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**(1941) 04 MAD CK 0012**  
**In the Madras High Court**

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|-----------------------------------------|------------|
| The General Agencies and Trades Ltd.    | APPELLANT  |
| Vs                                      |            |
| K.N. Viswanathan as Official Liquidator | RESPONDENT |

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**Date of Decision :** 21-04-1941

**Acts Referred:**

**Citation :** AIR 1941 Mad 855 : (1941) 54 LW 275 : (1941) 2 MLJ 417

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

**Bench :** Division Bench

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### **Judgement**

Alfred Henry Lionel Leach, C.J.—The appellant was the managing agent of the Garland Petroleum Company (Madras) Limited which is

being wound up by this Court under a compulsory winding up order passed on the 2nd April, 1938. The Court directed that all claims against the

company should be presented by the 15th July, 1938. The appellant presented a claim for Rs. 25, 313-8-2, which was said to be due by way of

commission and advances made to the company. The appellant's claim together with others were mentioned to the Court (Gentle, J.) on the 16th

September, 1938. The Official Liquidator then informed the Court that he required the appellant to prove the claim in detail. The learned Judge

decided that he would not enter upon an adjudication of the matter at that stage, and adjourned the matter for one month in order to allow the

appellant to take such steps as he might deem necessary to enforce the claim. Apparently nothing was done, and when the matter came before

Mockett, J., on the 14th March, 1940, he gave the appellant two weeks in which to prove his claim. The learned Judge directed that if no action

was taken within the period the appellant would be excluded from the benefit of any distribution which might be made. On the 11th April, 1940,

the appellant asked that the Judge's summons which he had taken out should be treated as an application for leave to file a suit against the Official

Liquidator u/s 171 of the Indian Companies Act in order to prove his claim. The learned Judge pointed out that the appellant had been very slow in

prosecuting his claim, which was in amount equal to almost the entire assets of the company. The learned Judge, however, decided to grant on

terms the application for leave to file a suit. He directed that the suit should be filed before the 24th April, 1940, and that the appellant should give

security for costs to the satisfaction of the Registrar in the sum of Rs. 1,500. The learned Judge also ordered that if the suit was not filed within the

period allowed the application should be reposted for orders on the 25th of that month.

2. The suit had not been filed by the 25th April, but on that date the appellant asked that further time be allowed to him in which to file the suit. This

application was dealt with by Gentle, J., who granted further time until noon on the 1st May, 1940. The learned Judge stated that his order was to

be regarded as being "final and peremptory". The appellant presented his plaint on the 1st May, 1940, but did not tender the security until three-

quarters of an hour after the time allowed, and Gentle, J., refused to grant a further extension. The consequence was that that the appellant had

failed to prove his claim within the time granted by the Court. He had undoubtedly been guilty of great procrastination, and in the circumstances it is

perhaps not surprising that no appeal was filed against the order of Gentle, J., of the 1st May, 1940, refusing to condone the delay of three-

quarters of an hour. The result was that the order of Gentle, J., became final.

3. On the 19th October, 1940, the judgment of this Court, R.C. Bhide Vs. The Travancore National and Quilon Bank Ltd., , was published in the

Law Weekly." It was there held that the general law of insolvency applies to the winding up of an insolvent company and that when an application

is made u/s 230-A (5) of the Indian Companies Act for an order rescinding a contract with the company and for an award of damages to the

applicant, the applicant is entitled to have his application heard without being relegated to a regular suit. On the 5th November, 1940, obviously as

the result of the publication of this judgment, the appellant took out a Judge's summons calling upon the Official Liquidator to show cause why the

claim should not be inquired into and adjudicated on in the liquidation proceedings. This summons came before Gentle, J., on the 28th November, 1940, and the learned Judge dismissed it on the ground that it did not lie, because the appellant had failed to prove the claim within the time allowed.

4. We consider that the decision of the learned Judge must be confirmed. The appellant was required to prove his claim by the 15th July, 1938, and this he failed to do. He was allowed further time and he eventually asked to be allowed to prove his claim in a suit. This application was granted on terms which were not fulfilled. The suit not having been filed within the time allowed by the Court and the Court having refused to grant a further extension, the order amounted to a dismissal of the appellant's claim. The appellant accepted the justice of this order until the idea was conceived of taking advantage of the judgment in R.C. Bhide Vs. The Travancore National and Quilon Bank Ltd., . If the appellant had at the beginning insisted on the Court adjudicating on his claim without recourse to a suit the case might have fallen within that judgment, but he preferred to have his claim decided in a suit and it is far too late in the day to allow him to turn round and ask the Court to change the procedure which he himself had considered to be proper. Ample time was given to him to prove his claim and he failed to take advantage of it. The present application is merely an after-thought.

5. For these reasons the appeal fails and will be dismissed with costs.