
(1925) 04 MAD CK 0079
In the Madras High Court

R.S.A.C. Kasi Iyer and Others

APPELLANT

Vs

Official Receiver and Others

RESPONDENT

Date of Decision : 24-04-1925

Acts Referred:

Citation : AIR 1926 Mad 228 : (1926) 23 LW 353

Hon'ble Judges : Venkatasubba Rao, J;Odgers, J

Bench : Full Bench

Judgement

Odgers, J.—This is an appeal against the order of the District Judge of West Tanjore dismissing a petition of the appellants asking that the adjudication in insolvency of one Sivaswamy Iyer may be annulled. Sivaswamy Iyer was adjudicated on 9-1-1923, and this petition was presented 9 months afterwards, viz , on 22-10-23. In the affidavit filed for the petitioners in the lower Court it is alleged that: (1) the insolvent does not carry on any business within the jurisdiction of the Court of West Tanjore but resides at Madras and carries on business at Madras, Nagapatam and Rangoon ; (2) that the petitioners only came to know of the adjudication on 9-10-23 ; (3) that the petitioning creditor was in collusion with the insolvent; (4) that no notice had been served on the petitioners though they were the largest creditors.

2. The petitioning creditor in his affidavit alleges various acts of insolvency, e. g., that 1st respondent (insolvent) was secreting his assets and had made various fraudulent alienations among which is a security bond dated 20-9-21 in favour of the appellants for Rs. 10,000. It is alleged that these alienations are either wholly sham or at least are by way of fraudulent preference. The affidavit further alleged that the respondent (insolvent) has his ancestral house at Kottur in the Kumbakonam taluk, that the properties in question are in the Tanjore Court's jurisdiction and that the various acts of insolvency have been committed therein.

3. The learned Judge on the petition for annulment observes that the ancestral house of the insolvent was in his jurisdiction, that his lands were there and were the chief or only property of the insolvent; further that the object of the

petitioners was to get the adjudication cancelled because there was an application pending to set aside the charge created in their favour. I need hardly observe that if this appeal succeeds the alleged fraudulent alienations including the charge will stand good. The petition for annulment was u/s 35 of the Provincial Insolvency Act i.e., that Court must be of opinion that the debtor ought not to have been adjudged insolvent.

4. With regard to the allegations in the affidavit filed in the lower Court, it may be observed that the insolvent in his deposition admitted that between September 1921 and March 1922 he was staying at various places according to the exigencies of his business; further that it is not necessary to serve notice on the petitioners. u/s 19(1) the Court after admitting an insolvency petition is to make an order fixing date of hearing. Notice of this order is to be given to creditors in such manner as may be prescribed Section 19(2). This is prescribed by Rule 21 which lays down that such notice shall be published in the Port Saint George Gazette in English and in the District Gazette in English and in the language of the Court and in such other manner if any as the Court may direct, and copies of the notices in English and in the language of the Court shall be affixed to the notice board of the Court. It is not suggested that this was not done. The petitioners have therefore no grievance on that score. Their only point and the only one dealt with by the Court below is territorial jurisdiction and this is a matter governed by Section 11 the proviso to which runs as follows: Provided that no objection as to the place of presentment shall be allowed by any Court in the exercise of appellate or revisional jurisdiction unless such objection was taken in the Court by which the petition was heard at the earliest possible opportunity, and unless there has been a consequent failure of justice." Two matters must coexist; the objection must be taken at the earliest possible opportunity and there must be a consequent failure of justice. With regard to the first, as already pointed out the petition was presented by petitioner after the adjudication and it is difficult to believe that a business man in Madras having large outstandings with the insolvent would have to wait to be informed by the insolvent himself of his adjudication. However assuming in their favour that they took this objection at the earliest possible moment, has there been any consequent failure of justice, which would enable us to uphold the petition? We have heard a long argument on this. It is said that the proviso cannot apply to a question unless we are satisfied that some failure of justice has resulted from the presentation of the petition to the wrong court *Periya Karuppan Chettiar v. Angappa Chettiar* AIR 1925 Mad. 483. I am not satisfied that the presentation was in fact to the wrong court; the insolvent has been residing in different places; his ancestral house and lands are within the territorial jurisdiction of the Court in which the petition was presented. I think the District Judge was right in dismissing the petition on that ground alone. Hence there can have been no consequent failure of justice as required by the proviso from such presentation.

