
(1929) 01 MAD CK 0012
In the Madras High Court

Jethaji Peraji Firm

APPELLANT

Vs

Tirupuramallu Krishnayya (dead) and Others

RESPONDENT

Date of Decision : 17-01-1929

Acts Referred:

Provincial Insolvency Act, 1920 — Section 37, 43

Citation : (1929) ILR (Mad) 648 : (1929) 29 LW 649 : (1929) 57 MLJ 116

Hon'ble Judges : Venkatasubba Rao, J;Reilly, J

Bench : Full Bench

Judgement

Venkatasubba Rao, J.—Several connected appeals and revision petitions have been argued before us, but, in my opinion, C.M.A. Nos.

310, 311 and 312 of 1925 really raise the question of substance, which presents itself for decision. If we decide these appeals in favour of the

appellants there, our decision in them governs the other cases and the contentions raised in the latter by the respondents seem beside the point.

Shortly stated, the question we have to decide relates to the construction and effect of Sections 43, 37 and 27 of the Provincial Insolvency Act of

1920.

2. The facts are undisputed and I shall briefly state them. Three brothers were adjudicated insolvents, first on their own petitions and subsequently

on petitions filed by certain creditors. The orders of adjudication were passed on the debtors' petitions by the Official Receiver on the 25th of

November, 1921 and he fixed 18 months as the period within which the debtors were to apply for their discharge. The same debtors were

subsequently adjudicated by the District Judge on the 12th of December, 1921 and the period fixed by him was 12 months. Pausing here for a

moment, one fails to understand how two such sets of parallel orders came to be made; but this curious irregularity has no bearing on the question

we have to decide. The total liabilities shown amount to over 2 1/2 lakhs. The insolvents had, on the 10th January, 1921, executed a mortgage in

favour of certain creditors, whom I shall in this judgment, call the mortgagees, for about Rs. 60,000 and it is said that the mortgage deed

comprises the bulk, if not the whole, of the insolvents' property. In the Insolvency Petition, a proceeding was commenced by the Official Receiver

u/s 54 for the annulling of the mortgage. He filed his petition under that section on the 20th of April, 1922. Its trial began on the 1st of February,

1923, and became a protracted one, the evidence being recorded piecemeal from time to time. In fact, from the 1st of February, 1923 to the 1st

of May, 1924, that is, for 15 months, witnesses were examined off and on, but the trial was not, even on the last-mentioned date, concluded. I

may mention that the evidence of 10 witnesses for the petitioner and 3 for the respondents had by then been taken. On the 30th of April, 1924, a

creditor by name Krishnayya applied u/s 43 that the orders of adjudication might be annulled on the ground that the debtors had not applied for

their discharge within the time fixed. The date chosen for making the application is significant. On the 24th of April the petition u/s 54 was

adjourned to the 1st of May. The application to annul the adjudication was made, as I have said, on the 30th of April, that is, the day previous to

the date fixed for the hearing of the substantive petition. On the 1st of May, I have already stated, the Judge heard the petition for annulling the

mortgage. Curiously enough, on that very date, without notice to, or knowledge of, the creditors, an order appears to have been made on

Krishnayya's petition directing the Official Receiver to submit a report. This petition came on the 3rd of May, 1924 and the District Judge made an

order annulling the adjudication. It must be noted that the petition u/s 54 stood adjourned from the 1st of May to the 28th of July. It was between

these two dates, that is on the 3rd of May, that the adjudication was annulled. It is surprising that when this order was made without notice to

creditors, the fact was overlooked that there was pending on the file of the Court the petition u/s 54 which was being hotly contested. So far as the

record goes the Official Receiver does not appear to have taken any steps to safeguard the interests of the general body of creditors. This led to

the strange result that the adjudication was unconditionally annulled. I use the words ""strange result"" advisedly. The order u/s 43 was made

presumably to punish the debtors,, But in this case the persons who are prejudicially affected are not the debtors but the creditors generally.

