
(1935) 09 MAD CK 0004
In the Madras High Court

P.P.P. Chidambara Nadar

APPELLANT

Vs

K.P.C. Mahalinga Nadar alias Katteri Malaya Pillai Nadar and
Others

RESPONDENT

Date of Decision : 16-09-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 4

Citation : 163 Ind. Cas. 968 : (1936) 43 LW 460 : (1936) 70 MLJ 282

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—The questions raised relate to the passing of the Receiver's accounts before an order is made for his discharge. The

accounts to be passed are for the period from 11th February, 1923 to 20th July, 1931.

2. The first objection relates to the sum of Rs. 6,700 and odd, the interest claimed by the Receiver on the advances made by himself. The lower

Court has disallowed the item in toto on the ground that before advancing the money the Receiver has not obtained the previous sanction of the

Court. The law imposes a certain penalty when the Receiver chooses to advance his own money without first obtaining the Court's permission, but

it does not follow that the penalty extends to the disallowance of the interest. Jessel M.R. points out in Ex parte I sard. In re, Bushell (1883) 23

Ch. D. 75 that if a Receiver chooses to advance money of his own without the previous authority of the Court, he can only look to the estate for

indemnity. The practice in the Chancery Division is for a Receiver, before advancing the money, to apply to the Court for its authority-to do so and

when the Court gives him authority, it generally allows him interest at 5 per cent,

and gives him a charge on the assets for that sum and the interest.

He is still entitled to this interest even where he does not obtain the previous sanction, but in such a case he can only look to the estate for

indemnity for the payment of the principal and interest and he will not be entitled to a personal order for payment. Beyond:, this he incurs no further

penalty. The question arose there in? bankruptcy and Jessel M.R. points out that the Court of Bankruptcy can do what the Chancery Division can

and goes on to say:

The only order which could be made would be that the trustee should pay him out of the assets, if he had available assets in his hands. In the

present case there is no evidence that when the order appealed from was made, the trustee had any assets in his hands; the only evidence is that he

had previously had assets in his hands, and that he had paid them away.

3. (See also Kerr on Receivers 1930 Edn. p. 322. - Where the law is stated as declared by Jessel M.R.) There is no question in the present case,

as the discussion by the lower Court shows, that the monies were advanced for proper purposes and that being so, I must set aside the lower

Court's order and hold that the Receiver is entitled to interest. The claim to 12 per cent, compound interest is no doubt extravagant, but I think

that 9 per cent, simple interest is in the circumstances a proper rate to allow.

4. The next item is that of Rs. 5,500 odd claimed by the Receiver as being the aggregate of the salaries disbursed by him. The lower Court's view

in this respect is also wrong. The item has been disallowed on two grounds; first that the previous sanction of the Court had not been obtained and

secondly that the amount claimed is ridiculously excessive in view of the fact that the realisations during the period did not exceed Rs. 4,400 odd.

Neither of these two grounds is sound in law. The failure to obtain the previous sanction, nothing further being shown, is not a sufficient reason for

disallowing the item. In Gordon ex parte. In re, GomersattX as Bacon, C.J., points out, the Court's sanction may be given even after the thing is

done, provided the Court is satisfied that it has been well and properly done. If the Receiver shows the expense, incurred upon his own

responsibility, to have been necessary and such as would have been authorised by the Court had application been previously made, he will be

reimbursed for such outlay as if previous authority had been given. (High on

Receivers, (1910) IV Edn. p. 945).

5. Passing on to the second ground, the questions that arise for decision are: (a) Did the Receiver actually incur the expenditure or any part of it?

and (b) In view of the nature and extent of the work, was he justified in incurring any expenditure, at all? If he was, what would be the proper

amount to allow under this head?

6. Turning to the third item - the rent claimed By the Receiver, the lower Court has properly disallowed it. The Receiver was a party to the suit and

does not profess to have actually paid the rent but claims it on the ground that a portion of his house has been used for the purposes of the

business. Having offered to discharge the duties without remuneration, he is hardly justified in claiming this amount.

