

Vellachami Chetti Vs. Arunachalam Chetti (Dead) and ors.

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Court : Chennai

Decided On : Nov-17-1930

Reported in : AIR1931Mad325; (1931)60MLJ339

Appellant : Vellachami Chetti

Respondent : Arunachalam Chetti (Dead) and ors.

Judgement :

1. The insolvent in this case within the time fixed for his application for discharge applied for extension of that time. The learned District Judge refused to grant an extension and annulled the adjudication. The latter part of his order, annulling the adjudication, does not appear to us to have been proper. The insolvent, though he may not have applied for discharge in so many words, had submitted himself to the Court and expressed his desire to apply for a discharge, an application which would involve the investigation and consideration of his conduct by the Court. As the learned District Judge was not prepared to extend the time, he might properly have treated the insolvent's application for time as an application for discharge or should have allowed the insolvent to make an immediate application for discharge, if that was thought formally necessary. The penalty of annulment under Section 43 of the Act does not appear to be intended for insolvents who come before the Court in time and submit themselves to the discipline of the Court.

2. But the learned Judge was right in his view that this was not a case for immediate discharge. Indeed absolute discharge could not have been granted

under the Act.

3. The order of annulment is set aside and the petition is remanded to the District Judge, who should now consider on what conditions, if any, the insolvent should be discharged.

4. There will be no order as to costs in this appeal.

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