

(2002) 08 AP CK 0019

In the Andhra Pradesh High Court

Case No : A No. 1476 of 1989, TA No. 330 of 2000 and CMP No's. 24234 and 24238 of 2001

Chunduru Siva Satyanarayana and Others

APPELLANT

Vs

Official Receiver and Others

RESPONDENT

Date of Decision : 01-08-2002

Acts Referred:

Provincial Insolvency Act, 1920 — Section 41, 41(1), 41(2)
Provincial Insolvency Rules, 1920 — Rule 20, 21(6)

Citation : (2002) 6 ALD 621

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : T. Seshagiri Rao, in A No. 1476 of 1989, G. Peddababu, in TA No. 330 of 2000 and V.L.N.G.K. Murthy, in CMP Nos. 24237 and 24238 of 2001, for the Appellant; T. Seshagiri Rao in TA No. 330 of 2000 and Respondent Nos. 3 to 5 in CMP Nos. 24237 and 24238 of 2001, G. Peddababu, in A No. 1476 of 1989 and for Respondent No. 1 in CMP Nos. 24237 and 24238 of 2001, for the Respondent

Judgement

P.S. Narayana, J. 1. This is a long drawn litigation arising out of an insolvency proceeding wherein neither the schedule creditors nor the legal representatives of the original owner - the deceased insolvent, are benefited. As can be seen from the facts of the case in view of the inordinate delay in the finalisation of the proceedings, the very object of the Insolvency Law is well frustrated and defeated.

2. The plaintiffs in O.S.No. 155/83 on the file of Principal Subordinate Judge, Tenali had preferred A.S.No. 1476/89 against the Official Receiver, Guntur appointed in I.P.No. 7/63 on the file of Insolvency Court, Tenali aggrieved by the judgment and decree granting the relief of partition relating to Northern shop room only and dismissing the suit relating to Southern shop room. Tr. A.S.No. 330/2000 was filed by the Official Receiver, Guntur representing the general body of creditors in I.P.No. 7/63 as against the appellants in the other appeal arrayed

as respondents as against an order made in I.A.No. 1041/98 in I.P.No. 7/63 on the file of Additional Senior Civil Judge, Tenali. The said appeal was filed by the Official Receiver, Guntur on the file of District Judge, Guntur which was numbered as A.S.No. 106/ 99 and the same was numbered as Tr.A.S.No. 330/2000 on the file of this Court by virtue of transfer.

3. One Edavalapati Sri Ramulu filed two C.M.Ps. in Tr.A.S.No. 330/2000 i.e., C.M.P.No. 24237/2001 and C.M.P.No. 24238/ 2001 to implead himself as a party and also to transpose him as an appellant.

4. The factual matrix in brief which had paved the way for the present litigations can be narrated as follows:

5. One Chunduru Lakshminarasimha Rao had four sons and one of them died and the other sons are the appellants in A.S.No. 1476/89 and respondents in TrAS. No,330/2000. Chunduru Lakshminarasimha Rao was adjudicated as an insolvent by an order dated 15-7-1966 in I.P.No. 7/63 on the file of Subordinate Judge, Tenali. One Hanumayamma - one of the creditors of the insolvent, filed O.S.No. 52/63 on the file of District Munsif Court, Tenali against Chunduru Lakshminarasimha Rao, hereinafter referred to as "insolvent" for purpose of the convenience, and his sons for recovery of an amount on the strength of a promissory note and had attached 3/5th share before judgment and 2/5th share of the insolvent had vested in the Official Receiver. Hanumayamma, having obtained a decree filed E.P.No. 386/68 and brought the 3/5th share of the appellants in A.S./ No. 1476/89 relating to the shop in T.S.No. 354, Block No. 4, Ward No. 10, for sale and she herself had purchased the 3/5th share in the Court auction and subsequent thereto she had instituted O.S.No. 799/76 on the file of District Munsif Court, Tenali for partition and separate possession of 3/5th share purchased by her in the Court auction and a preliminary decree was passed on 16-8-1980. However, no final decree was passed and the appellants in A.S.No. 1476/89 had not even delivered possession. The Official Receiver sold the 2/5th share of the insolvent in the other two shops in public auction on 28-6-1968 and the tenants of the said two shops had purchased the 2/5th share of the insolvent in the said shops. The said tenants were shown in the suit as defendants 2 and 3. Subsequent thereto, some of the creditors filed I.A.No. 1668/78 to set-aside the sale and the said application was allowed and the matter was carried by way of appeal and also second appeal, which were dismissed.

