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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)No.2556 of 2017

S.Sridharan

...Petitioner

Vs.

1.G.Karthikeyan

2.Rajammal

3.S.Sakthivel

4.D.Thangaraj

5.K.Anandharaj

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to call for the records relating to the fair and decreetal order dated 01.08.2017 made in C.M.A.No.10 of 2016 on the file of the Additional District Court, Dindigul confirming the fair and decreetal order dated 09.04.2015 passed in I.P.No.29 of 2010 on the file of the Principal Sub Court, Dindigul and to set aside the same.

For Petitioner : Mr.M.R.Sreenivasan

For Respondent : No Appearance



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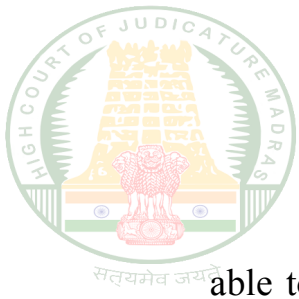
ORDER

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The order in and by which the learned Additional District Court, Dindigul had confirmed the confirming the fair and decreetal order of the Principal Sub Court, Dindigul declining to declare the petitioner as an insolvent is put in issue before this Court by filing the present revision.

2. Though notice has been served on the respondents and their names printed in the cause list, none appeared on their behalf. Considering the pendency of the petition and also the issue being raised is a question of law, which requires to be answered on the basis of the provisions of law, this Court is inclined to take up the matter and dispose of the same on merits on the basis of the records materials available on record.

3. The petitioner is an Archagar in a private temple in Dindigul. Due to his meagre income, the petitioner was in the habit of borrowing money to meet his needs and in the course of such borrowal, the petitioner borrowed money from respondents 1 to 4 for which, it is alleged, that he executed promissory notes and obtained the loans. However, the petitioner was not



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able to repay the said loans, though it is alleged that he paid the exorbitant monthly interest.

4. It is the further case of the petitioner that the 5th respondent filed the case in W.C. No.40/2004 before the Commissioner of Workmen Compensation with regard to the injury sustained by him during the course of the work in the common well in the house which was occupied by the petitioner. After adjudication, the authority passed an award in a sum of Rs. 2,44,392/- along with interest at 12% per annum to be paid by the petitioner to the 5th respondent.

5. It is the further averment of the petitioner that pending the award, the petitioner fell indisposed with multiple physical ailments and he was unable to attend to his avocation and, therefore, his earnings, which itself was meagre, dwindled further and, therefore, the petitioner was unable to pay the award amount. Apprehending that action might be taken by the 5th respondent by way of execution proceedings for the arrest of the petitioner for non-payment of the award amount, the petitioner has filed I.P. No.29/2010 before the trial court.



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6. The trial court issued notice to the respondents 1 to 5 and since the said respondents did not appear before the court, went on to set them *ex parte* and adjudicate the matter on merits. The trial court held that the petitioner, though averred that he had obtained hand loans from respondents 1 to 4 by executing promissory notes, however, has not given any details as to the date on which such loans were obtained and the dates of execution of the promissory notes. The trial court also held that the petitioner has admitted that he was earning eking his livelihood as an Archagar in a temple but the wages earned through the said avocation, according to the petitioner, is not sufficient to make both ends meet does not merit acceptance and merely because the 5th respondent had not appeared alone cannot be the basis to declare the petitioner as an insolvent as the petitioner, through proper materials from the revenue authorities has not proved his solvency and, therefore, rejected the petition.

7. Aggrieved by the said rejection, the petitioner filed appeal before the appellate forum and the appellate forum, on similar lines based on the materials placed before it, held that there are no materials from which a



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reasonable inference could be drawn with regard to the solvency status of the petitioner and in the absence of any material to show that the petitioner had executed the promissory note and the other materials available before it, confirmed the order passed by the trial court rejecting the claim of insolvency of the petitioner. Aggrieved by the same, the present revision petition has been filed before this Court.

8. Learned counsel appearing for the petitioner submitted that in the absence of any rebuttable evidence, both the courts below had erroneously rejected the plea of the petitioner, which is grossly erroneous and illegal. It is the further submission of the learned counsel that the act of a person to claim himself to be insolvent is the gravest form of social degradation that a person could inflict upon himself and that no prudent person would do the same as it would show him in disgrace in the eyes of the society. The petitioner having taken the extreme step to have himself declared as insolvent clearly shows the pathetic condition in which he is living. However, the said fact has not been properly considered by the courts below while rejecting the plea of the petitioner.



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9. The learned counsel for the petitioner further submits that with regard to item Nos.1 to 4 in the 'A' schedule of the insolvency proceedings, since the respondents 1 to 4 remained *ex-parte* in the insolvency proceedings, there arises no need for the petitioner to substantiate the debts as against respondents 1 to 4.