Another unexpected result of that order is, that the petition u/s 54 was held to have lapsed automatically and the mortgage, which was the subject

of attack, became, for the time being, valid and final. The very object of the Insolvency Petitions, so far as the creditors collectively were

concerned, became frustrated, for it cannot be gainsaid that the creditors started the proceedings, mainly if not solely, for the purpose of getting rid

of the mortgage. The rest of the story may be briefly told. Several creditors applied to the District judge for review of the orders made u/s 43 and

the review petitions were dismissed. As a necessary result, the Judge held that the petition to annul the mortgage u/s 54 lapsed and that petition

was accordingly dismissed.

3. The general body of creditors (whom I shall refer to as appellants) attack these orders of the learned District Judge, whereas Krishnayya and

the mortgagee support them. It is contended for the appellants that the word ""shall"" in Section 43 is not used in a mandatory sense, but must be

held to be directory only. The argument is put thus: Generally, no doubt, it is the debtor that is punished by the annulling of the adjudication. The

very terms of the section show that what is intended is in the nature of a penalty to the insolvent. If the adjudication is annulled, the section provides

that the Court may recommit the debtor to his former custody and that he shall be subject to all the processes that had previously been in force

against him. But there may be cases where, if no discretion is left to the Court, the very opposite of what is intended may result. In this case, it is

asked, how are the insolvents really prejudiced by the orders? The parties who profited by them are the mortgagees, that is to say, the creditors

fraudulently preferred. The honest creditors, on the contrary, have been seriously prejudiced. Can this be the intention of the section?

4. I shall now deal with this contention. Section 43 provides that if the debtor fails to apply for his discharge within the period specified by the

Court, the order of adjudication shall be annulled. The learned Advocate-General contends for the appellants that the word ""shall"" is directory and

the expression ""shall be annulled"" means ""shall be liable to be annulled"". Section 43 is, in my opinion, controlled by Section 27 which reads thus:

27. (1) ""If the Court does not dismiss the petition, it shall make an order of adjudication and shall specify in such order the period within which the debtor shall apply for his discharge.

(2) ""The Court may, if sufficient cause is shown, extend the period within which the debtor shall apply for his discharge, and in that case shall publish notice of the order in such manner as it thinks fit.

5. From these two Sections read together, it is clear that the party who can make the application for discharge is the debtor and no one else. It is

equally clear that the Court has the power to extend the period and it may be so done, not merely at the instance of the debtor but on the

application of anybody interested. The section merely requires that sufficient cause shall be shown, but it does not say that the debtor alone may

apply for extension or shall show sufficient cause. If then, before the expiry of the term fixed, an application is made u/s 27(2) it is obvious that it is

not obligatory upon the Court u/s 43 to annul the adjudication. To this extent it is plain that the word ""shall"" is not imperative. In re Lord Thurlow.

Ex parte Official Receiver (1895) 1 Q.B. 724 is an authority on this point. In that case, the Court of Appeal held, the expression ""shall adjudge"" in

Section 20, Clause (1) of the Bankruptcy Act, 1883, to be directory and not mandatory, on the ground that a discretion was left to the Judge

under the words of another section, namely, Section 105(2), which contained a provision to the effect that the Court may at any time adjourn any

proceedings before it upon such terms, if any, as it may think fit to impose.

6. Then comes the question, supposing the Court is moved u/s 27(2), after the expiry of the time originally fixed, but before the adjudication is

annulled u/s 43, has the Court the power to extend the period within which the debtor could apply for his discharge? In the first place, I must

observe that the adjudication does not get automatically annulled u/s 43 on the expiry of the original period. The words of the section show that the

Court must make an order of annulment. This is the correct interpretation of the section and Abraham v. Sookias I.L.R.(1923) C.337 supports this

view. Next, Section 27(2) while saying that the Court may extend the time, does not say in express terms that it may be extended either before or

after the expiration of the period originally fixed. Section 148 of the CPC enacts that the rule to be applied under that Code is that the time may be

enlarged irrespective of the fact that the application is made either before or after the expiry of the period originally specified. It is unnecessary to

decide whether by reason of Section 5 of the Provincial Insolvency Act Section 148 of the Code is attracted or not; for (1889) L.R. 17 I.A. 1

