
(1972) 09 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 971 of 1971

Puchalapalli Chandrasekhara Reddy and Another	APPELLANT
Vs	
The Official Receiver, Nellore	RESPONDENT

Date of Decision : 20-09-1972

Acts Referred:

Provincial Insolvency Act, 1920 — Section 53

Citation : AIR 1973 AP 130 : (1973) 1 APLJ 20

Hon'ble Judges : M. Krishna Rao, J;Lakshmaiah, J

Bench : Division Bench

Advocate : T. Veerabhadrayya, for the Appellant; M.B. Rama Sarma and S. Krishana Mohan, for the Respondent

Judgement

M. Krishna Rao, J.—This revision originally came up before Gopal Rao Ekbote, J. As he then was. In view of the importance of the question involved and also that there was no direct decision of this Court on the said question the learned Judge felt that there should be an authoritative pronouncement by a Division Bench of this Court. Hence the case is posted before a Division Bench.

2. The petitioners are transferees from a debtor under a sale-deed Ex. B-1 dated 29-12-1960. The debtor was adjudged as an insolvent on 160901961 on an application (I. P. 1 of 1961) filed by a creditor on 16-1-1961. One of the acts of insolvency alleged in the insolvency petition was that the debtor conveyed the property under Ex. B-1 in favour of the transferees fraudulently and without any consideration. As a result of the order of the adjudication, the estate of the insolvent became vested in the Official Receiver who filed an application I. A. No 284 of 1962 before the Subordinate Judge Kavali u/s 53 of the Provincial Insolvency Act to amend the transfer Ex. B-1 made by the insolvent in favour of the petitioners. The trial Court held that the transfer in favour of the petitioners was fraudulent and devoid of consideration and hence liable for cancellation at the instance of the Official Receiver. But the application was dismissed on the ground that the petitioning creditor had no locus standi to file the I.P. as there

was no satisfactory proof of his debt. On appeal by the Official Receiver in A.S. 94 of 1966 against the said order, the learned District Judge. Nellore while confirming the finding that the transfer is not binding on the Official Receiver, held that it is not open to the transferees to question the debt of the petitioning creditor and accordingly reversed the judgment of the learned Subordinate Judge and allowed the appeal filed by the Official Receiver. Against the said order, the transferees filed the above revision to this court.

3. According to the learned counsel for the petitioners Sri. T. Veerabhadraiah, the question for consideration is whether in an application under S. 53 or 54 filed by the Official Receiver to annul a transfer, it is open to the transferee to question the truth of the petitioning creditor's debt. But we do not think that the question which really arises in this case has been properly posed by the learned counsel. Even if he succeeds in establishing that the petitioning creditor's debt is false, it does not serve him any purpose as that would not result in a dismissal of the application filed by the Official Receiver to annul the transfer. The point really raised by the learned counsel is that as the petitioning creditor's debt was false, the order of adjudication itself is a nullity and of so, the Official Receiver will have no locus standi to file an application to annul this transfer. The learned counsel for the petitioner contended that though the order of adjudication is a judgment in rem the status of the petitioning creditor can be questioned in a subsequent proceeding. We quite agree that it will be open to any party to question the debt of a petitioning creditor in a subsequent proceeding, if such a question really falls for consideration. But in the present case that question is really irrelevant for even if we assume that the petitioner's learned counsel succeeds in establishing that the petitioning creditor's debt is false, that would not render the order of adjudication a nullity, if may at the most amount to a wrong order of adjudication, which should be only corrected by way of an appeal. The transferee could have filed an appeal against the adjudication order as a person aggrieved by the said order though he was not a party, but he did not choose to file any appeal and that order became final. So long as the order of adjudication stands, the Official Receiver is empowered under the provisions of the Insolvency Act to file an application to annul the transfers made by the insolvent. It is not the case of the petitioner that the order adjudication is a nullity on the ground that the insolvency Court had no jurisdiction to pass the order. Hence objection regarding the truth or otherwise of the petitioning creditor's debt is not at all a defence to an application filed by the Official Receiver u/s 53 of the Act.

In *Bajirao Bhawanrao Vs. Bansilal Ganeshlal and Another*, similar question came up for consideration and it was held that so far as the effect of the order of adjudication is concerned no one is entitled to challenge the order of adjudication except by way of an appeal under the Insolvency Act. It was further held that an enquiry into the status of the creditor cannot be gone into in a proceeding under the insolvency Act to set aside a transfer. In coming to this conclusion the Court dissented from a contrary view taken by the Nagpur High Court in *Khanderao v. Udhao Danesh*, AIR 1940 Nag 393. In the said Nagpur case the learned Judge no

doubt stated the proposition of law correctly, viz., that if the order of adjudication is a nullity it is open to the transferee to raise the said question as a defence to an application filed by the Official Receiver u/s 53 of the Act. But the learned Judge erred in thinking that an objection to the genuineness of the petitioning creditor's debt renders the order of adjudication a nullity. We are unable to agree with this view and we hold that the view expressed by the Bombay High Court represents the true position of law. If a petitioning creditor has no locus standi to file the insolvency petition it would merely result in a wrong order of adjudication passed by the insolvency Court and it is a well-known principle that a mere wrong order is not a nullity. So long as the insolvency Court has jurisdiction to entertain the insolvency petition, the order of adjudication cannot be said to be a nullity. In this view of the matter, the question as to the genuineness of the petitioning creditor's debt is not relevant for consideration at all as a defence to an application filed u/s 53 of the Provincial Insolvency Act. We, therefore, uphold the order of the learned District Judge and dismiss this revision with costs.

4. Revision dismissed.