
(2001) 03 AP CK 0014
In the Andhra Pradesh High Court
Case No : C.R.P. No. 927 of 2000

Sure Venkateshwarlu

APPELLANT

Vs

More Goverdhan and Others

RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 1
Provincial Insolvency Act, 1920 — Section 23

Citation : AIR 2001 AP 473 : (2001) 3 ALD 771 : (2001) 3 ALT 270

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : Venugopala Rao and Pasnooru, for the Appellant; P. Prabhakar Reddy, for Y.V. Swamy, for Respondent (Nos. 4 and 7), for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—This revision petition is filed questioning the order passed by the Court below in I.A. No. 862/1999 in I.P. No. 22/1999, in rejecting to grant interim protection of the insolvency petitioner till the disposal of the I.P. and also for his release from the custody of the bailiff as per the orders passed by the learned Junior Civil Judge, Miryalguda in I.A. No. 93/1999 in O.S. No.1/1999.

2. The brief facts are that the 4th respondent herein filed a suit against the petitioner for recovery of money in the Court of Junior Civil Judge, Miryalguda and sought for attachment of immovable properties of the petitioner before Judgment. The said Court passed a conditional order to furnish security. But the petitioner failed to furnish any security and sought for week's time from that Court. But in "the meanwhile, he sold away the property to third party under a registered document. Then the 4th respondent again filed another petition in I.A. No. 93/1999 under Order 38 Rule 1 C.P.C. to issue arrest warrant against the petitioner before judgment and accordingly arrest was ordered and when the petitioner was called upon to furnish security, he appeared before that Court and again took time, but failed to furnish any security and as such the petitioner was

sent to civil prison. Then the petitioner preferred a civil revision petition before this Court and this Court allowed the revision petition on condition that the petitioner shall furnish security to that Court within four weeks. However, this court observed that in case of default, the revision stands dismissed. However in order to get over the order of the Junior Civil Judge as well as the-High Court, the petitioner filed the present I.P. and also filed an Interim application seeking protection from the Court u/s 23(1) of the Provincial Insolvency Act, till the disposal of the I.P. But eventually the same was dismissed and challenging the same, the present revision petition is filed.

3. Obviously in order to circumvent the said orders, namely the orders of the Junior Civil Judge. Miryalguda in I.A. No. 93/1999, and the order passed by the High Court in revision, the petitioner had filed the present I.P. before the Senior Civil Judge, Miryalguda and in that I.P., he has filed the present application seeking interim protection u/s 23 of the Provincial Insolvency Act.

4. Section 23 of the said Act, is extracted as under :--

"Release of debtor (1) :-- At the time of making an order admitting the petition or at any subsequent time before adjudication, the Court may, if the debtor is under arrest or imprisonment in execution of the decree of any Court for the payment of money, order his release on such terms as to security as may be reasonable and necessary.

(2) The Court may at any time order any person who has been released under this section to be rearrested and re-committed to the custody from which he was released.

(3) At the time of making any order under this section, the Court shall record in writing its reasons therefore"

5. It is clear from the above section that the Court may order the release of the petitioner on such terms as to security as may be reasonable and necessary and such order of release may be either at the time of admitting the petition or at any subsequent time before adjudication and further when the debtor is under arrest or Imprisonment in the execution of the decree of any Court for payment of money.

6. Admittedly the Junior Civil Judge, Miryalguda had attached the property of the petitioner before Judgment in the suit initiated by the 4th respondent and granted time to the petitioner to furnish some security and the petitioner sought time and taking advantage of granting of time by the Court, he disposed of the property under attachment through registered sale deed. Then again on an application filed by the 4th respondent under Order 38 Rule 1 he was called upon to furnish security and even after taking number of adjournments! he could not furnish any security and, therefore, he suffered an order of arrest and detention in civil prison. Even this Court disposed of the revision petition filed by the petitioner with a condition that the petitioner shall furnish the security within four

weeks and otherwise made it clear that the revision itself stands dismissed. The petitioner did not even comply with that order.

7. So, the above proceedings would show that the order of arrest was passed by Junior Civil Judge, Miryalguda was not in an execution of a decree, but it was only under Order 38 Rule 1 C.P.C. Therefore, it is clear that only in a case where the judgment debtor in execution proceedings suffers an order of arrest, then only he can seek protection u/s 23(1) of the Provincial Insolvency Act.

8. Therefore, in my view the petition filed by the petitioner u/s 23(1) itself is not maintainable for want of jurisdiction. Further the conduct of the petitioner also discloses that in order to void the unpleasant situation he has been filing one application or the other, but remained unsuccessful all through.

9. For the foregoing reasons, I agree with the findings given by the Court below and I do not find any merits in this revision petition and the same is accordingly dismissed. No costs.