

(1945) 09 MAD CK 0024
In the Madras High Court

W.V. Arunachalam Chettiar

APPELLANT

Vs

K.G. Krishnaswami Iyer and Others

RESPONDENT

Date of Decision : 07-09-1945

Acts Referred:

Citation : AIR 1946 Mad 232 : (1946) 1 MLJ 2

Hon'ble Judges : Yahya Ali, J

Bench : Division Bench

Judgement

Yahya Ali, J.—This petition arises out of the proceedings relating to the insolvency of K.G. Krishnaswami Iyer. Two of his creditors filed I.P. No. 12 of 1941 on 25th November, 1941, to adjudge him an insolvent. Subsequently, another creditor was impleaded as a supplemental petitioner because the two creditors who had filed the petition assigned their debts to a third person who made an attempt to join the insolvency proceedings as a petitioning creditor but did not pursue that course. The supplemental petitioner died subsequently and respondents 7 to 9 are his legal representatives. One of the creditors Arunachalam Chettiar was impleaded as a respondent and both he and the insolvent opposed the application. The Subordinate Judge of Madura found that there was no act of insolvency within three months before the date of the application and consequently dismissed the same. On appeal, the District Judge held that Krishnaswami Iyer did commit an act of insolvency and reversing the order of the Subordinate Judge adjudged him insolvent and made further consequential directions. This appeal by the creditor Arunachalam Chettiar above referred to is against the order of the learned District Judge adjudging K.G. Krishnaswami Iyer an insolvent.

2. In the petition three acts of insolvency were alleged but only one of them was pressed. That consisted in an intimation which was said to have been conveyed to the petitioning creditors in September 1941, that the insolvent had made an application to the Debt Conciliation Board whereby he must be deemed to have intimated to the creditors that he was suspending payment of all his debts. The

debtor first opposed the application but subsequently filed a memorandum consenting to be adjudged an insolvent. Arunachalam Chettiar however continued to oppose the application.

3. On 21st July, 1941, Krishnaswami Iyer filed an application before the Debt Conciliation Board for the settlement of his debts. That application was filed u/s 4 of the Madras Debt Conciliation Act. As prescribed in Section 8 of the said Act, a date was fixed for the hearing of the application and notice thereof was sent both to the debtor and to the creditors. One such notice has been marked as Ex. P-5. It would appear that along with the notice a copy of the application presented before the Board was also sent. One such copy is Ex. P-4. In Ex. P-4 after setting out the debts, the debtor declared that he was unable to pay the debts stated in the petition. The application before the Debt Conciliation Board was dismissed on 17th November, 1941 and none of the advocates appearing in this case is in a position to state the reason why that application was rejected. I.P. No. 12 of 1941 itself was, as stated already, filed on 25th November, 1941, ten days after the dismissal of the debtor's application to the Debt Conciliation Board.

4. Before examining the question whether the presentation of an application to a Debt Conciliation Board u/s 4 of the Act by itself amounts to a notice given by the debtor to his creditors that he has suspended or that he is about to suspend payment of his debts within the meaning of Clause (g) of Section 6 of the Provincial Insolvency Act and the further question whether the statement made in the petition to the Board by the debtor that he was unable to pay the debts amounted to such a notice and whether the notice of that application sent by the Board to the creditors u/s 8 of the Act again amounted to such a notice, it will be convenient to deal with another small matter which has been adverted to in the judgment of the learned District Judge. The learned District Judge refers to a "despatch of notices by the debtor himself to his creditors of the presentation of such an application," meaning probably that there was besides the notice that was actually issued by the Board u/s 8, some further intimation that was given by the debtor himself to the creditors of the fact of such an application having been presented to the Board. Possibly the learned Judge had in mind paragraph 13 of the petition in I.P. No. 12 of 1941. In that paragraph it was alleged that the first petitioner's managing partner and the second petitioner's kariatthan met the debtor about two months prior to the filing of the application and that the debtor then apprised them of his inability to pay his debts and also that he had suspended payment of all his debts. If this case of a further oral intimation of the fact of such a petition having been presented to the Board was earnestly pressed, I have no doubt that the learned Subordinate Judge would have considered the same and given a finding thereon. I find no reference whatever in the judgment of the first Court to any such case of an oral intimation besides the statutory notice sent by the Board u/s 8 of the Act. I must therefore hold that the allegation contained in paragraph 13 of the petition was abandoned at the time of the hearing of the application in the first Court. The learned District Judge was referring to the despatch of notices by the debtor himself and not to any oral

intimation of any kind made at a conference between the debtor and some of the creditors. That allegation will therefore have to be ignored.

