

(1940) 03 MAD CK 0008
In the Madras High Court

Seth Balakisonlal Jankiprasad

APPELLANT

Vs

The Debt Conciliation Board and Others

RESPONDENT

Date of Decision : 27-03-1940

Acts Referred:

Madras Debt Conciliation Act, 1936 — Section 14(1)

Citation : (1940) 52 LW 434 : (1940) 2 MLJ 463

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The second respondent in these proceedings applied to the Debt Conciliation Board of Kovvur for the

settlement of his debts under the provisions of the Madras Debt Conciliation Act, 1936. His application disclosed fourteen creditors of whom the

present petitioner is one. According to the petition of the second respondent the total amount owing by him was Rs. 1,51,000 and of this Rs.

1,25,000 was owing to the petitioner. The amount due to the petitioner was payable under a mortgage decree dated 16th November, 1937,

passed by the Court of the Subordinate Judge of Ellore. The petitioner obtained an order for sale of the mortgaged property on the 14th April,

1939 and the sale was fixed for the 17th July, 1939. A fortnight before the date fixed for the sale the second respondent made his application to

the Debt Conciliation Board. Notice of the application was served upon all the creditors, who appeared before the Board on the 1.1th August,

1939.

2. The petitioner and another creditor, the Standard Bank of India, took a preliminary objection. They said that in as much as they represented

more than fifty per cent, of the debts owing by the second respondent and they objected there could be no settlement of his debts under the Act

and therefore the petition should be dismissed in limine. The Board overruled the preliminary objection and decided to proceed with the hearing of

the second respondent's application. The reason given for this decision was that it was nowhere stated in the Act that if fifty per cent, of the

creditors did not agree the application should be rejected. Here the Board erred because Section 17 expressly provides that if no amicable

settlement is arrived at under Sub-section (1) of Section 14 within twelve months from the date of the application u/s 4, the Board shall dismiss the

application. The petitioner asks the Court to quash the order of the 11th August, 1939, on the ground that it has passed it without, jurisdiction. It is

not suggested that the Board has in any way acted mala fide and it cannot be said that the Board had no jurisdiction to pass the order objected to.

All that the Board decided was that the application of the second respondent should be heard. We have been informed by the learned Counsel

appearing for some of the other creditors that the amount claimed by the petitioner is disputed. By virtue of the proviso to Section 12(2) the fact

that the Subordinate Court has passed a decree for a sum of Rs. 1,22,000 cannot be disputed, but the Court has been given to understand that

there is some question as to whether the decree-holder has not received payment in part of the decretal amount. In these circumstances the

petitioner is clearly not entitled to an order quashing the Board's order of the 11th August, 1939. At the same time we would point out that it is the

duty of the Board to dispose of the application with reasonable promptitude, and if it becomes apparent that the petitioner, and other creditors

who support him represent more than fifty per cent, of the debts and that there is no hope of an amicable settlement, it will be the duty of the Board

to dismiss the application. The petitioner has got an order for sale of the mortgaged properties and that order should not be stayed a moment

longer than is necessary.

3. The application, will be dismissed but there will be no order as to costs.