
(2006) 06 AP CK 0006
In the Andhra Pradesh High Court
Case No : CRP No. 1215 of 2003

Jampana Rajya Lakshmi

APPELLANT

Vs

Pattapu Seenaiah and Others

RESPONDENT

Date of Decision : 14-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5
Provincial Insolvency Act, 1920 — Section 10, 2, 28(6)

Citation : (2006) 5 ALD 159 : (2006) 2 APLJ 277

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : N. Satyanarayana, for the Appellant; E.V. Bhagiratha, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—This revision petition is directed against the order dated 20-12-2002 in E.P. No. 60 of 2002 in O.S. No. 277 of 1997 on the file of the Principal Senior Civil Judge, Ongole.

2. The facts, in brief, are as under :

3. The first respondent herein filed O.S. No. 277 of 1997 for recovery of money and the same was decreed on 24-4-2000. Even during the pendency of the suit, an order of attachment before judgment under Order XXXVIII Rule 5 CPC was in operation against the schedule property. After the suit was decreed, the plaintiff? decree holder/first respondent herein filed E.P. No. 60 of 2002 for sale of the attached property. The revision petitioner/ first judgment-debtor opposed the execution proceedings contending that pending the suit, she filed I.P. No. 49 of 1998 u/s 10 of the Provincial Insolvency Act, 1920 (for short "the Act") to adjudicate her as insolvent and the same was allowed, by virtue of which all the properties of the revision petitioner/first judgment-debtor including the house property which was attached under Order XXXVIII Rule 5 C.P.C, pending the suit vested with the official receiver and therefore, the only remedy available to the

decree holder was to receive dividends from the Official Receiver but the decree in O.S. No. 277 of 1997 cannot be executed independently. The said objection was overruled by the Court below holding that since the property in question was attached even before filing of the insolvency petition, the decree holder is a secured creditor and thus it is open to him to bring the property to sale. Accordingly, by order dated 20-12-2002, the execution petition was allowed. The said order is under challenged in this revision petition.

4. I have heard the learned Counsel for both the parties and perused the material on record.

5. Section 2(e) of the Act, defines secured creditor as under :

Secured Creditor" means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof as a security for a debt due to him from the debtor.

6. In the case on hand, admittedly the E.P. Schedule property was attached during the pendency of the suit under Order XXXVIII Rule 5 CPC much prior to the order in I.P. No. 49 of 1998.

7. The question whether such decree holder, who obtained an order of attachment before judgment, is a secured creditor as defined u/s 2(e) of the Act and thus entitled to the protection u/s 28(6) of the Act is no longer res Integra.

8. In *Ramchamalla Nagi Reddy v. Pasurula Naganna* 2004 (5) ALD 350 , this Court, having considered the said issue in detail and having taken into consideration the principles laid down by the Supreme Court in *Sardar Govindrao Mahadik and Another Vs. Devi Sahai and Others*, as well as a Division Bench of this Court in *Mutha Subbarao and Others Vs. The Official Receiver, West Godawari at Eluru and Others*, , which was rendered following the order in *Krishnamurthy Pillai v. Sundaramurthy Pillai* AIR 1932 Mad. 381, held that the order of attachment before judgment obtained by the decree holder does not confer him the status of the secured creditor. It was also held that the interim receiver appointed by the Court adjudicating a person as an insolvent has complete control over the properties kept under his custody notwithstanding the subsistence of any order of attachment including attachment made under Order XXXVIII Rule 5 CPC

9. In view of the ratio laid down in the above decision on interpretation of all the relevant provisions, I am of the opinion that the Court below committed an error in holding that the first respondent/decree holder should be considered as secured creditor within the meaning of Section 2(e) of the Act.

10. However, learned Counsel for the first respondent, while placing reliance upon a decision of this Court in *Vasavi and Company, Kodakondla Srisailam Vs. Nampally Padma and others*, , vehemently contended that the decree holder who obtained the order of attachment before judgment pending the suit, becomes a secured creditor and such a secured debt can be executed independently against

the judgment-debtors even though they are declared as insolvents.

11. A perusal of the said judgment shows that it was rendered without noting the principles laid down by the Full Bench of Madras High Court in MANICKAM CHETTIAR Vs. Income Tax OFFICER, MADURA., , as well as the Division Bench of this Court in Mutha Subba Rao's case (supra) which are binding precedents with regard to the interpretation of the secured creditor as defined u/s 2(e) of the Act.

12. As a matter of fact, in Rachamalla Nagi Reddy's case (supra), it was already held that the view taken in Vasavi and Company's case (supra) was not correct.

13. In the circumstances, I do not find any substance in the contentions raised by the learned Counsel for the first respondent. Accordingly, the order under revision is set . aside and the civil revision petition is allowed.