



C.M.A.(MD) No.412 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 21.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.412 of 2010

Mohammed Ilyas.

... Appellant

Vs.

1.Shir Ambika Chit funds,
197, Katcheri Road,
Mylapoor,
Chennai – 4.

2.Ashok,
3.Aris kumar,
4.J.K.Mettha,
5.Mettha Syndicate,
Shanthi Nekkethan,
43, Aathiappa Nayakkan Street,
1st Floor, Plot No.11,
Savkar Pettai, Chennai – 79.

6.Mettha Brothers,
34/62, Veerappan Street,
Savkar Pettai,
Chennai – 79.

7.Vasu Thulkani,

8.Gopal doss & Groups,
Ground port apartment,
204, 2nd Floor,



C.M.A.(MD) No.412 of 2010

WEB COPY

Plot No.13, Bank Street,
Keelpakkam, Chennai – 10.

9.Navathiva Chit Funds,
52/41, Shenkalvarayan Street,
Thiruvallikeeni,
Chennai – 5.

10.Pradeep,
11.Ramraj,
12.Viswanathan & Co,
50/22, Natchiappan Street,
Mylapoor,
Chennai -4.

13.Sekar Brothers,
46, Vithyanathan 1st street,
Savkar Pettai,
Chennai – 79.

14.Shri Chinki Brothers,
15, Stattan Muthiah Street,
Savkar Pettai,
Chennai – 79.

15.Dharshan Traders,
79, Govinthappa Nayakkan Street,
Savkar Pettai,
Chennai – 79.

16.Jute Traders,
60, Athiyappa Nayakkar Street,
Savkar Pettai,
Chennai – 79.

17.Bangaj Kumar & Co.
20/39, Athiyappa Nayakkar Street,
Savkar Pettai,
Chennai – 79.



C.M.A.(MD) No.412 of 2010

18.General Trading Point,
41/8, Stattan Muthiah Street,
Savkar Pettai,
Chennai – 79.

19.Royal Food Product,
18, Stattan Muthiah Street,
Savkar Pettai,
Chennai – 79.

20.K.K.Ram,

21.Ravi & Co.,
65, Solaiappan Street,
Chennai – 28.

22.Saira Marketing,
65/29, St.Maries Road,
Manthaveli,
Chennai – 28.

23.Jegi Agencies,
23, South West Road,
Thiagaraya Nagar,
Chennai -8.

24.Hema Enterprises,
24,Chinna Chetti Street,
Elumboor,
Chennai – 8.

25.Vijay Traders,
23, Shek Thavood Street,
Rayapetti,
Chennai -14.

26.K.V.Traders,
10, Bleak Stop Street,
Royapuram,



C.M.A.(MD) No.412 of 2010

Chennai – 13.

27.S.P.K.Dhal Merchant,
456/650, Thiruvetriyoor High Road,
Thandaiyar Pettai,
Chennai – 81.

28.R.Thirumal,

29.Vasuvi Ens Mercant,
135/2, Annapillai Street,
Savkar Pettai,
Chennai -81.

30.Vasuvi Chelli Merchant,
25, Chinna Thambi Muthali Street,
Chennai – 79.

31.Taj Traders,
66/90, Aatchariappan Street,
Chennai -1.

32.Savaran & Co.,
2,Avathana Ramasamy Lane,
Vannar Pettai,
Chennai – 21.

33.Arshat Ali,
34.Shahul Hameed,
35.R.Rajasekaran,
36.Venkatahcalam,
37.Rajan,
38.Shanthi & Selvi,
8/23, 2nd Floor,
Nattu Veeratchi Street,
Mylapoor,
Chennai – 4.

39.Dharumalingam,



C.M.A.(MD) No.412 of 2010

40.Raja,
41.Ganesan,
42.Perumal,
43.Velmurugan,
44.Mount Mani Iyer,
5/9, Managalam Apartment,
2nd Floor, 3rd Main road,
Nanthvanam,
Chennai -18.

45.Union Bank of India,
Mylapoor Branch,
Mylapoor,
Chennai – 4.

46.J.Abdul Jappar

47. I.C.I.C.I Bank
Personal Loan-L.P.C.H.E-002840069,
Kottur Puram, Chennai.

48.HDFC Bank
Personal Loan No.921/29,
56, G.N.Chetti Road,
T.Nagar, Chennai-17.

49.City Bank
Personal Loan,
Anna Salai, Chennai-2.

50.Shri Gokulam Chit Fund
356, Arkad Road, Vada Palani, Chennai-24.

51.I.C.I.C.I. Credit Card(Division),
No.4477473519146000, Chennai.

52. A.B.N. Amro Bank Credit Card (Division),
No.5415382309066009, Chennai.



C.M.A.(MD) No.412 of 2010

53.S.C.B.Credit Card
No.4129037082867789,
Dr.Radhakrishnan Road,
Chennai-4.

54.H.D.F.C. Credit Card
Division No.4346771706726939,
Gousalya Tower,
96, Anna Salai, Chennai.

55.S.V.N.Agro Oil Merchant
1/66, Vengaivasan Main Road,
Chellaiyoor Post, Chennai-73.