6. To avoid confusion, the plaintiffs in O.S. No. 155/83 i.e., the appellants in A.S.No. 1476/89 and respondent in TrAS. No. 330/2000 will be referred to as "appellants" and the Official Receiver, Guntur, the appellant in Tr.A.S.No. 330/2000 will be referred to as "respondent" for the purpose of convenience, hereinafter.

7. The appellants filed O.S.No. 155/83 on the file of Subordinate Judge, Tenali for partition and separate possession of their 3/5th share in two shops i.e., Items 1 and 2 which are referred to as Northern shop and Southern shop. In the said

suit, elaborate pleadings were filed by all the contesting parties and on the strength of such pleadings, the following Issues and Additional Issues were settled for trial:

Issues:

1. Whether the plaintiffs are entitled for partition and separate possession?
2. Whether the suit is not maintainable against defendants 2 and 3?
3. Whether the 1st defendant is liable to render any account?
4. To what relief?

Additional Issues:

1. What are the properties that are liable for partition?
2. Whether the defendants are estopped to contend that the Southern shop is the self-acquired property of Chunduru Lakshminarasimha Rao?

On behalf of the appellants, PW-1 was examined and Ex.A1 - certified copy of judgment in O.S. No. 799/78 on the file of District Munsif Court, Tenali, was marked. As against this evidence, DW1 and DW2 were examined and Exs.B1 to B3 were marked. Ex.B1 is the registration extract of the gift deed executed in favour of Chunduru Lakshminarasimha Rao by Alapati Venkata Subba Rao, dated 27-6-1943. Exs.B-2 and B-3 are the registration extracts of the sale deeds in favour of defendants 2 and 3 respectively dated 9-2-1977. The trial Court after discussing the oral and documentary evidence available on record having observed that there is no material to show blending had arrived at the conclusion that the Southern shop is the self-acquired property of the insolvent and hence it had vested in the Official Receiver and the Northern shop is the joint family property in which the appellants are entitled to their 3/5th share, had passed preliminary decree relating to 3/5th share of Northern shop only, and aggrieved by that portion of the judgment negating the relief, the appellants had filed A.S.No. 1476/89. The insolvent died on 29-4-1992 and the appellants herein are added as legal representatives of the insolvent by an order dated 1-7-1998 in I.A.No. 1169/ 95 in LP.No. 7/63. While making an order of adjudication in the aforesaid LP.No. 7/63, the Insolvency Court no doubt granted time to the insolvent to apply for discharge. But however, the insolvent had not taken steps to apply for discharge u/s 41 of the Provincial Insolvency Act, 1920, hereinafter referred to in short as "Act", till he died on 29-4-1992. The Insolvency Court had extended time on certain occasions for applying for discharge till 15-7-1992 and subsequent thereto there was no extension of time for discharge of the insolvent. In view of the fact that the appellants were impleaded as legal representatives they had chosen to file I.A.No. 1041/98 in I.P.No. 7/ 63 u/s 41 of the Act to pass an order of discharge and by an order dated 7-4-1999 the Insolvency Court allowed the said application and aggrieved by the same, the respondent filed A.S.No. 106/99 on the file of District Court, Guntur and by virtue of an order

made in Transfer C.M.P.No. 331/99, the said appeal was transferred and numbered as Tr.A.S.No. 330/2000 to be disposed of along with A.S.No. 1476/89. This is the brief history of the present litigation.