(Privy Council) establishes clearly that the power of the Court is not fettered in the way suggested. That case was decided under the old Code

which did not. contain a provision similar to Section 148. I am, therefore, disposed to hold that it is open to the Insolvency Court u/s 27(2) to

extend the time on a proper application to that effect made at any time before the adjudication is annulled u/s 43. This is the view taken by

Krishnan, J., in Arunayiri Mudaliar v. Kandaswami Mudaliar I.L.R.(1923) C.337 by Devadoss and Wallace, JJ., in Abbi Reddi v. Venkata Reddi

(1925) 51 M.L.J. 60 and by the present Chief justice in Manikkam Pattar v. Nanchappa Chettiar (1928) M.W.N. 441. The Lahore High Court

has taken the same view in Lakhi v. Molar (1925) 86 I.C. 115 and Fateh Muhammad v. Maya Das (1926) 100 I.C. 134 the Burma Court in

K.K.S.A.R.A. Chettiar v. Mating Mya Tha (1926) 6 Bur. L.J. 5 and the Calcutta High Court in the case already cited, Abraham v. Sookias

I.L.R.(1923) C 337. A different view was taken by Waller, J., who, differing from Krishnan, J., held in Arunagiri Mudaliar v. Kandaswami

Mudaliar (1923) 19 L.W. 418 that the Court has no such power. To the same effect are the decisions in C. Venugopalachariar Vs. K. Chinnulal

Sowcar and Others, Tirumala Reddi v. Kolakula Thomasu Reddi (1927) 54 M.L.J. 344 and Rainakrishna Misra, Ex parte (1924) ILR 4 Pat. 51.

There is thus a conflict of authority on this point. But I am in favour of holding that, on the right construction of the two Sections [Section 43 and

Section 27(2)] in the light of (1889) L.R. 17 I.A. 1 (Privy Council) the Court may enlarge the time even though the application is made after the

expiry of the period originally fixed. Thus, in this case again, the terms of Section 43 are, not imperative or obligatory.

7. I have so far dealt with two classes of cases but over and above these there remains a third, namely, what has actually arisen in this insolvency.

If, before the District Judge made his order u/s 43, there was before him an application to extend the time, he would have, as I have said, a

discretion to enlarge the period; and in the circumstances of this case he would have exercised it properly by granting an extension. There are other provisions in the Act under which the debtor can be punished while an adjudication still remains in force. For one thing, his protection may be revoked while the proceedings may be continued for the benefit of the creditors. In this case, I cannot help remarking that the Official Receiver failed in his duty by not asking for an extension. However that may be, the question is, is Section 43 to be construed as peremptory in the absence of an application before the Judge u/s 27(2)? In other words, can the Judge suo motu refuse to make an order u/s 43 if he thinks there are sufficient reasons for adopting that course? The learned Advocate-General argues that even in such a case the section is not mandatory. There is no authority and I wish to reserve my own opinion on the point, for, I can rest my judgment for the appellant on a much firmer ground.

8. Section 43, after saying that the order of adjudication shall be annulled, adds that the provisions of Section 37 shall apply. That section runs thus:

37. (1) "Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the

Court or Receiver, shall be valid; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the

Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions

(if any) as the Court may, by order in writing, declare.

