
(1930) 03 MAD CK 0037
In the Madras High Court

S.P.K.M. Muruga Konar and Co.

APPELLANT

Vs

Official Receiver and Others

RESPONDENT

Date of Decision : 18-03-1930

Acts Referred:

Citation : AIR 1930 Mad 782 : 126 Ind. Cas. 483

Hon'ble Judges : Ramesam, J

Bench : Single Bench

Judgement

Ramesam, J.—The facts of this revision petition are as follows: Two persons (father and son) applied to the District Court of Ramnad to be adjudicated insolvents. The petition was presented on 15th June 1927. It was transferred to the Sub-Court of Ramnad on 17th June, 1927. It was posted for enquiry on 8th October, 1927. On that (day objections seem to have been taken by some creditors that that Court had no jurisdiction. Then the Court passed the following order:

It is said to-day that this Court has no jurisdiction. Petitioners to answer by 27th January 1927.

2. On the latter date the petitioners' Vakil accepted the contention that that Court had no jurisdiction and requested the Court to return the petition for presentation to the proper Court. The Court accordingly passed an order returning the petition. The petition was immediately presented on the same day to the District Court of Madura. The original petition contained allegations that the petitioners lived at Palayampatti within the jurisdiction of the Ramnad District Court. It must be taken that when objection was taken to the jurisdiction of the Court this fact was denied, It must also be taken that when the petitioners accepted the contention and took back the petition they conceded that they were not living at Palayampatti on the date of the petition. Accordingly they corrected the petition making an allegation that they were then residing in Madura town within the jurisdiction of that Court. This means that the petitioners did not care to take upon themselves the burden of proving that they lived at Palayampatti on

15th June, 1927, when the petitions was first presented to the Ramnad Court. In the Sub-Court of Madura, the Official Receiver made an application questioning the genuineness of a mortgage-bond executed on 12th October, 1925, in favour of the respondents therein and inviting a decision on that matter. If the date of presentation to the Madura Court is taken as the date of presentation of the insolvency petition then the date of mortgage is more than two years before the date of filing the petition. On this ground both the lower Courts held that this is not a matter which could be considered u/s 53, Provincial Insolvency Act. The petitioner also wanted the matter to be gone into u/s 4, Provincial Insolvency Act, if not u/s 53. The Subordinate Judge refused to do so en grounds which are not very clear. On appeal the District Judge, while conceding that the matter may be enquired into u/s 4, Provincial Insolvency Act, observed that the power was discretionary and he was of opinion that the Subordinate Judge was right in referring the petitioner to a regular suit. This revision petition is filed against the order of the District Judge.

3. The first point argued by the learned Advocate for the petitioner is that the date of presentation of the petition in the Ramnad Court must be considered to be the date of the petition. It has been held in *Muhammad Maraikkar v. The Official Receiver Tinnevely* 36 I.C. 828 : (1917) M.W.N. 103 : 5 L.W. 123, that the date of presentation for our present purposes must be the date of presentation in the proper Court and not in the wrong Court. The adjudication dates back to the date of presentation which means the date of presentation to the proper Court, Mr. Rajah Ayyar addressed tome lengthy arguments against this view. His arguments are practically to the effect that the decision must be considered erroneous. He referred to a number of English decisions showing in some cases that adjudication may be made by a Court which may turn out to be not a proper Court. The first is *Revell v. Blake* (1874) 8 C.P. 533 : 42 L.J.C.P. 165 : 22 W.R. 86 : 29 L.T. 67. That was a decision under the Bankruptcy Act, 1769. The provisions of that Act as to jurisdiction are somewhat peculiar. u/s 59 of that Act if a person either resides or carries on business within the London Bankruptcy District "the Court" shall mean for the purpose of the Act the Court of Bankruptcy in London; but if he does not either reside or carry on business within the London Bankruptcy District, "the Court" shall mean the county Court of the District within which he resides or carries on business. The effect of this provision is that if a person resides in a county but carries on business in London then the London Bankruptcy Court is the proper Court and not the county Court though he resides there. Similarly if a person resides in London, but carries on business in the county, then also the London Court is the proper Court. The jurisdiction of the London Court is executed only when a person does not either reside in London or carry on business. The scheme of this Act is different from the scheme of our Act. In that case there was a petition stating that the debtor did not reside or carry on business within the London Bankruptcy District and it was presented in the county Court of the District in which the debtor resided. The debtor did not appear to oppose the petition with the result that the county

Court made the adjudication. Later on, before the Court of Common Pleas, there was a question between the trustee in bankruptcy and a person who had taken out execution through the Sheriff by a writ of fi fa. It was then contended that the order of adjudication by the county Court was not proper as it appeared that the bankrupt was carrying on business in London. It was held that the adjudication was right. In this case on the facts of the petition the adjudication was perfectly proper. If, as a matter of fact, the facts on which it has based were incorrect any person interested might have taken an appeal. Nobody did so. The proceedings before the county Court were collateral proceedings. I do not see how this case helps the petitioner. In the same volume there is another case at page 672 Page of 8 C.P.--[Ed.] Ransford v. Maule (1874) 8 C.P. 672 : 42 L.J.P.C. 231 : 21 W.R. 740. Here a petition was filed before the county Court of Peterborough. On account of some misrepresentation by the Registrar the petition was taken and filed on a later date, namely, the 11th October, the original date being the 12th. Meanwhile the Sheriff took out a writ of fi fa. It was held that the first date was the correct date and that the petition was taken back only by the Registrar's mistake and that the petitioner never abandoned the idea of filing it in the original Court.