5. I have set out already the questions that fall to be considered in this matter. The proposition that the presentation simpliciter of an application for settlement of claims under the Debt Conciliation Act amounts to an intimation by the debtor that he had suspended or was about to suspend payment of all his debts seems to be wholly untenable. An application for settlement does not necessarily involve that a settlement will be arrived at under which no creditor would receive the entire debt due to him. That appears to be the assumption upon which the learned District Judge has acted but in my opinion that assumption is wholly unwarranted by the Debt Conciliation Act. There is no doubt a declaration in the petition that the debtor was unable to pay his debts. But that per se is not sufficient to amount to a notice of suspension of payment of debts. The real test in such a matter is, as rightly set out by the learned District Judge, following the decision in *Gangu Veerabrahmam Vs. Gangu Jagannadhacharyulu and Another*, what effect would the notice produce on the mind of the creditor receiving it as to the intention of a debtor with regard to his creditors? Would it convey to the creditor that the debtor was about to stop payment or had stopped payment. For that purpose it is necessary to examine the petition itself with a view to see whether a person perusing the same would reasonably form the impression that the debtor intended thereby to suspend payment of debts. I have examined the petition and I find that as a matter of fact the liabilities were shown to amount to a sum of Rs. 88, 712 while assets were represented to be worth Rs. 90,560. In these circumstances, the creditors could not possibly have thought that the debtor's financial condition was so shattered that he intended, or would be constrained, to suspend or stop payment of his debts. It may be that on account of certain difficulties or obstacles he was not in a position at the moment to meet the calls or to pay up the most pressing debts but that does not amount to a suspension of payment of debts.

6. It is next urged that u/s 25 of the Debt Conciliation Act all suits or proceedings pending before Civil Courts in respect of debts for the settlement of which application had been made could not be proceeded with until the application had been dismissed by the Board and that provision amounted to an automatic suspension of payment of debts by the debtor. I am unable to see any force in this argument. The result of the statutory provision may be for the time; being to stay certain pending suits or other proceedings but mere stay of suits and proceedings pending in Civil Courts does not prevent or preclude the creditors from otherwise collecting the debts and does not by itself amount to actual suspension of payment of debts by the debtor. What Section 6 (g) of the Provincial Insolvency Act requires is that the suspension should be the act of the debtor himself and not an incident arising from a saving clause in another statute and the notice intimating to the creditors the fact of such suspension should also be the act of the debtor himself or his agent. It cannot be and it has not been urged that the Debt Conciliation Board was the agent of the debtor. In the

present case, no such notice was issued by the debtor himself. Nor did he personally intimate to all his creditors that he had suspended or was about to suspend payment of his debts. It is significant that I.P. No. 12 of 1941 was filed after the petition before the Debt Conciliation Board had been dismissed. The learned District Judge is therefore not justified in holding that the effect that the debtor intended to produce on the mind of every creditor and the effect that was actually produced on the mind of every creditor was that the debtor was intending to suspend payment of his debts. Further, Section 8 of the Debt Conciliation Act does not contemplate the sending of a copy of the application along with the notice and it cannot be said that if the office of the Debt Conciliation Board sent a copy thereof along with the notice, that act should be attributed to the debtor.

7. Taking all these factors into consideration I am of opinion that the view taken by the learned District Judge was not supported by the respective provisions of the Madras Debt Conciliation Act and the Provincial Insolvency Act. This revision petition will therefore be allowed with costs against the contesting respondents reversing the order of the learned District Judge in C.M.A. No. 16 of 1943. In the result the order adjudging K.G. Krishnaswami Iyer an insolvent is vacated.