
(1953) 02 KAR CK 0003

In the Karnataka High Court

Case No : Civil Revision Petition No. 438 of 1951-52

Muniappa and Others

APPELLANT

Vs

Subrahmanyaswaraswami Bank and Others

RESPONDENT

Date of Decision : 27-02-1953

Acts Referred:

Provincial Insolvency Act, 1920 — Section 17, 43 37

Citation : AIR 1954 Kar 52 : AIR 1953 Kar 52 : (1954) ILR (Kar) 95

Hon'ble Judges : Venkata Ramaiya, J; Mallappa, J

Bench : Division Bench

Advocate : C.K. Narayana Rao, for the Appellant; M.P. Somasekhara Rao, for the Respondent

Judgement

Venkata Ramaiya, J.—This is an application for revision of an order under the Insolvency Act passed by the learned District Judge setting aside the dismissal of two petitions I. A. Nos. IV and V in I. C. 9/36-37 of Chickballapur Munsiff's Court. That case arose on a petition by two creditors for their debtor Settappa and his two sons being adjudged insolvents. The petition was dismissed as against the sons but Settappa was adjudged Insolvent on 3-9-40 fixing a period of 6 months for discharge. The creditors had to prove the debts due to them to 25-10-40 but only on 14-12-45 affidavits were filed by petitioners as regards the amounts due to them. An order for the Receiver taking possession of the insolvent's properties was passed on 7-3-41 but this was recalled on 9-11-45 by stating that "the vesting order is returned". Later this adjudication itself was annulled on 21-12-45 and subsequently the two applications I. As. IV and V were filed for the administration of the properties. The learned Munsiff dismissed these but on appeal the learned District Judge has set aside the dismissal. The correctness of the appellate order is now in question.

2. As it is conceded that I. A. Nos. IV and V were both filed sometime after the order of annulment was passed, and no order for vesting the properties in any one was passed at the time of annulment, the properties must be deemed to be

not subject to the directions of the Court.

According to the decision of the Full Bench in -- "47 Mys. 242 (A)"

"If no vesting order is made at the time of annulling an adjudication u/s 43 any property of the insolvent which may have vested in the Receiver reverts to the debtor automatically and the Court cannot thereafter divest the debtor of the property and reverts it in another person."

Considering the dates I. As. IV and V are untenable as the properties had by that time reverted to the debtor.

To get over this result it is alleged that the insolvent Settappa was dead prior to the annulment and therefore the order of annulment is void. The learned Judge has set aside the order Of annulment on this ground. The petitioners in these applications did not ask for the annulment being cancelled & did not allege that owing to the death of the insolvent at the time of annulment this order was defective. Though there is reference to the death in these and some other records, the date of death is not clear. Fact of death, if it be a fact cannot be now put forward to treat the annulment as a nullity and the properties as being still in the hands of the Court.

3. Further Section 17 relied on by petitioners themselves states

"If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders be continued so far as may be necessary for the realisation or distribution of the property of the debtor."

Death of the insolvent is not therefore a bar to the Court making orders if it deems fit for realisation of the property. When the Court does not pass any orders in this behalf the properties revert to the debtor u/s 37.

4. In this view the order of the learned District Judge is set aside and I. As. IV and V are both dismissed. Parties will bear their own costs.

5. Order set aside.