

(1932) 01 MAD CK 0028
In the Madras High Court

Tunuguntla China Venkatappayya

APPELLANT

Vs

Chilankuri Punnayya and Others

RESPONDENT

Date of Decision : 19-01-1932

Acts Referred:

Citation : AIR 1933 Mad 631 : 145 Ind. Cas. 346

Hon'ble Judges : Beasley, C.J;Ramesam, J;Cornish, J

Bench : Full Bench

Judgement

Waller, J.—This case arises out of a fraudulent and collusive adjudication in insolvency. The insolvent was anticipating failure in a suit brought against him by a genuine creditor and arranged with a bogus creditor to have an insolvency petition filed before the decree could be passed. This was done, but later, the original creditor fell out and another bogus creditor stepped in to continue the proceedings. He put in his proof before the, Official Receiver who rejected it. An appeal was preferred to the District Judge which was dismissed. Not only that, the adjudication was set aside as well and an order was passed placing the money derived from the sale of the insolvent's property at the disposal of the court, which was executing the genuine creditor's decree. Now this order was open to two objections. The first was that the court had no power to annul the adjudication suo motu that could be done only on the application of the debtor or some other interested, person. The second was that no provision was made for the protection, of other genuine creditors such as the present appellant who were left with no prospect of getting any satisfaction for the debts they had proved in the insolvency. The appellant could and should have appealed against this order. That was his safe course. Instead, however; of adopting it he put in an application for review which the District Judge dismissed. In doing so, he followed a decision reported as Venugopalachariar v. Chinnulal Sowear 97 Ind. Cas. 706 : 51 M L J 209 : (1926) M W N 674: A I R 1926 Mad 942 : 49 M 835 and held he had no power to review an order annulling an adjudication. The decision relied on by him was concerned with the annulment of adjudications as the result of a debtor's failure to present or prosecute an application for

discharge. In such cases, the annulment is u/s 43 of the Act. In the-present case it was u/s 35. The District Judge had therefore complete jurisdiction to review his prior order provided that the conditions required by Order XLVII, Rule 1 of the Code of Civil Procedure, for the exercise of such jurisdiction were existent. That brings us to the main question before us, whether any of those conditions did exist. The final authority on the interpretation of the rule is to be found in Chajju Ram v. Neki 72 Ind. Cas. 506: 3 Lah. 127 : 30 M L T 295 : 26 C W N 697 : 41 P L R P C 1922 : 3 P L T 433: A I R 1922 P C 112 : 16 L W 37: 17 P W R 1922 : 43 M L J 332 : 24 Bom. L R 1238: 5 U P L R (P C) 99 : 36 C L J 459 : 49 I A 144 (P C). A Bench of this Court has remarked that the facts of that case "are not very clear". With great respect, one thing seems to me perfectly clear, that is, that a Full Bench of the Judicial Committee decided that a wrong exposition of the law was no ground for review under the rule. The Bench of this Court above referred in Muddapur Murari Rao v. Balwanth Dikshit 76 Ind. Cas. 312: 46 M 955 : 45 M L J 309 : 18 L W 363 : (1923) M W N 761 : A I R 1924 Mad. 98 came to the opposite conclusion. The facts were these. A District Judge dismissed a suit holding that sister's sons of the last male owner were entitled to succeed" to his estate in preference to the nearest agnates. An application for review was presented on the ground that a previous ruling of this Court, which had not been cited in the argument, had laid down the law differently. The District Judge allowed the view and in appeal, his order was upheld by the High Court which thought that there was an error of law apparent on the face of the record which could be reviewed. As I understand Chhajju Ram's case 72 Ind. Cas. 506: 3 Lah. 127 : 30 M L T 295 : 26 C W N 697 : 41 P L R P C 1922 : 3 P L T 433: A I R 1922 P C 112 : 16 L W 37: 17 P W R 1922: 43 M L J 332 : 24 Bom. L R 1238: 5 U P L R (P C) 99 : 36 C L J 459 : 49 I A 144 (P C), the Judicial Committee laid down that a mistake of law was no ground for review. There may, of course be cases such as Brindaban Chandra Ghosh v. Damodar Prasad Ghose 85 Ind Cas. 65 : 29 C W N 148 ; A I R 1925 Cal, where a subsequent and contrary exposition of the law by the Judicial Committee was invoked as a ground of review. That might be described as the discovery of new and important matter which no amount of diligence could have brought to the knowledge of the applicant earlier. But in Murari Rao's case 76 Ind. Cas. 312 : 46 M 955 : 45 M L J 309 : 18 L W 363 : (1923) M W N 761 : A I R 1924 Mad. 98 the ruling relied on was not subsequent and so far from there having been any diligence, there was negligence in not citing it. So that, on the authority of Chhajju Ram's case 72 Ind. Cas. 506: 3 Lah. 127 : 30 M L T 295 : 26 C W N 697 : 41 P L R P C 1922 : 3 P L T 433: A I R 1922 P C 112 : 16 L W 37: 17 P W R 1922: 43 M L J 332 : 24 Bom. L R 1238 : 5 U P L R (P C) 99 : 36 C L J 459 : 49 I A 144 (P C) there would seem to have been no ground for review whatever.

