

(1935) 03 MAD CK 0061
In the Madras High Court

Patri Venkata Srinivasa Rao

APPELLANT

Vs

Secy. of State

RESPONDENT

Date of Decision : 07-03-1935

Acts Referred:

Provincial Insolvency Act, 1920 — Section 37, 43

Citation : AIR 1935 Mad 931 : (1936) 43 LW 71

Hon'ble Judges : Beasley, C.J.;Cornish, J

Bench : Full Bench

Judgement

Beasley, C.J.—This appeal raises a point which appears to be entirely free from authority. The appeal is by the Official Receiver of Guntur and the respondent is the Secretary of State. One K. Thomasu Reddy was adjudged an insolvent in 1924. Subsequently his adjudication was annulled because he failed to apply for his discharge within the time specified by the Court. Upon the annulment of the adjudication u/s 37, Provincial Insolvency Act, the property of the debtor was by order vested in the Official Receiver who sold some of the properties of the insolvent and is in possession of the sale proceeds and other properties of the debtor. Subsequent to the date of the annulment of the adjudication, the debtor preferred four appeals in the District Court, Guntur, in forma pauperis. These appeals were dismissed and the court-fee payable on the respective appeals was ordered to be paid to Government. Government then put in an application to the Official Receiver for payment of the court-fees payable by reason of the appellate decrees out of the assets of the debtor's estate in his hands claiming to be entitled to be paid in priority to the debts of all other creditors because the debt due is a Crown debt. The Official Receiver declined to recognize the Government's claim contending that, on account of the order u/s 37, Provincial Insolvency Act, vesting the property in him, he held the property of the debtor for the benefit of creditors whose debts were provable and proved in the insolvency and that in distributing the assets in his hands as a result of the vesting order he has to be governed by the same rules that govern the case of an insolvency. It is quite clear that by reason of Section 34(2) the debts provable

in insolvency are those which the debts is subject to when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of his adjudication. Therefore no debt incurred after his adjudication is provable in insolvency. Hence it is contended by the appellant that as this was a debt incurred after the insolvent's, adjudication, indeed after the annulment of the adjudication, the Crown has no debt which the Official Receiver can recognize. The learned District Judge allowed the claim of the Crown.

2. What we have to consider is what is the effect of the annulment of an adjudication and the subsequent vesting order u/s 37(1), Provincial Insolvency Act? A Full Bench of this Court has on a reference to it in Appeal No. 135 of 1931 and C.R.P. No. 1194 of Veerayya v. Srinivasa Rao Since reported in 1935 Mad. 826 considered the following question, viz.:

Where the insolvency Court annuls an adjudication u/s 43, Provincial Insolvency Act 5 of 1920 and chooses to pass an order u/s 37 vesting the properties of the quandum insolvent in an appointee (Official Receiver or any other person) is the administration in insolvency to continue for the realisation and distribution of the assets of such a person despite the annulment of the adjudication itself and has given the following answer, viz.

The appointee continues to be subject to the directions of the Insolvency Court which appointed him, that these directions relate to the property of the insolvent and that they should be given in accordance with the policy and provisions of the Insolvency Act;

and that "this is not in all respects equivalent to the actual continuation of the insolvency proceedings." In the view of the Pull Bench the principle underlying Section 43 of the Act which provides that the Court shall annul an adjudication on the failure of the insolvent to apply for an order of discharge within the period specified by the Court is primarily to punish the insolvent by depriving him of any protection which he may hitherto have been enjoying under the Insolvency law. It is stated in the judgment:

Why should the negligence of the insolvent have the necessary effect of upsetting the rights of his creditors inter se for, if this first view is to be upheld those creditors can no longer expect the fair and equal treatment which had been assured to them by the insolvency. Those who have got no decree will be hopelessly handicapped as against those who may proceed immediately to execution, and those who are aware of the annulment will have an advantage over those who are not.

3. These observations relate to a contention which had been put forward that with the annulment of the adjudication the insolvency proceedings come to an abrupt and final conclusion, that the insolvency Court has no longer any power to pass any orders in regard to the insolvent's property, its order vesting that property in the appointee being its last expiring act, that the appointee is a mere

custodian of the insolvent's property and must merely hold it subject to any orders as to attachment and sale which he may receive from any Court entertaining an application in execution against the insolvent and that the insolvent's creditors are restored to the position in which they found themselves before the insolvency proceedings began and all must pursue afresh their remedies by execution or by suit in the ordinary way. That contention the Full Bench did not agree with, nor did it accept the contention which went to the other extreme, namely, that the insolvency proceedings are continued for all purposes. The view which is one intermediate between these two before-mentioned extreme contentions was accepted; by the Pull Bench as being correct.