10. In respect of the fifth item of 'A' Schedule, it is submitted that the 5th respondent obtained an order of arrest as against the petitioner. It is submitted that insofar as the award passed by the Workmen's Compensation falls under the provisions of Sections 10 (b) and 10 (c) of the Act, which provides that if a debtor is under arrest or imprisonment in execution of a decree of any Court for the payment of money or if the debtor is suffered with an order of attachment of his property in execution of such decree, the said debtor is entitled to be declared as an insolvent. The petitioner herein, suffering a decree based on which a warrant of arrest has been issued against the petitioner, without adverting to the same, the issue has been adjudicated by the courts below, which is unsustainable. In support of the aforesaid submission, learned counsel for the petitioner relied upon the decision in



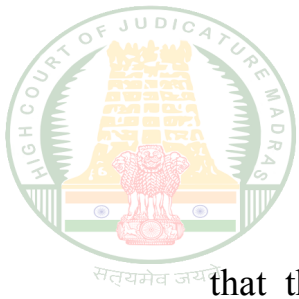
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K.R.K.K. Krishnappa Chettiar - Vs - V.V.R.Kasiviswanathan Chettiar (AIR 1966 Madras 331).

11. It is the further submission of the learned counsel that the finding of the trial court as to the earnings of the petitioner from the temple is erroneous and without any basis. It is the further submission of the learned counsel that the provisions of Section 6 (2) of the Provincial Insolvency Act, 1920 (for short 'the Act') has not been properly construed by the courts below while appreciating the case of the petitioner. It is the further submission of the learned counsel that there is no material to draw an inference that the petitioner's status was solvent when it is the categorical stand of the petitioner that he was an Archagar in a private temple and that the earnings from the said temple was meagre to clear his debts and that the debts were much more than his income, which clearly satisfied the requirement of an insolvent as defined under the Act.

12. It is the further submission of the learned counsel that the 5th respondent, who had obtained an award in his favour and had also filed a counter did not pursue the matter, which could only lead to the presumption



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that the petitioner's solvency status was within the knowledge of the 5th respondent. However, without appreciating the non-appearance of the 5th respondent in favour of the petitioner, has gone ahead and held that the non-appearance cannot be taken any benefit of by the petitioner, which is grossly arbitrary and illegal. Without properly appreciating the abovesaid facts, the courts below have held against the petitioner which requires interference at the hands of this Court.

13. As aforesaid, inspite of notice having been ordered by this Court umpteen times, including substituted service, there is no representation for any of the respondents, including the 5th respondent, who has obtained an award in his favour from the Commissioner for Workmen Compensation. Since the issue that arises in this case is a legal issue, which has to be decided, before it could be applied to the facts of the present case, this Court is proceeding to adjudicate the issue.

14. Heard the learned counsel for the petitioner and perused the materials available on the record.



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15. The issues that arise for consideration in the present revision petition are as under :

(1) Whether the award passed by the Commissioner of Workmen's Compensation could be classified as a debt as defined u/s 2 (1)(a) of the Provincial Insolvency Act and the award passed by the Commissioner of Workmen Compensation could be held to be a decree as defined u/s 2 (2) of the Code of Civil Procedure so as to attract the rigours of Section 10 of the Provincial Insolvency Act.

(2) If so, whether the petitioner could be declared as an insolvent by adverting to Sections 10 of the Act.

16. Before entering into the factual matrix of the case, the relevant provisions of law, which speaks of a debt and a decree and its implication on the award passed by the Commissioner of Workmen Compensation requires to be looked into to find out whether such an award could be held to be a decree and the amount quantified would partake the character of a debt, which would form the basis for this Court to decide whether the petitioner could be declared as an insolvent.



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17. Section 10 of the Act relates to the situations in which a person could file a petition before the Court seeking to declare him/her as an insolvent. The aforesaid provision provides as under :-

“10. Conditions on which debtor may petition.—

(1) A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts and

(a) his debts amounts to [five hundred rupees]; or

(b) he is under arrest or imprisonment in execution of the decree of any Court for the payment of money; or

(c) an order of attachment in execution of such a decree has been made, and is subsisting, against his property.”

(Emphasis Supplied)

18. From the above provision, it is clear that for a person, who is a debtor, for presenting a petition to claim himself/herself to be an insolvent, he/she should satisfy any of the following conditions, viz., (i) that the debt amount should be five hundred rupees or more, which he/she is unable to pay; or (ii) he/she is under arrest or imprisonment in execution of the decree of any court for the payment of money; or (iii) suffers an order of attachment in execution of such a decree against his/her property, which is subsisting.



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19. In the present case, there is no dispute that there exists no relationship of creditor and debtor between the 5th respondent and the petitioner anterior in point of time to the claim for compensation under the Workmen Compensation Act. Compensation has been awarded by the authority as damages for the injury suffered by the 5th respondent in the course of discharge of his employment. Could the injury suffered by the 5th respondent for which compensation has been determined by the authority, if remains unpaid, be termed to be a '*debt*' u/s 2 (1)(a) of the Act and could the award passed be termed to be a decree within the meaning of Section 2 (2) of the Code of Civil Procedure deserves to be adjudicated by this Court.

