(1996) 03 AP CK 0044

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1284 of 1990

Dandamudi Chakradhararao and Another — APPELLANT

Vs

Pidikiti Koteswararao and Another — RESPONDENT

Date of Decision : 06-03-1996

Acts Referred:

Provincial Insolvency Act, 1920 — Section 6, 75, 9

Citation : (1996) 3 ALT 34

Hon'ble Judges : Avinash Somakant Bhate, J

Bench : Single Bench

Advocate : A.V. Sivaiah and Y.B. Tata Rao, for the Appellant; M.V. Narasimha Charya, for the Respondent

Final Decision : Allowed

Judgement

Avinash Somakant Bhate, J.—This revision challenges the order passed in A.S.No. 150 of 1982 by the District Judge, West Godavari at Eluru.

2. The petitioners before this Court are respondents 2 and 3 in the Insolvency petition which was filed by respondent No.1 in this revision. Respondent No. 2 in this revision was originally the respondent No. 1 in the original petition. Parties shall be referred to as per their status shown in the original petition.

3. The petitioner Koteswara Rao had filed Insolvency Petition in the Court of Subordinate Judge, Eluru against respondent No. 1 Satyanarayana. The said petition was u/s 9 of the provincial Insolvency Act hereafter referred to as ''Insolvency Act''- In the said petition it was contended that Respondent No.1 borrowed a sum of Rs. 6,000/- by executing a pronote on 26-03-1974 for expenses of the marriage of his daughter. He agreed to repay the amount with interest at 12% p.a. It is alleged that on 5-3-1977 a part payment of Rs. 1,000/- was made by respondent No. 1 to the petitioner on demand. The balance remained unpaid. It was contended that respondent No. 1 had no property except one which he sold to respondents 2 and 3 by a sale deed dated

19-9-1977 for consideration of Rs. 18,000/-. It was also alleged that the said property was worth more than Rs. 40,000/-. However, the petitioner contended that the said sale deed was sham, nominal and collusive and no consideration passed under it. It was brought into existence only to defraud and delay the genuine creditors like the petitioner. It was alleged that the purchasers and attestors to the said sale deed were relatives and close associates of the first respondent. It was therefore contended that the said sale deed may be annulled Under Sections 53 and 54 of the Provincial Insolvency Act. The real prayer was that the 1st respondent committed an act of insolvency and be adjudicated as an insolvent for the benefit of general body of creditors.

4. Respondent No. 1 against whom adjudication was sought remained ex parte.

5. Respondents 2 and 3 resisted the claim by filing a counter at the hands of 2nd respondent which was adopted by 3rd respondent. It was alleged that respondent No. 1 and the petitioner were close relatives. They were ill-disposed towards respondents 2 and 3. The pronote set up by the petitioner was not a genuine document and was brought into existence only to deprive respondents 2 and 3 of property purchased by them. It was denied that respondent No. 1 had repaid any amount of Rs. 1,000/- to the petitioner on 5-3-1977. Further it was pointed out that first respondent was owning and possessing a terraced building at Pedapadu Village worth more than Rs. 30,000/- and was also having a site. The petitioner was aware of all these facts and in spite of this he did not file any suit for claiming his debt on the basis of the pronote. It was further pointed out that the property purchased by respondents 2 and 3 was subject to a charge of maintenance and respondents 2 and 3 were required to pay the said amount annually to the decree-holder of that maintenance. The decree-holder was wife of respondent No. l. It was thus contended that 1st respondent was not at all indebted to the petitioner, and had not committed any act of insolvency and there was no necessity of adjudicating him as an insolvent.

6. The Subordinate Judge held in favour of the respondents 2 and 3 and further held that respondent No. 1 had other properties and the petitioner could realise his amount from the other properties of the 1st respondent and therefore there was no occasion to adjudicate respondent No. 1 as insolvent. The Court also held that the transaction entered by respondent No. 1 with respondents 2 and 3 on 19-9-1977 was genuine sale transaction for valuable consideration.

7. However, the District Judge, West Godavari in appeal preferred against the Judgment of the subordinate Judge, reversed the finding and held that act of Insolvency was committed by respondent No. 1 and therefore allowed the appeal setting aside the order of the Subordinate Judge.

8. Learned counsel for respondents 2 and 3 (who are petitioners herein) has contended that the appellate Court was wrong in reversing the finding of the trial Court. He pointed out that apart from the fact that there was no convincing proof of the debt existing in favour of the petitioner, there was ample evidence to show

that respondent No. 1 had other properties from which the claim of petitioner, if any could be satisfied and therefore it could not be said that the sale in favour of respondents 2 and 3 fell within the term "act of Insolvency" as perceived u/s 6 of the Insolvency Act.

9. Learned counsel for the petitioner (who is respondent No. 1 in this revision) on the other hand supported the Judgment of the appellate Court and contended that as this was a proceeding u/s 75 of the Insolvency Act this Court should not disturb the finding of the District Court in the appeal as it is final.

10. Having given by anxious thoughts to the arguments advanced from both the sides I am of the opinion that the revision deserves to be allowed. It must be remembered in the first place that adjudicating a person as an insolvent in insolvency proceedings is a very serious act and before adjudicating a person as insolvent and making such adjudication the Court has to satisfy that all the requirements for adjudication are established very convincingly and beyond reasonable doubt.

