

(1961) 11 AP CK 0020

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1231 of 1958

Chaganti Ramachandrareddi

APPELLANT

Vs

Gadiko Kotireddi and Others

RESPONDENT

Date of Decision : 15-11-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Provincial Insolvency Act, 1920 — Section 10(2), 43, 5

Citation : AIR 1963 AP 52

Hon'ble Judges : Satyanarayana Raju, J;Kumarayya, J

Bench : Division Bench

Advocate : K.A. Suryanarayana Raju and M. Suryanarayana Murthy, for the Appellant; M. Rama Reddy, for the Respondent

Final Decision : Allowed

Judgement

Satyanarayana Raju, J.—This revision case raises a question as to the power of an insolvency Court to review its orders.

2. The facts which have culminated in this revision may be briefly stated: -- On 24-9-1953 one Ramachandra Reddy was adjudged an insolvent on his own petition in I. P. No. 17 of 1952 on the file of the Sub Court, Guntur and the Court granted one year's time to the insolvent to apply for discharge. The properties of the insolvent were vested in the Official Receiver immediately on the adjudication. The Official Receiver sold the insolvent's property and realised a sum of Rs. 9,000/-. Before the Receiver, the creditors of the insolvent filed their claims. Some of these claims were allowed but others were rejected by the Official Receiver. The aggrieved creditors filed appeals against the order of the Official Receiver. Meanwhile an application for extension of time for discharge was made and the time was extended till 24-9-1955. On 29-2-1956, the Official Receiver addressed a letter to the Subordinate Judge, Tenali requesting that the adjudication might be annulled u/s 43 of the Provincial Insolvency Act after vesting the properties in the Official Receiver.

On 11-4-1956, the learned Subordinate Judge annulled the adjudication unconditionally without giving any reasons. On 29-12-1956, the insolvent filed I. A. No. 147 of 1957 before the Sub Court, Tenali, for a review of the order of unconditional annulment made on 11-4-1956. It was prayed in the application that the earlier order should be set aside and a fresh order be made vesting the properties of the insolvent in the Official Receiver. By his order dated 19th March, 1957, the learned Subordinate Judge annulled the adjudication and by way of rectifying the earlier order, passed a supplementary order vesting the properties in the Official Receiver. The order directed that the Receiver should continue to realise and distribute the debtor's property in accordance with the provisions of the Insolvency Act. Aggrieved by the said order, the 14th respondent, a creditor of the insolvent, preferred an appeal before the District Judge, Guntur. By his order dated 24th February, 1958, the learned District Judge allowed the appeal and directed that the original annulment order dated 11-4-1956 should be restored. It is this appellate order of the District Court, Guntur, that is impugned in this revision petition,

3. It may be stated at the outset that while the learned Subordinate Judge held that an insolvency Court had power of review by reason of the provisions of Section 5 of the Provincial Insolvent Act. the learned Appellate Judge took the view that it was not within the competence of the insolvency Court to review its orders.

4. Before considering the contentions raised in this revision petition, it will be useful to read the material provisions of the Provincial Insolvency Act. Section 5 which enumerates the general powers of the Courts, in so far as it is material, reads thus:

"(1) Subject to the provisions of this Act, the Court in regard to proceedings under this Act, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction.

(2) xxxxx

Section 10(2) reads;

"(1) xxxxx

(2) A debtor in respect of whom an order of adjudication whether made under the Presidency-towns Insolvency Act, 1909, or under this Act has been annulled, owing to his failure to apply, or to prosecute an application for his discharge, shall not be entitled to present an insolvency petition without the leave of the Court by which the order of adjudication was annulled. Such Court shall not grant leave unless it is satisfied either that the debtor was prevented by any reasonable cause from presenting or prosecuting his application, as the case may be, or that the petition is founded on facts substantially different from those contained in the petition on which the order of adjudication was made."

5. The Provincial Insolvency Act is a special law, and where the Act provides a

specific remedy, it is not open to a party to resort to the general provisions of the CPC of 1908. u/s 5, the Court, in regard to proceedings in insolvency has, subject to the provisions of the Act, the same powers and is required to follow the same procedure as it follows in the exercise of original civil Jurisdiction. Therefore, it is to be seen whether there is any special procedure prescribed by the Provincial Insolvency Act enabling the debtor to move the Insolvency Court for appropriate orders in a situation similar to the one arising in the present case. If there is a special provision, the Insolvency Court cannot exercise the powers vested in a Civil Court under the general provisions of the Civil Procedure Code. There is abundant authority in support of the proposition that where there is no specific provision, orders passed under the Provincial Insolvency Act are reviewable under Order 47, Rule 1 C. P. C. This is so by reason of fact that the provisions enabling the Court to review its orders, which is one of the powers vested in a Civil Court under Order 47 Rule 1, C. P. C., would be attracted to proceedings in Insolvency by reason of Section 5 of the Provincial Insolvency Act.