2. Speaking for myself, I cannot understand how a mistake of law can be apparent on the face of the record. It may be apparent from a contrary decision of a superior court, but that is not a part of the record. I am of opinion that Murari Rao's case 76 Ind. Cas. 312 : 46 M 955: 45 M L J 309 : 18 L W 363 :

(1923) M W N 761 : A I R 1924 Mad. 98 was wrongly decided and would refer to a Full Bench the following question:---

Had the District Judge power under Order XLVII, Rule 1, of the CPC to review his after of 10th July, 1926, on the ground of error of law, that is to say, non compliance with Section 35 of the Provincial Insolvency Act

3. What I conceive the Privy Council to have decided is that a mistake in law did not fall within the category of mistakes apparent on the face of the record or anything analogous to it.

Krishnan Pandalal, J.—In Chhajju Rams case 72 Ind. Cas. 506 : 3 Lah. 127 : 30 M L T 295 : 26 C W N 697 : 41 P L R P C 1922 : 3 P L T 433 : A I R 1922 P C 112 : 16 L W 37 : 17 P W R 1922 : 43 M L J 332 : 24 Bom. L R 1238 : 5 U P L R (P C) 99 : 36 C L J 459 : 49 I A 144 (P C) the reviewing court granted a review on the ground that the first decision "proceeded upon an incorrect exposition of the law". Their Lordships held that this was not covered by the words "any other sufficient cause" in Order XLVII Rule 1, because those words must be limited to "grounds at least analogous to those specified immediately previously."

2. In the present case the order of Mr. Walsh annulling the, adjudication can hardly be described as proceeding on any incorrect exposition of the law but on account of ignoring Section 35 which requires that an application is a condition of such order and there was none. There is, I submit, a difference between wrongly understanding or applying the law and not being aware of conditions legally necessary for exercising a power given by law. In a loose sense both may be said to be merely erroneous on a question of law but only in the former case is there a decision in any proper sense; the latter case may be due to inadvertence and at least analogous to error apparent on the record. Whether a particular erroneous order, due to not being aware, say, of a particular section of a Code, may justly be called error apparent on the face of the record must depend on the nature of each case depending on the obviousness of the mistake which it is to be presumed no Judge would commit if properly advised. This is I think the ground on which Murari Rao's case 76 Ind. Cas. 312 : 46 M 955 : 45 M L J 309 : 18 L W 363 : (1903) M W N 761 : A I R 1924 Mad. 98 and Maung Sein Myi v. Maung Tun Pe 114 Ind. Cas. 687 : 6 R 794 : A I R 1929 Rang. 70 are to be explained. I am inclined to treat the order of Mr. Walsh of 10th July, 1926, either as an instance of error apparent on the face of the record or one analogous to it which is all that the Privy Council decision requires to give the court the power of review. If the above order was liable to review, the order of 26th August, 1926, dismissing the application for review on the ground of want of jurisdiction is also erroneous. As my learned brother takes a different view, I agree that the question may be referred to a Full Bench.

3. Opinion. The question referred to us is in consequence of a difference of opinion between Waller and Pandalal, JJ., and is as follows:--

Had the District Judge power under Order XLVII Rule 1 of the CPC to review his"

order of 10th July, 1926, on the ground of error of law, that is to say, non-compliance with Section 35 of the Provincial Insolvency Act?

4. The facts upon which this question is based are as follows. The insolvent got himself fraudulently and collusively adjudicated. In order to defeat a claim in a suit filed against him by a genuine creditor he arranged with a bogus creditor to have an insolvency petition filed before the decree could be passed and he was accordingly adjudicated an insolvent. Later on, however, the original creditor dropped out and another bogus creditor stepped in to continue the proceedings. He put in his proof of claim before the Official Receiver who rejected it. He appealed to the District Judge and his appeal was dismissed. In dismissing the appeal the District Judge annulled the adjudication. Then another creditor filed a petition under Order XLVII, Rule 1, Civil Procedure Code, in the District Court praying for a review of the order passed by the District Judge on appeal and on the 26th August, 1926, the District Judge passed the following order:

I see no reason to review my order; moreover, according to the latest decision in *Venugopalackariar v. Chimnual Sowcar* 97 Ind. Cas. 706 : 51 M L J 209 : (1926) M W N 674 : A I R 1926 Mad 942 : 49 M 835 the Insolvency Court cannot revise an order annulling an adjudication, except u/s 10 72 Ind. Cas.: 506: 3 Lah. 127 : 30 M L T 295 : 26 C W N 697 : 41 P L R P C 1922 : 3 P L T 433 : A I R 1922 P C 112 : 16 L W 37 : 17 P W R 1922 : 43 M L J 332 : 24 Bom. L R 1238 : 5 U P L R (P C) 99 : 36 C L J 459 : 49 I A 144. The petition is dismissed with costs.

