

(1967) 12 AP CK 0007
In the Andhra Pradesh High Court
Case No : A.A.O. No. 45 of 1965

Paidimarri Balasubba Chetty and Sons	APPELLANT
Vs	
Jutur Reddiya and Others	RESPONDENT

Date of Decision : 06-12-1967

Acts Referred:

Provincial Insolvency Act, 1920 — Section 11, 27, 28, 28(4), 36, 36

Citation : AIR 1969 AP 446 : (1970) 1 AnWR 225

Hon'ble Judges : Gopal Rao Ekbote, J

Bench : Single Bench

Advocate : N. Ramamohan Rao, for the Appellant; P.M. Gopal Rao and K. Venkata Ramaiah, for the Respondent

Judgement

1. This is an appeal against an order of the Additional District Judge, Cuddapah passed on 19-10-1964 whereby he adjudicated respondents 1 and 2 as insolvents and directed that the estate of the debtors will vest in the Official Receiver for purposes of administration and fixed the time for discharge as one year.

2. The necessary facts are that the appellants before me filed O. S. No. 69 of 1961 in the Court of the District Munsif, Cuddapah to recover a sum of Rs. 1532-4-0 against respondents 1 and 2 herein. They attached certain property before judgment. The suit was decreed on 30-5-1961. The decree-holder filed E. P. 288 of 1961 on 12-6-1961. The attached house was brought to sale on 20-11-1961. the sale was confirmed on 2nd May, 1962. The sale proceeds were distributed rateably amongst the decree-holders in the above said suit as well as other decree-holders against the same respondents on 4-5-1962.

3. I. P. No. 9 of 1961 was filed by the respondents 1 and 2 on 29-6-1961 before the sub-ordinate Judge's Court Nellore to adjudicate them insolvents. I. A. No. 698 of 1961 was filed therein seeking stay of the sale which was to be held on 20-11-1961 in the decree passed in O. S. 69 of 1961. That petition was dismissed. C. M. A. No. 23 of 1961 which was filed was also dismissed on

12-2-1962. The 1st and 2nd respondents were subsequently adjudged as insolvents on 18-2-1963.

4. While the matter stood thus, I. P. 5 of 1964 out of which this appeal arises was filed by two petitioning creditors and the third was subsequently joined for adjudicating respondents 1 and 2 as insolvents. The act of insolvency alleged in the petition was that the respondents had filed I. P. 9/61 which constitutes an act of insolvency. This petition was resisted by the other creditors, particularly the decree-holder in O. S. 69 of 1961. Their contention was that the present petitioners were parties to I. P. 9 of 1961 and once respondents 1 and 2 were adjudicated insolvents in that proceedings it is not permissible for these petitioners to file an application to adjudicate the same respondents as insolvents which could now vest in the Official Receiver. If appointed in these proceedings. They contended that respondents 1 and 2 had only one house and they have no other property. That house was sold and is now in the possession of the purchaser and the sale proceeds distributed amongst different decree-holders who had applied for the same.

5. The petitioners examined one witness and the respondents one witness. They also marked certain documents. Upon this material, the learned Additional District Judge Negating the contention that the second petition for adjudicating does not lie adjudged respondents 1 and 2 as insolvents. It is this view that is now questioned in this appeal.

6. The Principal contention of the learned Advocate for the appellants is that once the respondents 1 and 2 were adjudicated as insolvents. Unless the adjudication is annulled, the respondents cannot be adjudged as insolvents in another proceedings. He further contended that since the only property of the insolvents was already auctioned and the sale proceeds distributed amongst the decree-holders, nothing remains which could be vested in the Receiver appointed. In this insolvency petition after the respondents 1 and 2 are adjudicated as insolvents. In support of this contention reliance was placed on *Ram Das v. Sultan Husain Khan*, AIR 1929 Oudh 149 .

