

(1946) 01 MAD CK 0033
In the Madras High Court

Mahankali Subba Rao

APPELLANT

Vs

Jalasutram Audinarayanamurty and Others

RESPONDENT

Date of Decision : 22-01-1946

Acts Referred:

Citation : AIR 1946 Mad 388 : (1946) 59 LW 349 : (1946) 1 MLJ 262

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—The respondents were adjudicated insolvents on their own petition I.P. No. 18 of 1935 on 16th October, 1935. This adjudication was annulled by the learned Judge in chambers on 19th November, 1937, on the ground that the insolvents did not file their adjudication for discharge within the time-fixed by the Court. No order was made in regard to the property of the insolvents which had been vested in the Official Receiver. There was an application for review of this order by two creditors and allowing the application the learned Judge passed an order on the 17th of August, 1942, confirming his order of annulment and vesting the insolvents' properties in the Official Receiver u/s 37 for distribution amongst the creditors of the insolvent. On 26th January, 1943, the insolvents applied for reviewing the order dated 17th August and revesting the property in themselves alleging that all the creditors who had not obtained decrees except creditors Nos. 7 and 17 were satisfied, that the decree-holders were taking execution proceedings on foot of the decrees obtained by them and that, accordingly, there was no need to continue the vesting of the properties in the Official Receiver under the previous order dated 17th August. They also declared their willingness to deposit the amount due to the 7th and 17th creditors in Court so that their claims might also be satisfied. The learned Judge accepted the suggestion and passed an order revesting the properties in the insolvents on condition that they deposited in Court on or before 18th March, 1944, a sum of Rs. 2,450 towards the sums that might be found due to creditors Nos. 7 and 17. He directed the Official Receiver's commission and audit fee to be deducted from the amounts lying in deposit with him. It is from this order that

the first creditor has preferred this appeal.

2. Mr. Kasturi Seshagiri Rao for the appellant has challenged the correctness of this order on the broad ground that the learned Judge, having annulled the adjudication of the insolvents on the ground of their default u/s 43 of the Provincial Insolvency Act ought not to have revested the insolvents' properties in them,, thereby driving the creditors who have proved their debts to the remedies under the general law and exposing them to possible rival claims by way of application for rateable distribution or otherwise by other creditors who might have obtained decrees against the insolvents after the date of the annulment on the 19th of November, 1937, but would not be entitled to proceed against the properties if they had continued to be administered by the Official Receiver as appointee u/s 37 of the Act. The learned Counsel also pointed out certain errors into which the learned Judge has fallen in arriving at the figure of Rs. 2,450 as due to creditors. Nos. 7 and 17.

3. We are of the opinion that the contention on behalf of the appellant is correct and must prevail. When an adjudication is annulled on the ground that the insolvents had not fulfilled their duty by applying for their discharge within the time fixed by the Court it would not be a proper exercise of discretion on the part of the Court to revest the properties in the insolvents, for that would be allowing the insolvents to take advantage of their own default. It is obvious from the provisions of the Provincial Insolvency Act that the creditors who had already proved their debts would be seriously prejudiced by such an order, as u/s 61(5) such creditors alone would be entitled to be rateably paid out of the amount realised by the assets of the insolvents if the administration in insolvency were to continue; whereas if the properties were revested in the insolvents there would be nothing to prevent other creditors who have obtained decrees subsequent to the annulment to come in u/s 73 of the CPC and claim rateable distribution out of the assets realised in execution of any one decree against the insolvents. In the present case the appellant who is the first creditor as well as creditors Nos. 8 and 19 had obtained decrees against the insolvents and the appellant and the 19th creditor have actually proved their debts. The order made by the learned Judge would clearly operate to their prejudice and there is, in our opinion, no justification for the learned Judge making the order dated 4th March, 1944, at the instance of the insolvents.

4. It is unnecessary in this view to go into the errors of calculation pointed out in the course of the arguments before us.

5. The result is that the appeal is allowed, the order dated 4th March, 1944, is set aside and the order passed by the learned Judge on 17th August, 1942 will, be restored. The appellant will have his costs here and the Official Receiver in the Court below against the respondents 1 and 2.

6. The connected appeal C.M.A. No. 665 of 1944 is not pressed and is dismissed with costs.

7. C.R.P. No. 1751 of 1944 which is filed only as an alternative to the C.M.A. No. 665 of 1944 will be dismissed without costs.