

(1975) 01 AP CK 0002

In the Andhra Pradesh High Court

Case No : Civil Revision Petition 331 of 1969

The Official Receiver, Kurnool

APPELLANT

Vs

The South Indian Mining and Slabs Co. and Others

RESPONDENT

Date of Decision : 27-01-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73
Provincial Insolvency Act, 1920 — Section 51(1)

Citation : AIR 1976 AP 48

Hon'ble Judges : Ramachandra Raju, J

Bench : Single Bench

Advocate : R.V. Subba Rao, for the Appellant; E. Ayyapa Reddy, K. Palaksha Reddy and K. Somakonda Reddy, for the Respondent

Judgement

1. The revision petition arises in the matter of insolvency of a judgment-debtor whose property was brought to sale in execution at the instance of a decree-holder and assets were realised by the executing Court before the insolvency petition was filed. We are concerned in this revision petition largely with what effect Section 51(1) of the Provincial Insolvency Act, hereinafter referred to as "the Act" will have on such assets.

2. On 28-10-1967 a creditor's insolvency petition, No. 24 of 1967 was filed on the file of the Court of the Subordinate Judge, Kurnool, against one N.Ramachandra Reddy, who is the judgment-debtor in O.S. No. 68 of 1962 on the file of the same Court pending adjudication, the Official Receiver was appointed as Interim Receiver to his properties. The judgment-debtor was finally adjudicated insolvent on 11-7-1968. Even before the insolvency were brought to sale on 27th and 28th September 1967 and they were sold for a sum of Rs. 53,400/- in E.P. No. 28 of 1966.

On the date of the sale, 25 per cent of the sale was deposited and the balance 3/4th sale amount was deposited within 15 days therefrom, the time allowed as provided under Order 21, Rule 85 of the Code of Civil Procedure. Thus, the entire

amount of Rs. 53,400/- was realised in execution earlier than the filing of the insolvency petition. The sale warrant amount was only Rs. 8,808.75 Ps. Some decree-holders filed applications u/s 73 of the CPC for ratable distribution among them of the assets realised. Before the executing Court passed any orders on those applications, the Official Receiver filed the present application, out of which this civil revision petition has arisen, on 21-9-1968 claiming the balance amount of Rupees 44,591.25 Ps., after deducting the sale warrant amount from the money realised in execution, for the benefit of the general body of creditors of the insolvent, which the court negatived.

3. The relevant provisions of the Constitution are Sections 28 and 51(1). It is provided u/s 28(2) of the Act that on the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver and shall become divisible among the creditors, and therefore, except as provided by the Act, no creditor to whom the insolvent is indebted in respect of any debt payable shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt. It is provided u/s 28(2) of the Act that an order of adjudication shall relate back to and take effect from, the date of the presentation of the petition on which it is made. Therefore, the crucial date in this case is 28-10-1967 on which date the insolvency petition was filed though the adjudication order was passed subsequently on 11-7-1968, but that is subsequent to 13-10-1968, on or before which date the sale amount was deposited in the Court.

In Section 51(1) of the Act it is provided that where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the Receiver except in respect of assets realised in the courts of the execution by sale or otherwise before the date of the admission of the petition. In the present case, as already mentioned above, the assets in question were realised in the course of execution by sale before the date of the filing of the insolvency petition. From a plain reading of Section 51(1) of the Act it appears clear that in respect of assets realised in the course of execution by sale if they were realised before the date of filing of the insolvency petition, the ordinary law will take its course with regard to claims of persons on those assets. It means that in such a case the persons who will be entitled in law to the benefit of the assets realised in execution will not be affected by the subsequent adjudication of the judgment-debtor.

4. It is provided u/s 73 of the CPC what where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets after deducting the costs of realisation shall be ratably distributed among all such persons. Therefore, when assets in execution were realised by the executing Court before the insolvency petition was filed, as provided u/s 73 of the Code of Civil Procedure, the assets would be available for ratable

distribution among the decree-holders who made applications for execution of their decrees for payment of money passed against the same judgment-debtor insolvent.

5. In this connection Sri R.V. Subba Rao learned counsel for the petitioner, has placed reliance on a number of decisions. But none of the decisions is of any avail to support his argument that as per the provision contained in Section 51(1) of the Act the decree-holder at whose instance the properties of the insolvent were sold in execution would only be safe and not the other decree-holders who applied for ratable distribution.

6. In the decision *The Official Receiver of Tanjore Vs. M.R. Venkatrama Iyer*, the insolvency petition was filed after an order was passed by the executing Court for ratable distribution. Their Lordships of the Madras High Court held that from the time of the order of ratable distribution, the money must be treated as belonging not to the judgment-debtor but to the decree-holders in whose favour the order was passed and the Official Receiver therefore could no more recover the money from the Court which passed the order than from the decree-holder, not can he claim the money for the benefit of the general body of creditors. On the facts of that case, their Lordships held so. They did not further say that before any order was actually passed by the executing Court for ratable distribution if the insolvency petition was filed the money would be available for the benefit of the general body of creditors.

7. In the decision *The Official Receiver Vs. K. Sambasiva Ayyar and Others*, what the Madras High Court said was where in an execution sale one-fourth of the purchase money is deposited before and the balance three-fourths is paid into Court after the admission of the insolvency petition, the sale proceeds cannot be deemed to have been realised within the meaning of Section 51(1) of the Act. To the same effect is the decision *Ramanathan Chettiar Vs. Subramanian Chettiar and Another*, In the present case, admittedly the entire purchase money was received by the executing Court before the insolvency petition was filed.

8. In the decision *Official Receiver Vs. N. Subbamma*, the Madras High Court said that when some money was attached before judgment, mere filing of an execution petition cannot convert the money into assets realised in execution.

9. In the decision *Brij Behari v. Budh Sen*, AIR 1942 All 263 what the Allahabad High Court said is that the insolvent's property vests in Official Receiver from the date of insolvency petition and therefore the Official Receiver can challenge the sale in execution of the decree against the insolvent held after the insolvency petition was filed.

10. Therefore, none of the decisions relied on by the learned counsel for the petitioner supports his argument. There are no merits in the revision petition and accordingly it is dismissed with costs.

11. Petition dismissed.