9. Under this section it was open to the Court to have directed the insolvent's property to vest, for the creditor's benefit, in some person named

for the purpose. This is not disputed. That is the order that, in the circumstances, ought to have been made. Had such a conditional order been

made, though it would have revoked the status of the debtors as insolvents, it would not have proprio vigore put an end to the insolvency

proceedings by legal implication. The District Judge held that, as the annulment of adjudication had the effect of terminating the insolvency petition,

the proceeding instituted by the Receiver u/s 54 in that petition lapsed as a matter of course. But this result could have been avoided. For, if, as I

have said, action had been taken u/s 37, the annulment would not have been unqualified or absolute and in that case the Court would still retain

control over the insolvent and his assets. The scheme of the Act shows that in certain cases the annulling of adjudication does not necessarily lead

to the finally putting an end to the insolvency petition. This, in my opinion, is the correct view and I am supported by *Ex parte Lennard. Re Chidley*

13 and *Timmappa v. Devasi Harpal* (1929) M.W.N. 22. In the last mentioned case the question arose: What was the effect of an order u/s 39

annulling adjudication which was made consequent on a scheme of composition approved by the Court u/s 38? It was held that the order did not

bring the insolvency petition to an end and that the Court, although the adjudication was annulled, continued to retain control over the insolvent's

assets. I entirely agree with that decision and the point is fully dealt with in the judgment of Wallace, J. But there is one observation made by the

learned Judge--an obiter dictum--with which I do not agree. While holding that an order of annulment u/s 39 does not terminate the petition (that

was the point that directly arose), the learned Judge incidentally observed that u/s 43 the case would be different. If what Wallace, J., meant was

that an unconditional annulment under that section would bring an insolvency petition to an end, that is a proposition to which no exception can be

taken; and in my opinion, that is all that the learned Judge could have meant.

10. Now, turning to *Ex parte Lennard Re Chidley* (1875) 45 L.J. (Bk.) 49 the facts are these: A composition scheme provided for the annulment

of the bankruptcy and the assignment by the debtor of all his personal property to the trustee to secure the composition. The scheme having been

approved and the bankruptcy annulled, a question arose whether the rights of an execution creditor under an execution that was void in the

bankruptcy revived upon the annulment. The Registrar granted an injunction restraining the creditors from proceeding with their execution. It was

contended that the Court had no jurisdiction, the bankruptcy having been" annulled. The Court of Appeal overruled the objection. James, L.J.,

observes:

I am of opinion that under Sections 28 and 72 of the Bankruptcy Act, 1869, the Court of Bankruptcy has jurisdiction to determine all questions

which may arise in the case of a scheme of arrangement.. . But here though the bankruptcy has been annulled, the composition was made in

bankruptcy by the Court itself as part of a scheme which was approved by the

Court.. . The order was therefore made in what continued to be a matter of bankruptcy and the question was a question to be decided u/s 72 for the purpose of making a complete distribution of the property.

11. At this point, a passage from Williams' Bankruptcy, 13th Edition, may be quoted. The learned Author while commenting on Section 29 of the English Bankruptcy Act (which contains a sub-clause on which Section 37 of our Act is modelled) says thus:

Although in cases where the annulment is on the ground that the adjudication ought never to have been made, the Court will in all respects try to remit the bankrupt to his original position, yet in cases where the annulment is, as it is u/s 21, a continuance of the bankruptcy in another form, the rights of and against the bankrupt or the person in whom the bankrupt's estate becomes vested by the order of the Court in respect of that estate will remain as they were under the bankruptcy.

12. Assuming then that, in the events that have happened, Section 43 was mandatory, the District Judge ought to have made a conditional order u/s 37.

13. I would, therefore, in C.M.A. Nos. 310, 311 and 312 of 1925 set aside the order of the District Judge and under Sections 43 and 37 annul the adjudication of the insolvents, subject to this condition, that their property shall remain vested in the Official Receiver.

14. The result of the view I have taken is, the insolvency petition not having come to an end, the proceeding started by the Receiver u/s 54 must be deemed to be pending; and the Lower Court is directed to complete the enquiry and dispose of the petition according to law in the ordinary course.

15. It only remains to add that Section 37, which deals with the consequences of annulling, validates all acts done previously by the Official

Receiver. The word ""acts"" is wide enough to include the Receiver's act of avoidance u/s 54. ""Void"" in that section has been held to mean

voidable,"" that is, it is open to the Official Receiver, as representing the creditors, to disaffirm the transaction (the fraudulent preference). The

effect of the saving in Section 37 is to preserve the validity of the Receiver's exercise of his option of avoidance. The result is, now that I have held

that the insolvency petition has not been brought to an end, the proceeding u/s

54 subsists and can be continued.

