
(1974) 10 MAD CK 0024
In the Madras High Court
Case No : C.R.P. No. 2342 of 1974

S. Srinivasachariar

APPELLANT

Vs

Sri Renganatha Co-operative Stores Ltd. and another

RESPONDENT

Date of Decision : 11-10-1974

Acts Referred:

Provincial Insolvency Act, 1920 — Section 9(1)(c)
Tamil Nadu Co-operative Societies Act, 1983 — Section 71, 71(1)

Citation : (1974) 10 MAD CK 0024

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Advocate : K. Sarvabhauman, for the Appellant; M.V. Krishnan for 1st Respt.,
for the Respondent

Final Decision : Dismissed

Judgement

Kailasam, J.—The petitioner is the second respondent before the Co-operative Tribunal, Tiruchirapalli. An enquiry for surcharge was commenced against the petitioner and others under S. 71 of the Tamil Nadu Co-operative Societies Act by the Registrar. The Registrar started to go into the conduct of the petitioner and others who are officers of the Co-operative society on 25th September, 1965 relating to a sum of Rs. 41,288.51. The enquiry was adjourned from time to time. It was adjourned to 13th October, 1965. It was again adjourned to 11th January, 1966. In the mean time criminal proceedings were started against the petitioner and others in C.C. No. 284 of 1966. Pending disposal of the criminal proceedings the enquiry was suspended and was taken up again only in September, 1970. It was again adjourned to 17th November, 1970, and then to 18th July, 1972. The written statement was filed by the petitioner on 17th August, 1972. Again it was adjourned to 29th July 1972. In the written statement the petitioner and others contended that as no enquiry contemplated under S. 71(1) can be held after the expiry of six years from the date of act or omission referred to in the sub-section, the enquiry cannot be continued. It was submitted that the act complained of was in 1961 and 1962. The proviso does

not use the words "enquiry shall not be commenced" and so it was submitted that the enquiry should be completed within six years from the date of the commission of the act or omission and in the event of non-conclusion of such an enquiry the proviso will be attracted and that the enquiry can no longer be continued. Though the wording of the proviso is not very clear in the context, I am of the view that it relates only to the commencement of the enquiry. Due to various reasons the enquiry commenced in proper time may be delayed and it is unlikely that the Legislature intended that the enquiry properly commenced should be stopped when once the six year period has expired. In the circumstances, I would construe the proviso as meaning that no enquiry under S. 71 can be commenced after the expiry of six years from the date of the commission of the act or omission. In a petition filed by one of the persons whose conduct was enquired into under S. 71, Ismail, J. has taken the same view in *Vasudeva Iyengar v. Sri Ranganatha Co-operative Stores Limited* 87 L.W. 660. Mr. Sarvabhauman, learned counsel for the petitioner, also referred to a Full Bench decision reported in *Kaku Chenchuramana Reddi v. Palapu Arunachalam* AIR 1935 Mad. 857; 42 L.W. 330 (F.B.). The Bench had to construe the provisions of S. 9(1)(c) of the Provincial Insolvency Act, 1920, which provided that a creditor shall not be entitled to present an insolvency petition against a debtor unless the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition. The court held that such a petition cannot be presented just after the vacation where three months have expired during the vacation. This decision does not help the petitioner as the section itself provides that the creditor will not be entitled to present an insolvency petition unless the act of insolvency had occurred within three months before the presentation of the petition. The emphasis is on the date of the presentation of the petition, and there could be no doubt that this period prescribed by the statute cannot be extended by the intervention of the vacation. Agreeing with Ismail, J., I dismiss this petition. There will be no order as to costs.