

In the High Court of Judicature of Travancore-Cochin.

Before their Lordships

The Hon'ble Justice Shri K. Sankaran &
The Hon'ble Justice Shri K.S. Govinda Pillai.

A.S. No. 6 of 1953.

M.P.No.355/1125 in L.P.No.21/1121 on the file of the
District Court of Anjikaimal.

Appellant:

Sree Pooranathrayeesa Vilasam Bank Ltd., Ernakulam.

by Advocates Shri I.S.Venkiteswara Iyer &

C.S.Ananthakrishna Iyer.

Respondents:

1. Kadir, son of Chovariath, Thuravoor Pakuthy Shertallai Taluk. (died). (Heirs are impleaded as respondents 3 to 6).

2. The Official Receiver, Anjikaimal District Court.

Addl. Respondents.

3. Mahomed Ali son of Chalakkal Kadir, Padingjattumkara Vadakkum Muri, Thuravoor Pakuthy, Shertallai.
4. Kunji Pathumma wife of deceased 1st respondent of do.
5. Kadija Umma daughter of deceased 1st & respondent, residing in Vattathumuriparambil, Thrikkanarvattom Desom, Ernakulam.
6. Melissa daughter of deceased 1st respondent, residing in Puthenveedu, Vadakkuzhagor, Muri, Shertallai.

Addl. respondents 3 to 6 have been impleaded as per order on G.M.P.325/53 dated 27.2.1953.

Respondents 3 to 6 by Advocate Shri A.V. Noothedan.

This appeal having been finally heard on 29.7.1953 the court on the same day delivered the following

Judgment.

The 1st counter-petitioner in L.P.21/1121 on the file of the Anjikaimal District Court has preferred this appeal against that court's order giving sanction applied for in M.P.355/1125 filed by the assignee of the 2nd counter petitioner. The matter had come up before this court on a prior occasion in A.S.26/1950 and by the judgment in that appeal the case was remanded to the lower court with the specific direction that the court should first consider whether the petition comes under section 53 or 54 of the Cochin Insolvency Act and then to consider the

question whether the sanction under section 54A should be given. All the same it is seen that the lower court has deferred the first question for consideration and decision to a later stage and in the meanwhile has given the sanction applied for. In the present appeal the main objection raised is ~~the~~ to such a procedure adopted by the lower court. We think that the appellants' objection is well founded and on that point alone he has to succeed in the appeal. There was no justification for the lower court to ignore or act contrary to the clear and specific direction contained in the remand order. It was the duty of that court to act up to that direction and to consider first the question whether the allegations in M.P.355 are such as to bring the petition within sections 53 or 54 of the Insolvency Act and in the light of the conclusion regarding that matter, to proceed to consider and decide the question whether the sanction applied for under section 54-A has to be given or not. Accordingly the order under appeal is set aside and the case is again remanded to the lower court for fresh disposal as per the above direction. No order as to the costs of this appeal.

29th July 1953.

(Sd) K. Sankaran, Judge.

(Sd) K. S. Govinda Pillai, Judge.

(True copy)

L. R. Kumar
Asst. Registrar,
for Registrar.

Compared by
P. J. S.