

(1964) 12 MAD CK 0008

In the Madras High Court

Case No : Civil Revision Petition No. 1069 of 1962

R. Kalyanasundaram Pillai

APPELLANT

Vs

M.N. Palaniappa Mudaliar and Sons and Another

RESPONDENT

Date of Decision : 15-12-1964

Acts Referred:

Provincial Insolvency Act, 1920 — Section 37, 43, 5

Citation : AIR 1966 Mad 29 : (1965) 78 LW 442 : (1965) 2 MLJ 11

Hon'ble Judges : Ramamurti, J

Bench : Single Bench

Judgement

(1) One Kalyanasundaram Pillai, who was adjudged insolvent in I. P. 5 of 1958 on the file of Subordinate Judge, Mayuram, is the petitioner in this

revision petition. The short point that arises for decision is whether the unconditional annulment of his adjudication under S. 43 of the Provincial

Insolvency Act is valid and binding upon the creditors, as the annulment was made without notice to them.

(2) In this case, the petitioner was adjudged insolvent on 4-12-1959 and one year's time was fixed for the debtor to apply for discharge. As no

application was filed for obtaining discharge, the Official Receiver moved the insolvency court on 21-12-1960, for the annulment of the

adjudication, and it was accordingly annulled by order of court dated 23-12-1960. The petitioning creditor filed an application, out of which this

revision petition arises, on 13-3-1961 for extending the time for discharge, and the petition was returned on the ground that the adjudication had

already been annulled. He amended the petition praying that the order of annulment of adjudication should be set aside, as no notice was issued to

him. The learned Subordinate Judge took a too narrow and technical view of the

petition of the petitioning creditor and dismissed it, holding that so long as the order of annulment stood, the petitioner (first respondent herein) was not entitled to file a petition for extension of time for applying for discharge. But on appeal, the learned District Judge came to a contrary conclusion, holding that the petition filed by the petitioning creditor could be well regarded as containing a prayer for setting aside the order annulling the adjudication, since no notice was given to the general body of creditors or at least to the petitioning creditor. In this view, he set aside the order of the Subordinate Judge and remanded the matter giving liberty to the petitioning creditor to apply for extension of time for applying for final discharge.

(3) Mr. T.R. Ramachandran, learned counsel for the petitioner, contended that, of the various provisions which provide for annulment of adjudication like Ss. 35, 37, 39, 41 and 43, certain sections provide for notice to the creditors, while S. 43 does not contain any provision that, when adjudication is annulled, notice should go either to the petitioning creditor or to the general body of creditors. He also urged that in the rules framed under the Provincial Insolvency Act, containing the form of notice and the formalities to be complied with when notice of particular proceedings is published, there is no provision for any notice to be issued in respect of annulment of adjudication under S. 43. From this alone, I am not inclined to hold that no notice need be issued to the petitioning creditor or the general body of creditors, when the adjudication is annulled under S. 43. In *Bohrey Shankar Lal Vs. Bansi Dhar and Others*, it was held that notice should be issued at least to the petitioning creditor before the adjudication was annulled under S. 43. The observations of Venkatasubba Rao J. in *Firm Jethaji Peraji Vs. Krishnayya and Others*, lend support to this view that notice should be issued before the adjudication is annulled. It must be noticed that when the adjudication is annulled under S. 43, it is in the nature of a punishment imposed upon the insolvent for not having applied within the time fixed for discharge, with the result that the protection which is available to him under the provisions of the Insolvency Act is no longer available; Learned counsel for the respondents contends that in such a situation, especially when the order of annulment is unconditional and, there is no order under S. 37 vesting the properties in

the Official Receiver for distribution for the benefit of the general body of creditors, their interests would be seriously prejudiced. It is obvious that, if the adjudication is annulled without any condition as to vesting of the properties in the Official Receiver under S. 37, the purpose for which the petitioning creditor filed the insolvency petition and got the debtor adjudged insolvent would be completely frustrated; principles of natural justice clearly require that before an adjudication is so annulled, notice should be given at least to the petitioning creditor.

(4) It is settled law, that, even though there is no specific provision in the Provincial Insolvency Act conferring powers of review, the insolvency court can review its orders under S. 5 of the Provincial Insolvency Act. It is sufficient to refer to the Bench decision of this court in Satyanarayana

Rao v. Official Receiver of West Godavari, AIR 1948 Mad 233 which followed the earlier decisions in Challa Abbireddi and Others Vs. Challa

Venkata Reddi and Another, and Ayyasami Chetty Vs. The Official Receiver, . The petition filed by the petitioning creditor can well be regarded

as a petition to review the order. The order of the insolvency court in not setting aside the annulment is set aside. The matter shall be disposed of as

indicated in the judgment of the learned District Judge.

(5) The civil revision petition is dismissed with costs.

(6) Revision dismissed.