11. In the instant case one has to remember that though the petitioner claims that he had advanced an amount of Rs. 6,000/- on the pronote in the month of March 1974, no attempt was made by the petitioner to file any civil suit to obtain decree in his favour within die stipulated time. Even assuming that he was able to bring his claim within limitation on the basis of so called repayment dated 5-3-1977 he ought to have filed a suit before 5-3-1980 for establishing his claim against respondent No. 1 He has tried to make out the claim now only on the basis of his own statement and one G. Raghava Rao who is examined as P.W2. The said Raghava Rao stated that he was attestor of the said pronote. His cross-examination however shows that he does not know the name of daughter of Respondent No. 1 and he is a person from altogether different village. The evidence of such witness was highly doubtful. It is also admitted that petitioner is closely related to respondent No. 1. The relationship as pointed is very close because the wife is the sister of 1st respondent''s wife. In this case 1st respondent has remained ex parte through out the litigation. Therefore, in my view the whole transaction of so called debt itself is not established beyond doubt and the improbable and unnatural conduct of petitioner in not obtaining any decree supports the doubtful transaction.

12. u/s 9 of the Insolvency Act the first requirement is that, there must be existing debt in favour of the petitioner, as a creditor, as against a person who is sought to be adjudicated as an insolvent.

13. Apart from the fact that there is no convincing proof of the existing debt in favour of the petitioner, the admitted evidence in the case will show that 1st respondent had properties apart from the property which is sold to respondents 2 and 3. The person commits act of insolvency only if he transfers the property to any one else with intent to defeat or delay his creditors. Section 6 of Insolvency Act runs as follows:

Acts of Insolvency:

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

(a) if, in (the Provinces) 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 (the Provinces) or elsewhere, he makes transfer of his property or of any part thereof with intent to defeat or delay his creditors".

This is the relevant provision relied upon by the petitioner. The evidence of the petitioner appears to have been ignored by the learned Appellate Court. The petitioner in his evidence during the course of cross-examination has stated that "by the date of Ex. A-l Respondent No. 1 was having terraced building, sites and land. Ex.A-2 is the pronote which was allegedly executed by 1st respondent in favour of the petitioner. Thus, it is clear that apart from the property transferred vide Ex.A-1 in favour of respondents 2 and 3, respondent No.1 had also a terraced building, site and land. The contention of the petitioner that the property transferred under Ex.A-1 in favour of respondents 2 and 3 was worth more than Rs. 18,000 / - which is the consideration shown, is unconvincing from the material on record. The property which was purchased by respondents 2 and 3 was for a charge of maintenance of the wife of respondent No. 1 Therefore, respondents 2 and 3 were required to pay the maintenance amount to the wife of 1st respondent. This naturally reduces the value of the property. Apart from that it is also clear from reading of the Ex.A-1 itself, that certain other debts of respondent No.1 were to be paid by the said transaction. However, the learned Counsel for the petitioner contended that the terraced building was given as security to respondents 2 and 3 at the time of execution of sale deed and this can; be seen from the contents of Ex.A-1. It was therefore tried to be suggested on behalf of the petitioner that the said property was not available to respondent No.1 and therefore, it cannot be considered while deciding as to whether respondent No.1 had other properties or not. This does not impress me. The terraced building was said to be only a security in case any dispute arose regarding the property conveyed by Ex.A-1 in favour of respondents 2 and 3. There was no indication whatsoever that any dispute had infect arisen. In any event the terraced building was not transferred as such to any one, But it was said to be only a security. The respondent No. 1 thus continued to be the owner of the said property. Furthermore one site was also belonging to respondent No. l. R.W.I, who is the Karanam of the village, has also pointed out this fact. What is contended on behalf of the petitioner is that earlier respondent No. 1 filed O.P.No. 60/80 for getting declaration that he was pauper i.e. "indigent". The said OP. was filed for instituting a suit against respondents 2 and 3 for cancellation of the sale deed Ex.A-1. In the said O.P. The Court found that respondent No. 1 as indigent as he was not having sufficient property, other than the property in dispute, worth more than Rs. 3,000/- Ex.B-1 which is the copy of the order in the said O.P. will make it clear that the Court at that time held that this site of Ac.0.07 cents was not shown to be worth more than Rs.3,000/ - and therefore the Court held respondent No. 1 as "pauper". The said decision does not in any way help to prove or to do away with me fact mat respondent No. 1 is having property other than the one which is conveyed under Ex.A-1. The petitioner in his petition Under Section.9 of Insolvency Act has tried to suppress this fact. Unless it is proved mat respondent No. 1 transferred the property with intent to defeat or delay the creditors the act of Insolvency cannot be said to have been established. If a person is having sufficient other property, then the sale of one property alone does not amount to act of defeating the creditors'' claim. The same principle was laid down in M. Sriramulu v. P. Singaiah, 1967(2)An.w:R.329.

14. Taking all these aspects I am of the view that the Appellate Court was very much in error and did not act according to law by ignoring the fact that the petitioner had made out in the petition an untrue claim of his debt and also further an untrue statement that respondent No. 1 had entered into sham transaction with respondents 2 and 3 in respect of the property described in Ex.A-1. The Court further did not realise mat respondent No. 1 had sufficient other property as per the admission of the petitioner himself to discharge the debt if any of the petitioner.

15. I have already pointed out adjudication of a person as an insolvent is a very serious act and such adjudication cannot be done merely on some flimsy evidence. In the circumstances the appellate Court was not justified in law in allowing the appeal. The order passed by the learned Subordinate Judge was correct and requires to be restored. The present revision petition, which is u/s 75 of the Insolvency Act is therefore allowed and the order of the Subordinate Judge is restored. In the circumstances, no order as to costs.