20. Before traversing into the web of the legal provisions that are intricately intertwined with regard to the manner in which the term '*debt*' has to be looked into, it would be useful to refer to the manner in which the word '*debt*' has been dealt with and the meaning that it would attract in the various scenarios.



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21. The dictionary meaning of the term '*debt*' and '*debtor*' as referenced in Oxford Advanced Learners Dictionary, New 9th Edn., is as under:-

“Debt – a sum of money that one owes.

Debtor – A person, a country or an organization that owes money.”

22. Therefore, where there exists a relationship between two parties, where one party owes money to the other party, the said borrowed sum would be termed to be a debt on its non-payment and the person, who borrowed the money, which remains unpaid, shall be termed to be a debtor. This clearly shows that the liability should be pre-existing and the non-discharge of the liability is a debt.

23. The term '*debt*' in relation to Displaced Persons (Debts Adjustment) Act, 1951, fell for consideration before the Bombay High Court in the case of *Iron & Hardware (India) Co. – Vs – Firm Shamlal & Bros. (AIR 1954 Bom 423)*, wherein the Court held as under :-



“6.

Now, in order that there should be a debt there must be an existing obligation. The payment may be due immediately or it may be due in future, but the obligation must arise in order that the debt should be due. It may even be that the actual amount due in respect of the debt may require ascertainment by some mechanical process or by the taking of accounts. But even when the actual amount is to be ascertained the obligation must, exist. It is well settled that when there is a breach of contract the only right that accrues to the person who complains of the breach is the right to file a suit for recovering damages. The 'breach of contract does not give rise to any debt and therefore it has been held that a right to recover damages is not assignable because it is not a chose in action. An actionable claim can be assigned, but in order that there should be an actionable claim there must be a debt in the sense of an existing obligation. But inasmuch as a breach, of contract does not result in any existing obligation on the part of the person who commits the breach, the right to recover damages is not an actionable claim and cannot be assigned.

7. Now, this principle has been accepted by the learned Judge below, but the reason why he has taken a different view is that the definition of "debt" given in this Act is an artificial definition and is not the definition which has been accepted for the purpose of the Transfer of Property Act, and what is emphasised is that debt is not merely a liability which is ascertained, but it is also a liability which is to be ascertained,



and therefore the view is taken that unliquidated damages would constitute a debt within the meaning of this Act. In my opinion, with respect to the learned Judge, greater emphasis should be placed on the expression "any pecuniary liability" rather than on the expression "whether ascertained or to be ascertained". Before it could be said of a claim that it is a debt, the Court must be satisfied that there is a pecuniary liability upon the person against whom the claim is made, and the question is whether in law a person who commits a breach of contract becomes pecuniarily liable to the other party to the contract. In my opinion it would not be true to say that a person who commits a breach of the contract incurs any pecuniary liability, nor would it be true to say that the other party to the contract who complains of the breaches has any amount due to him from the other party.

As already stated, the only right which he has is the right to go to a Court of law and recover damages. Now, damages are the compensation which a Court of law gives to a party for the injury which he has sustained. But, and this is most important to note, he does not get damage or compensation by reason of any existing obligation on the part of the person who has committed the breach. He gets compensation as a result of the fiat of the Court. Therefore, no pecuniary liability arises till the Court has determined that the party complaining of the breach is entitled to damages. Therefore, when damages are assessed, it would not be true to say that what the Court is doing is ascertaining a pecuniary liability which already existed. The



Court in the first place must decide that the defendant is liable and then it proceeds to assess what that liability is. But till that determination there is no liability at all upon the defendant.”

(Emphasis Supplied)

24. Yet again in **Ram Lal Jain – Vs – Central Bank of India Ltd. (AIR 1961 P & H 340)**, a Full Bench of the Bombay High Court, upon reference with regard to the issue ‘*whether a petition by a displaced person to be compensated in damages for the alleged loss of the goods pledged by him as security for loans advanced by a bank in a cash credit account is maintainable as relating to a ‘debt’ under the Displaced Persons (Debts Adjustment) Act, 1951.*’ Answering the said reference, the Full Bench, per majority, following the interpretation in *Iron & Hardware case (supra)*, held as under :-

20. No doubt, as observed in *Corpus Juris Secundum*, the term “debt” has, as used in some statutes, been held to include unliquidated damages. The only Indian statute, which, could be pointed out by the learned counsel for the appellant, in which such an extended meaning has been given to the term “debt” is Provincial Insolvency Act (Act V of 1920). In Clause (a) to Sub-section (1) of Section 2 of the Act, “debt” is defined to include a judgment-debt. The particulars which have to be, mentioned in the



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insolvency petition by the debtor are stated in Section 13 of the Provincial Insolvency Act, and one of these (clause (d) to Sub-section (1) of Section 13) is the amount and particulars of all pecuniary claims against him.

