

(1943) 04 MAD CK 0024
In the Madras High Court

M. Karunakara Menon and Another

APPELLANT

Vs

E. Sankaran Unni, the Official Receiver of S. Malabar and
Others

RESPONDENT

Date of Decision : 30-04-1943

Acts Referred:

Provincial Insolvency Act, 1920 — Section 54

Citation : AIR 1943 Mad 644 : (1943) 56 LW 408 : (1943) 2 MLJ 134

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—This petition arises in insolvency and deals with a mortgage deed executed by the insolvent in September, 1931. The Official

Receiver applied in 1933 to set aside the mortgage deed and the application was dismissed by the Subordinate Judge in 1935. On the 21st

December, 1937, the learned District Judge of South Mialabar reversed this decision and set aside the mortgage deed in appeal. There was a

second appeal to this Court which came before me in July, 1940 and I set aside the appellate order of the learned District Judge and remanded the

appeal for fresh disposal. When the appeal came before the successor of the learned District Judge, a new point was raised of which nothing had

been heard when the appeal came before me in 1940. It was stated that on the 18th December, 1937, that is, three days before the first appellate

order of the District Judge an absolute order of discharge had been granted to the insolvent. It was then contended on behalf of the mortgagee that

the learned District Judge in 1937 had in fact no jurisdiction to deal with the appeal and still less had his successor any jurisdiction to deal with the

appeal in 1941. The moment the absolute order of discharge had been granted,

the appeal automatically abated. The learned District Judge held against this view of the law and then considering the case on the merits, has annulled the mortgage deed in so far as the insolvent's half share in the mortgage right under Ex. IV is concerned. This is a petition against that order of the District Judge filed by the transferee. The Official Receiver, who is the main respondent in this petition, has not appeared.

2. It seems to me that there are no sufficient grounds for holding the view that the granting of an absolute order of discharge has any immediate effect upon any proceedings which may be pending under either Section 53 or Section 54 of the Insolvency Act, whether in the Insolvency Court itself or in the Court of appeal. Naturally if such objections were pending in the Insolvency Court, the Insolvency Court would take due notice of them when an application for discharge was made to it. But, equally naturally, it is quite possible that when such an application is made during the pendency of an appeal, the pendency of the appeal may pass unnoticed. In the present case no reference at all was made by the Insolvency Court which granted the absolute order of discharge to the appeal which was on the point of being disposed of by the District Judge.

3. In support of the petition, I have been referred to two recent decisions of Benches of this Court but they do not seem to me to apply to facts similar to the facts of the present case. In *C.D. Desikachari Vs. The Official Receiver and Others*, , it was held that, when an order of discharge was granted in 1932 by a Court which stated as one of the reasons for the granting of that order the fact that there was no insolvent estate to administer, the creditor of the insolvent could not several years later claim that some of the insolvent's property could be sold for his benefit on the allegation that the insolvency still continued in spite of the granting of the order of discharge. In *Vasireddi Raja Lakshammamma and Another Vs. Gopu Raghavayya and Others*, , it was clearly pointed out by another Bench of this Court, that when an absolute order of discharge had been granted, there was no power in the Official Receiver or in any creditor to initiate proceedings u/s 53 or Section 54 of the though leave to do so had previously been granted. In the former judgment. it was pointed out that there is an analogy between the annulment of adjudication and the granting of an absolute order of discharge with regard to the further disposal of the

insolvent's property. The leading case with regard to the effect of an annulment of an adjudication is the decision of the Full Bench in *Moturi Veerayya Vs. Rao Bahadur P.V. Srinivasa Rao, The Official Receiver and Others*, . In the course of that judgment, it was made clear that the annulment of adjudication does not necessarily put an end to proceedings which are pending under Sections 53 or 54, but that once the annulment order has been passed, no fresh proceedings can be initiated under those sections. Applying then the analogy between annulment and the grant of an order of discharge, it would follow that after an absolute order of discharge has been granted, proceedings which were pending u/s 53 or 54 could be continued by the Official Receiver, unless, of course, there were definite orders of the Insolvency Court to the contrary, though in the present case it would be impossible for the Insolvency Court to order the District Judge to refuse to hear the appeal. In these circumstances, it seems to me that both the District Judge in 1937 and the District Judge who has now disposed of the appeal in 1942 had jurisdiction to do so, and there is no ground for the interference of this Court in revision.

4. One fact may, however, be pointed out. It is urged on behalf of the petitioners that the disposal of this appeal by the learned District judge was a sheer waste of time, because no creditor had proved his debt and likelihood of any creditor proving his debt. I am unable to say any thing this point, though there appears to be some plausibility in the estimate which is given of the situation, as the Official Receiver has not chosen to appear to oppose this petition.

5. The result of this revision petition will now be that such part of the mortgage deed as has been set aside by the learned District Judge will revert as the property of the insolvent to be disposed of by the Official Receiver for the benefit of the insolvent's creditors. If any such creditors now appear and prove their debts, the right of the present petitioner to prove his debt will of course be recognised. If, on the other hand, no creditor should appear and prove his debt, then it must be made clear that the setting aside of this mortgage deed cannot possibly enure to the benefit of the insolvent personally. It has been set aside by proceedings taken under the Provincial Insolvency Act and the benefit of the order of the District Judge, which is now being confirmed in revision, can go not to the insolvent, but

only to the insolvent's creditors.

6. For the reasons already given, the revision petition fails and is dismissed.