

ORIGINAL JURISDICTION.

*Before Sir Lionel Leach, Chief Justice, and Mr. Justice
Krishnaswami Ayyangar.*

1939,
December 15.

K. DASARADHARAMA REDDY (CREDITOR), PETITIONER,

v.

SYED RAHIMPULLA HUSSANI AND ANOTHER
(PETITIONER 1 AND NIL), RESPONDENTS*.

Debt Conciliation Act, Madras (XI of 1936), s.c. 4 (1)—Application under, to Debt Conciliation Board by insolvent without leave of Insolvency Court—If competent—Provincial Insolvency Act (V of 1920), sec. 28 (2)—Writ of certiorari.

An application to a Debt Conciliation Board when the debtor is an insolvent and the Insolvency Court has not given its consent is in direct contravention of section 28 (2) of the Provincial Insolvency Act and is incompetent. The position is the same whether the application to the Debt Conciliation Board is made by the insolvent or by a creditor.

Venkayya v. Sambayya(1), approved.

PETITION praying that in the circumstances stated therein the High Court may be pleased to issue a writ of certiorari calling for records in A.P.P. No. 47 of 1938 on the file of the Debt Conciliation Board, Nellore, and to quash the proceedings therein, dated 13th December 1938, preferred therefrom to the High Court.

P. Chandra Reddy for petitioner.

Respondents were not represented.

LEACH C.J. LEACH C.J.—The rule nisi must be made absolute. The respondent Board has entirely misconceived the law. On 15th March 1935 one Rahimtulla Hussani

* Civil Miscellaneous Petition No. 2270 of 1939.
(1) 1938 M.W.N., 667.

was adjudicated in the Court of the Subordinate Judge of Nellore. On 28th June 1938 he filed an application to the respondent Board for settlement of his debts under section 4 (1) of the Madras Debt Conciliation Act, 1936. The applicant had not obtained his discharge and is still an insolvent. The petitioner objected to the Board entertaining the application on the ground that the applicant's estate had vested in the Official Receiver. The leave of the insolvency Court has not been obtained for the filing of the petition and the Official Receiver was not a party to it. Thereupon, the Board directed notice to be issued to the Official Receiver who replied that he could not be made a party to the application as the applicant had not obtained the consent of the insolvency Court.

The Board overruled the objection and refused to accept the decision of this Court in *Venkayya v. Sambayya*(1), which was in point. In that case PANDRANG ROW J. held that an application to a Debt Conciliation Board, when the debtor was an insolvent and the insolvency Court had not given its consent, was in direct contravention of section 28 (2) of the Provincial Insolvency Act. The applicant happened to be a creditor and the respondent Board considered that that made all the difference. This is an opinion which certainly cannot be accepted. The position is the same whether the application to the Debt Conciliation Board is made by the insolvent or by a creditor. The debtor's estate has become vested in the Official Receiver and the Provincial Insolvency Act requires that it shall be administered by the insolvency Court. An insolvency takes away the jurisdiction of the Debt Conciliation Board.

DASABADHA-
RAMA
v.
RAHIMTULLA.
—
LEACH C.J.

DASABADHA-
RAMA
v.
RAHIMTULLA.
LEACH C.J.

The order of the Board contains other statements which are equally open to objection but it is not necessary to discuss them. It is sufficient to say that in the circumstances the Board had no jurisdiction to accept the petition and the proceedings must be quashed. The petitioner is entitled to his costs and we fix the Advocate's fee at Rs. 50.

N.S.

APPELLATE CIVIL.

*Before Sir Sidney Burn, Officiating Chief Justice, and
Mr. Justice Krishnaswami Ayyangar.*

1940,
January 2.

N.K.R.M.N. NAGAPPA CHETTIAR AND SEVEN OTHERS
(PLAINTIFFS 2 TO 5 AND DEFENDANTS 3 TO 6), APPELLANTS,

v.

RAJA SRIMANTHU MUTHU VIJAYA RAGHUNATHA
DORAISINGAM *alias* GOURI VALLABHA THEVAR,
ZAMINDAR OF SIVAGANGA, THROUGH HIS AUTHORIZED
AGENT AND DIWAN R. M. SUNDARAM AND ANOTHER
(DEFENDANTS 1 AND 7), RESPONDENTS. *

*Court of Wards Act, Madras (I of 1902), sec. 49—Notice
u der, on behalf of Hindu temple—Sufficiency of—Names
and addresses of managers, if to be stated—Hindu idol—
Juristic entity.*

A Hindu idol is a juristic entity with the power of suing and being sued. The real plaintiff in a suit on behalf of a Hindu temple is its presiding Deity. A notice of suit on behalf of a Hindu temple, under section 49 of the Madras Court of Wards Act is not therefore open to objection for the reason only that the names and addresses of the managers of the temple are not stated therein. It is sufficient if the notice mentions the name of the temple and of the village in which it is situated.

* Letters Patent Appeal No. 13 of 1939.