When an order of adjudication has been made either on the application of the debtor or that of the creditor, all persons alleging themselves to be creditors, of the insolvent in respect of debts provable under the Act shall tender proof of their respective debts by producing evidence of the amount and particulars thereof, and the Court shall, by order, determine the persons who have, proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts, respectively, and shall frame a schedule of such persons and debts. If, in the opinion of the Court, the value of any debt is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt shall not be included in the schedule. Then comes Section 34 of the Act which is as follows:

"34. (1) Debts which have been excluded from tile schedule on the ground that their value is incapable of being fairly estimated and demands in the nature of unliquidated damages arising otherwise than by reason of a contract or a breach of trust shall not be provable under this Act.

(2) Save as provided by Sub-section (1) all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged insolvent, or, to which he may become subject before his



discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Act".

21. The result of this provision is that under the Provincial Insolvency Act, a claim for unliquidated damages which arises out of a contract or breach of trust may be proved, but not for unliquidated damages for torts unless it has been ascertained before the date of the order of adjudication by judgment, award or compromise. There is no doubt, therefore, that the term "debt" under the Provincial Insolvency Act covers a wider field than "debt" as understood in ordinary legal parlance, but the argument does not really help the appellant.

* * * * *

*I do not propose to discuss those cases because there are a large number of decisions in which the scope of the term "debt", as used in the Displaced Persons (Debts Adjustment) Act, has been considered and all of them--with the exception of one which is [Union of India v. Smt. Tara Rani](#), AIR 1960 Punj 291--go to support him. The most important of these cases, which has been referred in several of the subsequent cases, is *Iron and Hardware (India) Co. v. Firm Shamlal and Bros.*, AIR 1954 Bom 423. One of the points which came up before Chagla C. J. in that case was whether an application to recover damages for breach of contract was a "debt" as defined in the Act. The learned Chief Justice of the Bombay High Court laid emphasis on the qualification "pecuniary liability" and observed as follows:*



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"Now, in order that there should be a debt there must be an existing obligation. The payment may be due immediately or it may be due in future, but the obligation must arise, in order that the debt should be due. It may even be that the actual amount due in respect of the debt may require ascertainment by some mechanical process or by the taking of accounts. But even when the actual amount is to be ascertained the obligation must exist. It is well settled that when there is a breach of contract the only right that accrues to the person who complains of the breach is the right to file a suit for recovering damages. The breach of contract does not result in any existing obligation on the part of the person who commits the breach, and so does not give rise to any debt". "Greater emphasis should be placed on the expression 'any pecuniary liability' rather than on the expression 'whether ascertained or to be ascertained'. Before it could be said of a claim that it is a debt, the Court must be satisfied that there is a pecuniary liability upon the person against whom the claim is made, and the question is whether in law a person who commits a breach of contract becomes pecuniarily liable to the other party to the contract".

"The only right which the party who complains of the breach has is the right to go to the Court of law and recover damages. Now, damages are the compensation which a Court of law gives to a party for the injury which he has sustained. But, and this is most important to note, he does not get damages or compensation by reason of any existing obligation on the part of the person who has committed the breach. He gets compensation as a result of the fiat of the Court. Therefore, no pecuniary liability arises till the Court has determined that the party complaining of the breach is entitled



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to damages."

" * * * * the whole basis of a suit for damages is that at the date of the suit there is no pecuniary liability upon the defendant and the plaintiff has come to Court in order to establish a pecuniary liability."

30. In *Milkha Singh v. Messrs. Gopala Krishna Mudaliar*, AIR 1956 Punj 374, a Division Bench of this Court consisting of Bhandari, C. J. and Kapur, J. (as he then was) agreed with the Chief Justice Chagla's interpretation of the term "debt" in *Iron and Hardware Company's case*, AIR 1954 Bom 423. The point in issue before the Division Bench of this Court was whether a mere breach of contract of warranty can be said to be a pecuniary liability and this question was answered in the negative.

It was held that all that the breach amounted to was a right to go to Court and recover damages, which right arose not because of any existing obligation by the person who breaks a contract but it arose as a result of the determination by the Court, and the argument, based on Section 73 of the Indian Contract Act, was repelled. Kapur, J., who delivered the main judgment, observed as follows :

"Besides, as I have already pointed out, there is a distinction between the remedy in regard to getting repayment of money borrowed and for getting damages for personal injury. One is remedial and the other is penal. That it is penal even in the case of breach of contract is shown by the words of Section 74, Contract Act, which supports that notion of penalty in the case of suits for compensation for breach of



contract. In my opinion, therefore, the suit for damages is not within the jurisdiction of a Tribunal because the word "debt" in Section 2(6) of the Act does not include damages for breach of contract.

"If such a wide interpretation as is sought to be put by the petitioner is given to the words "pecuniary liability", then all cases in which ultimately a defendant is ordered to make a money payment whether it is based on a debt, as ordinarily understood, or it arises out of a breach of contract or a personal injury or is imposed as a fine in a criminal case would be included, which, in my opinion, is not within the contemplation of the statute."