16. I make an order accordingly in C.M.A. No. 313 of 1925. This is scarcely an independent order, for, as a matter of fact, it follows as a

consequence from the orders already made in C.M.A. Nos. 310, 311 and 312 of 1925.

17. These orders will really suffice to dispose of all the matters before us. In that view I make no separate orders on C.R.P. Nos. 627 and 628 of

1924 and 173 and 1.74 of 1925.

18. In regard to costs, though collusion between Krishnayya and the mortgagees may be suspected, it cannot be said that either of them acted

wrongly. I, therefore, direct that each side shall bear its costs of these appeals and petitions.

19. Mr. S. Srinivasa Aiyangar says that his client was brought on the record as alienee who acquired the interest at a Court sale of the mortgagees,

Bhadri Narain and Soorja Narain. He contends that he is protected by Section 54(2). This is a question which must be left to be decided by the

Lower Court when it disposes of the petition u/s 54.

Reilly, J.

20. In these cases the insolvents did not apply for their discharge within the time specified; nor was any application made either before or after the

expiry of that time for its extension. That being so, I do not wish to express any opinion on this occasion on the question whether the time specified

can be extended by the Court after its expiry. But in the circumstances stated the District Judge was bound in my opinion u/s 43 of the Provincial

Insolvency Act to annul the adjudication. In the decisions of this Court on the question culminating in Tirmnala Reddi v. Kolakula Tliomasu Reddi

(1927) 54 M.L.J. 344 the weight of authority is clearly in favour of the view that the words ""shall be annulled"" in Section 43 of the Act are

mandatory. But in Manikkam v. Nanchappa (1928) M.W.N. 441 where the question was not decided, the learned Chief Justice suggested that

another view was possible and referred to In re Lard Thurlow, Ex parte Official Receiver (1895) 1 Q.B. 724 as deciding that a similar provision in

the English Bankruptcy Act was not mandatory. The learned Advocate-General has relied strongly on Lord Thurlow's case 1 in support of his

contention that the expression ""shall be annulled"" in Section 43 of the

Provincial Insolvency Act is not mandatory but directory, and that in this case the adjudication should not have been annulled. But, when we examine In re Lord Thurlow. Ex parte Official Receiver (1895) 1 Q.B. 724. I doubt with great respect whether the learned Chief Justice was right in suggesting that the Court of Appeal was there interpreting an exactly similar provision of the English Bankruptcy Act. In that case the statutory meeting of creditors eventually passed no resolution, and it was contended for the appellant (the Official Receiver) that u/s 20(1) of the Bankruptcy Act, 1883, in those circumstances it was obligatory to adjudge the debtor bankrupt forthwith. The Court of Appeal decided that it was not obligatory on the Registrar to make the order of adjudication forth with but that he had power to adjourn the matter. It was not explicitly set out in Section 20(1) of the Bankruptcy Act, 1883, that, if the meeting of creditors passed no resolution, the debtor should be adjudged bankrupt forthwith, and even taking that section by itself I doubt whether ""shall adjudge"" was a mandatory provision which left the Court no discretion to do anything except to adjudge the debtor bankrupt forthwith; it appears to me rather to set out that the next step in the procedure was to make the order of adjudication. However all the members of the Court of Appeal called to their aid another section of the Bankruptcy Act, Section 105, which provided that the Court might at any time adjourn any proceedings before it, and reading that section with Section 20(1) they had no doubt that the Registrar was not bound by Section 20(1) to adjudge the debtor bankrupt forthwith. And it must be noticed that Rigby, L.J., indicated that he would have regarded the provision in Section 20(1) by itself as obligatory and was only saved from doing so by reading it with Section 1.05; and even Lord Esher, M.R., eventually came to the conclusion that it was obligatory subject to the power of adjournment. Although it appears to me that, even taking Section 20(1) of that Act by itself, the provision ""shall adjudge"" was not mandatory in the sense that in the circumstances stated the Registrar was bound to adjudge the debtor bankrupt forthwith, it is clear that the Court of Appeal did not decide that by themselves the words ""shall adjudge"" were not mandatory in that sense. But in my opinion in Section 43 of the Provincial Insolvency Act we have a different provision. It is one thing to provide that on a certain thing happening or not happening the next