7. I have now dealt with the Receiver's complaint against the lower Court's order Turning now to the other Civil Revision Petition (368 of 1933),

the matter stands thus. In regard to the several charges made against the Receiver, such as, on the ground of wilful default, the lower Court has

referred the parties to a regular suit. Order 40, Rule 4 of the CPC has since been amended, but even under the amended rule, the Court is

ordinarily bound to deal with all matters relating to the Receiver in the proceeding itself. In *Kamatchi Ammal v. Sundaram Ayyar* I.L.R.(1902) 26

Mad. 492 it was held that redress against the Receiver should generally be sought in the very proceeding in which he was appointed. As pointed

out in *Shriniwas v. M.C. Waz* I.L.R.(1920) 45 Bom. 99 the proper occasion for making allegations against the Receiver is, when his accounts are

passed and the Court ought to protect its officers and not to allow the parties to pester the Receiver with actions. The objection that the enquiry

under Rule 4 is but a summary enquiry, is without force as by that expression is meant no more than "an enquiry which secures the usual degree of

fairness and efficiency and which gets rid of a good deal of formality and delay", per Heaton, J. at page 104 in *Shriniwas v. M.C. Waz* I.L.R.

(1920) 45 Bom. 99. Although under the amended rule, the Court may at its option refer the parties to a separate proceeding, it is bound, when it

makes such an order, to record its reasons which shows, that ordinarily the enquiry should be held in the proceeding itself. This litigation dates from

a reference to arbitration made in 1919 and the proceedings have dragged out

over a period of Over 15 years, and it is extremely desirable that they should not be allowed to be further protracted.

8. Various charges have been made against the Receiver and several issues have been framed. My direction is, that all such questions as bear on the Receiver's discharge and relate to matters between him and the estate, should be decided in this very proceeding. It is unnecessary for me to define with precision what those questions are, but as one particular matter has been brought to my notice, I may dispose of it at once.

9. An order is sought against the Receiver for payment of Rs. 4,000, alleged to have been borrowed by him for the business from certain persons (see paragraph 13(c) of the counter affidavit of Rama Nadar dated 30th October, 1931 filed in the lower Court). Whether those persons are

parties to the suit or strangers (that makes no difference), the matter cannot be gone into in this proceeding. The sums borrowed by the Receiver and brought into the business have been shown (I gather) as advances made by him and he treats himself to that extent as a creditor of the estate

having incurred personal liability in respect of those borrowings. That being so, the remedy of the lenders of the amounts, against the Receiver, in such cases is by way of independent proceedings and the questions cannot be gone into in this enquiry.

10. I therefore direct the lower Court to deal with all such matters as are relevant to this enquiry, in the light of my remarks above made and to return its findings on those matters within two months from this date. Time for filing objections to the findings is 10 days.

11. The question of costs as regards both the Civil Revision Petitions is reserved.

12. In pursuance of the directions contained in the above order the Subordinate Judge of Madura submitted the following

13. Finding. - I have been asked by the High Court by its order in C.R.P. Nos. 62 and 368 of 1933 dated the 24th day of January 1935 to submit findings in E.A. No. 565 and 1004 of 1931 on the points raised in the order of the High Court set above.

* * * *

14. I therefore find that the pay of the clerk at Rs. 25 and of the peon at Rs. 10 only should be allowed and the excess claimed in the receiver's account should be disallowed. None of the items of; loss to the estate owing to

the receiver's wilful default or gross negligence has been substantiated before me.

15. The Court delivered the following

JUDGMENT

16. The first objection argued before me has reference to the salary alleged to have been paid to Arunachalani Pillai. In regard to this matter, in my previous order the two following questions were specifically raised:

(a) Did the receiver actually incur the expenditure or any part of it?

(b) In view of the nature and extent of the work, was he justified in incurring any expenditure at all? If he was, what would be the proper amount to allow under this head?

17. In regard to the first of these two questions the Receiver ought to have gone into the box and shown what amount he actually paid. The lower

court remarks that the accounts produced by him cannot be acted upon. I am unable to see why the Receiver failed to go into the box and adduce

affirmative evidence in support of his case. In the result, I must, differing from the lower court disallow the salary alleged to have been paid to

Arunachalam Pillai. As regards the amount said to have been paid by way of salary to Subbier, I see no reason to disallow it, to that extent the

lower court's finding is upheld. As regards the salary alleged to have been paid to the peon, there is evidence in support of this claim and I see no

reason to differ from the lower court's conclusion.

18. As regards the rents of the house and the nanja, land, the lower court's finding is confirmed.

19. As regards the debts said to have become irrecoverable no satisfactory evidence has been adduced that the receiver has been guilty of any

negligence. The lower court's finding is therefore confirmed.

20. I have now disposed of all the objections urged before me. Each party will bear his costs.

21. I understand from both the parties that there is no other matter that remains to be dealt with. The lower court will forthwith pass a final decree.