

(1939) 09 MAD CK 0020
In the Madras High Court

Ramakrishna Reddi and Another	APPELLANT
Vs	
The Official Receiver of Bellary and Another	RESPONDENT

Date of Decision : 08-09-1939

Acts Referred:

Citation : (1940) 51 LW 612 : (1940) 1 MLJ 932

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal arises out of the dismissal of an application for modifying an order passed u/s 37 of the Provincial Insolvency

Act, vesting the properties of the quondam insolvent whose adjudication has been annulled. The facts are rather unusual. The insolvent was in jail

as the result of a criminal conviction and he died in jail without applying "for his discharge. His minor son applied for the annulment of the

adjudication basing the application on two grounds (1) that no application had been made for discharge within time allowed and (2) that the debts

had all been satisfied. The records show that notice was ordered to a vakil, apparently appearing for the only active creditor, and a report was

called for from the Official Receiver. Thereafter the District Judge passed an order annulling the adjudication u/s 43 and directing that the property

should vest with the Receiver until payment of the debt of Lakshmipathi - presumably the active creditor. This order was passed on 13th

November, 1931. In 1934 the present appellants who represent two other creditors applied to the Receiver for directions to pay them dividends

out of the estate. Their applications were rejected. Thereupon the application which gives rise to this appeal was filed on 3rd September, 1934,

praying for the modification of the order u/s 37, so that the properties might vest in the Official Receiver until all the unpaid creditors had been paid

under the Insolvency law. The ground upon which this relief was sought was an averment that there had been a fraud by the insolvent's son in

giving notice only to one creditor and that he had taken advantage of the fraud to mortgage the properties and thereby cheat the other creditors.

On this application the order of the learned District Judge was:

I cannot do this. The insolvency has been annulled. I have no jurisdiction over the estate except in accordance with that order.

At the time of this decision the ruling of the Full Bench of this High Court in Moturi Veerayya Vs. Rao Bahadur P.V. Srinivasa Rao, The Official

Receiver and Others, , was not yet available. What the Full Bench decides is that when on an annulment u/s 43 coupled with a vesting order u/s 37

the Receiver holds charge of the properties he continues to be subject to such directions of the Court with regard to the realisation and disposal of

the properties as the Court may give in accordance with the principles, and policy of the Insolvency Act. It was also held that the power to control

the Receiver should be exercised in the interests of the whole body of creditors and that the Receiver u/s 37 had only such powers as were

necessarily implied by the vesting order. It is contended that the effect of this ruling is to enable the. Court to pass a fresh order directing the

Receiver to hold the properties, not merely for the satisfaction of the debt of the one creditor specified in the order, but for the satisfaction of the

debts of all the creditors. I cannot accept this contention. It seems to me that the decision of the Full Bench clearly contemplates that the Official

Receiver shall act under the directions of the Court which directions shall be for the purpose of carrying out the intention of the vesting order in

administering the properties according to the principles of the Act. In the present case the vesting order explicitly prescribes that the property is to

be held for the satisfaction of one particular debt only. It is not possible to contend that the order leaves it open for the Court to direct payments

towards other debts, for that contention has already been canvassed by the present appellants and they have failed. As I read the decision of the

Full Bench it provides no basis for the view that when the Court has passed a particular vesting order, restricted in a specific way, it retains the

power on some future date to pass a fresh order removing those restrictions and providing for an entirely new scheme for the distribution of the assets. To my mind that cannot be done under the provisions of the Insolvency Act.

2. My attention has been drawn to the case of Balla Mal v. Mst. Fatima Bibi I.L.R. (1904) (1934) 15 Lah. 698, which has been followed by a

single Judge of this Court in the case of C.A.V. Baluswami Naidu Vs. The Official Receiver and Another, . This decision deals with the position

when the Insolvency Court in annulling an. adjudication by inadvertence omits to make a vesting order. It was held that in the interests of justice the

Court can rectify its error. The power of Court is put on two grounds, (1) its inherent jurisdiction and (2) its power of review. With very great

respect it seems to me that there are difficulties in using the theory of the Court's inherent jurisdiction to rectify errors, so as to justify the divesting

of property which under the provisions of the statute has already vested in the insolvent. But, provided that the matter can be brought within the

purview of Order 47, Civil Procedure Code, there is, so far as I am aware, no difficulty about the correction of the error by way of review.

3. It is suggested that the learned District Judge instead of holding that he had no jurisdiction to modify the present order should have treated the

application as one for review and considered it on its merits. No doubt had a review application been presented on proper grounds and within the

prescribed period of 3 months, the learned District Judge would have had jurisdiction to make such modifications in his order as were justified in

the circumstances. But the fact remains that the present application is not a review application; it does not purport to be a review application it is

not based on grounds such as would support a review application, and it is filed nearly 3 years after the order complained of without any

application to excuse the delay so as to save limitation. In such circumstances I do not think that the learned District Judge can be blamed for

treating the application as one claiming a right to get an apparently erroneous vesting order modified and a fresh vesting order passed merely

because it has prejudiced the interests of certain parties whose views are alleged not to have been put before the District Judge at the time when

the original order was passed. To my mind the learned District Judge had no jurisdiction to alter his own order merely because it is said to have

worked hardship on some of the creditors. His powers in respect of that order must be taken to be confined to the power to give such directions

as are necessary to carry out its intention. The application, the form in which it was presented being one which the District Judge had no jurisdiction

to grant and not having been framed as an application for review, I do not see how the learned District Judge could have treated it as an

application for review and assumed that the applicants would have some way of getting round the difficulties in respect of limitation and have given

them an opportunity for redrafting their application and filing a further application to excuse the delay.

4. The order rejecting the application was to my mind a correct order and I dismiss the appeal. No order as to costs as the second respondent

who alone objected has died and no legal representative has been put in his place.