(Emphasis Supplied)

25. Yet again, a Division Bench of the Bombay High Court, in ***S.Milkha Singh & Ors. – Vs – N.K.Gopala Krishna Mudaliar & Ors. (AIR 1956 P & H 174)***, once again accepting the interpretation given to the term 'debt' in *Iron & Hardware case (supra)*, held as under :-

"8. There is a distinction between a remedy for the repayment of an amount borrowed and in regard to publishing of a libel. According to Salmond the remedy of a borrower to repay the amount borrowed is remedial and that of a publisher of a libel to be imprisoned or to pay damages to a person injured by him is penal and thus in jurisprudence there is a distinction between a liability to pay a debt in its ordinary connotation and to be mulcted in



damages for causing a civil injury to another person.

9. In *Crofter Hand-Woven Harris Tweed Co. Ltd. v. Veitch*, 1942 A. C. 435 (442) (A), Viscount Simon L.C. drew a distinction between injury and damage. 'Injury' according to stricter diction derived from the civil law is limited to actionable wrong, while 'damage' means loss or harm occurring in fact, whether actionable as an injury or not.

10. In *Swansea Corporation v. Harpur*, (1913) 107 LT 6 (B) Fletcher-Moulton L.J. defined 'damages' to mean sums paid under the order of the Court for compensation for breach of contract or a wrong.

11. The principles of jurisprudence and the cases mentioned above show that the remedies in regard to loans and in regard to damages are distinct and that damages are sums which the Court orders to be paid as compensation for a breach of contract or wrong. If the definition which is sought to be placed by the petitioner is correct, then all financial liabilities whether they arise in contract or in tort or fines imposed in criminal proceedings would be covered and that in my opinion would be giving a definition which the words of the section do not warrant. The preamble to the Act itself shows that the Act is meant for the recovery of certain debts due to or by displaced persons and for matters connected therewith. Even all debts are not covered by the provisions of the Act. The provisions of Sub-clause (c) of Section 2(6) themselves show that it was not the intention



of the Legislature to give a very wide meaning to the words "pecuniary liability". The sub-clause expressly includes any liability which is by way of renewal of a liability which falls within Clauses (a), (b) or (c), but it is significant do note that it does not include any liability which arises out of a decree passed in West Pakistan after 15-8-1947, nor any loan which exceeds the amount which was originally advanced and does not include the amount for which the liability had been renewed if it is more than what was originally advanced.

12. That such a wide meaning cannot be given to the words "pecuniary liability" has been held by a judgment of the Bombay High Court in Iron and Hardware (India) Co. v. Firm Sham Lal & Bros., 1954 Bom 423 (AIR V 41) (C), where a claim for damages was held not to be covered by the words "pecuniary liability" under Section 2(6) of the Act. It was observed by Chagla C. J.:

"Now, in order that there should be a debt there must be an existing obligation. The payment may be due immediately or it may be due in future, but the obligation must arise in order that the debt) should be due. It may even be that the actual amount due in respect of the debt may require ascertainment by some mechanical process or by the taking of accounts. But even when the actual amount is to be ascertained the obligation must exist. It is well settled



that when there is a breach of contract the only right that accrues to the person who complains of the breach is the right to file a suit for recovering damages. The breach of contract does not give rise to any debt and therefore it has been held that a right to recover damages is not assignable because it is not a chose in action. An actionable claim can be assigned, but in order that there should be an actionable claim there must be a debt in the sense of an existing obligation.

But inasmuch as a breach of contract does not result in any existing obligation on the part of the person who commits the breach, the right to recover damages is not an actionable claim and cannot be assigned." and the learned Chief Justice further observed:

"Before it could be said of a claim that it is a debt, the Court must be satisfied that there is a pecuniary liability upon the person against whom the claim is made and the question is whether in law a person who commits a breach of contract becomes pecuniarily liable to the other party to the contract. In my opinion it would not be true to say that a person who commits a breach of the contract incurs any pecuniary liability, nor would it be true to say that the other party to the contract who complains of



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the breach has any amount due to him from the other party."

(Emphasis Supplied)

26. However, there is no direct authority in relation to the meaning of the word '*debt*' as found in the Provincial Insolvency Act. However, from the proposition of law as encapsulated in the aforesaid decisions, it is evident that there should exist a pecuniary liability upon the person against whom the claim is made and that the said person becomes pecuniarily liable to pay the other party. However, compensation granted for the sufferance of damages, which an authority gives to a party not based on any pre-existing obligation on the part of the person who committed the breach, but it is as a result of the fiat of the quasi-judicial authority, the same cannot be held to be a debt, within its ordinary meaning. Therefore, unless a pecuniary liability exists and is established, the person against whom damages is claimed cannot be said to be pecuniarily liable to pay and any quantification of damages by the authority on the basis of any claim for damages would not partake the character of '*debt*' so as to mulct the person against whom such a claim is made to be a debtor in the simplest sense of the term '*debt*' and '*debtor*'.



