
(1940) 08 MAD CK 0080
In the Madras High Court

Jooluri Guruvayya

APPELLANT

Vs

The Official Receiver

RESPONDENT

Date of Decision : 30-08-1940

Acts Referred:

Citation : AIR 1941 Mad 575 : (1941) 53 LW 357 : (1941) 1 MLJ 405

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—The petitioner obtained a decree against certain persons who were subsequently adjudicated insolvents. Before the insolvency petition was admitted, the judgment-debtors' properties were sold in execution of the decree and a sum of about Rs. 666 was realised. The respondent who is the Official Receiver applied to the Court below for payment of this amount to him and the Court ordered payment accordingly.

2. The petitioner assails the validity of this order as being contrary to Section 51 (I) of the Provincial Insolvency Act. Prima facie that section entitles the petitioner to the amount realised in execution of his decree, as it does not appear that the petitioner's allegation in the counter petition filed in the lower court that the amount was realised before the admission of the insolvency petition was controverted. But the respondent's contention which has found favour with the Court below is that by virtue of Section 28 (7), the order of adjudication should be regarded as taking effect from the date of the presentation of the insolvency petition and that therefore the respondent's title to that sum should prevail.

3. No direct decision of this Court dealing with this point has been brought to my notice find it has to be decided with reference to the relevant provisions of the Act. It is true that there are no words in Section 28 (7) making the operation of that provision subject to the other provisions of the Act, but the Official Receiver's title to the property of the insolvent as on the date of the presentation of the insolvency petition rests on the combined operation of the provisions of Section 28 (2) and (7), and Sub-section (2) excepts from its

operation the other provisions of the Act including Section 51. It is therefore quite clear that the Official Receiver's title to the property of the insolvent does not extend to the assets realised in the course of execution levied against: the property of the insolvent before the date of the admission of the insolvency petition. To hold otherwise would be to nullify the provisions of Section 51. The Lahore High Court has taken the same view in *Charanjit Singh v. Sardar Mohammad* AIR 1935 Lah. 690.

4. The Civil Revision Petition is allowed with costs here and below.