

(1927) 12 MAD CK 0012
In the Madras High Court

Ramaswami Chettiar and Another

APPELLANT

Vs

Muthialuswami Chettiar

RESPONDENT

Date of Decision : 12-12-1927

Acts Referred:

Citation : AIR 1928 Mad 903

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—In this case, the appellants, two Chetties of Salem, were sought to be declared insolvents by a creditor and the District Judge

found that they committed an act of insolvency and therefore declared them insolvents. They appeal. The facts are: The appellants were carrying on

business in yarn twist and cloths and by the end of 1925 their position became very involved. They had a number of creditors, the principal amount

of whose debts is stated in Ex. 1 to be about Rs. 17,200. Two of these creditors are the petitioner and P.W. 2 and their debts amounted to Rs.

5,000 and 4000 respectively. There is another creditor whose debts amount to Rs. 2,000 and two others whose debts amount to Rs. 1,000 each

and the others' debts amount to less than Rs. 1,000. The appellants had two houses and a garden besides the dwelling house. They had a number

of outstandings due to them. On paper they amount to Rs. 18,000 odd. Except two of these which amount to more than a thousand, all the others

are within a thousand and some of them are merely tons. They are so trivial that the likelihood of their being collected is very small. The appellants

were being pressed for payment of debts and they were unable to pay. On one of these occasions when they were pressed for payment, a year

prior to the inquiry he sent notice to the petitioner and P.W. 2 and they met and on that occasion he offered his properties consisting of two houses and garden to them, omitting the house in which he was living, in discharge ""of their debts; but no settlement was reached. This is according to his statement; but, on the other hand, Obili Chetti says in his deposition that the title-deeds were handed over to him for the purpose of selling all the properties and settling all the creditors rateably. But even this was not done, because they were not willing to place the properties at the disposal of Obili Chetti though the title-deeds were handed over.

2. Four or five days after this a number of creditors came and assembled at the house of Obili Chetti and then the appellants were asked as to how they propose to pay their debts. According to P.W. 3 appellant said that his title deeds had been given to P.W. 2 and to the petitioner for sale of his properties towards the discharge of the debts. P.W. 2 stated that was not true; by which apparently what was meant was that though some title-deeds were handed over, all the title-deeds were not handed over and the properties were not really placed at their disposal. All of them then went away agreeing to meet the next day. The next day the creditors again came. Appellant 1 was sent for but he did not come. These are all the material facts as proved by the evidence.

3. The question now is: On these facts was an act of insolvency committed? It is strenuously contended before us that a mere statement of inability to pay debts and the fact that the appellants were hopelessly insolvent, or that even an attempt to make a composition with creditors are not enough to amount to an act of insolvency. The learned vakil for the appellant has called our attention to all the earlier English cases ranging from 13 Q.B. Dn. 471 up to (1896) 2 Q.B. Dn. 124. We do not think it necessary to discuss these cases in detail, because their effect has been correctly summed up in the judgment of Lord Macnaghten in *Clough v. Samuel* [1905] A.C. 442. He says:

Now when this provision first came under the consideration of the Courts, a very narrow construction was put upon it. It was said that the notice must be in writing, and must declare an intention on the part of the debtor to suspend payment. It was said that the notice must be a notice intended to be communicated to all the creditors or to the body of creditors, and that the

state of circumstances as disclosed must be such as to render it not merely improper but actually fraudulent for the debtor afterwards to pay anybody. All these glosses, for which there seems to be no foundation in the Act, were, I had thought, swept away by the decision of the Court of appeal in *In re Lamb* [1887] 4 Morrell 25 and by the decision of the majority of the same Court in *Crook v. Moreley* [1891] A.C. 316 affirmed in this house.

4. Now the decision of the House of Lords in *Crook v. Moreley* [1891] A.C. 316, while showing that a bare declaration of inability to pay debts does not amount to an act of insolvency, also shows that it may well be accompanied by such circumstances and might have been in such a context that if the impression produced upon the minds of the creditors receiving it is such as to amount to a statement that the debtor is going to suspend the payment of his debts it might amount to an act of insolvency. In that case it was a written circular "that was sent to all the creditors. The Earl of Selbourne says at p. 321:

Then I ask, what effect would this circular naturally and properly produce upon the minds of the creditors receiving it. It is a general circular by the debtor to all his creditors. That I think, upon the evidence, upon the *evidentia rei* also, your Lordships may take for granted. Well, "being unable to meet my engagements as they fall due, I invite your attendance at a certain place, two days afterwards, on Wednesday "next, when I will submit a statement of my position for your consideration and decision. " I cannot help thinking that every creditor receiving that circular must have understood that he would not do or would attempt to do that which he said he was unable to do, he would not attempt to meet any of his engagements as they fell due etc.

5. In the later decision of the House of Lords in *Clough v. Samuel* [1905] A.C. 442 this judgment of Lord Selbourne and Lord Watson was referred to with approval by the Earl of Halsbury who says: Two most distinguished Judges have pointed out in this House that a declaration of inability by a debtor does not by itself and without reference to context or circumstances satisfy the statute; and if I look to the circumstances or the words used, I concur with the Court of Appeal etc.

6. On these decisions of the House of Lords it appears that the question is more

one of fact than of law. The question is, on the evidence before us, what was the impression left upon the creditors when the answer of appellant 1 was given in reply to the question put to him as to what he proposed to do for payment of the creditors. His answer was that he has placed all his title-deeds in the hands of P.W. 2 for the sale of his properties and the discharge of his debts, that is the properties are to be taken in total discharge, whether the price was equal to them or not. The statement almost amounts to saying that beyond this they are unable to do anything more. In the case in *Clough v. Samuel* [1905] A.C. 442 all the creditors were not sent for, though the debtor was in a hopelessly insolvent condition. It was a friendly meeting arranged by the solicitor with only two of the creditors, and when a question was put to the solicitor as to what was stated about the other creditors the answer was that no reference was made to them. In this respect, the two cases are entirely dissimilar. In the case before us though all the creditors might not have been present there is no doubt that what was discussed at the meeting was the payment of all the creditors and the impression that was left on their minds was that the appellants were unable to pay debts and would suspend payment of debts unless this offer of discharge of all the debts by the sale of the properties is accepted. Soon after the meeting was over, the appellants issued Ex. 4 in which they state that there is an agreement by which the properties were intended to be purchased by Obili Chetti and the petitioner only. His present evidence is in accordance with that, but contradicted by the other two witnesses. This was on the day the present petition was filed. Taking into consideration all the circumstances we do not think that this is a case in which we should interfere. The result is, the appeal is dismissed with costs.