

(1949) 10 MAD CK 0028

In the Madras High Court

Case No : Civil Revision Petition No's. 797 to 799 and 1063 of 1947

Chunduru Krishnayya and Another

APPELLANT

Vs

Sree Seethanagara Veeranjaneya Cin and Oil Mills,
Nagasarapu Krishnamurthi and Co. and Others

RESPONDENT

Date of Decision : 28-10-1949

Acts Referred:

Madras Civil Rules of Practice — Rule 21

Provincial Insolvency Act, 1920 — Section 19, 19(1), 27, 79

Citation : AIR 1950 Mad 386

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

Advocate : G.C. Venkatasubba Rao and Suryanaryana, for the Appellant; M.S. Ramachandra Rao and M. Subramania Sarma, for the Respondent

Final Decision : Dismissed

Judgement

Krishnaswami Nayudu, J.—C. R. P. Nos. 797 and 798 of 1947: These revision petitions are against the orders in C. M. A. Nos. 115 and

120 of 1946 respectively on the file of the District Judge of Guntur. These relate to the insolvency of one Immadisetti Bikshapathi. A creditor of

his, filed I. P. No. 15 of 1946 on 6th September 1946 for his adjudication. An ex parte order for adjudication was made. The petitioners who

claim to be transferees of the properties of the insolvent filed applications to be added as parties to the said I. P. No. 15 of 1946 as they

contended that they are entitled to notice of the adjudication petition before final orders were passed. The applications filed by the petitioners for

adding them as parties and hearing them were dismissed by the learned Subordinate Judge of Guntur before whom the said I. P. No. 15 of 1946

was filed and an ex parte order of adjudication was made adjudicating the debtor

an insolvent on 6th November 1946. As against the said orders, appeals were filed, C. M. A. Nos. 115 and 120 of 1946 to the District Judge of Guntur. The appeals also were dismissed, the learned Judge observing that they are not persons aggrieved by the order of adjudication and therefore they were not entitled to file appeals u/s 75, Provincial Insolvency Act.

2. It is contended on behalf of the petitioners that they are transferees of the properties of the insolvent and under Rule 21, clause (3) of the rules framed under the Provincial Insolvency Act of 1920, are entitled to notice of the petition for adjudication filed u/s 19(1), Provincial Insolvency Act and that notice not having been given they were not allowed to oppose the petition for adjudication and have their say in the matter and an order of adjudication passed in their absence is irregular and is liable to be set aside. Rule 21, clause (3), as originally framed, provided for notice of the date fixed for the hearing of an insolvency petition u/s 19(1) of the Act to be sent by the Court by registered post if the petition is by the debtor, to all creditors mentioned in the petition, and if the petition is by a creditor, to the debtor, not less than 14 days before the said date. But the said rule was amended prior to 6th September 1946, by which after the words ""if the petition is by a creditor to the debtor"" the words ""and to any transferee, the transfer in whose favour is alleged to be an act of insolvency within the meaning of clause (a) or (b) or (c) of Section 6 of the Act, [were added ?] There is no doubt that the petitioners are entitled to notice under the amended rule. The petition having been filed after the date of this amendment, notice should ordinarily have gone to the petitioners and they should have been given an opportunity to be heard on the question whether an order for adjudication should issue or not. The learned District Judge held that they were not persons aggrieved by the order of adjudication relying on the Full Bench decision in *Official Receiver, Guntur v. Gopalakrishniah*, I. L. R. (1945) Mad. 541 : A. I. R. 1945 Mad. 66. The learned Judge observed that though the petitioners are bound by the order, their interests are not affected injuriously, for, in any event, the alienations in their favour could not be set aside until the Official Receiver, in the course of the administration of the estate, proceeds against them u/s 53 or Section 54, Provincial Insolvency Act, and that the alienations would

hold good until they are set aside on such applications. I do not think that should be a consideration in refusing the petitioners an opportunity to be heard especially when the amended rule expressly provides for such a notice to issue. The Subordinate Court should ordinarily have issued notice in pursuance of the rule and when the petitioners filed an application praying that they may be given notice; added as parties and be heard, at least then they should have been given an opportunity to come on record and be heard. I should think this is a case where the lower Courts failed to conform to the rules provided under the Civil Rules of Practice and an order passed without strict compliance of the rules could not, however, be supported. I am, therefore, of opinion that the order of adjudication passed without notice to the petitioners is unsustainable. I set it aside and direct that I. P. No. 15 of 1946 on the file of the Subordinate Judge of Guntur be heard and disposed of according to law after giving notice to the petitioners and other transferees, if any, and to all other persons to whom notice ought to go under Rule 21. Costs of these petitions will abide the result of I. P. No. 15 of 1946.

3. Civil Revision Petitions Nos. 799 and 1063 of 1947: These are revision petitions filed by the petitioners against I. A. Nos. 1963 and 1919 of 1946 in I. P. No. 15 of 1946 praying that the order refusing to allow them to be heard be reviewed. In view of the order passed in the connected civil revision petitions NOS. 797 and 798 of 1947, no orders are necessary on these petitions. The petitions are dismissed. There will be no order as to costs.