
(1938) 03 MAD CK 0010
In the Madras High Court

V.M. Ahmad maraikayar

APPELLANT

Vs

V.N. Thangiah Nadar

RESPONDENT

Date of Decision : 04-03-1938

Acts Referred:

Provincial Insolvency Act, 1920 — Section 42(1)(a)

Citation : (1938) 47 LW 653 : (1938) 1 MLJ 760

Hon'ble Judges : Burn, J

Bench : Division Bench

Judgement

Burn, J.—Both the lower Courts have clearly lost sight of Section 42(1)(a) of the Provincial Insolvency Act which peremptorily requires the

Court to refuse an absolute order of discharge:

Unless the insolvent satisfies the court that the fact that the assets are not of a value equal to eight annas in the rupee has arisen from circumstances

for which he cannot justly be held responsible.

2. In this case it is admitted that the assets did not realise eight annas in the rupee. Neither the learned Subordinate Judge nor the learned District

Judge has expressed himself as satisfied in the manner required by Section 42(1)(a). On the contrary, the Official Receiver reported that there was

no evidence whether the deficiency was due to circumstances for which the debtor could not justly be held responsible. This means simply that the

debtor did not discharge the burden laid on him by Section 42(1)(a). The learned District Judge appears to have fallen into the error of supposing

that there was a burden on the creditors, or perhaps on the Official Receiver to show that the debtor could justly be held responsible for the

deficiency of assets. This is the precise opposite of the correct statement of the

law.

3. The order granting an absolute discharge is set aside and the application for discharge must be restored to file and dealt with according to law.

The appellant (Petitioner) will be entitled to his costs of this appeal out of the assets if there are any funds in the estate.