(1951) 03 MAD CK 0013

In the Madras High Court

Case No : Civil Revision Petitioner No. 1655 of 1949

Mepatti Sambayya APPELLANT

Vs

The Official Receiver, Guntur and Others RESPONDENT

Date of Decision : 19-03-1951

Acts Referred:
Provincial Insolvency Act, 1920 — Section 51, 51(1)

Citation : AIR 1952 Mad 256 : (1951) 64 LW 764 : (1951) 2 MLJ 271

Hon'ble Judges : Raghava Rao, J

Bench : Single Bench

Advocate : A.V. Krishna Rao, for the Appellant; N. Subramanayam, for the Respondent

Final Decision : Dismissed

Judgement

Raghava Rao, J.—This case is thoroughly unarguable for we petitioner, Mr. Krishna Rao, however, has done his job neatly and fairly.

2. The material facts are these. There was a suit filed by the petitioner before me on 10-9-1948, and an attachment before judgment was then, and

there obtained by him. On 2-12-1948 a decree followed and the Court made the attachment absolute. Then there was an execution petition filed

on 7-12-1948 against certain money of the judgment-debtor lying to his credit with the I. L. T. D. Company at auntur. The Court on 9-12-1948

made an order in these terms ""send for'', apparently a compendious expression which the Court used for what might well have been ''send for the

money attached."" On 14-12-1948, five days after the order of the Court just mentioned, there was an insolvency petition presented against the

judgment-debtor in this suit by a creditor of his. The question which arises for determination is whether the order of 9-12-1948 has the effect of bringing into operation the exception referred to in Sub-section (1) of Section 51 of the Provincial Insolvency Act.

3. The question turns upon whether the amount which was sent for by the Court can be said to be in the nature of assets realised in the course of

the execution within the meaning of Sub-section (1) of Section 51 of the Provincial Insolvency Act. That the money was not in fact received by the

Court by the date of the admission of the petition for adjudication of the Judgment-debtor as an Insolvent is not denied. What is urged is that

according to the true meaning of the word ""realised"" in Sub-section (1) of Section 51, such receipt is unnecessary. It is argued that the order of 9-

12-1948 is itself tantamount to realisation although there was not even receipt of the money by the Court pursuant to its order and prior to the date

of the admission of the petition for insolvency of the judgment-debtor. I cannot agree with this contention.

4. My attention has been drawn by the learned Advocate for the petitioner to three decisions, none of which really helps him. The first decision

cited by him is ''Official Receiver Cuddapah v. Suobamma'', AIR 1944 Mad 389. That is a case of nothing done at all on the execution petition

before the date of the admission of the petition for insolvency. That is a clear case and the only conclusion possible was that there was no

realisation within the meaning of the Sub-section (1) of Section 51 of the Provincial Insolvency Act. The next case referred to by the learned

Advocate is ''Jooluri Guruvayya v. Official Receiver, Guntur'', AIR 1941 Mad 575. There, there was receipt of the money prior to the date of the

admission of the petition for insolvency. So also is, the position on facts in ''Firm of Tekchand v. Official Assignee'', AIR 1931 Sind 164, the only

other case relied upon by the learned Counsel.

5. The argument is not borne out by the decisions cited; nor is there anything intelligible in legal principle or In the ordinary meaning of the words

realised"" such as would render the mere order sending for the moneys of the judgment debtor tantamount to an order realising the assets within the

meaning of Sub-section (1) of Section 51 of the Provincial Insolvency Act. In the result, the civil revision petition fails and is dismissed with costs.