5. The appeal must be dismissed with costs of 3rd and 5th respondents.

Venkatasubba Rao, J.

6. This appeal raises an important question as regards the scope of proviso to Section 11 of the Provincial Insolvency Act, Act V of 1920.

7. On a creditor's petition, a debtor was adjudicated insolvent. Some time later, the appellant, another creditor, applied to the insolvency Court to annul the adjudication on the ground that it had no jurisdiction to entertain the insolvency petition. The District Judge dismissed the application. In this appeal the correctness of his order is impeached.

8. In September 1921, it is alleged that the insolvent entered into certain transactions voidable under the Insolvency Law. On the 14th December 1921, the insolvency petition was filed and the acts of insolvency relied on were the transactions of September 1921. In October 1922, the insolvent was served and on the 9th of January 1923 he was adjudicated insolvent. The appellant filed the application in question for annulling the adjudication on the 22nd of October 1923.

9. Section 11 of the Insolvency Act deals with jurisdiction of insolvency Courts and runs thus:

Every insolvency petition shall be presented to a Court having jurisdiction under this Act in any local area in which the debtor ordinarily resides or carries on business, or personally works for gain, or if he has been arrested or imprisoned where he is in custody.

Provided that no objection as to the place of presentment shall be allowed by any Court in the exercise of appellate or revisional jurisdiction unless such objection was taken in the Court by which the petition was heard at the earliest possible opportunity, and unless there has been a consequent failure of justice.

10. The insolvency petition was filed in the Court of the District Judge of West Tanjore and the appellant contends that the insolvent ordinarily resided at Madras and carried on business at Negapatam, Rangoon and Madras and that the Court of West Tanjore had therefore" no jurisdiction to entertain the insolvency petition.

11. I shall assume that the facts as alleged by the appellant are correct. The question is: Is the adjudication liable to be annulled on the ground taken? The proviso says that no, objection as to the place of presentment shall be allowed by a Court exercising appellate or revisional jurisdiction unless (1) such objection was taken in the lower Court at the earliest possible opportunity and (2) unless there has been a failure of justice consequent on the petition having been presented to the wrong Court. (The words "a consequent failure of justice" are somewhat obscure, but there has been no doubt that I have correctly stated their effect.)

12. It is alleged that the appellant became aware of the insolvency proceedings

only on the 9th of October 1923 and immediately thereafter on the 22nd he applied that the adjudication should be annulled on the ground of want of jurisdiction. The District Judge has not decided the question of fact whether the objection was taken at the earliest possible opportunity, but I am prepared to assume that it was.

13. Then remains the question. Has there been "a consequent failure of Justice". Mr. K.V. Krishnaswami Iyer the learned vakil for the appellant contends that when a decision is given adverse to the party raising the point of jurisdiction and he immediately before any further proceedings are taken files an appeal or a revision petition and attacks the order, it is impossible in the very nature of things to decide whether there has or has not been a failure of justice. It follows from this, he contends, that in such a case the Court cannot advert to considerations pertaining to failure of justice.

14. The truth is that this proviso is very badly and imperfectly drafted. The same defect exists in Section 21, Civil P.C., which deals with territorial jurisdiction of Courts and I reproduce it below:

No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been a consequent failure of justice.

15. To elucidate the point of the appellant's contention, I shall give a few instances -- instances of suits and not insolvency proceedings in order to avoid all complications.

16. Illustration 1.-A sues B. The latter objects u/s 21 on his being served with summons. The trial Court disallows the objection. The case is proceeded with and finally judgment is given against B.

17. He appeals and repeats his objection to jurisdiction. In this case objection was taken in the trial Court at the earliest possible opportunity, but the appellate Court can decide whether there has been or not a failure of justice; if there has been no failure of justice the appellate Court will not interfere.

18. Illustration 2.-In the preceding illustration if B, the moment the point of jurisdiction is decided against him, comes up to the High Court asking that the trial Court's order should be revised, what happens? Whether there has been or not a failure of justice cannot, in the very nature of things, be decided because the very words used in the section presuppose the existence of some facts from which a conclusion either way is possible. Unless after the disallowing of the plea of jurisdiction some matters happened in the Court there would be no material from which the appellate Court could answer whether any injustice has resulted.