8. Sri Seshagiri Rao, the learned Counsel representing the appellants in A.S.No. 1476/89 and respondents in Tr.A.S.No. 330/2000 had made the following submissions. The learned Counsel contended that the Insolvency Court had not passed any specific order relating to the realisation of the property and no doubt an order of adjudication was made against the insolvent and the insolvent had failed to apply for discharge u/s 41 of the Act and he died. The learned Counsel also contended that as per the material available on record, though the Insolvency Court had extended time, the insolvent had failed to apply for discharge. The learned Counsel further maintained that if the scheme and object of the Act and different provisions of the Act are carefully read, in the absence of a specific order relating to realisation of the property by the Insolvency Court where the insolvent dies the property will revert back to the insolvent enabling the legal representatives to claim their respective shares. The learned Counsel also had drawn my attention to Sections 17, 37 and 41 of the Act. The learned Counsel also had commented that even the findings relating to the blending in O.S.No. 155/83 also are not sustainable and the relief of partition should have been granted in relation to both the shop. The learned Counsel also had drawn my attention to the different findings recorded by the trial Court in partition action O.S.No. 155/83. It was also further contended that in the light of the subsequent events i.e., the order of discharge passed in I.A.No. 1041/98 in I.P.No. 7/63, inasmuch as the application for discharge was allowed and since several of the creditors are dead and the claims are time barred and no creditor came forward to prove the debts, the only consequence on the death of the insolvent is that the estate of the insolvent should revert back to the legal representatives in view of the fact that the same cannot be distributed among the scheduled creditors, whatever the reasons may be. The learned Counsel had taken me through the order of discharge made and had commented that both in law and also in equity, the order of discharge is made on justifiable grounds. The learned Counsel also had drawn my attention to *Asa Nand v. Bishan Singh*, AIR 1933 Lahore 997, *Yellavajjhula Surayya v. Tummalapatti Mangayya and Ors.* AIR 1941 Mad. 345, *Desikachari v. Official Receiver, in Re Thippedurappa* AIR 1954 Mys. 52, *Bhisham Chand v. Kishan Lal* AIR 1939 Nag. 103, *Raghunath Keshava Kharkar Vs. Ganesh and Others*, . The learned Counsel also had contended that in the facts and circumstances of the case, the service or non-service of notice before making the order of discharge on the creditors may not be of any consequence since it will be a futile exercise.

9. Sri Peda Babu, the learned Counsel representing the Official Receiver - respondent in A.S. No. 1476/89 and appellant in Tr.A.S. No. 330/2000, had made the following submissions. The learned Counsel submitted that the legal representatives of the deceased appellant cannot take advantage of the inaction on the part of the deceased insolvent who had not applied for discharge at all

during his lifetime. The learned Counsel also had taken me through several provisions of the Act and had stressed on the language of Section 41 of the Act. The learned Counsel further contended that as far as the Official Receiver is concerned, he has been discharging his duties and a specific stand had been taken relating to the collection of rents also and hence it cannot be said that the Official Receiver has not been maintaining the estate of the deceased properly. The learned Counsel further contended that the very order of discharge without putting the body of creditors on notice is illegal and unsustainable. The learned Counsel also had commented that there is no limitation after an order of adjudication is made to prove the debts and in such a case it cannot be contended that merely because the insolvent died without even making an application for discharge the legal representatives are entitled to an order of discharge without the assets of the deceased insolvent being distributed as amongst the creditors. The learned Counsel also would further maintain that inasmuch as those parties are not put on notice all the aspects relating to whether the debts are provable or not, whether the debts in fact are proved or not, whether they are within the limitation or not, whether the creditors are alive or not, if so how many creditors are alive and how many creditors are dead, cannot be decided and hence the learned Counsel contended that in view of the specific language of Section 41 itself, notice should have been given to the creditors. The learned Counsel also had placed strong reliance on *Puttathayamma v. C. Chicha Venkatappa* AIR 1957 Mys. 3, *Sivasubramania Pillai v. Theethiappa Pillai* AIR 1924 Mad. 163.