56.S.V.Traders
53, Karneeswarar Koil Street, Mylapoor,
Chennai-4.

57.S.I.F.Roofchand,
19/20, Rayapuram Road,
Rayapuram, Chennai.

58.Shek Mohammed

59.Shri Prakash Traders
113, Varadha Muthiappan Street, Paris,
Chennai-1.

60.Tamil Nadu Oil Industries
18, 5th Street, Bakthavatchalam Nagar,
Adaiyar, Chennai-20.

61.Jeyalakshmi Agency
5, 1st Cross Street, Raja Annamalaipuram,
Chennai-28.

62.T.Rajan

63.Jeyalakshmi Agency



C.M.A.(MD) No.412 of 2010

WEB COPY

55, 1st Street, Parameswari Nagar, Adaiyar,
Chennai-20.

64.United Confication
2, Dhagir Shakibu Street, Market Lane,
Mount Road, Chennai-2.

65.V.V.M.V.Rice Mill,
2, N.N.Garden, 6th Lane, Old Vannarapettai,
Chennai-21.

66.Haris Traders
3, Somu Chetti Street 2nd Lane, Chennai-13.

67.Shri.Arun Junai Traders
17, Srirangammal Street, Vannarapettai,
Chennai-21.

68.L.G. & Co.,
53, Perumal Muthali Street,
Soukarpettai Street, Chennai-79.

69.Airtel
101, Santhom High Road, Chennai-28.

70.S.V.Traders
8, T.A.Street, Mylapoor, Chennai-4.

71.T.Murugesan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 75(2) of Civil Procedure Code against the decretal order dated 04.11.2009 passed in I.P.No.7 of 2005 on the file of the 1st Additional District Court, Tirunelveli.



WEB COPY



C.M.A.(MD) No.412 of 2010

For Appellant : Mr.H.Arumugam

For Respondents :
for R1 to R6, R8 to R13,
R15 to R44, R44 to R49,
R51 to R71 : Ex parte

R7 : Died
R14, R45 & R50 : No appearance

J U D G M E N T

The instant appeal has been filed challenging the order passed in Insolvency Petition No.7 of 2005, wherein, the petition, filed by the appellant herein to declare him as insolvent, was dismissed by the Court below.

2. The learned counsel for the petitioner/appellant submitted that the Insolvency Petition was filed, stating that the petitioner/appellant was doing grocery business at Chennai in the name and style of 'Patel Stores' and was earning substantial income till 2004, after which he incurred heavy losses in the business and hence, returned to Tirunelveli; and that the 'A' schedule in the petition contains a list of persons, to whom the appellant is liable to make payment and the 'B' schedule contains a list of persons, who are due to pay money to him.



C.M.A.(MD) No.412 of 2010

3. The Court below, after going through the pleadings, had dismissed the Insolvency Petition, on the following grounds:

a. The respondents, except for two of them, were residents of Chennai and the two respondents, namely, respondents 37 and 71, who were the residents of Tirunelveli, have been impleaded only to bring the case within the jurisdiction of this Court.

b. Though the list of persons have been mentioned in the 'B' schedule, from whom, the appellant is entitled to recover the money, no evidence has been produced to show as to how the said persons were liable to pay money to him, and that the evidence of P.W.1 and his explanation for not furnishing the details of his debtors are not acceptable.

4. The learned counsel for the petitioner/appellant submitted that the Court below ought to have seen that even if one of the respondents resides within the jurisdiction, the Court would have jurisdiction and ought to have entertained the petition.

5. The point for consideration in the instant appeal is 'whether the appellant can be declared as an insolvent.



C.M.A.(MD) No.412 of 2010

6. This Court, on perusal of the order passed by the Court below, finds that except the respondents 37 and 71, all the other respondents, admittedly, were residents of Chennai. The respondents 37 and 71 remained *ex parte* before the Court below.

7. On facts, the Court below had held that the impleadment of those two respondents, namely, respondents 37 and 71 was only to invoke the jurisdiction of the Court below. The petitioner/appellant had not produced any evidence to show as to how he was due to pay money to the respondents 37 and 71. In the said circumstances, this Court is of the view that there is absolutely no infirmity in the finding of the Court below that these two respondents were added only to invoke the territorial jurisdiction of the Court below.

8. That apart, except for furnishing the list of names in the 'B' schedule as his debtors, the appellant has not produced any material to substantiate his case that the said persons were liable to pay money. Therefore, the Court below was right in holding that the petition lacked *bona fides*.



C.M.A.(MD) No.412 of 2010

WEB COPY 9. This Court is of the view that the order of the Court below, dismissing the Insolvency Petition filed in the year 2005, does not require any interference. Further, in any case, the Insolvency Petition was filed in the year 2005 and since then 20 years have passed. For the said reason also, the order passed by the Court below need not be interfered with. The point is answered accordingly.

10. In the result, this Civil Miscellaneous Appeal stands dismissed.

No costs.

21.08.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1. The I Additional District Judge, Tirunelveli.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD) No.412 of 2010

SUNDER MOHAN, J.

apd

C.M.A.(MD) No.412 of 2010



WEB COPY



C.M.A.(MD) No.412 of 2010

21.08.2024