Case Citation: (2026) ibclaw.in 6426 HC

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30-09-2026

CORAM

THE HON'BLE MR JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MRS.JUSTICE M.D.SUMATHI

CMA(MD) No. 1277 of 2026
CNR:{HCMD010329182026}
and
CMP(MD)No.12251 of 2026

Jahir Ussain S/o.Kaniyar Mohamed Kasim,
Door No.260, Keezha Theru,
Chakkarappalli Village,
Papanasam Taluk,Thanjavur District.

..Petitioner(s)

Vs

1. U.A.Rahman Batcha S/o.Abdul Jameel,
   Door No.9, High Road,
   Mydeen Nagar, Ayyampettai,
   Papanasam Taluk, Thanjavur District.

2. Mehraj Nisha W/o.Mohamed Fharuk,
   Door No.88. Jinnaa Street,
   Chakkarappalli Village,
   Papanasam Taluk, Thanjavur District.
   Mumthaj Begum (Died).

3. Imthiyaz Ahamed, S/o.Rahman Batcha,
   Door No.9, High Road, Mydeen Nagar,
   Ayyampettai, Papanasam Taluk,
   Thanjavur District.

4. Rabiyathul Basiriya, W/o.Rahman Batcha,
   Door No.9, High Road, Mydeen Nagar,
   Ayyampettai, Papanasam Taluk,
   Thanjavur District.

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5. Sirajudeen Muneera,
W/o.Mohamed Kasim Sha,
Door No.7/8, High Road, Mydeen Nagar,
Ayyampettai, Papanasam Taluk,
Thanjavur District.

6. U.A.Hawva Kani, W/o.Ullu Mohamed Basheer,
Door No.9, High Road, Mydeen Nagar,
Ayyampettai, Papanasam Taluk,
Thanjavur District.

7. Afrin D/o.Mohamed Fharuk,
Door No.88, Jinnaa Street,
Chakkarappalli Village,
Papanasam Taluk,Thanjavur District.
Mohamed Ibrahim (Died)

8. Habeeb Ammal D/o.Mohamed Batcha,
Door No.72, Jinnaa Street,
Chakkarappalli Village, Papanasam Taluk,
Thanjavur District.

9. Rahamathunnisa, D/o.Mohamed Batcha,
Door No.72, Jinnaa Street,
Chakkarappalli Village, Papanasam Taluk,Jn
Thanjavur District.

10. Mohamed Basheer,
S/o.Kaniyar Mohamed Kasim,
Door No.260, Keezha Theru,
Chakkarappalli Village, Papanasam Taluk,
Thanjavur District.

11. Sabeer Ahamed,
S/o.Kaniyar Mohamed Kasim,
Door No.260, Keezha Theru,
Chakkarappalli Village, Papanasam Taluk,
Thanjavur District.

12. Ameerjohn, D/o.Kaniyar Mohamed Kasim,
Door No.260, Keezha Theru,
Chakkarappalli Village, Papanasam Taluk,
Thanjavur District.

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13. Sobia, W/o.Kaniyar Mohamed Kasim, Door No.260, Keezha Theru, Chakkarappalli Village, Papanasam Taluk, Thanjavur District.

14. Fathima Yaswin, W/o.Sabeer Ahamed, Door No.260, Keezha Theru, Chakkarappalli Village, Papanasam Taluk, Thanjavur District.

15. The Sub Registrar, Sub Registrar Office, Ayyampettai.

16. The Joint Sub Registrar No.I District Registrar Office, Sivagangai Poonga, Thanjavur.

17. The District Collector, District Collector Office, Thanjavur.

..Respondent(s)

Prayer : Civil Miscellaneous Appeal filed U/s 75(2) of the Provincial Insolvency Act, 1920, to call for the records and set aside the order and decretal order dated 18.12.2025 passed in I.P. No. 4 of 2016 on the file of II Additional District and Sessions Court, Thanjavur and allow the present Civil Miscellaneous Appeal with costs throughout and thus render justice.

For Petitioner(s): Ms.Janaki Devi V for Mr.Shyllappakalyan

For Respondent(s): Mr.S.Venkatesan for R1, R4 To R6

JUDGMENT

(By G.R.Swaminathan J.)