10. Sri V.L.G.N.K. Murthy, the learned Counsel representing the third party applicant who filed CMP Nos. 24237/2001 and 24238/ 2000 for impleading himself as a party and for transposing himself as an appellant in Tr.A.S.No. 330/2000 had submitted that the proposed party is a legatee by virtue of Will executed by one Venkatasubbaiah and incidentally he is also the son-in-law. The learned Counsel also contended that the said Venkatasubbaiah was also shown as one of the creditors and thus this party is interested in the prosecution of the present litigation. The learned Counsel also contended that the ingredients u/s 41 of the Act are not satisfied and hence the Court of first instance had made an order of discharge on unsustainable grounds. The learned Counsel also contended that it is the discretion of the Court either to grant the absolute discharge or to refuse and after an order of adjudication is made the Insolvency Court has to exercise its discretion while making such an order only in the presence of the schedule creditors. The learned Counsel had drawn my attention to Section 41 of the Act and Rule XXI of the A.P. Provincial Insolvency Rules and also Sections 3, 35, 37, 42 and 43 of the Act. The learned Counsel further submitted that in the absence of specific provisions under the Act, since the provisions of the CPC are applicable, in the light of the facts and circumstances of the case, the proposed party may be permitted to come on record and the proposed party also may be transposed as one of the appellants in Tr. A.S.No. 330/2000.

11. Heard the Counsel on record.

12. The following points arise for consideration in this appeal:

1. Whether the appellants are entitled to the relief of partition relating to the Southern shop room also?
2. Whether the appellants are entitled to have the order of discharge made against their deceased father confirmed?
3. To what relief?

Point No. 1:--

The suit instituted by the appellants OS No. 155/83 on the file of Principal Subordinate Judge, Tenali for the relief of partition was decreed in relation to the Northern shop and the suit was dismissed in relation to the Southern shop on appreciation of the evidence of PW1, DW1 and DW2 and also Ex.A1 and Exs.B1 to B3. As can be seen from the findings recorded by the trial Court in paragraphs 13 and 14, the aspect whether this property is the self-acquired property of the deceased insolvent or not had been discussed in detail and on the strength of Ex.B1 it was held that the gift was accepted by him and inasmuch as Ex.B1 is admissible in evidence, it was held to be the self-acquired property. In paragraph 15 of the judgment, the trial Court had discussed the aspect of blending and had arrived at the conclusion that there is no evidence available on record to prove the aspect of blending. As far as these findings are concerned, it is no doubt true that except the evidence of PW1, there is no other evidence available on record to prove the aspect of blending and hence it cannot be said that these findings recorded by the trial Court are unsustainable findings since such findings had been recorded on the basis of the oral and documentary evidence available on record. In *Lakkireddi Chinna Venkata Reddi Vs. Lakkireddi Lakshmama*, , it was held that the self-acquired property of a member of Joint Hindu family may be impressed with the character of joint family if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim. No doubt, certain aspects to be established to prove the doctrine of blending. In view of the close relationship between the parties i.e., the deceased insolvent father and the sons, I am of the opinion that this is a fit case where further opportunity should be given to the appellants-plaintiffs in OS No. 155/83 to let-in further evidence for the purpose of establishing their claim relating to the Southern shop room also. It is needless to point out that as far as the preliminary decree passed relating to the Northern shop room is concerned, the same became final inasmuch as no appeal was preferred by the Official Receiver. The point is answered accordingly.

13. The most crucial aspect which had been elaborately argued by the Counsel relates to the effect of the death of the insolvent and the reversion of the estate of the insolvent to the legal representatives. The stand taken by the Counsel for the appellant is that in view of the facts and circumstances of the case, especially

in the light of the order of discharge automatically the appellants are entitled to the relief of partition relating to the other portion also and hence AS No. 1476/89 has to be allowed as prayed for and Tr.A.S. No. 330/2000 is liable to be dismissed. On the contrary the stand taken by the Counsel for the Official Receiver and also the proposed party is that there is no question of any limitation for proof of debts and even otherwise an order of discharge could not have been passed without putting the scheduled creditors or body of creditors on notice. No doubt, several other incidental submissions also had been made by the respective parties.

14. At the outset, I may state that the litigation is a long drawn litigation and it appears from the record that the body of creditors are not interested in proving the debts under the Act for reasons best known to them. The total inaction on the part of the creditors in proving the debts had been urged as a strong point in favour of the legal representatives of the deceased insolvent to have an order of discharge.

