

(1924) 11 MAD CK 0041
In the Madras High Court

V.A.V.S. Firm

APPELLANT

Vs

P.S.N. Muruganathan Chetti

RESPONDENT

Date of Decision : 07-11-1924

Acts Referred:

Citation : AIR 1925 Mad 569 : (1925) ILR (Mad) 514 : (1925) 21 LW 394 :
(1925) 48 MLJ 228

Judgement

1. This is an appeal against an order of Waller, J., sitting in the Insolvency Court in which he refused to transfer an insolvency petition presented to

the District Judge of Coimbatore to the file of his Court.

2. There is a preliminary objection that no appeal lies on the ground that the Judge's order is not a judgment. But this can easily be disposed of by

reference to Section 8, Clause 2 (b) of the Presidency Towns Insolvency Act, which provides for an appeal lying to this Court against any order

made by a Judge in the exercise of jurisdiction conferred on him by this Act.

3. The question we have to decide turns upon the interpretation of Section 97 of the Presidency Towns Insolvency Act. This section runs thus:

Where an order of adjudication has been made on an insolvency petition against or by one partner in a firm, any other insolvency petition against or

by a partner in the same firm shall be presented in or transferred to the Court in which the first-mentioned petition is in course of prosecution; and

such Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

4. Waller, J. declined to pass any orders on the application for transfer on the ground that it was ambiguous whether the Court to which the

insolvency petition was presented or the Court in which the earlier proceedings

against a partner in the same firm was pending should take action.

In the firm to which the respondent belongs there are three partners and insolvency proceedings are still pending before the Official Assignee

against Ambalavana Chetti and Narayana-swami Aiyar who are the other two partners of the firm. Waller, J. was impressed by the decision of

Justice Cave in *In re, Nicholson* 3 Morrel 46. That learned Judge refused to make an order for transfer of bankruptcy proceedings pending before

a County Court Judge on the ground that he thought that the application should be made to the County Court Judge. At the date when that case

was decided the Bankruptcy Act of 1883 was the Act in force in England and was equally applicable to bankrupts in the County Court and in the

High Court, and no rules had been framed providing for making transfers u/s 112 which corresponds to Section 97 of our Presidency Towns

Insolvency Act. After rules had been framed no difficulty was found in another case *In re, Williams* 5 Morrel 103 in making an order under this

section.

5. Section 97 of the Presidency Towns Insolvency Act is plain in its terms and imperative. It provides that where insolvency proceedings are

pending against one partner in a firm any other insolvency petition shall be presented in or transferred to the Court in which the first-mentioned

petition is in course of prosecution. There is no limitation of the words "any other insolvency petition" to insolvency petitions presented under the

Presidency Towns Insolvency Act. It would therefore appear to be sufficiently wide to cover insolvency petitions presented under the Provincial

Insolvency Act to a Court which is subject to the superintendence of this Court. There is no reason why the legislature should have made a

provision of this kind in order to provide for transfers of insolvency proceedings only from one High Court to another, if the policy underlying the

section is of general application. The section does not declare by whom the order of transfer should be made, but there can be no ambiguity in

India because the only Court exercising jurisdiction in insolvency under the Presidency Towns Insolvency Act for the Presidency of Madras is the

High Court of Madras. This is declared by Section 3 of the Act, and u/s 6, the Judge who is deputed to sit in the Court of Insolvency exercises all

the powers conferred on the High Court under the section. Our attention has

been called to the decision in W.A. Srinivasa Aiyangar Vs. The Official Assignee of Madras and Another, in which it was held by a Bench of this Court that the Judge exercising insolvency jurisdiction in the High Court had no power to transfer a case pending before him under the Presidency Towns Insolvency Act to the District Court of Tanjore. The ratio decidendi of that case appears to be that the Court to which the insolvency petition was transferred was not competent to hear and dispose of the same, because the jurisdictions under the Presidency Towns Insolvency Act and the Provincial Insolvency Act were distinct, and therefore the District Judge of Tanjore would have no jurisdiction to proceed under the Presidency Towns insolvency Act in the insolvency of a debtor who had presented a petition before the High Court of Madras. The decision was one given with special reference to Section 24 of the CPC which is made applicable by Section 90, Clause 1 of Act III of 1909 to insolvency proceedings. No such difficulties confront us in the present case because the words of Section 97 confer power on the Court to which the case is to be transferred to deal with the insolvency petition made against or by the same partner in the same firm and permit the Court to consolidate the proceedings. We have also been referred to a decision of Marten, J. in *In re, Maneckchand* ILR (1922) B 275 in which he held that the Commissioner in Insolvency had no power to stay insolvency proceedings in a District Court u/s 18 of this Act, the grounds of his decision being that the District Court in its insolvency jurisdiction was subject to the superintendence of the High Court on its Appellate Side and not to the Commissioner in Insolvency, by which term he designated the Judge sitting in the Insolvency Court. It is unnecessary to canvass the correctness of that decision, as the terms of Section 97 of the Act are quite independent of the provisions of Section 18 and do not contain any reference to the powers of the High Court of superintendence over other Courts subject to its Appellate Jurisdiction, which it has u/s 107 of the Government of India Act. For the purposes of the present case it is unnecessary to invoke the powers conferred on Courts of Insolvency in the Presidency Town and outside. Section 126 of the Presidency Towns Insolvency Act and Section 77 of the Provincial Insolvency Act (V of 1920) aid each other. As the terms of Section 97 make it obligatory on the Court exercising insolvency powers

to transfer any insolvency petition in circumstances existing in this case, we are of opinion that Waller, J. had no discretion to refuse to transfer the petition presented to the District Court of Coimbatore, and that as he declined to make that order, we must allow the appeal and make the order ourselves, giving the appellant costs of this appeal payable out of the estate of the insolvent by the Official Assignee. The Court which deals with the petition may give such directions for consolidating the proceedings with the other pending insolvency proceedings as it thinks fit. Taxed costs on the Original Side scale here and before Waller, J. to be paid out of the insolvent's estate. The memorandum of cross-objections is dismissed.