7. Now, u/s 11 of the Provincial Insolvency Act, an insolvency petition can be presented to the Court in whose jurisdictional limits the debtor ordinarily resides or carries on business. or personally works for gain, or is in custody under arrest or imprisonment. It is thus plain that the debtor may be adjudged insolvent by the Court having jurisdiction in each of the places where he ordinarily resides or where he carries on business. It is to provide for such an eventuality that Section 36 of the Act provides that in case petitions, more than one, for insolvency are presented, concurrently in more than one court, one of the two Courts may annul adjudication of the fact that the property of the debtor can be more conveniently distributed by the other court, and if such a discretion is not exercised, the proceedings in both the courts can, without any objection, be continued.

8. What has to be, however, seen is whether when u/s 27 an order of

adjudication is passed, the effect provided u/s 28 of the Act would automatically ensue, according to sub-section (4) of which all property after the date of an order of adjudication and before his discharge shall forthwith vest in the court or Receiver, and when once the property vests in the Receiver, it would be futile to file another application for adjudication because it will not serve any purpose unless of course there are material changes in the circumstances. Even if any order of adjudication of insolvents is made a second time and consequently any subsequent vesting order is made. It cannot affect the rights acquired under a previous vesting order made by competent Court. All that an Official Assignee could obtain by virtue of an subsequent vesting order made in another Court would be a sort of contingent or reversionary interest in the assets in the event of the previous order being set aside.

9. In AIR 1929 Oudh 149, a Bench of the Oudh Chief Court held:

"Under the Provincial Insolvency Act once a person has been declared an insolvent, it is not open to him to apply for a second order of adjudication, until he has obtained an order of discharge or until his previous adjudication has been annulled."

10. While in view of section 11 read with Section 36 it may not perhaps be objectionable to file concurrently two petitions for adjudication of the same respondents on the same or different acts of insolvency, but when once property vests in an Official Receiver any order of adjudication subsequently passed will not divest the property which already vested in the Official Receiver. Not the 2nd Official Receiver can do anything except wait for an opportunity to administer the estate in case his adjudication is annulled or the order is set aside. That is a mere contingency which may or may not happen and it is for that reason that it is held in *Re. Aranvayal Sabhapathi*, ILR(1897) 21 Bom 297 at p. 307 that the Court has a discretion to refuse the adjudication order if, having regard to all circumstances of the case. It is considered that all adjudication would be a vain and useless proceedings. Holding therefore, that the second petition is not barred under the Act, but when once the adjudication order is made and the property is vested in the Receiver, what has to be seen in this case is whether there are any circumstances for adjudicating the respondents insolvents or the petition can be refused on the ground that an Official Receiver was already appointed and since the property is also sold, there is no purpose in adjudicating the respondents again as insolvents and appointing another Official Receiver as it is not likely to benefit all the Creditors. It is not disputed that the only property, which the respondents 1 and 2 had, has already been sold. It is not possible to make any inquiry in regard to the question as to whether the sale in the Court auction of the house of the insolvents after I. P. No. 9 of 1961 was filed is valid and the transferee gets title in the house, or assuming that he gets good title, the sale proceeds which actually vested in the Official Receiver could have been distributed amongst few of the creditors and not all of them and without the intervention of the Insolvency Court. These are matters which could have been

agitated in I. P. 9 of 1961. Instead of following that procedure which the law permits, the petitioners have chosen to file this petition. Adjudicating that respondents 1 and 2 as insolvents would not solve the problem as on the date when I. P. 5/64 was filed apparently the insolvents had no property to administer or which could vest in the Official Receiver, The appointment of Official Receiver therefore, would not serve any purpose. Following the abovesaid Bombay Decision, therefore, I do not find that the adjudication of respondents 1 and 2 in I. P. 5/64 would in any way be useful to the body of the creditors in view of the difficulties mentioned above. The lower Court therefore, ought to have taken into consideration the fact that the previous insolvency proceedings were in a way still pending because neither the insolvents are discharged nor the insolvency is annulled. In these circumstances, the adjudication of respondents 1 and 2 again as insolvents and the appointment of a Receiver will serve no purpose.

11. For the reasons already stated, I would allow the appeal, set aside the judgment of the Court below and dismiss I. P. 5 of 1964. In the circumstances of the case, I make no order as to costs.

12. Appeal allowed.