Reference may here be made to the latest of the decisions of the Madras High Court in Pasumarti Satyanarayana Rao and Another Vs. The Official Receiver of West Godavari and Another, where a Division Bench, consisting of Bell and Govindarajachari, JJ. has held that a Court acting under the Provincial Insolvency Act has power to review its orders. This was the view taken in Challa Abbireddi and Others Vs. Challa Venkata Reddi and Another, . The same view was taken by Anantakrishna Aiyar, J., in Ayyasami Chetty Vs. The Official Receiver, where it was held that "mofussil courts in the exercise of insolvency jurisdiction have, by virtue of Section 5 of the Provincial Insolvency Act, the right of review and the right to entertain an application under Order 9, Civil Procedure Code, to set aside for sufficient cause, orders passed ex parte".

6. Learned counsel for the respondent has relied upon the decision of Division Bench of the Madras High Court in C. Venugopalachariar Vs. K. Chinnulal Sowcar and Others, . There the learned Judges had to consider whether having regard to the provisions of Section 5, read with Section 10(2) of the Provincial Insolvency Act, a debtor, whose application had been dismissed by reason of his absence was entitled to apply for review of the order of annulment. The Division Bench held that Section 5 had to be read alone with Section 10(2) and as the insolvent, had a right to apply afresh, he was not entitled to make the application. The basis of the rule laid down in C. Venugopalachariar Vs. K. Chinnulal Sowcar and Others, can be explained. Section 5 specifically provides that the general power vested in the Insolvency Court to exercise the same jurisdiction as is vested in a Civil Court is subject to an important qualification, namely, that it has to be exercised subject to the provisions of the Act. Where, therefore, there is a specific provision provided elsewhere in the Act, the Civil Court cannot exercise its power of review. The following observations made therein bring out this distinction.

"I am inclined to agree that Section 10, Clause (2) governs this case. u/s 5 of the

Act the provisions of the CPC are to be applied subject to the provisions of the Act. Section 10(2) provides a definite remedy for a debtor in respect of whom an order of adjudication has been annulled, and it gives him permission to present another petition on the same facts, provided that he satisfies the Court that he was prevented from prosecuting his application by any reasonable cause. Such a remedy is certainly distinct from any remedy granted by the CPC and appears to prescribe definitely the procedure to be adopted. If that is so, then, I think that the words Subject to the provisions of this Act", in Section 5 must have their full force; when the Act prescribes a definite method by which the debtor can obtain his remedy it is not open to him to adopt other methods which would be open under the Civil Procedure Code."

7. The very reasoning adopted by the learned Judge supports the view taken in the other Bench decisions of the Madras High Court that the powers vested in the Civil Court cannot be exercised where a specific remedy is provided under the Act; but where no such specific remedy is available to an aggrieved person within the four corners of the Act, he can have resort to the general powers of the Civil Court. This broad ground of distinction was reiterated by Mr. Justice Chandra Reddy (as he then was) in M.A. Jaleel Sahib Vs. Seenappa Ramaswami Mudaliar and Co., . There the learned Judge observed:

"Under Section 5, Provincial Insolvency Act the Court in exercising insolvency jurisdiction can follow the procedure prescribed in the Code only when there is no procedure prescribed in the Act with regard to a particular matter but not when it is provided for in the Act. In other words the provisions of the CPC will apply in the absence of any provisions in the Act. Where the Act prescribed a method by which a party can work out his remedy it is not open to him to call to his aid the provisions of the Civil Procedure Code--"

Indeed the learned Judge deduced this principle from the decisions in C. Venugopalachariar Vs. K. Chinnulal Sowcar and Others, : Ayyasami Chetty Vs. The Official Receiver, and Challa Abbireddi and Others Vs. Challa Venkata Reddi and Another, On the principles established by the above decisions, the problem requiring solution in the instant case is whether the debtor, who seeks to have the unconditional order of annulment reviewed, has a remedy provided u/s 10(2) of the Act for it is common ground that apart from that provision, there is no other provision in the Act which gives him such a right.

Section 10(2), which is extracted above, provides a specific remedy for the debtor in respect of whom an order of adjudication has been annulled and it gives him permission to present another petition on the same facts, provided that he satisfied the Court, that he was prevented, by any reasonable cause, from presenting or prosecuting his application. Here the relief sought is to set aside the unconditional order of annulment passed by the learned Subordinate Judge on the earlier occasion without providing for the vesting of the properties of the insolvent in the Official Receiver. in such a situation, the special remedy provided by Section 10(2) cannot be availed of by the debtor, and the conclusion,

therefore must be that the remedy sought by the debtor is outside the scope of Section 10(2). If this conclusion is correct, as we hold it to be, the learned Subordinate Judge was right in allowing the review application and rectifying the defect contained in the earlier order by passing a supplementary order vesting the property of the insolvent in the Official Receiver to be administered by him in accordance with the provisions of the Insolvency Act.

8. We, therefore, hold that the view taken by the Subordinate Judge is correct and that taken by the appellate Court is not in accordance with law and cannot be sustained. This revision petition is allowed and the order of the Subordinate Judge is restored with costs here and in the Courts below.