step shall be such and such; it is quite another thing to provide that, if a certain order of the Court is not carried out within a certain time, a certain consequence shall follow. The latter provision is to my mind much more clearly mandatory than the former. It is very difficult to suggest any reasonable explanation why the words "shall be annulled" were used in Section 43 of the Provincial Insolvency Act if something other than their plain meaning was intended, and it is not disputed that their plain meaning is mandatory. The learned Advocate-General has suggested that what the Legislature meant by using those words was "shall be liable to be annulled" ; but he has not been able to suggest any satisfactory reason why, if so, the Legislature did not say what it meant. If anything less than a mandatory provision was intended, it would have been the simplest matter to express the real intention. I am very averse from accepting suggestions, which are not in frequently made in this Court when the plain language of a statute appears to lead in particular circumstances to inconvenient consequences, that the Legislature has done its work carelessly and inefficiently and has not said what it meant or has said what it did not mean. On the contrary we have no right to depart from the plain meaning of a statute except for some compelling reason, and our own view of what is convenient can seldom provide such a reason. In this instance the use of the words "shall be annulled" becomes more marked when we contrast it with the provision "may be annulled" in Section 41 of the Presidency Towns Insolvency Act. it would be extravagant to assume that when framing Section 43 of the Provincial Insolvency Act the Legislature had forgotten the wording of Section 41 of the Presidency Towns Insolvency Act on the same subject, and if the latter provision had not been entirely forgotten, the words "shall be annulled" in Section 43 of the Provincial Insolvency Act can hardly have been chosen otherwise than advisedly and deliberately. But the learned Advocate-General has suggested that, even if the Legislature used the words "shall be annulled" advisedly and deliberately, it would be possible for us to soften them by a kind of equitable interpretation, if experience showed that in certain circumstances they led to gross and un contemplated hardship or to some unexpected conflict with the general purpose of the Act. In very exceptional cases it may be necessary for us to modify by interpretation even the most unambiguous words deliberately used by the Legislature in a particular passage of a statute if we

are convinced that in the, circumstances under consideration they lead to consequences wholly un contemplated by the Legislature and repugnant to the purpose of the statute. The plainest words most deliberately chosen in a particular passage cannot be allowed to defeat the unquestionable intention of the Legislature in framing a statute. But that is only one aspect of the fundamental rule that we must enforce a statute ""according to the intent of them that made it."" Before we depart from the plain meaning of particular words deliberately chosen by the Legislature we must be very sure of our ground; we must be convinced that we have to deal with circumstances which the Legislature never foresaw and to which it never intended its words to apply, and of that we can hardly ever be convinced except by the clearest repugnancy to the purpose of the statute. It is true that our Insolvency Acts are intended not only for the relief of debtors but also for the fair treatment of their creditors and that, if the plain meaning of a particular passage, though deliberately adopted, led to the infliction of gross and obviously un contemplated hardship on a debtor or his creditors, which the Legislature could not have intended, we might be driven to depart from the language used in order to do what the Legislature clearly intended, not what it actually said. But can it be said that there is any such compelling reason to depart from the plain language in this case? The annulment of his adjudication can inflict no such hardship on a debtor, as Section 10(2) of the Provincial Insolvency Act indicates, that, if he has been prevented from making his application for discharge by some reasonable cause, the Court will permit him to present a new insolvency petition on the same facts as before. The hardship which the learned Advocate-General has pressed upon us is hardship to the creditors or some of them if the adjudication is annulled on account of the debtor's default when it is clearly profitable to them that the realisation and distribution of the debtor's assets should go on in the insolvency proceedings or disastrous to them that his property should again vest in the debtor. But it is to prevent any such hardship that the Legislature has by the terms of Section 43 made the provisions of Section 37 applicable in such a case. It is not necessary, when the adjudication is annulled because the debtor has failed to apply for his discharge within the specified time, that his property should revert to him; it may be vested by the Court in some other person. In a case such as the present one the obvious course is that the Court