15. CMP Nos.24237/2001 and 23238/ 2001 were filed by one Edavalapati Sriramulu to implead himself as a party and also to transpose him as 2nd appellant in Tr.A.S No. 330/2000. The Official Receiver had filed a counter-affidavit opposing the said applications. The stand taken by the proposed party is that the proposed party is interested in opposing the discharge prayed for by the legal representatives of the deceased insolvent and the Official Receiver who filed the appeal had completed his term and Sri G. Nageswar Rao has assumed the office of the Official Receiver and that the said G. Nageswar Rao had requested the learned Counsel for the appellant to give him no objection vakalath and in such circumstances they are unsure whether the appeal will be prosecuted at all and if so by whom and as creditors they are interested in the appeal being prosecuted with all seriousness. It was also stated that in the affidavit filed in support of the applications that his father-in-law one Rachamadugu Venkasubbaiah was the creditor in IP.No. 7/63 and he was shown as 85th creditor and subsequently the said Venkatasubbaiah died on 7-2-1990, testate, executing a registered Will dated 11-12-1985 in a sound disposing state of mind bequeathing the amount recoverable in IP No. 7/63 in favour of this proposed party. The Official Receiver had filed a counter-affidavit in detail taking a stand that the proposed party never approached him at all to know the real facts and there are no grounds to permit him to come on record. It was also stated that the proposed party is a stranger both in the appeal and also in IP No. 7/63 and he has no right to file such applications. It was also stated that though the proposed party is claiming right by virtue of a will, he did not file any valid legal heir certificate from a competent Court and the will executed in his favour is subject to enquiry only and further it was stated that the will executed by creditor No. 85 in favour of the proposed party is creating some doubt on the authenticity of the said document. No doubt several other aspects also had been narrated in detail in the counter-affidavit.

16. It is pertinent to note that sufficiently for long time the proposed party who appears to be squatting on the property had kept quiet and for the reasons best known to him, taking advantage of the fact that the appeal is pending, had chosen to file these applications making certain allegations against the Official Receiver. The very fact that the proposed party had not taken any steps to come on record at the original stage, definitely throws some suspicion over his bona fides. Apart from this aspect of the matter, a person who was not brought on record at all at any point of time, cannot straight away walk into the Court at the appellant stage and claim as a matter of right to come on record, especially in a case where he is claiming to be a legatee. It is needless to point out that when a party, as a legal representative, intends to come on record by virtue of a Will to the exclusion of the natural heirs, it is always subject to regular enquiry under the provisions of the Code of Civil Procedure. It is no doubt true that Section 5 of the Act dealing with General Powers of Courts, reads as follows:

(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 procedure as it has and follows in the exercise of original civil jurisdiction.

(2) Subject as aforesaid, the High Courts and District Courts, in regard to proceedings under this Act, in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits.

Likewise, Section 18 of the Act dealing with Procedure for admission of petition specifies that the procedure laid down in the Code of Civil Procedure, 1908 with respect to the admission of plaints, shall, so far as it is applicable, be followed in the case of insolvency petitions. In *Paturi China Veerayya v. Talluri Gopalakrishna Rao* and another AIR 1957 A.P. 603, it was held:

"An examination of the several provisions of the Provincial Insolvency Act (V of 1920) clearly show that without being impleaded as a party to the insolvency petition, under the terms of Order 1, Rule 10, Civil Procedure Code, it is open to the petitioner who is a creditor to oppose the application filed by the 1st respondent to adjudicate the 2nd respondent as an insolvent. Section 9 sets out the conditions when a creditor is entitled to present an insolvency petition against a debtor and Section 10 relates to the presentation of an insolvency petition by a debtor. Section 14 provides that no petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court.

Section 16 enacts that where the petitioning creditor does not proceed with due diligence on his petition, the Court may substitute any other creditor to whom the debtor may be indebted in the amount required by the Act in the case of a petitioning creditor. Section 19(1) prescribes that where an insolvency petition is admitted the Court shall make an order fixing a date for hearing the petition. Sub-section (2) provides that the Court shall give notice of the order fixing the date for hearing the petition to all the creditors.