4. In the case before me, the facts are different. The petitioners practically admitted that they could not proceed in the Ramnad Court and presented it in the Madura Court. Then two other cases *Ex parte May*; *In re Brightmore* (1885) 14 Q.B.D. 37 : 1 Morrell 253 : 33 W.R. 598 : 51 L.T. 710 and *In re French*; *Ex parte French* (1890) 24 Q.B.D. 63 : 38 W.R. 52 : 62 L.T. 93 are cited. Both these cases turned upon the construction of Sections 95 and 97, Bankruptcy Act, 1883. Here again I observed that the scheme of the Act was different from our Act. It is unnecessary to state the elaborate provision 3 of Section 95(1) and (2), but Section 97(1) provides that "subject to the provisions of this Act every Court having original jurisdiction in bankruptcy shall have jurisdiction throughout England."

5. The scheme of the Act is that the Courts in England have concurrent jurisdiction. We have nothing of the sort here. Then another group of cases were cited. Those are *Ex Parte Villars*; *In re, Rogers* (1822) 9 Ch. 432 : 43 L.J.B.K. 76 : 22 W.R. 603 : 38 L.T. 348, a decision on the Act of 1869; *Fawcett v. Fearne* (1844) 6 Q.B. 20 : 13 L.J.Q.B. 300 : 8 Jur. 645 : 66 R.R. 258, which was a decision on "A and 3 Vic. Oh. 29: *In re, Reis*; *Ex parte, Clough* (1904) 1 K.B. 451 : On Appeal (1904) 2 K.B. 769 : 73 L.J.K.B. 929 : 91 L.T. 592 : 53 W.R. 122 : 11 Manson 229 : 20 T. L. R. 547, a decision on the Act of 1883, *Edwards v. Gabriel* (1862) 31 L.J. Ex. 113 : 7 H. & N. 520 : 3 Jur. (N.S.) 592 : 10 W.R. 95 : 126 R.R. 554, a decision of the Act of 1849. All these cases are reviewed in *Williams on Insolvency*, at page 211. According to these decisions the adjudication dates back not to the filing of the petition but to the commencement of the Act of Bankruptcy and the question arises, what is meant by the commencement of the Act of Bankruptcy. The scheme of our Act is different. I do not see how these cases can help the petitioner. It is said the jurisdiction does

not depend on the will of the petitioner; for instance he cannot withdraw the petition without leave of Court, vide B. 14. It may be that a petition presented properly cannot be withdrawn and the petitioner has no further control over it. But when the opposite party objects that it is filed in a wrong Court the opposite party plays into the petitioner's hands and they make it possible for the petitioner to say that he will take it back and file it in the proper Court. I do not see how anybody can question this. In the present case it is not suggested that while some creditors objected to the petition being presented to the Ramnad Court on the ground of want of jurisdiction other creditors insisted on its going on in the Ramnad Court. If they had done so the Court would have gone into the matter. But on the events that happened everybody allowed the petitioner to take back his petition. The learned Advocate for the petitioner has argued that just as it is impossible for parties to confer jurisdiction upon a Court by consent when there is no jurisdiction, similarly the parties cannot by consent take away from it the jurisdiction of a Court where it exists. I think that the proposition is too broadly stated. If one party objects to the jurisdiction and another party agrees to the objection practically it is in the power of the parties to get away from its jurisdiction. The case in *Kidri Prasad v. K.R. Khosla* 75 I.C. 590 : 5 L.L.J. 300 : AIR 1923 Lah. 425, where it was held that agreements that disputes should be settled in particular Courts and not in other Courts are unenforceable, does not help the petitioner.

6. I am of opinion that the lower Courts are right in holding that the date of petition means the date of presentation of petition in the proper Court. In this case on the events that happened and the objection of some creditors and the concession of the petitioners debtors we must take it that the proper Court was the Madura Court and not the Ramnad Court.

7. The next point argued by the learned Advocate is that even if Section 53, Provincial Insolvency Act, does not apply, an enquiry can be made under s. 4 of the Act, and that the lower Court is wrong in refusing the enquiry. The decision in *Haji Anwar Khan Vs. Mohammad Khan and Others* is relied on in support of this position. While saying nothing about this Full Bench judgment which is a judgment of a majority of two Judges against one dissenting Judge assuming that the Courts have jurisdiction to make an enquiry u/s 4 of the Act, it seems to me that the District Judge was right in saying that the powers given u/s 4 are discretionary. It is a very wide section, and, unless the Courts feel compelled by the facts of the case to embark upon such enquiry. I do not see why they are bound to do so. Whatever the Subordinate Judge might have done in this case the District Judge has exercised his discretion in thinking that this case should be referred to a regular suit. On these grounds, I think that the District Judge's order is right and the petition is dismissed with costs.