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27. In this backdrop, the definition of the term '*creditor*', '*debt*' and '*debtor*' are defined u/s 2 (1) (a) of the Act assumes significance and for better understanding the same is quoted hereunder :-

“2. Definitions.—(1) In this Act, unless there is anything repugnant in the subject or context,—
(a) "creditor" includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor.”

28. In this regard, a cursory perusal of the definition of '*decree*', '*decree holder*' and '*judgment-debtor*' as found in sub-sections (2), (3) and (10) of Section 2 of the Civil Procedure Code, reveals that it would pertain only to decree passed by a competent civil court and not in respect of any other awards passed by a quasi judicial forum. For better appreciation, sub-sections (2), (3) and (10) of Section 2 of the Civil Procedure Code are quoted hereunder :-

“2. Definitions.-

* * * * *

(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it conclusively determines the rights of the



parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include –

* * * * *

(3) “decree holder” means any person in whose favour a decree has been passed or an order capable of execution has been made.

* * * * *

(10) “judgment-debtor” means any person against whom a decree has been passed or an order capable of execution has been made.”

29. From the above, it is evident that it is only a civil court, which could pass a decree and the person in whose favour the decree is passed alone is termed the decree holder and the person against whom a decree is passed alone is termed judgment-debtor. Therefore, the inclusion of ‘*judgment-debtor*’ and ‘*decree-holder*’ in Section 2 of the Provincial Insolvency Act would only connote such persons who are parties before the civil court and against whom the decree has come to be passed by the civil court and it would not include the persons, who were parties to the award passed by the



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authority under the Workmen Compensation Act. Therefore, for all intent and purposes, the award passed by the Commissioner of Workmen Compensation will not partake the character of a decree as one passed by a civil court.

30. There is no clear definition of the term '*creditor*', '*debt*' and '*debtor*' under the Provincial Insolvency Act and, therefore, it could only be taken to mean that the said words would have to be construed in its ordinary sense and it would also include a decree-holder, a judgment-debt and a judgment-debtor as defined under the Code of Civil Procedure. In this backdrop of its ordinary meaning, the word '*debt*' under Section 2 (1)(a) would only mean such of those debts in which there is pre-existence of pecuniary liability, which stood adjudicated and decreed by a judicial forum. Where no pre-existing liability exists, but a quasi-judicial authority grants an award quantifying the damages for the injury sustained, by compelling one of the parties to perform a certain act, the said award, which though enforceable, cannot be equated to a decree granted by a civil court, and the award cannot quantify itself to be a judgment passed by a civil court.



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31. The meaning of '*debts*' in the Provincial Insolvency Act, precisely u/s 2 (1) could only be taken to mean such of the debts, where a pre-existing liability is in existence and any damages, which is quantified by a quasi-judicial authority on the basis of certain injury alleged to have been sustained in the course of employment cannot be brought within the ambit of '*debt*' provided u/s 2 (1) of the Act. To put in straight-jacket terms, there should be a pre-existing creditor-debtor relationship so as to cloth the liability as a '*debt*'. Any other wider interpretation of the term '*debt*' insofar as payment of any money is concerned relating to breach of contract or a personal injury or any imposition as a fine in a criminal case would be beyond what is sought to be contemplated under the statute. Further, giving any such interpretation encompassing all damages and compensation granted towards personal injury or imposed as fine, etc., by any forum, other than a civil court, would be stretching the legal limit far and wide and would frustrate the provisions of the enactment as no decree could be passed by any forum other than a civil court.

32. The decree as defined u/s 2 (2) of the Code of Civil Procedure takes within itself three essential conditions to be termed as a decree, viz., (i) that



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the adjudication must be given in a suit; (ii) that the suit must start with a complaint and culminate in a decree; and (iii) that the adjudication must be formal and final and must be given by civil or revenue court. (*See : Diwan Bros. – Vs – Central Bank (AIR 1976 SC 1503)*). Merely because there exists some order captioned as a decree, drawn up even in the form of a decree, it would not make such an order a decree as the three ingredients, which have been spelt above requires to be fulfilled so as to term a document a decree.

33. It is an accepted proposition that the Commissioner for Workmen Compensation is not a civil court and is not bound by the technical rules of the Civil Procedure Code. The contours within which the Commissioner can traverse is limited and it is not as diverse and exhaustive as that of a civil court. The Commissioner could travel only within the four walls of the Workmen Compensation Act, including entertaining matters *suo motu*, where the civil court's jurisdiction is barred in view of the special enactment. It is evident from Section 20 (4) of the Workmen Compensation Act that the Commissioner is a public servant and not a judicial authority and, therefore, the awards passed, though executable, are not decrees as are passed by the civil courts, as defined u/s 2 (2) and (3) of the Civil Procedure Code. The



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above clearly reveals that none of the ingredients stand satisfied to qualify the order passed by the Commissioner of Workmen Compensation as a decree and, therefore, the said order, merely because it is executable, cannot be said to be a decree.