Section 24 lays down the procedure to be adopted at the hearing of the petition. Clause (a) of Sub-section (1) provides that the Court shall require proof that the creditor or the debtor, as the case may be, is entitled to present the petition. Sub-section (2) enacts that the creditors shall have the right to question the debtor when he is examined as to his conduct, dealings and property. Sub-section (3) is significant as it provides that the Court shall, if sufficient cause is shown, grant time to the debtor, or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

The Section referred to supra clearly established that the creditors to whom notice is given as provided u/s 19(2) are entitled to appear at the hearing of the petition and oppose the maintainability of the insolvency petition by a creditor or a debtor. They are entitled to adduce evidence and satisfy the Court that the provisions of Section 9 or 10 of the Act are not complied with and that the insolvency petition should be dismissed u/s 25.

As under the provisions of the Provincial Insolvency Act it is open to the petitioner herein to prove that the 1st respondent is not a creditor of the 2nd respondent and that the insolvency petition is engineered by the 2nd respondent only with a view to defeat and delay his rights, I do not think it necessary to add him as a party under the terms of Order 1, Rule 10, Civil Procedure Code. Sections 5 and 18 no doubt make it clear that the procedure laid down in the CPC shall so far as it is applicable be followed in the case of insolvency petitions; but it is unnecessary to apply the provisions of CPC viz.. Order 1 Rule 10, to this case as the Provincial Insolvency Act itself has made adequate provisions in this behalf."

Apart from this aspect of the matter, the Official Receiver is expected to protect the interests of the scheduled creditors. Section 57 of the Act deals with Power to appoint Official Receivers and Section 59 of the Act specifies the Duties and powers of Receivers. A careful and close reading of the provisions of the Act clearly reveal the necessary safeguards provided for protecting the interests of the body of creditors and normally the Official Receiver representing the general body of creditors is expected to maintain the estate of the insolvent to the best advantage of the general body of the creditors to realize the maximum and distribute the same among them. In the light of the same, especially in the light of the specific stand taken by the Official Receiver in the counter-affidavit, I do not see any reason to entertain these applications at this belated stage since in my considered opinion these applications are not bona fide applications and are liable to be dismissed.

Point No. 2:

Now, coming to the other question whether the order of discharge made by the Court below can be sustained, it will be relevant to look into certain provisions of the Act. Section 41 of the Act dealing with Discharge reads as follows:

(1) A debtor may, at any time after the order of adjudication and shall, within the

period specified by the Court, apply to the Court for an order of discharge, and the Court shall fix a day, notice whereof shall be given in such manner as may be prescribed, for hearing such application, and any objections which may be made thereto.

(2) Subject to the provisions of this Section, the Court may, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver,--

(a) grant or refuse an absolute order of discharge; or

(b) suspend the operation of the order for a specified time; or

(c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired properties.

Section 17 of the Act deals with Continuance of proceedings on death of debtor. Section 33 of the Act deals with Schedule of creditors and Section 33(3) reads as follows:

"Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt and apply to the Court for an order directing his name to be entered in the schedule, as a creditor in respect of any debts provable under this Act, and not entered in the schedule, and the Court, after causing notice to be served on the receiver and the other creditors who have proved their debts, and hearing their objections (if any), shall comply with or reject the application."

While dealing with the expression "debts provable" in my Law of Insolvency, 2nd Edition at page 199, I had stated:

"The expression "debts provable" in the Act means the debts whose proof is offered with a view to entitle the creditors to be included in the schedule with a view of their participating in the assets of the insolvent and not the proof for any other purpose".

Section 35 of the Act deals with Power to annul adjudication of insolvency and Section 37 of the Act deals with Proceedings on annulment. Apart from Section 41, certain Rules under A.P, Provincial Insolvency Rules, in short hereinafter referred to as "Rules" also may be relevant. Rule VIII of the Rules deals with Proof of debts and Rule IX deals with Schedule of creditors. Rule XVI deals with Receiver's report and Rule XX deals with Application for discharge and the said Rule reads as follows:

(1) Application for discharge shall not be heard until after the schedule of creditors has been framed.

(2) Every creditor who has proved shall be entitled in person or by pleader to appear at the hearing and oppose the discharge provided that he has served

upon the insolvent and upon the Receiver (if any) not less than seven days before the date fixed for the hearing a notice stating the grounds of his opposition to the discharge.

