
(1941) 10 MAD CK 0037
In the Madras High Court

Kudithipudi Venkatramayya

APPELLANT

Vs

Mallacheruvu Pundareekakshudu and Others

RESPONDENT

Date of Decision : 15-10-1941

Acts Referred:

Provincial Insolvency Act, 1920 — Section 37

Citation : AIR 1942 Mad 523 : (1942) 55 LW 242 : (1942) 1 MLJ 491

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—These three cases have relation to the same transaction and they are to some extent interdependent. We are concerned with a promissory note debt incurred on 4th December, 1930, by the first defendant, in the suit out of which A.S. No. 131 of 1940, arises, in favour of the first plaintiff. This debt was a renewal of two earlier debts incurred by the father of the first defendant. The suit note was assigned by the first plaintiff to the second plaintiff for collection and re-assigned to the first plaintiff in November, 1939. Meanwhile, the first defendant had become an insolvent, his insolvency petition being filed on 6th July, 1932, and the adjudication being four months later. The insolvency was not prosecuted and on 1st November, 1938, the Insolvency Court passed an order annulling the adjudication owing to the default of the insolvent and directing that u/s 37 of the Provincial Insolvency Act, the properties should vest in the Official Receiver. After this order was passed, the first defendant, who is the appellant here, seems to have made some sort of arrangement with certain of his creditors and on the 2nd December, 1938, he filed a civil miscellaneous petition before the Insolvency Court praying for a review of the order vesting the property in the Official Receiver. This application was dismissed on 21st March, 1939 and C.M.A. No. 40 of 1939, was preferred to the District Judge on 27th March, 1939. The first defendant also filed in the Insolvency Court, C.M.P. No. 426 of 1939, in which he prayed the Court to scale down the promissory note debt due to the present respondent, which was the only debt said to be outstanding after the settlement made between the appellant and his creditors. This application was rejected on

the ground that the applicant by reason of the insolvency had no saleable interest in agricultural lands on 1st October, 1937, and by reason of the annulment of the insolvency was not entitled to call in aid Section 21 of Act IV of 1938. Against the order in this civil miscellaneous petition another appeal was filed to the District Court. In the District Court, the creditor, who had not been paid, on 21st November, 1939, with, the leave of the Insolvency Court filed a suit for the recovery of his debt. The present appellant pleaded that he was entitled to relief under Act IV of 1938. The learned Subordinate Judge negatived this plea on the basis of his previous order, no stay having been obtained from the District Court. The suit was accordingly decreed. The District Judge shortly afterwards passed orders on the two C.M.As. pending before him. On the appeal against the order rejecting the application for relief under Act IV of 1938, the learned District Judge held that the insolvency continued even after the annulment by reason of the vesting order and that, even assuming that the insolvency did not continue, the ex-insolvent had still a saleable interest in the property vested in the Official Receiver. He therefore directed the trial Court to scale down the debt. On the appeal against the dismissal of the application to review the order vesting the property in the Official Receiver, the District Judge observed that all the creditors except the present respondent had adjusted their claims against the insolvent and that as the debtor was prepared to deposit the amount due to the contesting creditor it had to be scaled down under the contemporaneous proceedings. The District Judge accordingly passed an order vacating the vesting of the property on condition of the deposit of the amount as scaled down within one month of its ascertainment by the trial Court. C.R.P. No. 1098. is preferred by the creditor against the order remanding the application under Act IV of 1938 for the scaling down of the debt. C.R.P. No. 1099, is preferred by the creditor against the review of the order vesting the property in the Official Receiver and the main appeal, A.S. No. 131 of 1940, is preferred by the debtor against the decree passed without allowing him the benefit of scaling down the debt under Act IV of 1938.

2. C.R.P. No. 1099, is not now pressed in view of the fact that on the stay application to this Court, C.M.P. No. 2936 of 1940, the debtor has given security to the satisfaction of the creditor for the amount of the debt should he fail to get it scaled down. There is, therefore, no longer any necessity for the restoration of the vesting order. This civil revision petition is therefore dismissed without any order as to costs.

3. The appeal and C.R.P. No. 1098, go together and the decision of both these cases depends on the interpretation of Section 21 of Act IV of 1938. Section 21, runs as follows:

Nothing contained in this Act shall apply to the debts payable by any, person who has been adjudicated an insolvent, if prior to the coming into force of this Act, a dividend has been declared out of his assets. If a dividend has not been so declared, this Act shall apply to the debts payable by such person if he would have been an agriculturist within the meaning of this Act but for his adjudication

in insolvency.

