

(1992) 08 AP CK 0014

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3860 of 1991

Angadi Santhanna and Another

APPELLANT

Vs

G. Nagabhushanam and Others

RESPONDENT

Date of Decision : 07-08-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Provincial Insolvency Act, 1920 — Section 75(1)

Citation : (1992) 3 ALT 487

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : R.V. Subba Rao, R.V. Prasad and R.V. Nagabhushana Rao, for the Appellant; T. Veerabhadrayya, for the Respondent

Final Decision : Dismissed

Judgement

Motilal B. Naik, J.—The petitioners herein filed I.A. No. 40 of 1991 in I.P. No. 6 of 1991 under Order 1, Rule 10 C.P.C praying to permit them to come on record as respondents 4 and 5 in the Insolvency Petition. The petitioners stated in the affidavit that I.P. No. 6/91 is filed by respondent No. 1 herein in collusion with respondents 2 to 4, who are the debtors. It is stated that the petitioners are creditors and they filed suits, O.S. Nos. 218/90 and 290/90 against respondent No. 2 to 4 for recovery of certain amount. The trial Court seems to have decreed the suits and E.P. No. 18/91 was filed by one of the decree-holders against the judgment- debtors and some of the items of the properties were sold in auction and were purchased by one of the decree-holders. Likewise, the 1st petitioner also filed E.P. No. 17/91 for sale of certain items of the properties. At that stage, respondent No. 1 filed I.P. No. 6/91 in the Subordinate Judge's Court, Adoni for declaring the judgment-debtors as insolvent. It is also contended that the petition is filed solely for the purpose of preventing the trial Court in passing an order in E.P. No. 17/91 which was directed finally for orders on 23-10-1991.

2. Smelling the design of the judgment-debtor, petition under Order 1, Rule 10

CPC was filed inter alia alleging the mala fide intention and pleaded for bringing them as respondents 4 and 5 to the above Insolvency Petition, so that they could contest the merits or otherwise of the petition. The lower Court somehow was not convinced and dismissed the interlocutory application on 25-11-1991. As against the said dismissal, the present revision petition is filed.

3. Sri T. Veerabhadrayya, learned counsel appearing for the respondents, has raised preliminary objection as to the maintainability of revision petition in the High Court. He contended that as against any order or decision taken by the insolvency court, a remedy is provided u/s 75(1) of the Provincial Insolvency Act (for short "the Act"). For the purpose of analysing the issue, it would be helpful to read the provisions of Section 75 of the Act. Section 75(1) reads as under:

"75. Appeals:- (1) The debtor, any creditor, the receiver or any other person aggrieved by a decision come to or an order made in the exercise of insolvency jurisdiction by a court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final:

Provided that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the same and pass such order with respect thereto as it thinks fit:

Provided, further, that any such person aggrieved by a deviation of the District Court on appeal from a decision of a subordinate Court u/s 4 may appeal to the High Court on any of the grounds mentioned in Sub-section (1) of Section 100 of the Code of Civil Procedure, 1908."

Thus, according to Sri Veerabhadrayya, as against a decision or order made by the insolvency court in exercise of its insolvency jurisdiction, only an appeal lies to the District Court and, therefore, the present revision filed by the petitioners before the High Court is not maintainable.

4. Sri R.V. Prasad, learned counsel appearing for the petitioners, has contended that the order passed rejecting the petition cannot be treated as "a decision" by the court exercising the jurisdiction vested in it under the provisions of the Insolvency Act and, therefore, a revision lies to the High Court. He further contended that u/s 115 of the Code of Civil Procedure, the High Court has wide powers to entertain the revision petition. In so far as rejecting the application for bringing the petitioners on record as respondents 4 and 5 is not in true sense of an order or decision falling within the ambit of Section 75(1) of the Act and, therefore, the Court has not passed an order under the provisions of the Act vested in it. Under these circumstances, he contended that the revision petition is maintainable.

5. Sri Veerabhadrayya has brought to my notice the decision of a Division Bench of the Madras High Court in In Re: Pedda Iswara Reddy, in support of his contention that revision does not lie to the High Court in given circumstances. In that case, an application was made under Order 1, Rule 10 CPC praying that

certain alienees from the insolvent may be added as party respondents in the insolvency application and there was also a petition for condonation of delay filed along with the said application. The two petitions were dismissed and pursuant to the dismissal, two revision petitions were sought to be filed in the High Court on the ground that as they were not appealable under Order XLIII of the Civil Procedure Code, appeals to the civil court are incompetent. The Madras High Court considered this aspect and held:

"The only question to be decided was whether the orders in question were orders made or decisions come to by the judge in the exercise of insolvency jurisdiction. They are such orders and they definitely conclude particular dispute between the parties, namely, whether the alienees were to be made parties or not and fall within the words "a decision come to or an order made" within the meaning of Section 75(1) of the Provincial Insolvency Act. Revisions against those orders to the High Court would be incompetent inasmuch as appeals lie to the District Court."

Thus, the Division Bench has held that as against the dismissal by the insolvency court, only appeal lies to the District Court.

6. Sri Prasad has not placed before me any relevant decision in support of his contention, whereas the decision placed before me by Sri Veerabhadrayya supports his contention. In view of the settled law, I do not find any merit in entertaining the revision petition. I, therefore, dismiss the revision petition only on the question of maintainability.

7. Once I am dismissing the revision petition only on the question of maintainability, I am not inclined to go into the merits of the case. No costs.

8. However, it is made clear that it is open to the petitioners to move appropriate court for such relief if they choose to do so. The Court below is further directed to return the certified copies filed in support of the petition to the petitioners herein enabling them to take further steps.