
(1966) 07 MAD CK 0020
In the Madras High Court

Seth Gokaldas Lalchand by Agent Ramchand S. Pahlajani and
Another

APPELLANT

Vs

V.S. Krishnamurti

RESPONDENT

Date of Decision : 11-07-1966

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 6(g), 9(g)

Citation : (1967) ILR (Mad) 358 : (1966) 79 LW 504 : (1966) 2 MLJ 381

Hon'ble Judges : K.S. Ramamurti, J

Bench : Division Bench

Judgement

K.S. Ramamurti, J.—This petition has been filed by the petitioning creditors to adjudge the debtor, V.S. Krishnamurthi, an insolvent on the ground that he had committed an act of insolvency within the meaning of Section 9(g) of the Presidency Towns Insolvency Act, and in support of their case the petitioning creditors relied upon the oral evidence of P.W.1, the Multhani broker who arranged for the loans, as well as the letter Exhibit P-2 passed by the debtor to P.W.1.

2. Mr. Jagannatha Rao, learned Counsel for the debtor raised two points : (i) that the letter Exhibit P-2 does not amount to giving notice by the debtor of his intention to suspend payment of his debts within the meaning of Section 9(g); (ii) and that, in any event, any such intention as revealed or disclosed in Exhibit P-2 is not suspension of payment of the entirety of the debts, i.e., debts due to all the creditors in a collective body, but only the debts to the tune of Rs. 85,000 referred to in Exhibit P-2 due by the debtor to the Multhani bankers for whom P.W. 1 acted. as broker. When P.W. 1 was examined with reference to the circumstances under which the debtor gave this letter, he stated that notice of suspension of payment was only with reference to the Multhani bankers from whom he (P.W. 1) had arranged for loans to the debtor and that it did not relate to all the debts of the debtor. P.W.1 also admitted that the reference to " the calling of the meeting of the creditors " as also the " request for getting some

time from the creditors ", was only to the Muthani bankers to whom a sum of Rs. 85,000 was due. I put several questions to P.W.1 and it is clear from his answers that at the interview which took place between him and the debtor both of them were concerned only with the debts due to the Multhani bankers a particular section of the creditors of the debtor and that the interview had nothing to do with the entire body of creditors of the debtor. The position, therefore, is that, even assuming that Exhibit P-2 is construed as amounting to a notice of suspension of payment within the meaning of Section 9(g) it is not an intimation of suspension of payment of all the debts of the debtor, but only some of his debts.

3. My attention was drawn to a Bench decision of the Calcutta High Court in *Indo Burmah Trader's Bank, Ltd. Vs. Barada Charan Dhar, on Death, Sm. Sita Sati Dhar and Others*, (a case arising under the analogous provision under the Provincial Insolvency Act-Section 6(g)) in which it was held that to bring the case within Clause (g) of Section 6, the notice of suspension must be for the whole of the indebtedness and that it must amount to an expression of a general intention to stop payment to every creditor. In that case the notice was given to two creditors, and the Bench took the view that in the absence of proof that there were no other creditors, it could not be held that the expression of intention was to suspend payment to every creditor.

4. I may also refer to the statement of law in *Mulla's Law of Insolvency*, Second Edition, page 132, where the learned author states the law in these terms;

A notice of suspension of payment of debts may be oral or in writing, but must be a notice deliberately given and must amount to an intimation to the creditors that the debtor intends to suspend payment of his debts due to all his creditors, but mere intimation of inability to pay his debts does not ordinarily amount to such notice, though taken with other circumstances it may so amount. The notice must be such that the creditors may be led naturally to infer that the debtor intends to suspend payment of his debts.

5. Reference may also be made to a Bench decision of the Lahore High Court in *Harkishan Lal v. Peoples Bank of Northem India* ILR Lah. 117 where Jai Lal, J. delivering the judgment of the Bench after reviewing the entire case-law summarised the position in the above terms. It is significant to note that of the words " to suspend the payment of his debts due to all his creditors ", the word all has been italicised in the said decision.

6. I may also refer to the Bench decision of the Patna High Court in *Lakhi Prasad Singhanian and Another Vs. Ugrah Misra and Others*, where the Bench has laid down the principles for deteimining whether the debtor's statement satisfies that requirement of law. One of the conditions pointed out by the Bench is that the intimation of suspension of a payment should not only be in relation to a particular creditor, but it should be in respect of debts due to all the creditors collectively.

7. This was followed in the later Bench decision of the same Court in Hardayan Dass Vs. Jagarnath, in which the evidence was that the debtor's statement of suspension of payment was in relation to some particular creditors, and it was held that was insufficient in law and that the suspension of payment must be with regard to all the creditors as one body.

8. I am satisfied that having regard to the scheme of the Insolvency Act, the suspension of payment must be the suspension of payment of the debts due to all the creditors. It may be that the notice of such suspension may be either to all the creditors or to a body of creditors. But what is most important is that notice of suspension of payment should be suspension of payment of debts due to all the creditors. This aspect of the matter is also emphasised in the leading decision of the House of Lords in Clough v. Samuel L.R. (1905) A.C. 442. Vide the following observations of Lord Robertson at page 448:

A man faced by a balance-sheet which means certain and speedy ruin may try to arrange with his more pressing creditors, or he may put off the evil day and stagger on, leaving the stoppage of his-career to be brought about by the action of others. Either of those courses is different from suspending payment of his debts.

9. I may also refer to the evidence of P.W.1, that apart from the Multhani creditors for whom he acted as broker, he did not know the other creditors of the debtor. I have no doubt whatsoever in my mind that when the debtor passed the letter Exhibit P-2, he wanted to gain some time from the Multhani Bankers (a section of his creditors) and he never had in his mind the general body of his creditors, as a collective unit.

10. For all these reasons, I hold that his letter Exhibit P-2 does not amount to an act of bankruptcy within the meaning of Section 9(g) of the Act. The petition is, therefore, dismissed.

11. The Official Assignee who has been appointed Interim Receiver, shall be discharged forthwith. The debtor shall take possession of the properties in the custody of the Official Assignee and also the key on payment of the expenses which the Official Assignee has incurred in keeping watch over the properties.

12. No costs.