

(1934) 08 MAD CK 0053
In the Madras High Court

Padilam Narayanamma and Another

APPELLANT

Vs

Neti Venkatasomayajulu and Another

RESPONDENT

Date of Decision : 15-08-1934

Acts Referred:

Citation : AIR 1935 Mad 46 : 153 Ind. Cas. 624 : (1934) 40 LW 693

Hon'ble Judges : Beasley, C.J.;King, J

Bench : Full Bench

Judgement

Beasley, C.J.—The question in this, appeal is whether an application in insolvency made by a creditor to the District Munsif u/s 4, Provincial Insolvency Act, asking for a declaration that a certain transaction was benami was barred by reason of the fact that leave of the Insolvency Court had not been obtained as provided by Section 28 of the same Act. In the sense that no formal application was ever made to the Insolvency Court under that section and formal leave granted, there was no sanctioning of the presentation of the application, but the District Munsif in the Insolvency Court entertained the application, heard it and proceeded to give a. decision upon it. It was contended before Jackson, J., in second appeal that the Insolvency Court must have impliedly granted its consent. Jackson, J., accepted that contention and thought that leave might be fairly inferred and at the same time observed that, even if it could not be inferred, the point was so technical as not to be worth raising. In my opinion, the fair inference from what took place is that leave of the Court must be deemed to be given and therefore the application u/s 4 was not barred. With regard to the order made by the District Judge, our attention has been called to the observations made by the Judicial Committee in Chockalingam Chetty v. Seethai Achi 1927 P.C. 252. We content ourselves with drawing the attention of the Insolvency Courts, the Official Receivers and the Official Assignee to those observations. The order made by the District Judge need not be set aside. Under these circumstances this appeal must be dismissed with costs (one set). No orders necessary on C. M.P. No. 5644 of 1932.

King, J.

2. I agree.