

(1972) 08 MAD CK 0024

In the Madras High Court

Case No : Civil Revision Petition No"s. 2235 and 2236 of 1971

Govindasami Chettiar and Another

APPELLANT

Vs

M.V.N. Kalidoss Chettiar and Sons and Others

RESPONDENT

Date of Decision : 02-08-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Provincial Insolvency Act, 1920 — Section 75

Citation : AIR 1973 Mad 168

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

Kailasam, J.—These petitions are filed by respondents 3 and 4 in Insolvency Petition No. 2 of 1965 on the file of the court of the

Subordinate Judge of Mayuram. C. R. P. 2235 of 1971 is filed against the order of the learned District Judge of East Thanjavur at Nagapattinam

dismissing the appeal filed by the first respondent, fifth respondent and the legal representatives of the second respondent in the main insolvency

petition. C. R. P. 2236 of 1971 is filed against the order of the learned District Judge refusing to implead the petitioners herein as parties in the

appeal before the District Judge. A preliminary objection is taken by the learned counsel for the petitioning creditor that the two civil revision

petitions are not maintainable in law as the petitioners have not preferred any appeal to the District Court against the order of the trial Court.

2. Section 75 of the Provincial Insolvency Act, 1920, provides that the High Court, for the purpose of satisfying itself than an order made in any

appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit. The

contention of Mr. N. C. Raghavachari, learned counsel for the petitioning-creditor is that this power of revision conferred on the High Court could

be exercised only with regard to persons who have preferred an appeal to the District Court and not persons who have failed to prefer any appeal

to the District Court. A reading of the proviso would make it clear that the High Court will have power to interfere with any order passed in appeal

by the District Judge, irrespective of whether one had preferred the appeal to the District Court or not. But this power would be exercised only in

accordance with the well accepted principles, as in the case of the power conferred on the appellate Court by Order 41, Rule 33, Civil Procedure

Code.

If in a revision petition filed by some of the persons who have preferred an appeal to the District court a finding is rendered which would make the

adjudication of the order respondents who had not preferred an appeal to the District Court incongruous or unsustainable for the reasons given in

the revision petition filed by some of the persons who have preferred an appeal to the District Court, this court will be justified in passing an order

in favor of the persons who had not preferred an appeal to the District Court. But this question does not arise for respondents 1 and 5 and the

legal representatives of the second respondent in the main insolvency petition, who filed an appeal to the District Court, and against the order of the

District Court, a revision petition to this court, contending that respondents 1, 2 and 5 were not partners in the partnership firm and as such they

were not liable to be adjudicated as insolvents. This contention was upheld by this court and the order of adjudication was set aside. This finding

does not in any way affect the adjudication of the present petitioners, respondents 3 and 4 in the main petition, for, they were adjudicated on their

individual acts of insolvency, namely, the alienation of certain of their individual properties. Apart from it, on the merits, the third respondent in the

main petition (the first petitioner herein) did not file any counter at all and the second petitioner herein (fourth respondent in the main petition) did

not question the correctness of the allegations made by the petitioning-creditor about the fourth respondent alienating certain properties. In these

circumstances, this court will not be justified in going into the correctness or otherwise of the order of adjudication which was not challenged by

them in any appeal before the District Court. These civil revision petitions are dismissed with the costs of the petitioning-creditor. One set.

3. Petitions dismissed.