(3) A creditor who has not served the prescribed notices shall not, unless the Court otherwise directs, be permitted to oppose the discharge of the debtor and a creditor who has served the prescribed notices shall not be permitted, unless the Court otherwise directs to oppose the discharge on any ground not specified in the notice.

(4) At the hearing of the application the Court may hear any evidence which may be tendered by a creditor who has served the prescribed notices, or by the Receiver and also any evidence which may be tendered on behalf of the debtor and shall examine the debtor, if necessary, for the purpose of explaining any evidence tendered and may hear the Receiver, the debtor, in person or by pleader, and any creditor, in person or by pleader, who has served the prescribed notice.

Likewise, Rule XXI deals with Notices and Rule XXI (6) of the Rules specifies as follows:

"Notice of the date fixed for the hearing of an application for discharge u/s 41(1) of the Act shall be dispatched by the Court by registered post to all persons whose names have been entered in the schedule of creditors not less than fourteen days before the said date.

Note :--With a view to secure uniformity of practice the High Court directs that notices u/s 41(1) should go to all creditors (not only to schedule creditors).

17. The reasons recorded by the Court of first instance for allowing the application for discharge filed by the legal representatives of the deceased insolvent are that the deceased insolvent was declared as such on 15-7-1966 and he died on 29-4-1992 and pending disposal of the insolvency petition the time for discharge was extended from time to time till 15-7-1992 and subsequent thereto the legal representatives were brought on record and most of the creditors died and several debts even by that time were time barred and in such circumstances there is nothing to be administered by the Official Receiver, and the Court of first instance came to the conclusion that the application filed by the legal representatives for discharge has to be allowed and accordingly the same was allowed. As can be seen from the provisions of Section 41 of the Act, it is clear that the Court may after considering the objections of any creditor and where a Receiver has been appointed, the report of the Receiver, grant or refuse an absolute order of discharge. Hence, especially the legal representatives, in the light of the specific language of Section 41, cannot and at any rate, as a matter of right, seek for the relief of absolute discharge. In the decision referred (5) supra, it was held that in the case of devolution of property on undischarged insolvent and the insolvent obtaining absolute discharge, the suit for recovery thereafter is maintainable, no doubt subject to the conditions laid down in

Section 67 of the Act. In the decision referred (1) supra, it was held that ordinarily speaking insolvency proceedings would not terminate until there has been a discharge of the insolvent and the matter is otherwise where the insolvent is dead and in such a case there is automatic discharge of the insolvent and where the property had been distributed prior to his death, the proceedings must automatically be held terminated. In the decision referred (supra), it was held that on widow's death, her husband's estate devolve upon the insolvent as reversioner after his adjudication but before his discharge and insolvent after obtaining absolute discharge instituting the suit as reversioner against widow's alienees for recovering properties, is maintainable. In *Desikachari v. Official Receiver*, AIR 1943 Madras 26, while explaining the whole purpose of the Insolvency Act it was observed that the proceedings in insolvency shall be dealt with as expeditiously as possible, that the creditors shall be satisfied as expeditiously as possible from the property of the insolvent and that the insolvent shall then be free to start life again unburdened by his debts. In the said case, the facts in brief are as follows:

The debtor on his own petition was adjudicated an insolvent in 1930, and was granted an absolute order of discharge in 1932 for two reasons - (1) because there was no mala fide conduct on the part of the insolvent and (2) because no creditor had proved his debt before the Official Receiver and therefore no one was entitled to oppose his petition for an order of absolute discharge. At the time of the insolvent's discharge the insolvent was in possession of a number of acres of lands and this property was vested in the Official Receiver. When the order of discharge was granted the Official Receiver had done nothing in regard to the disposal of that property as there were no creditors properly before him. More than seven years later one of the Official Receiver's creditors applied that the insolvent's property should be sold and the Court ordered that the property could be sold at the instance of the creditor by the Official Receiver. In such circumstances it was held that the order could not be justified as it amounted to a complete frustration of the intention of the insolvency law.