should order the property to vest in the Official Receiver. It has not been contended before us for the respondents that that would not be a proper

order in this case or that, when the debtor's property has so vested in the Official Receiver, he would not be able to realise it by sale and suit and

to distribute it rateably among the creditors. In my opinion the annulment of the adjudication in these cases was correct and must stand, as the

District Judge had in these circumstances no discretion to refuse to make an order of annulment, but he should have made use of the provisions of

Section 37 and should have ordered the debtor's property to vest in the Official Receiver, which order we should now make.

21. That order we can make in C.M.A. Nos. 310, 311 and 312 of 1925. But it will not serve the purpose of the appellant in C.M.A. No. 313 of

1925, another creditor, who objects to the dismissal of LA. No. 402 of 1922 on the file of the District Court. That was a petition by the Official

Receiver originally under Sections 53 and 54 of the Provincial Insolvency Act but apparently pressed only u/s 54 for the annulment of a mortgage

of almost the whole property of the debtors concerned as made with a view of giving the mortgagees a preference over their other creditors and

was dismissed by the District judge as having abated when the adjudication was annulled. It is contended by Mr. Srinivasa Aiyangar, who has

argued the case for respondents 2 and 3 in this appeal, that, even if a debtor's property is ordered to vest in the Official Receiver u/s 37 of the

Provincial Insolvency Act, proceedings u/s 54 cannot go on after the adjudication has been annulled. He first argues that under the wording of

Section 54 such a petition can only proceed while the debtor continues to be an adjudged insolvent, which he is no longer when the adjudication

has been annulled. But that is not to be found explicitly or implicitly in the section. It is true that, unless the debtor is once adjudged an insolvent, the

Receiver cannot move under the section. But apart from that essential the words ""if such person is adjudged insolvent on a petition"" are of

grammatical effect in the section only to fix the identity of the petition from the date of which the period has to be calculated within which a transfer,

etc., made comes within the scope of the section. There are no words in the section to express or imply that the petition, once properly preferred,

can be prosecuted only while the adjudication is in force. And there is nothing incongruous in a Receiver, if the property of a debtor has vested in

him u/s 37 for realisation and distribution, continuing to prosecute a petition u/s 54. It is the duty of the Receiver in such circumstances, as before the annulment of the adjudication, to distribute the property rateably. A petition u/s 54 is only an incidental proceeding by which the Receiver ensures a fair distribution by making the creditor to whom preference has been given disgorge what he has got in excess of his fair share. Such a creditor is not prevented from getting his fair share with the other creditors; in effect it is only the excess which he must give up. But the objection of substance raised by Mr. Srinivasa Aiyangar is that the jurisdiction to annul the preferential transaction and to make the preferred creditor disgorge is peculiar to insolvency proceedings and it is only in the course of those proceedings that it can be exercised. That proposition is sound so far as it goes. Outside its insolvency jurisdiction the Court has no power to annul a preferential transaction merely because it gives preference to one creditor over others. But Mr. Srinivasa Aiyangar goes on to contend that immediately an adjudication is annulled the insolvency proceedings come to an end. As a general proposition that is not so. Certainly it cannot be suggested that in this country annulment of adjudication puts the clock back as if the adjudication had never been. The opening part of Section 37 of the Provincial Insolvency Act, which validates what has been done while the adjudication has been in force, is enough to dispose of any such suggestion. But apart from that I think it is clear that the insolvency proceedings do not always stop at the moment of annulment. Sections 39 and 40 show that insolvency proceedings continue after adjudication has been annulled on a composition or scheme being approved, so much so that on the debtor's failure to pay any instalment due in pursuance of the composition or scheme the Court can read judge him insolvent without any fresh insolvency petition being put in, which it could not do if the insolvency proceedings were at an end. That the insolvency proceedings continue in such a case was decided recently in *Timmappa v. Devasi* Harpal (1929) M.W.N. 22. And see *Ex parte Lennard. Re Chidley* (1875) 45 L.J. (Bk.) 49. It is true that in the former case Wallace, J., said that an annulment of adjudication u/s 43 is evidently intended to put an end to the insolvency proceedings as a whole. But that statement was obiter dictum. It was not necessary for that case, and the question was not before him, and with great respect I doubt whether he considered fully all the

