(2005) 07 AP CK 0102

In the Andhra Pradesh High Court

Case No : C.R.P. No. 2536 of 2005

Dasari Siva Prasada Rao and Another	APPELLANT
Vs	
Pasupuleti Satyanarayana and Others	RESPONDENT

Date of Decision : 06-07-2005

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 151
Provincial Insolvency Act, 1920 — Section 11, 2(1), 20, 28, 28(2)

Citation : (2005) 6 ALD 45 : (2005) 4 ALT 798

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : >jud V.L.N. Sarma, for the Appellant; V.Ch. Naidu, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This case demonstrates as to how the judicial process was put to gross misuse. Unfortunately, the Presiding Officer of the Court did not exhibit the care and caution, which was expected of him, to curtail such practices.

2. The petitioners purchased a plot of 378 square yards at Chellapalli through separate sale deeds, dated 23-2-2005, from respondents 2 to 6 herein. Few weeks thereafter, they received a notice, dated 14-3-2005, from the 1st respondent to the effect that he lent a sum of Rs.2,25,000/- to respondents 2 to 6 and that he came to know about the proposal of the latter to alienate the property to defeat his claim. The petitioners got issued a reply, dated 28-3-2005, to the 1st respondent. They stated that they purchased the property from respondents 2 to 6 for valuable consideration through sale deeds, dated 23-2-2005, and that the sale consideration, to their knowledge, was deposited in the Vijaya Bank. They alleged that the so-called liability of respondents 2 to 6 to the 1st respondent is fictitious. Thereafter, the 1st respondent got issued a rejoinder, dated 16-4-2005 stating for the first time that the transaction between him and respondents 2 to 6 is evidenced by a pronote, dated 18-11-2002.

3. The 1st respondent, claiming to be a creditor, filed I.P. No.18 of 2005, on 29-4-2005, the last working day before closure for the summer vacation, in the Court of Senior Civil Judge, Avanigadda. He also filed I.A. No. 168 of 2005 u/s 20 of the Provincial Insolvency Act, 1920 (for short "the Act"), read with Section 151 C.P.C., to appoint an Interim Receiver to take possession of the ''A'' Schedule property, which is covered by the sale deeds, dated 23-2-2005. The trial Court ordered the same. Hence, this revision.

4. Sri V.V.LN. Sarma, learned counsel for the petitioners, submits that there were absolutely no bona fides on the part of the 1st respondent in filing the I.P., or the I.A. therein. He submits that the 1st respondent was an agricultural labourer and he never had the capacity to lend any amount to respondents 2 to 6. He further contends that though it was clearly mentioned in the I.P. as well as the affidavit filed in support of the I.A. that the schedule property was already sold in favour of the petitioners, the trial Court has chosen to appoint an Interim Receiver, that too, without naming the person. Learned counsel submits that the Insolvency Court cannot adjudicate the validity of the transfer of properties, which took place before presentation of the I.P.

5. Sri V.Ch. Naidu, learned counsel for the 1st respondent, on the other hand, submits that on coming to know that respondents 2 to 6 were alienating the properties, his client took steps by getting notices issued to the petitioners and that it was only with a view to protect his interest, the 1st respondent filed the I.P. as well as the I.A.

6. The 1st respondent filed I.A. No.18 (sic. 168) of 2005 under Sections 6, 9 and 11 of Act to declare respondents 2 to 6 herein as insolvents. He impleaded the petitioners herein as respondents 6 and 7 in the I.P., as the purchasers. The only property shown in the schedule to the I.P. was a plot of 378 square yards. In the I.P., the 1st respondent categorically stated that the petitioners herein purchased the said property through separate sale deeds, dated 23-2-2005. The schedule ''A'' of the petition furnishes the description of the sale deeds. ''B'' Schedule carries the list of the so-called creditors. Apart from the 1st respondent, the names of Miriyala Ramu and T. Venkateswarlu find place in it. Those two persons, however were not made parties to the I.P. or I.A. Instead, the petitioners herein were impleaded as respondents 6 and 7 in the I.P. and I.A. It is rather mysterious that the I.P. in such a form was registered by the trial Court.

7. The 1st respondent filed I .A. No. 168 of 2005 u/s 20 of the Act, for appointment of Interim Receiver. It is rather surprising and shocking that the trial Court proceeded to appoint the Interim Receiver straightaway. The order passed by the trial Court presents an interesting reading. It reads as under:

"Heard arguments of the P.C. I find that to consider in this regard in the interest of justice. Hence, O.R. is directed to take the possession of petition ''A'' Schedule Property by 10-6-2005."

(Verbatim reproduction)

8. To say the least, the order does not conform to the basic tenets of adjudication, even at an ex parte stage. The trial Court failed to realize that the order passed by it was going to affect the property, which was purchased by the petitioners herein, for consideration, much before the I.P., itself, came to be filed. Section 20 of the Act clearly indicates that the appointment of Interim Receiver can be only in respect of "the property of the debtor or of any part thereof. The provision does not enable the Court, to appoint an Interim Receiver, in respect of any property of which, the debtor is not the owner, at the relevant point of time. The Court was so hasty in the matter, that it did not even choose to name the Official Receiver. It is un-understandable as to how the office issued any warrant to a person whose name does not find place in the order. The whole exercise smacks of either supine indifference or gross negligence. The order does not contain even a semblance of reasons on the basis of which the trial Court has come to the conclusion to appoint the Official Receiver.

9. On merits also, this Court does not find any basis in the matter. If really, the 1st respondent had advanced amounts to respondents 2 to 6, it was open to him to file a suit for recovery of the amount. It is only when his attempts to recover the amounts through ordinary legal process failed, that he could have taken steps to file the IP. To add a semblance of legality to the proceedings, names of two other persons were shown in the B schedule, but they were not impleaded. The curious aspect of the matter is that the only property shown in the suit schedule is the one, which was admittedly sold two months prior to the filing of the IP. By no stretch of imagination, an Insolvency Court can be conferred with the jurisdiction to adjudicate upon the transaction, which has already taken place before the IP. is presented. A perusal of Section 28 of the Act discloses that after adjudication of an individual as insolvent, it is "the property of the insolvent'', that shall vest in the Court, or a Receiver, appointed for that purpose. The definition of the word "property" u/s 2(1)(d), is very clear on this aspect. It reads as under:

"Section 2(1)(d): "Property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit"

Any doubt, as to the competence of the Court, to proceed against the property, which is not held by the insolvent, by the time the proceedings came to be instituted; stands clarified by Sub-section (3) of the Act, which deals with the immovable properties. It reads as under:

"Section 28(3): For the purposes of Sub-section (2), all goods being at the date of the presentation of the petition on which the order is made, in the possession, order or disposition of the insolvent in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof shall be deemed to be the property of the insolvent."

10. In view of this, it is impermissible for an Insolvency court to deal with the

properties, which are not owned and possessed by the proposed insolvent.

11. For the foregoing reasons, the civil revision petition is allowed with costs, quantified at Rs. 1,000/-. The order under revision is set aside, and the Official Receiver, who is said to have been appointed by the trial Court, shall forthwith restore the possession of the land to the petitioners. Any delay in this regard either on the part of the trial court or the Official Receiver shall be viewed very seriously.