Challenge in this appeal is to the order dated 18.12.2025 made in IP No.4 of 2016 passed by the learned II Additional District and Sessions Judge, Thanjavur.

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2.The learned counsel appearing for the appellant made a very short point. She argued that unless the debtor commits any one or more acts of insolvency catalogued in Section 6 of the Provincial Insolvency Act, 1920, no petition by a creditor under Section 9 of the Act would lie.

3.The respondents 1 to 9 herein filed I.P No.4 of 2016 before the Court below to declare the appellant and respondents 10 to 14 herein as insolvent persons. The first and second petitioner in the I.P examined themselves as PW.1 and PW.2. Exs.A1 to A23 were marked. The appellant examined himself as RW.1. After hearing both the parties, the court below vide order dated 18.12.2025 allowed the petition and declared the respondents 1 to 6 in the I.P as insolvents. The properties mentioned in the petition were directed to be sold in public auction. Repayment was to be made from out of the sale proceeds. Assailing the said order, this appeal has been filed.

4.Law provides for remedies through legal proceedings. To enforce one's civil rights, one can institute suits. Section 9 of the CPC states that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is expressly or impliedly barred. Section 26 states that every suit shall be instituted by the presentation of a plaint. Any suit seeking a civil remedy can be straightaway instituted before the court of competent jurisdiction. Of course, subject to the provisions laid down in CPC. But remedy sought through a petition would be on a different footing. It has to

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be statute-specific. It has to trace the particular provision under which it is filed. It has to conform to the parameters and criteria set out in the Section concerned. If the conditions prescribed in the Section are not present, the petition will not be maintainable.

5.The Provincial Insolvency Act, 1920 contemplates filing of petitions both by the creditor as well as the debtor. A debtor's petition to declare himself insolvent is filed under Section 10 of the said Act. A creditor's petition is filed under Section 9. The case on hand arises out of a creditor's petition. But the petition has been filed under Section 10. The Registry of the court below ought to have returned the petition straightaway and called upon the counsel to make the necessary correction. Every petition should be filed under the correct provision of law. But wrong quoting or misquoting cannot render the petition as not maintainable. The principle that we invoke in administrative law can as well be applied to the case on hand. We can take it that the petition filed by the creditors/contesting respondents herein was filed under Section 9(1) of the Provincial Insolvency Act, 1920.

6.The said provision is as follows :

> "9. Conditions on which creditor may petition
>
> (1)A creditor shall not be entitled to present an insolvency petition against a debtor unless
>
> (a)the debt owing by the debtor to the creditor, or, if two or more

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creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(b)the debt is a liquidated sum payable either immediately or at some certain future time, and

(c)the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition:

[Provided that where the said period of three months referred to in clause (c)expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens.] *[Added by Act 3 of 1950, Section 6 (w.e.f. 18.2.1950).]"*

The expression employed in the above provision is "and". It is conjunctive. It means that all the three conditions set out in (a), (b) and (c) must be present. The term "act of insolvency" is defined in Section 6(1) of the Act. It reads as follows :

"6. Acts of insolvency

(1)A debtor commits an act of insolvency in each of the following cases, namely:

(a) if, in India or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;

(b) if, in India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

(c)if, in India or elsewhere, he makes any transfer of his property, or

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of any part thereof, which would, under this or any other enactment for the time being in force, be void as fraudulent preference if he were adjudged an insolvent;

(d) if, with intent to defeat or delay his creditors,

(i) he departs or remains out of the territories to which this Act extends;

(ii) he departs from his dwelling-house or usual place of business or otherwise absents himself,

(iii) he secludes himself so as to deprive his creditors of the means of communicating with him;

(e) if any of his property has been sold in execution of the decree of any Court for the payment of money;

(f) if he petitions to be adjudged an insolvent under the provisions of this Act;

(g) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts; or

(h) if he is imprisoned in execution of the decree of any Court for the payment of money."

Unless the debtor had committed an act of insolvency as defined above, a creditor's petition under Section 9(1) will not lie. The phrase "a creditor shall not be entitled to present" and the word "unless" are highly significant. The conditions set out in Section 9(1) of the Act are mandatory. If they are not present, no petition can be filed.