18. Strong reliance was placed on the decision referred (supra) wherein it was held that on the death of an insolvent where the Court had not passed any order for realization of property, the properties revert back to the daughter. In the present case on hand, it is pertinent to note that though time was being extended and the legal representatives had filed an application for discharge the main ground on which the application was allowed by the Court of first instance is that either the debts are time barred or several of the creditors are no more and the creditors had not come forward to prove the debts. The learned Counsel representing the Official Receiver had placed strong reliance on the decisions referred (supra) to convince the Court that there is no limitation for proof of debts under the Act.

19. As can be seen from the scheme of the Act, the procedure is prescribed for the purpose of proving the debts. For the reasons best known, the creditors have

not chosen to prove the debts. The deceased insolvent had not chosen to file an application for discharge during his life time and the legal representatives filed an application for the relief of discharge without impleading the body of creditors, most probably on the ground that the Official Receiver will represent the said general body of creditors. However, as can be seen from Rule XXI(6) of the Rules read with Section 41(2) of the Act, it is clear that issuance of notices and service of notices on such parties who may be affected parties, is definitely mandatory. It is no doubt true that there is no specific period of limitation for proof of debts. But, that by itself, it cannot be taken that there can be total inaction on the part of the Official Receiver and the body of creditors in relation to the proof of debts. The Official Receiver and also the body of creditors are expected to diligently exercise their rights, at least within a reasonable time. This is the main contention advanced by the learned Counsel for the appellants stating that there is inordinate delay in proof of debts and hence inasmuch as nothing can be administered by the Official Receiver, the order of discharge made is well justified in the facts and circumstances of the case. It was also stated that at any rate, it will be a futile exercise.

20. In the decision referred (supra), it was no doubt held that omission to give notice of the application for discharge as required by Section 41(1) is no irregularity if none of the creditors had proved his debt and notice is only required to be given to those creditors who proved their debts. However, as already stated by me, Section 41(2) of the Act read with Rule XX and XXI (6) of the Rules, specifically contemplate notice to the schedule creditors. The Note appended to Rule XXI (6) of the Rules further clarifies that with a view to secure uniformity of practice, the High Court directs that notice u/s 41(1) should go to all creditors (not only to schedule creditors). In the light of these specific provisions, in the absence of putting the creditors on notice, the Court of first instance is not justified in making the order of discharge. While making an order of discharge the Court is expected to take into consideration all the facts and circumstances of the case and should also see whether there is any possibility of the Official Receiver well realizing the assets of the insolvent for the purpose of distribution among the creditors. The very object and the purpose of the Act cannot be frustrated either by a non-party squatting on the property or by virtue of total inaction on the part of the Official Receiver or even on the part of the body of creditors, as the case may be. Every endeavour should be made to see that the assets of the insolvent are well realized and distributed in accordance with the provisions of the Act. In the light of the same, it cannot be said that the order of discharge made in the facts and circumstances of the case, can be sustained. The point is answered accordingly.

Point No. 3:

In view of the findings recorded in detail above, the Appeal A.S.No. 1476/89 is hereby allowed to the extent of the Northern shop room and the matter is remanded for the purpose of affording opportunity to the parties to let-in further

evidence to establish their case. Likewise, the order of discharge made in IA No. 1041/98 in IP No. 7/63 on the file of Additional Senior Civil Judge, Tenali is hereby set-aside and the matter is remanded to the said Court for the purpose of issuing notice to the creditors in accordance with law and to pass appropriate orders in this regard after affording opportunity to both the parties. As can be seen from the record, the Appeal AS No. 1476/89 is as against the judgment and decree made by the Principal Subordinate Judge, Tenali whereas the order made in IA No. 1041/98 in IP No. 7/63 was made by the Additional Senior Civil Judge, Tenali and inasmuch as both the appeals are being disposed of by Common Judgment, it is desirable that the same Court deals with both these matters i.e., the Court of Additional Senior Civil Judge, Tenali. Thus the appeal AS No. 1476/89 is partly allowed to the extent indicated above and the Tr.AS No. 330/2000 is also allowed to the extent indicated above. CMP Nos.24237/2001 and 24238/2001 are hereby dismissed. No order as to costs.

21. As already observed by me, the litigation being a long drawn litigation, it is needless to mention that the Court of first instance shall proceed with these matters at the earliest point of time and dispose of the same as expeditiously as possible in accordance with law.