

Narayana Menon Vs Devasy and Another

Court: High Court Of Kerala

Date of Decision: March 24, 1964

Acts Referred: Provincial Insolvency Act, 1920 " Section 6, 9(1), 9(1)(c)

Citation: (1964) KLJ 650

Hon'ble Judges: P. Govinda Menon, J; M. Madhavan Nair, J

Bench: Division Bench

Advocate: V.R.Venkitakrishnan, K. Vijayan, in C.R.P. 700/62 and N. Sundara Iyer and P.R. Balachandran in C.R.P. 721/62, for the Appellant; T. Chandrasekhara Menon, A. Harihara Iyer, for 1st Respondent both C.P.Ps. and A.S. Krishna Iyer and A.K. Ramaseshadrinathan for 2nd Respondent both C.P.Ps, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Madhavan Nair, J

1. The only question in these revision petitions is whether in the computation of time for presentation of an insolvency petition the period when

Court remains closed is excluded. In Chenchuramana Reddi v. Anmachalam (A.I.R. 1935 Mad 857 F.B.) a Full Bench of the Madras High Court

held such period not to be excluded. A contrary view was taken by a Full Bench of the Allahabad High Court in Raja Pande Vs. Sheopujan Pande

and others and by a Full Bench of the Travancore-Cochin High Court in Gopala Pillai v. Sankara Iyer (1954 KLT 535). Section 9 (1) (c) of the

Cochin Insolvency Act, under which this case has arisen, is identical in expression with section 9 (1) (c) of the Provincial Insolvency Act 1920. In

fact the latter Act was the precedent that the Cochin Act followed closely. The section reads:

9(1). A creditor shall not be entitled to present an insolvency petition against a debtor unless-

(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

2. The wording of the section may tempt to a construction that requires the computation of time backward from the date of presentation of the

petition to the date of occurrence of the act of insolvency to see if it exceeds three months, as has been held in the Madras case cited above. But,

the General Clauses Act provides the principle of construction of statutory computation of time, and "whatever the General Clauses Act says,

whether as regards the meanings of words or as regards legal principles, has to be read into every statute to which it applies". The Chief Inspector

of Mines and Another Vs. Lala Karam Chand Thapar etc., . That principle is in Section 10 of the Act and is thus:

Where by any Act, any act or proceeding is ...allowed to be done or taken in any court...within a prescribed period, then, if the court...is closed

on...the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next

day afterwards on which the Court is open.

3. In our view, Section 9 (1) (c) of the Insolvency Act comes straightly within the plain wording of the above principle, and therefore in all cases

where the period of three months from the occurrence of an act of insolvency expires during a vacation, the presentation of an insolvency petition

on the reopening day is in time.

4. Counsel for the petitioners contended, relying on the dictum in Chenchuramana Reddi v. Arunachalam (AIR 1935 Madras 857) that an act of

insolvency ceases to be such on the expiration of three months of its occurrence. We regret our inability to accept that contention. An act of

insolvency is defined in Section 6 of the Insolvency Act. It provides that a debtor commits an act of insolvency if he does any of the eight

categories of acts specified therein. It is the nature of the act done that is to determine whether it amounts to an act of insolvency or not. If an act

was an act of insolvency at its commission, it is difficult to understand how it would become otherwise a short time afterwards. We find no

provision in the Insolvency Act which says that an act of insolvency ceases to be such on the expiry of three months, or any time after its

occurrence. It may be that after a period a creditor cannot move proceedings in insolvency grounded on that act but that need not necessarily

mean that the act has ceased to be an act of insolvency if it is within the definition of Section 6. Lapse of time may shed its fangs, but does not

work any metamorphosis. It is pertinent to note here that the legislature has, without changing the wording of Section 9 (1) (c) of the Provincial

Insolvency Act, added a proviso to it reading:

Provided that where the said period of three months referred to in clause (c) expires on a day when the court is closed, the insolvency petition may

be presented on the day on which the Court re-opens.

We feel certain that the proviso has not brought about any change in the enacted law but has only clarified the position of which contrary views

came to be taken in different Courts.

These Civil Revision petitions fail, and are dismissed hereby. We make no order as to costs here.