7.We called upon the learned counsel for the contesting respondents to clarify as to which act of insolvency is being attributed to the debtor. The

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learned counsel responded that the debtor was attempting to alienate his properties.

8.Section 6(a) to (c) employ the expression “makes a transfer”. It means that the debtor must have transferred his property. Section 6 is not about attempts to transfer of property. It is not even about agreement to transfer the property. The High Court of Andhra Pradesh in ***Vadamala Sanjeevi Reddy v. K.Ellappa Reddy and anr (1966 SCC OnLine AP 9)*** held that Section 6(b) applies only when a debtor transfers his property with the view to defeat or delay all the creditors. A learned Judge of this Court in ***Chellathurai Nadar v. Ramaswami Pillai, 1995 SCC OnLine Mad 260*** held that execution of an agreement for sale cannot be held to be sufficient to attract the provisions of Section 6 of the Provincial Insolvency Act, 1920. It is only if the debtor conveys a right which he had in the property, in favour of another, that too with the intention of defeating the interests of his creditors, Section 6 of the Provincial Insolvency Act can be attracted.

9.Attempting to transfer one’s property to defeat the interest of the creditors can be a good ground for attaching the property before judgment under Order 38 of CPC. However, it is not an act of insolvency within the meaning of Section 6 of the Provincial Insolvency Act, 1920.

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10.The contesting respondents herein have portrayed the appellant and others as flight-risk. The appellant herein had been present before the court below throughout and conducted the proceedings. When we sought his appearance, he readily complied with our direction.

11.The appellant and the respondents 10 to 14 have not committed any act of insolvency. Hence, no petition under Section 9 of the Act could have been filed against them. But the court below went by the fact that there were financial transaction between the parties and that the appellant on his behalf and on behalf of R10 to R14 herein having received amounts from the petitioning-creditors failed to repay the same. Failure to repay by itself will not constitute an act of insolvency. It can be a cause of action for instituting a money suit. Cause of action is existence of those facts which give a party a right to judicial remedy (P.Ramanatha Aiyar's Advanced Law Lexicon). Cause of action is the ground based on which the superstructure of legal action is erected. What can be a cause of action for maintaining a money suit may not be a cause of action for initiating insolvency proceedings. The trial Judge failed to keep in view this fundamental point. The learned Judge ought to have verified if the petition filed under Section 9 of the Provincial Insolvency Act, 1920 fulfilled the conditions precedent set out therein. Even a cursory perusal would have revealed that they are absent. On this sole ground, we set aside the impugned order and allow this appeal.

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12.The learned counsel for the contesting respondents suggested that the impugned order could be set aside only in respect of the appellant. We disagree. When the petition itself is incompetent, it has to go lock, stock and barrel. It cannot be allowed to survive against the respondents 10 to 14 also. We cannot permit the enforcement of the impugned order selectively. Once an order is found to be without jurisdiction, it goes to the root of the matter and it has to go as a whole and against everyone.

13.We wanted to explore the possibilities of settlement. We summoned Sri U.A.Rahman Batcha as well as Jahir Ussain. The appellant admitted before us that he had borrowed a sum of Rs.15,00,000/- from the petitioning creditors. Rahman Batcha on the other hand claimed that what was received was multiple times higher. We are not in a position to go into the factual controversy. The parties are Muslims. Quran forbids collection or levy of interest. The parties have therefore crafted the contracts between them in a peculiar manner. A simple loan is styled as an investment. The parties are probably labouring under the fond impression that they can thus pull the wool over the eyes of the Almighty. Subterfuges apart, we have no doubt in our minds that the appellant owes substantial amounts to the contesting respondents herein. He has technically succeeded before us. But we hope better sense prevails. Needless to say, the petitioning-creditors herein are at liberty to pursue any remedy open to them in law.

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14.For the foregoing reasons, this civil miscellaneous appeal is allowed.

No costs. Connected miscellaneous petition is closed.

(G.R.S.,J.) (M.D.S.,J.)
30-09-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

SKM

To

1. The Sub Registrar,
   Sub Registrar Office,
   Ayyampettai.

2. The Joint Sub Registrar No.I
   District Registrar Office,
   Sivagangai Poonga,
   Thanjavur.

3. The District Collector,
   District Collector Office,
   Thanjavur.

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