5. Against this order the creditor presented a Civil Miscellaneous Appeal to this Court. Our learned brothers, Waller and Krishnan Pandalar, JJ., before whom the appeal was argued, differed upon the question as to whether or not the District Judge had power under Order XLVII, Rule 1, Civil Procedure Code, to review his order. Waller, J., is of the opinion that although Section 35 of the Provincial Insolvency Act gives no power to the Insolvency Court to annul an adjudication suo motu and the District Judge was wrong in annulling the adjudication, his error did not fall within the category of mistakes apparent on the face of the record or anything analogous to them. Reliance is placed by him upon *Chajju Ram v. Neki* 72 Ind. Cas. 506 : 3 Lah. 127 : 30 M L T 295 : 26 C W N 697 : 41 P L R P C 1922 : 3 P L T 433 : A I R 1922 P C 112 : 16 L W 37 : 17 P W R 1922 : 43 M L J 332 : 24 Bom. L R 1238 : 5 U P L R (P C) 99 : 36 C L J 459 : 49 I A 144, a decision of the Privy Council. In that case the Privy Council were dealing with the third class of cases within Rule 1 of Order XLVII, of the CPC giving power to review on any other sufficient reason being shown. It was held that the words "any other sufficient reason" mean a reason sufficient on grounds at least analogous to those specified immediately previously in the rule and that a decision which proceeded upon an incorrect exposition of the law was not covered by the words "any other sufficient reason". Krishnan Pandalar, J., takes a different view. In his opinion there is a difference between wrongly understanding or applying the law and not being aware of conditions legally necessary for exercising a power given by law. He says:

I am inclined to treat the order of Mr. Walsh of 10th July, 1926, either as an instance of error apparent on the face of the record or one analogous to it which is all that the Privy Council decision requires to give the court the power of review.

6. Upon this difference of opinion the matter has been referred to us. We are of the opinion, however, that the question, as framed does not correctly raise the point necessary for the decision of this appeal. If the District Judge has the power of review in this case, it is because of some mistake or error apparent on the face of the record and in our view, the question is not to be tested by any consideration of whether the District Judge in making the order annulling the adjudication was in error because Section 35 of the Provincial Insolvency Act does not entitle the Insolvency Court to do so suo motu but requires an application to be made as a condition of such order. What we have to consider here is what it was that the District Judge was asked in the appeal before him to do. The alleged bogus creditor had put in his proof of claim before the Official Receiver. The Official Receiver rejected it. He accordingly presented Q. P. No. 37 of 1926 to the District Court, Guntur. In that petition he asked that the order of the Official Receiver rejecting his proof might be reversed and that the petitioner's debt might be ordered to be included in the schedule of creditors. A counter-petition was put in by one Chilankuri Punnayya, one of the creditors, in which it was contended that the order of the Official Receiver rejecting the petitioner's claim was correct and that the debt of the petitioner was a bogus one. This counter-petition prayed for a dismissal of the petitioner's claim with costs. It must be observed, therefore, that the only question before the District Judge was whether or not the Official Receiver's order dismissing the petitioner's proof was correct and that all the District Judge was asked to do by the petitioner was to reverse the Official Receiver's order and by the counter-petitioner to dismiss the petitioner's request. These are facts apparent on the face of the record. There is another fact apparent on the face of the record and that is that not only did the District Judge dismiss the petitioner's petition but he proceeded to do that which neither party had prayed the court to do, namely, to annul the adjudication. It is, therefore; apparent that on a petition in an insolvency asking for a certain remedy he dismissed the insolvency petition itself. These facts., apparent on the face of the record, do not, in our view, render necessary any examination of the Insolvency Act or any consideration of whether the District Judge ignored Section 35 of the Act. It is, therefore, unnecessary to consider the matter from the point of view of whether there was there a wrong exposition of the law. In our*view of the matter it is unnecessary to the Appellate Court to apply the test which is raised in the question referred to us, because there was here an error apparent on the face of the record and the District Judge, therefore, had the power of review under Order XLVII, Rule 1 of the Code of Civil Procedure. The case will, therefore, go back to the Appellate Court to be considered in the light of our opinion.