19. Ex-hypothesis no such matters transpired and the test laid down in the section becomes inappropriate. Neither of these two illustrations covers the present case. I have assumed for the purpose of argument that the appellant

objected at the earliest possible opportunity. The objection doubtless was not taken at an early stage of the proceedings; but from the point of view of the appellant he could not have possibly objected earlier than he did. But before the objection was taken proceedings reached an advanced stage, the debtor had been adjudicated and several acts were done although the appeal was filed immediately after an adjudication order was made and before any further proceedings were taken, still there is material sufficient to enable the appellate Court to decide whether there has or has not been a failure of justice. The Court can examine the proceedings so far had and determine this question. By reason of the petition having been presented to a wrong Court has any injustice been occasioned? Has there been for instance, any failure of justice by reason of an adjudication order having been made by the wrong Court? It is thus possible to decide whether there has or has not been a failure of justice.

20. I shall take one more parallel instance of a suit. I shall call this Illustration 3. An action to set aside, say half a dozen alienations, is instituted. After various adjournments, it is discovered that B impleaded as one of the alienees, had previous to the suit transferred the property to C. Thereupon the latter is added as a party defendant. He objects to the jurisdiction of the Court u/s 21, Civil P.C. The point is decided against him by the trial Court. He forthwith comes up to the High Court asking that the order should be revised. In this case, so far as C is concerned, he has taken the objection at the earliest possible opportunity and before any further proceedings are taken he has applied to the High Court to revise the order; but still there is sufficient material from which that Court can infer whether there has or has not been a failure of justice. This case is analogous to the case with which we are concerned.

21. As contended for by Mr. Varada chari we are now clearly in a position to determine whether there has or has not been a failure of justice. A further point arises: What is the failure of justice that the appellant must show? In my opinion the other parties having submitted to the jurisdiction and having thus waived the plea, the appellant cannot be permitted to show that failure of justice has been occasioned to those parties. Other wise what they themselves would be prevented from Showing appellant could indirectly rely upon. This would be clearly wrong: the only failure of justice that the appellant can point to, is failure of justice so far as his own interests are concerned. If he can show by reason of any proceedings that have already taken place in the wrong Court his interests have been prejudiced in that case the appellate Court will interfere on his behalf.

22. Looking at the case from this standpoint I find that there has been no miscarriage of justice, and on this ground the appellant is bound to fail.

23. The reason for the appellant's intervention at this stage in the lower Court is obvious. One of the transactions impeached as fraudulent in the insolvency petition is an alienation in favour of the appellant.

24. The Official Receiver was about to apply to the Court to set aside this

alienation. To forestall him, the appellant applied to have the adjudication annulled on the ground of want of jurisdiction. Here I may indicate a difficulty. What would be the legal position if the appellant waited till this proceeding (the one to-set aside this alienation) was actually heard and in the event of this being decided against him he filed an appeal from the final decision? Then the Court would be in a position to judge whether subsequent to the adjudication on the question of jurisdiction there had or had not been a failure of justice. But it will be noticed that in that case the appellant would not ask that the adjudication should be annulled, but only that the final order against himself should be set aside on the ground of want of jurisdiction. It is not necessary for the present purpose to go into this question.

25. I must now notice a second contention raised on behalf of the appellants. It is said that the petitioning creditor was guilty of an abuse of the process of the Court in filing the insolvency petition in question. The suggestion made is that the petition is the result of collusion between the petitioning creditor and the insolvent. I have carefully gone through the record and I find that there is not the slightest warrant for this charge. Most of the properties, if not all, of the insolvent are within the jurisdiction of the Tanjore Court. The place where the alleged transactions were entered into is also within the jurisdiction of that Court. The appellant's name was mentioned and the alienation in his favour was referred to in the insolvency petition. The debtor could not be served in the ordinary way and substituted service of the notice was effected upon him more than a year from the date of the petition. The insolvent, on the appellant's own showing, traded at Negapatam, a place not very distant from Tanjore. The insolvent owned an ancestral house in a village in the Tanjore district and he" admitted in a deposition that some months previous to the presentation of the petition he had stayed at that village. The question as to which Court had jurisdiction was at best doubtful, and it cannot be said that any mala fides have been shown on the part of the petitioning creditor. The suggestion, therefore, that the Tanjore Court was deliberately chosen with an improper motive is utterly futile.

26. In the circumstances the appeal fails and I agree with my learned brother that it must be dismissed with costs.