consequences of his proposition. Mr. Srinivasa Aiyangar urges that we must infer from the fact that after an annulment of adjudication u/s 43 a

debtor, as indicated by Section 10(2), is able in certain circumstances to present a fresh insolvency petition on the same facts as before that the

previous insolvency proceedings came to a complete end when his adjudication was annulled. No doubt all such advantages as he got by

adjudication then came to an end; but that does not necessarily imply that the whole insolvency proceedings came to an end. And, when once we

reach the conclusion that u/s 37 the Court may order the property of the debtor to vest in a Receiver for the purpose of realisation and distribution

among his creditors--and that is admitted by Mr. Srinivasa Aiyangar--it is only by going out of our way that we can suppose that the Receiver,

who has been appointed by the Court in the exercise of its insolvency jurisdiction, is to be controlled and directed by the Court, as he must be

controlled and directed in the exercise of some other jurisdiction. In a large proportion of the cases in which an adjudication is annulled otherwise

than u/s 35 or Section 36 there will be further proceedings to be taken or superintended by the Court, and that must be done in the exercise of its

insolvency jurisdiction. The Act does not say that insolvency proceedings cease in all cases with the annulment of adjudication, and Sections 37,

39, 40 and 50 show that proceedings may continue which must be proceedings before the Court in its insolvency jurisdiction. In my opinion, if the

Court orders u/s 37 that the property of the debtor shall vest in a Receiver, the insolvency proceedings will continue while the Receiver's work

goes on. That being so there is no difficulty in the Receiver continuing to prosecute in those circumstances a petition u/s 54 after the adjudication

has been annulled u/s 43. Moreover, if, as in this case, the Receiver has initiated, the proceedings u/s 54 before the adjudication is annulled, the

position is still simpler. Section 37 validates acts done by him after the adjudication is made and before it is annulled. Even if we do not go so far as

to say that the presentation of any petition to the Court in his capacity as Receiver is an "act" within the meaning of Section 37, the presentation of

a petition u/s 54 must, I think, as the learned Advocate-General contends, be such an act. By presenting a petition u/s 54 the Receiver exercises

his option to treat the transaction concerned as void. The formal exercise of that option is an act within his competence. If, as can hardly be denied,

the institution of a suit in the interest of the debtor's estate by the Receiver after the adjudication is made and before it is annulled is an act which

will remain valid u/s 37 after the adjudication is annulled for the benefit of the debtor or any one else concerned, the formal exercise of his option to

void a transfer must surely be an act which u/s 37 will remain valid. If it remains valid after the annulment of the adjudication, then it is unreasonable

to suppose that the Receiver cannot continue to pursue the remedy provided by Section 54. I agree, therefore, that C.M.A. No. 313 of 1925 must

be allowed and the dismissal of I.A. No. 402 of 1922 must be set aside and that petition must be remanded to the District Judge for fresh disposal.

I agree also that C.R.Ps. Nos. 627 and 628 of 1924, 173 and 174 of 1925 against the District Judge's refusal to review his order annulling the

adjudication should be dismissed as unnecessary and that in those revision petitions and in the four appeals each party should bear his own costs.

22. Mr. Srinivasa Aiyangar's contention that his client, an auction-purchaser in execution, is protected by Section 54(2) of the Provincial

Insolvency Act as a purchaser in good faith for valuable consideration is clearly one which should be urged before the District Judge when LA.

No. 402 of 1922 is reheard.