The contention of the appellant is, firstly, that the section applies to the case of any person who has been adjudicated whether or not he remains an adjudicated insolvent during the relevant period, and secondly, that by reason of the vesting order the insolvency continues, so that the section, applies even if it refers only to insolvencies which continue up to the date of the application. It seems to us that the provision that the Act Shall apply to debts payable by any person "who has been adjudicated an insolvent" cannot properly apply to the case of any person who was at some time in the past adjudicated an insolvent, but has ceased to be in the position of an adjudged insolvent, before the question arises. We are of opinion that this section cannot properly apply to the case of a person who has at some time in the distant past been adjudged an insolvent, if he is not an insolvent during the relevant period. There is no point in treating a person as an insolvent for the purpose of his qualification under Act IV of 1938, if he is not an insolvent for any other purpose. It would be absurd to apply Section 21, to the case of an insolvent who was adjudged many years ago and whose debts had been paid as a result of proceedings in insolvency. To read the words "has been adjudicated" as if they do not contain any reference to a continuing state, would be to deprive many people of the benefits of the Act, although they were no longer disqualified by their insolvency from owning properties, incurring debts and carrying out the normal activities of a person with full rights over his estate. There is ample authority for the interpretation of the words "has been" in a statute, as indicating something which happened in the past and continues upto the present. Such an interpretation was placed upon the words "has been hereditary" by the Bench which decided *Kallepalle Krishnamurthi and Another Vs. The Madras Hindu Religious Endowments Board and Others*, and a similar view was taken in *C.V. Chelapathi Rao Naidu Vs. The Board of Commissioners for Hindu Religious Endowments*, . In Appeal No. 298 of 1940 and C.R.P. No. 1355 of 1940, *C.V. Chelapathi Rao Naidu Vs. The Board of Commissioners for Hindu Religious Endowments*, , this Bench had to deal with the words "has been hereditary" in the definition of an excepted temple under the Madras Hindu Religions Endowments Act and we held that these words clearly indicate a state of affairs which has prevailed in the past and continues upto the present. There seems therefore no reason to interpret the words "has been adjudicated" as having reference to a past completed act with no reference to present conditions. The ordinary meaning of the phrase in ordinary English would be "has been adjudicated and continues in the state resulting from his adjudication", and we hold that this is the meaning of the phrase in Section 21. We do not consider that Section 21 was intended to impose a disqualification upon all persons who have at any time in the past been adjudicated insolvents if dividends have been declared out of their assets, nor do we believe that it was intended to give the benefits of the Act to all persons who at any time in the past have been made insolvents when owning agricultural land, if no dividends have been declared out of their assets. The intention clearly was to provide for pending insolvencies and

to lay it down that when a dividend had been paid in such an insolvency the Act would not apply, but that if there had been no dividend, the Act would apply and the debts payable in insolvency would be liable to be scaled down if the insolvent was a person who but for his insolvency would have been an agriculturist.

4. It has been suggested that even assuming the words "has been adjudicated" to imply the continuation of the insolvency, they only have regard to the state of affairs as on the commencement of the Act. But this interpretation is not acceptable to us. No doubt it is necessary in order that a person may claim the benefits of the Act that he should be an agriculturist on 1st October, 1937 and on the date of the commencement of the Act. The appellant in this case was not an agriculturist on either of these dates, for his estate was vested in the Official Receiver. He cannot get the benefit of the Act unless he can come u/s 21; and it seems to us that in order to come u/s 21, it is necessary that the applicant should be an insolvent at the time of his application.

5. A further contention has been advanced that by reason of the vesting order the insolvency continues even after the adjudication has been annulled. This contention seems to us unsound. The annulment of the adjudication relegates the debtor to the position which he occupied before he was adjudicated, except in so far as the vesting order places the residue of the properties at the disposition of the appointee for the benefit of the creditors. Although to this limited extent the administration of the estate continues to be in insolvency, the debtor ceases to be an insolvent. This has been clearly laid down in *Kallepalle Krishnamurthi and Another Vs. The Madras Hindu Religious Endowments Board and Others*, . The position therefore is that the appellant on 1st October, 1937, and on 22nd March, 1938 was not an agriculturist because his property was vested in the Official Receiver and he had no saleable interest therein. We cannot accept the view of the District Judge that after the annulment of the adjudication he had a saleable interest in the properties vested in the Official Receiver. The most that he could have had in those properties was a "possible expectation of a surplus, if any, after satisfying the creditors. That is not, in our opinion, to be treated as a saleable interest in those properties. It follows therefore that the trial Court was right in refusing to apply the benefits of Act IV of 1938.

6. A.S. No. 131 of 1940, has therefore to be dismissed with costs. C.R.P. No. 1098, has to be allowed and the order of the trial Court dismissing the application to scale down the debt is restored and the order of the District Judge vacated. No separate costs in the civil revision petition.