
(1941) 09 MAD CK 0028
In the Madras High Court

Manyam Krishna Rao

APPELLANT

Vs

The Official Receiver and Another

RESPONDENT

Date of Decision : 08-09-1941

Acts Referred:

Provincial Insolvency Act, 1920 — Section 63, 75

Citation : AIR 1942 Mad 254 : (1941) 54 LW 513 : (1941) 2 MLJ 698

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This civil revision petition is preferred u/s 75 of the Provincial Insolvency Act against the order of the District Judge

reversing the decision of the Insolvency Court which declined to interfere u/s 63 of the Provincial Insolvency Act with a sale held by the Official

Receiver. The-petitioner here was the purchaser from the Official Receiver of the equity of redemption of certain properties of the. insolvent which

were bound by three mortgages, one of which had been the subject of a decree for sale. The other two had not been sued on. The insolvency sale

was held on the 27th September, 1938 and was subject to these mortgages. On the 14th September, 1938, the insolvent filed the petition in the

Insolvency Court. According to an unofficial copy of the petition which has been placed before me, the insolvent impleaded therein a large number

of creditors, but did not implead the Official Receiver and he asked under Sections 21 and 7 of Act IV of 1938 that he should be declared an

agriculturist, that the debts due to the creditors should be scaled down or that the Official Receiver should be asked to prepare schedules

according to the Act after scaling down the debts; and the petition recites that the Official Receiver has advertised the properties for sale on the

27th September, 1938, and that loss will be suffered by the insolvent if the properties were sold before the debts are scaled down. On the 27th

September, the actual date of the sale, the insolvent filed an application before the Official Receiver in which he alleged that he was an agriculturist

entitled to relief, no dividend having yet been declared, and also recited the fact of the petition already filed in the Insolvency Court; and u/s 20 of

Act IV of 1938 he prayed the Official Receiver to stay the sale. The Official Receiver did not stay the sale. The properties were knocked down to

the present petitioner. Thereupon the insolvent filed the petition u/s 68 of the Provincial Insolvency Act to set aside the sale. This petition was

rejected by the Insolvency Court on the ground that the insolvent was not a person aggrieved by the sale in the light of the decisions and that he

was not therefore entitled u/s 68 to question the act of the Official Receiver whereby the sale was completed. There was an appeal to the District

Judge against this order and the District. Judge reversed the decision of the trial Court holding that, although in an ordinary case the insolvent was

according to the authorities not aggrieved by the sale held in the course of administration of his estate, the enactment of Act IV of 1938 has made a

substantial difference, seeing that it confers the right upon the insolvent to apply for the scaling down of his debt, and the learned Judge goes further

and says that the insolvent is entitled u/s 20 of the Act to get the proceedings stayed.

2. It seems to me quite clear that Section 20 of Act IV of 1938 has no application to sales by Official Receivers and cannot be invoked in favour

of a person who is not a judgment-debtor seeking to stay the execution of a decree. It seems to me also clear that though Section 21 of Act IV of

1938 lays down no procedure for scaling down debts due by the insolvent, the procedure should, as far as may be, be analogous to that

prescribed for the reduction of other debts. It is apparent, therefore, that, if there was a debt embodied in a decree, the Court which passed the

decree would have to be moved u/s 19 to reduce the decree and the Court which executes the decree must be moved u/s 20 to stay execution of

the decree in so far as the debts of the insolvent are covered by the decrees of a Court.

3. There was at the time of this sale no procedure prescribed by the rules. Subsequently rules have been enacted giving to the Court having

jurisdiction a power to entertain applications for declaration of the amount due on any debt as scaled down under the Act, even though no suit has been filed therein. But as things stood when this sale was held, I have little doubt that it would be within the power of the Insolvency Court to entertain an application u/s 21 for the scaling down of those debts not covered by the decrees or suits in other Courts, and that with reference to those debts the Insolvency Court would be empowered to apply the principles of the Act and direct the Official Receiver to revise or frame the schedule in accordance with the result. One thing seems to be abundantly clear and that is that any proceedings u/s 21 of Act IV of 1938 should not be taken behind the back of the Official Receiver by the insolvent himself. As the status of the insolvent has necessarily to be established before any relief can be obtained, it seems to me desirable that both the Official Receiver and the insolvent should be made parties to any application under this section. If an application is properly presented to the Insolvency Court it would no doubt be within the competence of the Insolvency Court to give directions to the Official Receiver regarding the staying of realisation of assets where such realisation is legally to be effected by the scaling down process. Thus if the Official Receiver was about to sell properties subject to mortgages which mortgages were liable to be scaled down, an application might be made to the Insolvency Court to give directions to the Official Receiver to suspend the sale until the scaling down process is completed; and if the Official Receiver held the sale in disobedience to such directions, then presumably it would be a ground u/s 68 for setting aside the sale. I doubt whether the decision of the Full Bench in *S. Hari Rao Vs. The Official Assignee, High Court, Madras and Others*, , would necessarily stand in the way of a petition by the insolvent in such special circumstances. It would not be a case of the insolvent being aggrieved by the mere sale of the properties, but the insolvent being aggrieved by the act of the Official Receiver disregarding the directions of the Court obtained at the instance of the insolvent who is seeking the benefit of a special statutory procedure.

4. In the present case the procedure of the insolvent seems to have been wrong throughout. The mortgages to which the properties were subject were not all in the same position. The first mortgage was decreed. The Court which passed that decree might properly be moved u/s 19 to scale

down the debt on proof that the insolvent, had he not been an insolvent, would have been entitled to the benefits of the Act. The other two

mortgages had not been decreed. It is doubtful whether the Insolvency Court would have jurisdiction to scale down those secured debts and it

might be argued that Rule 2 of the rules framed under the Act cannot override the general law of mortgages, a matter on which I express no

opinion. As to the rest of the debts, the question whether the Insolvency Court could or could not deal with them depends upon the nature of each

debt, whether it was decreed or was the subject of a pending suit and if so, in what Court. It seems to me clear that the petition filed by the

insolvent before the Insolvency Court to scale down all the debts, apparently including these mortgage debts, could not be maintained.

5. Moreover the application to the Official Receiver u/s 20 praying for the stay of sale was clearly incompetent. An application might possibly have

been made to the Official Receiver to move on behalf of the insolvent in the proper Court for the scaling down of those debts which could not be

scaled down in the Insolvency Court and to move the Insolvency Court for the reduction of those debts which were within the competence of the

Insolvency Court and in that application the Official Receiver might have been asked to obtain the directions of the Insolvency Court to suspend

the sale pending the decision of the amount due. But it certainly does not follow from, the mere fact that an insolvent's estate may claim the benefit

of Section 21, that all administration of the estate must stop until there : has been an adjudication on the claims nor does it necessarily follow

because there is a sale being held subject to mortgages and the insolvent estate may have a right to get those mortgage debts scaled down, that the

sale must necessarily await the scaling down process. It might be desirable to sell the properties subject to the mortgages, the purchaser taking a

chance of the burden being reduced as a result of the scaling down process.

6. However that may be, it seems to me clear that on the procedure adopted by the insolvent in this case there was nothing to prevent the Official

Receiver from going on with the sale and that, though the sale was held by the Official Receiver with the knowledge that the insolvent had made a

move in the matter of an application u/s 21 of Act IV of 1938, it cannot be said that the Official Receiver acted illegally or irregularly in going on

with the sale notwithstanding that knowledge.

7. In this view I allow the civil revision petition with costs throughout and restore the order of the Insolvency Court.