit against these persons against whom the applications were made. It seems to me the only conclusion that can be drawn is that, when the Official Assignee carried through that compromise, he deliberately intended to release his hold on those assets, which are after all only potential assets of the estate in his hands. What remedies the bankrupt himself may have against these alleged debtors it is not our province to inquire. It may be that "they are all barred by limitation. This much is clear that in the light of what has taken place it does not lie in the mouth of the Official Assignee to say that the bankrupt's) estate is in any way vested in him so as to enable him to prosecute proceedings to recover additional sums of money over and above those provided for, for distribution in the compromise for the benefit of the bankrupt's estate. This being so the learned Judge's decision is quite correct and these appeals must be dismissed.

Ramesam, J.

2. I think this case illustrates the inconvenience of garnishee proceedings. If the Official Assignee had filed suits, the insolvent has merely to bring himself on the record to continue again, and there is no question of any fear of those suits being barred.