34. It therefore crystallises from the above discussion that the award passed by the Commissioner of Workmen Compensation is not a decree, the rigours of Section 10 (1)(b) of the Provincial Insolvency Act does not stand attracted, as the said provision, in clear and unambiguous term specifies that the person so claiming to be insolvent is under arrest or imprisonment in execution of the decree of any Court for the payment of money. The amount quantified as damages in the present case not being a '*debt*' and the award not being a decree passed by a civil court, clause (a) and (b) of sub-section (1) of Section 10 of the Provincial Insolvency Act would not stand attracted to the case on hand.

35. Though the decision in *Ram Lal Jain case (supra)* has cast a distinction with regard to '*debt*' which arises under the Provincial Insolvency Act, by stating that it covers a wider field than what is ordinarily understood



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In the legal parlance, yet it is to be pointed out that unliquidated damages for torts cannot be put within the purview of '*debt*' under the Provincial Insolvency Act. There is a marked distinction between '*debt*' by means of borrowing and '*damages*' as is quantified by an authority as is evident from the provisions found in Section 10 (1) of the Act. While clause (a) of sub-section (1) of Section 10 specifically deals with debts of an amount of Rupees Five Hundred or more, clause (b) of sub-section (1) Section 10 deals with the execution of the decree of any Court, which clearly signifies that it is only decrees, which are granted by the civil court, which would fall within the realm of Section 10 (1) and the award of compensation passed by the Commissioner of Workmen Compensation, which is not a civil court, would neither quantify itself to be a '*debt*' nor would the award quantify itself to be a '*decree of any court*' so as to fall within Section 10 (1)(b) of the Provincial Insolvency Act.

36. In a nutshell, while debt is a pre-existing liability on account of borrowal, compensation towards damages passed by the Workmen Compensation Commissioner will not qualify itself as a pre-existing liability, nor the order passed by the Commissioner would partake the character of a



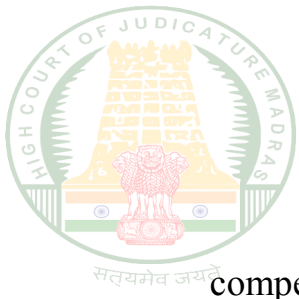
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decree so as to fall within the scope of Section 10 (1)(b) of the Provincial Insolvency Act.

37. Further, the compensation, which is granted to a workman in a Workmen Compensation case would fall within the jurisprudential meaning of 'damages' and it is nothing more than the compensation which the authority determines in the circumstances of each case for the injury or loss which has been sustained by the workman. This does not arise because of any pre-existing obligation but it arises as a result of the determination by the authority and, therefore, does not arise till it has been determined that the complainant is entitled to compensation and, therefore, what the authority does is nothing more than to determine the value of the injury caused and the compensation payable and till such determination is made, there is no liability upon the employer. (*See : S.Milkha Singh & Ors. – Vs – N.K.Gopala Krishna Mudaliar & Ors. – AIR 1956 P&H 174*).

38. In the background of the aforesaid interpretation, it can safely be concluded that the amount, which has been quantified by the Commissioner under the Workmen Compensation Act would only be held to be



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compensation/damages in respect of the personal injury suffered by the 5th respondent and the said damages quantified would not partake the character of '*debt*' to be brought within the ambit of pre-existing liability. Further, the award passed by the Commissioner though amenable to execution but cannot be construed as a decree passed by a civil court. **Issue No.1 is answered accordingly.**

39. In the present case, the petitioner claims that he has taken loans against promissory notes from respondents 1 to 4 and is unable to pay the amounts. Further, the compensation quantified by the authority under the Workmen Compensation Act payable by the petitioner to the 5th respondent cannot be honoured by the petitioner by showing his alleged pathetic financial position and, therefore, the insolvency petition was filed to declare himself as insolvent. The petitioner has taken shelter under Section 10 of the Provincial Insolvency Act to get himself declared as an insolvent.

40. Section 10 has already been extracted supra, which provides three conditions for the person, who seeks to be declared as insolvent by filing a petition. Firstly, his debts amounts to Rupees Five Hundred; secondly, the



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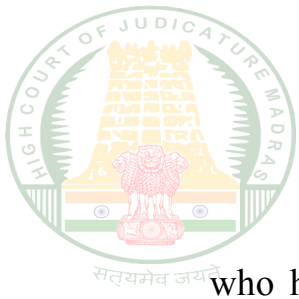
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person is under arrest or imprisonment in execution of the decree of any court for the payment of money; and thirdly, an order of attachment in execution of such decree has been made and is subsisting against his property.

41. The petitioner places reliance on the debts, which he has incurred on the basis of the promissory notes from respondents 1 to 4 to claim that his debts under the promissory notes exceed Rupees Five Hundred and, therefore, he is entitled to be adjudicated as an insolvent.

