

(1980) 10 AP CK 0003
In the Andhra Pradesh High Court
Case No : A.A.O. No. 635 of 1978

Karnati Sriramulu

APPELLANT

Vs

J.A. Qureshi and Others

RESPONDENT

Date of Decision : 09-10-1980

Acts Referred:

Provincial Insolvency Act, 1920 — Section 49, 49(1), 49(2)

Citation : AIR 1981 AP 69

Hon'ble Judges : Muktadar, J

Bench : Single Bench

Advocate : J. Eswara Prasad, for the Appellant;

Final Decision : Allowed

Judgement

1. The 43rd respondent in I.P. No. 1 of 1969 on the file of the District Judge, Khammam, has preferred this appeal against the order dated 21-9-1978 passed by the District Judge, Khammam directing the Receiver to distribute the amount of Rs. 17,339/- to Creditors Nos. 2, 3, 6, 7, 9, 11 to 14, 18 to 21, 24, 25, 41 and 43 in proportion to the debts proved by them.

2. The case of the appellant is that having allowed the Insolvency Petition, the Court appointed a Receiver to take possession of the property of the insolvent and heard the objections of the creditors. Since respondents 2 to 11 in the Insolvency Petition failed to disclose the particulars of their respective claims, their claims were rejected by the Receiver. Respondents 27 and 29 based their claims on pronotes. The Receiver rejected the claim of the 27th respondent on the ground that he did not produce the pro-note. However, the Receiver looked up the claim of the 29th respondent and directed that the claim may be decided by the District Court. The learned District Judge, however, rejected the claim of respondents 27 and 29 in the Insolvency Petition, but allowed the claim of respondents 2 to 11 in the Insolvency Petition whose claim was rejected by the Receiver on the ground that they have not disclosed any particulars of their respective claims. But the learned District Judge allowed their claims on the

ground that the other creditors did not cross-examine respondents 2 to 11 when they had given their statements. Therefore, he thought their statements to be sufficient proof of their debts,

3. In this appeal, Mrs. Chamunthi, the learned Advocate appear lag on behalf of the appellant 43rd respondent in I.P. No. 1 of 1969 contends that having regard to the provisions of Section 49(1) of the Provincial Insolvency Act, a debt could be proved by delivering or sending by post in a registered letter to the Court an affidavit verifying the debt and Sub-section (2) thereof provides that the affidavit shall contain or refer to a statement of account showing the particulars of the debt and shall specify the vouchers, if any, by which the same can be substantiated and the Court may at any time call for the production of the vouchers. Mrs. Chamanthi contends that in the instant case, it is to be noted that there is a dispute with regard to the debt and therefore Section 49 of the Act will have no application where the debt is disputed. It is only where the debt is not disputed that then Section 49 would be attracted. Where the debt is disputed, it will have to be proved like any other debt by producing the account-books. In support of this contention Mrs. Chamanthi relied on the decision in Abdul Shakur and Others Vs. Kotwaleshwar Prasad and Others, . To my mind, the contention advanced by the learned Advocate has to be acceded to. It is to be noted that Section 49(1) of the Act, as pointed out, in the Allahabad case, may be a mode of proof of undisputed debts. But, to my mind, even in the case of undisputed debts u/s 49(2) of the Act the affidavit so produced under Sub-section (1) of Section 49 should contain or refer to a statement of account showing the particulars of the debt and should substantiate the vouchers, if any by which the same can be substantiated. Therefore, even in a case where the debt is not disputed the creditor will have to specify the vouchers by which be can substantiate the debt. In the instant case, no such details have been given. To my mind, when the appellant is contesting the debt of respondents 2 to 11 in the I.P., they ought to have proved in proper manner. Mrs Chamanthi states that except filing of their claims, there is no evidence whatsoever on behalf of respondents 2 to 11 calling them for being cross-examined by !he appellant. I am of the opinion that this appeal has to be allowed which is hereby allowed and the case remitted back to the Court of the District Judge, Khammam with a direction that respondents 2 to 11 may be called upon to prove then- debt by proper method as a disputed debt has to be proved and given an opportunity to the appellant herein to disprove those debts of respondents 2 to 11. Since in spite of service of notice, no one has appeared, I do not see any reason to grant costs. Appeal is allowed and the case remanded.