
(1955) 10 AP CK 0038

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1687 of 1953

Paturi China Vcerayya

APPELLANT

Vs

Talluri Gopalakrishna Rao and Another

RESPONDENT

Date of Decision : 21-10-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Provincial Insolvency Act, 1920 — Section 10, 9

Citation : (1955) 10 AP CK 0038

Hon'ble Judges : Umamaheswaram, J

Bench : Single Bench

Advocate : A. Sambasiva Rao and K.S. Somasekhara Rao, for the Appellant; K. Kotaiah and G. Ramachandrudu, for the Respondent

Judgement

Umamaheswaram, J.—This Civil Revision Petition raises a simple question of law. The Petitioner herein filed an application under Order 1, Rule 10, CPC to be impleaded as a party in I. P. No. 4 of 1952 on the file of the Subordinate Judge's Court, Gudivada. The Subordinate Judge dismissed the application on the ground that the decision in M.A. Jaleel Sahib Vs. Seeniappa Ramaswami Mudaliar and Co., (A) was directly applicable. On appeal, the District Judge of Krishna confirmed his decision. He held that though -the decision referred to by the Subordinate Judge was not applicable, still the Petitioner was entitled under the terms of Rs. 19 and 24 of the Provincial Insolvency Act to Prove that the Respondent herein was not a creditor and that the application filed by him "Jo adjudicate the 2nd Respondent was not maintainable. The Petitioner has consequently filed the Civil Revision Petition to this Court.

2. An examination of the several provisions of the Provincial Insolvency Act (V of 1920) clearly shows that without being impleaded as a party to the insolvency petition, under the term-; of Order 1, Rule 10, CPC Code, if, is open to the Petitioner who is a creditor to oppose the application filed by the 1st Respondent to adjudicate the 2nd Respondent as an insolvent. Section 9 sets out the

conditions when a creditor is entitled to present an insolvency petition against a debtor and Section 10 relates to the presentation of an insolvency petition by a debtor. Section 14 provides that no petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court.

Section 16 enacts that where the petitioning-creditor does not proceed with due diligence on his petition, the Court may substitute any other creditor to whom the debtor may be indebted in the amount required by the Act in the case of a petitioning creditor. Section 19 (1) prescribes that-where an insolvency petition is admitted the Court shall make an order fixing a date for hearing the petition. Sub-section (2) provides that the Court shall give notice of the order fixing the date for hearing the petition to all the creditors. Section 24 lays down the procedure to be adopted at the hearing of the petition. Clause (a) of Sub-section (1) provides that the Court shall require proof that the creditor or the debtor, as the case may be, is entitled to present the petition. Sub-section (2) enacts that the creditors shall have the right to question the debtor when he is examined as to his conduct, dealings and property. Sub-section (3) is significant as it provides that the Court shall, if sufficient cause is shown, grant time to the debtor, or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

The section referred to supra clearly established that the creditors to whom notice is given as provided u/s 19(2) are entitled to appear at the hearing of the petition and oppose the maintainability of the insolvency petition by a creditor or a debtor. They are entitled to adduce evidence and satisfy the Court that the provisions " of Section 9 or 10 of the Act are not complied with and that the insolvency petition should be dismissed u/s 25.

As under the provisions of the Provincial Insolvency Act it is open to the Petitioner herein to prove that the 1st Respondent is not a creditor of the 2nd Respondent and that the insolvency petition is engineered by the 2nd Respondent only with a view to defeat and delay his rights, I do not think it is necessary to add him as a party under the terms of Order 1, Rule 10, CPC Code. Sections 5 and 18 no doubt make it clear that that procedure laid down in the Code of CPC shall so far as it is applicable be followed in the case of insolvency petitions; but it is unnecessary to apply the provisions of CPC Code, viz., Order 1, Rule 10, to this case as the Provincial Insolvency Act itself has made adequate provision in this behalf.

3. The point arising for decision in this case was considered by Jai Lal, J., in *Mt. Chand Kaur v. Official Receiver* AIR 1936 Lah 499 (B). The learned Judge pointed out that, though no case law on the subject had been cited on either side, in his opinion, the question was clear from the phraseology of S. 24. I agree with his opinion and follow that decision. The decision in (AIR 1956 Mad 665) (A), does not directly apply to the facts of this case. But the principle laid down by the Judge, that the provisions of the Code of CPC will not apply when there are other provisions in the Provincial Insolvency Act, governs this case. The learned Judge

rightly held u/s 1G of the Provincial Insolvency Act, it was open to the Court to substitute Anr. creditor in the place of the petitioning creditor if he did not proceed with due diligence on his petition and that he need not be added as a party under the terms of Order 1, Rule 10, CPC Code.

4. The Civil Revision Petition therefore fails, and is dismissed with costs, one set.