

(1934) 08 MAD CK 0011
In the Madras High Court

The Official Assignee of Madras

APPELLANT

Vs

Khambampati Pedda Subba Rao

RESPONDENT

Date of Decision : 08-08-1934

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 13(8)

Citation : 153 Ind. Cas. 541

Hon'ble Judges : Beasley, C.J;King, J

Bench : Division Bench

Judgement

King, J.—This appeal is concerned with the insolvency of the three partners of Mahomed Khaja Sahib & Co., and the simple point at issue

is whether a certain agreement to which these partners were parties, which is unregistered, is or is not exempt from registration. The learned trial

Judge has held that it is not exempt, and, therefore, is not admissible in evidence and the Official Assignee who seeks to rely upon it has appealed.

2. The circumstances in which the document came to be executed were these. In 1928 two Insolvency Petitions, Insolvency Petition No. 483 and

Insolvency Petition No. 527 were filed in the High Court against the firm in question--each by two of its creditors. These petitioning creditors

applied u/s 13(8) of the Presidency Towns Insolvency Act for leave to withdraw their petitions. Their applications were posted to December 11,

1928, and on that day they produced in support of them the agreement now in dispute which was undated but signed by the three partners and by

nineteen of their creditors. As the Official Assignee did not object to the applications, and no doubt, in view of the arrangements evidenced by the

agreement the Court granted leave to withdraw. The agreement begins by setting out the indebtedness of the firm as Rs. 99,500 and its potential

assets, i.e. outstandings due but not yet realised as Rs. 1,95,850. It then goes on to provide that the partners shall pay immediately a sum of Rs.

22,300, which is to be lent to them by a relation. They are then to have a period of one year in which to collect their outstandings and pay off the

balance of their debts in full. If they fail to do this, they are to sell certain immovable property and from the sale proceeds pay off the balance and

also finally, the debt owing to their relation. In the meantime a charge is created in favour of the creditors over the immovable property already

referred to. Finally (para. 8) if both the outstandings and the sale-proceeds are insufficient to pay the creditors in full, the creditors are to be at

liberty to recover the balance by proceeding against the partners personally or against any other property which they may possess.

3. It is not seriously denied that prima facie such a document as this requires registration. It falls clearly within Section 17(1)(b) of the Registration

Act as creating an interest in immovable property. It is for the appellant, therefore, to show, if he can, under what provision or provisions of the

Registration Act the document can be exempted. He has referred us to two provisions. The first is Section 17(2)(i) which exempts:

Any composition deed

and the second is Section 17(2)(vi) which exempts:

Any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than

that which is the subject-matter of the suit or proceeding.

4. On the first of these contentions the learned trial Judge has held that this document cannot be a composition deed as it is not, technically

speaking, a deed and does not record any composition. He has also refused to have recourse, in determining this matter, to the definition of

"composition deed" to be found in Schedule I, of the Indian Stamp Act. In appeal we have been referred to a ruling of a Bench of the Bombay

High Court, *Chandrashankar Pranshanker v. Bai Mogan* 24 Ind. Cas. 730 : 38 B. 576 : 16 Bom. L.R. 236, in which the definition given in the

Stamp Act was applied to the expression "'composition deed'" as found in the Registration Act, and without feeling bound, for the determination of

this appeal, to express any opinion on the point whether this ruling should or should not be followed in this respect, we have proceeded to hear the

arguments of appellant's learned Advocate based upon that definition.

5. There are three kinds of "composition deed" contemplated by the Stamp Act. Such a deed may either

(i) convey property for the benefit of a man's creditors

(ii) secure to them the payment of a composition or dividend

or (iii) provide for the continuance of a debtor's business under the supervision of inspectors.

It is not seriously argued that the agreement now in question can fall under the first or the third of these heads, but it is contended that it fulfils the

conditions of the second.

6. The only point urged in favour of this argument is that a composition or a dividend does not necessarily imply that creditors are to be paid

something less than the full measure of their debts. Support for this position is sought in Mulla's commentary on the Registration Act at p. 72. It is

clear that the learned commentator's note is based upon the Bombay case to which we have already referred, *Chandrashankar Pranshankar v. Bai*

Mogan 24 Ind. Cas. 730 : 38 B. 576 : 16 Bom. L.R. 236. Now all that was decided in that case was this

(i) that the definition of "composition deed" found in the Stamp Act can be applied in interpreting the same expression in the Registration Act;

(ii) a conveyance of property for the benefit of creditors can therefore be a composition deed;

(iii) by such a conveyance the creditors might in fact be enabled to receive full payment of their debts.

7. But this is very far from being any authority for the position that where in the body of the definition in the Stamp Act the word "composition" and

not, be it, noted, "composition deed" is used, that single "word can be interpreted in any other than its ordinary meaning, which is, to quote

Halsbury, Vol. II, Section 581, "an agreement between the compounding debtor and all or some of his creditors by which the compounding

creditors agree with the debtor and with each other to accept from the debtor payment of less than the amounts due to them in full satisfaction of

the whole of their claims. The present agreement in which every possible kind of arrangement is made, including a final residuary right of suit, to

ensure that the creditors shall be paid in full cannot therefore, in our opinion, be

held to be an instrument to secure the payment of a composition.

8. We proceed to consider the second point "Is this agreement a decree or order of" any Court?" Quite obviously on the face of it, it is not. The

only application made, to the Court was one for leave to withdraw the insolvency petitions. The only order of the Court "was Official Assignee

does not object. Leave granted. Order as prayed." It is, however, argued that the agreement must have been shown to and considered by the

Court which was bound to satisfy itself that good reasons existed before granting the leave, and that it is not necessary that every word of it should

be incorporated in the Court's order. We have been referred to a passage in the judgment of the Privy Council in *Pranal Anni v. Lakshmi Anni* 22

M. 508 : 26 I.A. 101 : 4 Bom. L.R. 394 : 3 C.W.N. 485 : 9 M.L.J. 147 : 7 Sar. 516 (P.C.) in support of the argument that the mere reference to

the terms of an agreement in an order would make those terms admissible in evidence but that rulings deal with quite different facts; nor can we

see that the mere inclusion of this agreement among the list of documents which the Judge is said to have read before passing his brief order of

December 11, is equivalent to a "reference" to it by the Judge himself such as is meant by their Lordships of the Privy Council in *Pranal Anni v.*

Lakshmi Anni 22 M. 508 : 26 I.A. 101 : 4 Bom. L.R. 394 : 3 C.W.N. 485 : 9 M.L.J. 147 : 7 Sar. 516 where the full expression used is "if the

order of the learned Judge had referred to or narrated these terms of compromise."

9. On behalf of the respondent our attention was drawn to a ruling reported in *Muthayya v. Venkalaratnam* 25 M. 553 which while not entirely on

all fours with the present case, since it deals with the withdrawal of a suit and not the withdrawal of an insolvency petition, yet affords a very close

parallel, and we think there is no good reason why we should not apply its principles to the present case. As has been indicated the only matter

upon which the Court in this case was asked to decide was whether leave to withdraw should or should not be granted. No doubt the Court

considered the agreement now in question when examining the reasons why the leave to withdraw was asked for but the parties did not apply to

the Court to record the terms of their agreement and it is impossible in our opinion to hold that that agreement in any sense formed part of the

Court's order. The second ground for exemption thus equally fails and this appeal must be dismissed with costs.

Beasley, C.J.

10. I agree.