4. It is quite clear in my view - and this, is also the view of the Full Bench - that the appointee u/s 37 does not hold the property for the benefit of the insolvent. u/s 37 it is true that the property may, in default of any order by the Court vesting the property in an appointee, revert to the debtor to the extent of his right or interest therein on such conditions, if any, as the Court, may, by order in writing, declare. But in the opinion of the Full Bench the legal effect of the vesting order will be different from the legal effect of the reversion of the property to the debtor. The whole significance of the Court's action in vesting the debtor's property in some one else is that the Court is entitled to preserve its control over that property just as a similar control is always retained when a receiver is appointed to administer the property which is the subject-matter of a suit. In the opinion of the Full Bench the insolvency Court retains full power to give directions-under Section 37 as to the realization and disposal of the debtor's assets and that power should not, of course, be used arbitrarily but should be used in the interests not of this or that individual, creditor but of the whole body of creditors which means, in other words, that the only proper order of the Court to pass is that the appointee should continue to realize and distribute the debtor's property in accordance with the provisions of the Insolvency Act. It is contended on behalf of the appellant; that this means that the debtor's property can only be distributed amongst those who would be entitled to it under the provisions of the Insolvency Act. If: that contention is correct, then of course the Crown's debt cannot be recognised because this was not a debt provable in insolvency. The Full Bench decision-however does not say who comprise "the whole body of creditors."

5. It is not clear that in that judgment it is intended to decide that only debts provable in the insolvency can be recognized by the appointee u/s 37 unless the words "distribute the debtor's property in accordance with the provisions of the Insolvency Act" express such an intention. It seems to me that this is by no means clear. It is plain from Section 10(2), Provincial Insolvency Act, that after the annulment of an adjudication the insolvency does not continue. The insolvent is not an insolvent any longer and has to be re-adjudicated an insolvent by the Court if he again desires to be an insolvent. If the property on the Court's failure to vest it in an appointee, reverts unconditionally to the debtor, then it is obvious that not only those creditors who had debts provable in insolvency but all other

creditors are entitled to proceed against him; and this would no doubt lead to a wild scramble or as suggested in the Full Bench decision to some creditors being enabled to gain an advantage over others; and it seems to me that the scheme of the section is to enable an orderly distribution of the assets of the insolvent which under the provisions of the section the Court has vested in its appointee and to place those assets at the disposal of all those creditors who would be able to proceed against the debtor if the property had reverted to him by reason of the annulment. Unfortunately, as I have stated before, we are unable to get any assistance upon the point from reported decisions and the intention of the legislature is by no means easy to discover; but on the whole I think that the view I have just expressed after giving the matter the best consideration I can is the correct one.

6. If this is the position, then it is very fairly conceded by Mr. Ramanarasu, the learned Counsel for the appellant, that the Crown is entitled to claim priority in common law, quite irrespective of the Insolvency Act, for this debt which is clearly a Crown debt. For these reasons the decision of the learned District Judge was correct and this appeal must be dismissed with costs out of the proceeds now in the hands of the Official Receiver of Guntur.

Cornish, J.

7. I agree. When an order of adjudication is annulled u/s 43 the provisions of Section 37(1) are made applicable. In other words the position upon an annulment u/s 43 is the same as when an adjudication is annulled following the approval by the Court of a composition or scheme u/s 39. The result of this is that, although the debtor is no longer an adjudicated insolvent, the debtor's property, whether vested in a trustee appointed by the Court or whether it has reverted to the debtor subject to any conditions imposed by the Court, continues to be under the control of the Insolvency Court : see Williams on Bankruptcy, 14th Edn., p. 139. The recent Full Bench ruling of this High Court is to the same effect. If upon an annulment the property reverts to the debtor without any conditions, the consequence is that he is remitted to his original situation prior to the insolvency. It has accordingly been held that a debtor so placed is free to sue for debts due to him : Flower v. Lyme Regis Corporation (1921) 1 K.B. 488, and that he can be sued by a creditor in respect of a debt which, though provable, had not been included in the scheme of composition : Gopalu Pillai v. Kotkandarama Ayyar 1934 Mad. 529. On the other hand, if upon an annulment the property of the debtor is vested in a trustee the object can only be that the property shall be safeguarded for the benefit of the creditors.

8. The question is whether a creditor, in this case the Crown, can enforce against the trustee a debt which was not provable at the time of the adjudication because the debt had not then come into existence. This would seem to depend on whether the creditors' right to enforce a claim continues, notwithstanding the annulment, to be subject to the restrictions of the Insolvency Act both as regards the means of recovery and in respect of the debt which is recoverable. The

prohibition placed by Section 28(2) upon the commencement of a creditor's suit after an adjudication arises as a consequence of the order of adjudication and must, I think, cease to be operative after annulment of the adjudication. Similarly, the rule in Section 34 that only debts which are subsisting at the time of the adjudication are provable in the insolvency can have, in my view, no further application when the adjudication has been annulled. This view is fortified by the saving words in Section 37(1) in favour of all dispositions and payments duly made before the annulment. It follows from these conclusions that the Act does not prevent the claim from being enforced in the present case. Moreover the debt being one due to the Crown is a debt from which the debtor, even if he had got his discharge, would not have been released. The debtor cannot be in a better or the Crown in a worse position in respect of this debt by reason of the fact that the insolvency has been annulled for failure of the debtor to apply for his discharge.

9. For these reasons I am of opinion that the Collector is entitled to recover payment of the debt from the trustee. The right of the Crown to payment of a debt in priority to the debts of other creditors does not depend on the Insolvency Act. For Section 61(1)(a) of the Act only declares a long established rule of law that when claims of the Crown and claims of subjects as creditors are in competition the Crown has priority.