

(1924) 03 MAD CK 0033
In the Madras High Court

Venkatanarayana Chetty and Another	APPELLANT
Vs	
Sevugan Chetty and Others	RESPONDENT

Date of Decision : 25-03-1924

Acts Referred:

Provincial Insolvency Act, 1907 — Section 39(4)

Citation : (1924) 47 MLJ 240

Hon'ble Judges : Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—This is an appeal in an insolvency proceedings which began in 1912. The appeal is by one of the creditors. He claimed to be

entitled to a dividend from the assets realised from the insolvent's estate. His application was dismissed by the learned District Judge on the ground

that the final dividend had been declared before his application was filed and that the distribution of the dividends so ordered could not be revised

so as to include his share, as he knew that such dividend was going to be declared and took no steps in time. The learned Judge points out that he

appeared in Court in person when it was claimed by the Official Receiver that a property transferred to him by the insolvent was not validly

transferred; it was a case of a fraudulent preference and the Receiver applied to have the alienation set aside and it was set aside. The learned

Judge holds that he should have kept in touch with the proceedings in Court; and as he had tendered no proof of his claim in time he was rightly

refused his share in the dividend. Now the difficulty in adopting this view is that u/s 39, Clause 4 of the Provincial Insolvency Act of 1907, a

particular form of notice to creditors whose claims have been notified but not proved is prescribed whenever a final dividend is to be declared. It

appears that in this case such a notice had not been given to the creditor. Under Rule 21(b) of the Rules framed by this Court under the Insolvency

Act, it is prescribed that the notice u/s 39(4) should be in the form of a separate registered letter addressed to each creditor. Section 39(4) says

also that the creditor should have express notice that the Receiver is proceeding to make a final dividend and that he would do so without regard to

the claims of the creditor if he does not take care to prove his debt in time. When a notice of that sort is prescribed by the rules made under the

Statute a strict compliance with the rule is necessary before the creditor's claim to share in the final dividend can be disallowed.

2. We have not been referred to anything to show that the appellant has proved his claim up to date or that his proof has been accepted: But as the

Court did not send the necessary notice as required by the section we think that the creditor should be allowed to re-open the matter and that he

should be given an opportunity of proving his debt within a time to be fixed by the lower Court. We are saying all this on the footing that the final

dividend has been declared in this case. The learned Judge says that there was only one dividend and that was the final dividend in the case. If,

however, the dividend that has been declared is not the final dividend in the case, of course the creditor will have to share in it for none of these

remarks made above will apply to the case. That is a matter that should be considered and decided by the lower Court; it must see whether the

dividend declared was the final dividend or whether any further assets are available for payment of another dividend. The order of the lower Court

is set aside and the case will go back to the lower Court for disposal in the light of the observations made by us. As regards the costs of this

Appeal we think we would not be justified in giving any costs to the appellants as all the delay and difficulty has arisen from the fact that he delayed

the tendering of proof of his debt. We direct each party to bear its costs in this Appeal.

3. C.M.A. No. 47 will follow C.M.A. No. 46 of 1921 and the same order will be passed in it.