42. Right away, it could be stated that condition 3 as provided for u/s 10 (1)(c) does not arise in the present case, as even as per Schedule 'B' annexed to the insolvency petition, the petitioner is alleged to be not in possession of any property and, therefore, there arises no question of attachment of any the property belonging to the petitioner. Therefore, Section 10 (1)(c) does not stand attracted to the case on hand.

43. Coming to the other two conditions, as is found in Section 10 (1), clause (a) of sub-section (1) of Section 10 relates to the debt of an amount in excess of Rupees Five Hundred, which would be a factor to declare a person,



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who has filed a petition before the court to be an insolvent. Though it is claimed by the petitioner that he has obtained loans from respondents 1 to 4, which he is unable to repay, however, it is to be pointed out that respondents 1 to 4, from whom the petitioner is alleged to have taken loans under promissory notes to the tune of Rs.3,10,000/= (Rupees Three Lakhs Ten Thousand only) have not turned up before the Court to contest the petition nor have the promissory notes under which the loans are alleged to have been paid have been placed before the Court to establish that the debts of the petitioner exceeds Rupees Five Hundred and, therefore, u/s 10 (1)(a) of the Act, the petitioner is entitled to be declared as an insolvent.

44. Coming to the second condition with regard to arrest or imprisonment in execution of the decree of any court for the payment of money, true it is that the authority under the Workmen Compensation Act has passed an award for a sum of Rs.2,44,392/- along with interest in favour of the 5th respondent payable by the petitioner. This Court has already held that the award passed by the Commissioner of Workmen Compensation does not qualify itself as a decree passed by any court and, therefore, even at the very outset, clause (b) of sub-section (1) of Section 10 cannot be pressed into

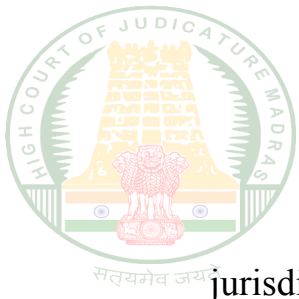


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service. Notwithstanding the inapplicability of the aforesaid provision, even otherwise, there is no material to infer that any execution petition has been filed by the 5th respondent and in pursuance of the said execution petition, an order of arrest or imprisonment of the petitioner has been ordered.

45. A perusal of the order passed by the appellate court reveals that no claim has been made therein with regard to filing of any execution petition for enforcing the order of the authority with regard to the compensation awarded. However, it is only stated across the Bar on behalf of the petitioner that execution proceedings have been initiated by the 5th respondent and an order of arrest has been obtained against the petitioner. In the counter filed by the 5th respondent before the appellate court, though thereafter, the 5th respondent remained absent and was treated *ex parte*, there is no whisper about the filing of execution petition and obtainment of an order of arrest against the petitioner. When there is no order of arrest or imprisonment of the petitioner in execution of the said order, which, as held is not a decree of any court, the claim of the petitioner that he is unable to pay the said amount would have to be held in his favour to declare him as insolvent cannot be accepted as mere inability to pay the amount cannot be the reason to invoke the insolvency

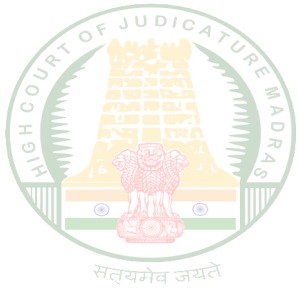


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jurisdiction when the conditions contemplated u/s 10 (1) of the Act are not fulfilled. Though the petitioner claims that he himself claims inability to pay and seeks to declare himself as an insolvent, which is nothing but a scar on his person, thereby causing a disgrace to the person, but when the law does not permit such declaration, non-fulfilment of the conditions postulated in the Provincial Insolvency Act bars this Court from declaring the petitioner as an insolvent as it is the duty of this Court to be a custodian of the rights and liberties of the citizens and it cannot be a party to the infringement of the legal mandate.

46. In the absence of any material which would form the basis to hold that the ingredients of Section 10 (1) stands fulfilled, the claim of the petitioner to declare himself as an insolvent is wholly misconceived and rightly appreciating the facts and materials placed before it, the trial court and the appellate court have rightly dismissed his plea to declare himself as insolvent and the same does not require any interference at the hands of this Court. **Issue No.2 is also answered accordingly.**



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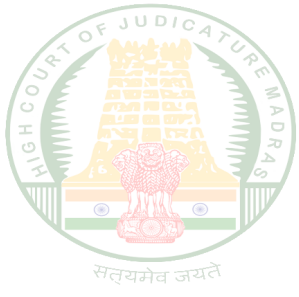
47. For the reasons aforesaid, this Court is of the considered view that no case has been made out to interfere with the order of the appellate court impugned herein and, accordingly, this revision petition fails and the same is dismissed. There shall be no order as to costs.

04.06.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Additional District Court, Dindigul
- 2.The Principal Sub Court, Dindigul
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI,J.

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04.06.2025