
(1942) 11 MAD CK 0046
In the Madras High Court

Yerabalu Chennabasappa

APPELLANT

Vs

The Official Receiver of Bellary

RESPONDENT

Date of Decision : 24-11-1942

Acts Referred:

Citation : AIR 1943 Mad 266 : (1943) 56 LW 125 : (1943) 1 MLJ 127

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The appellant was adjudicated an insolvent, but because he did not apply for discharge within the time allowed, his adjudication was annulled. In annulling the adjudication the Insolvency Court passed an order continuing the property in the Official Receiver.

2. The primary duty of the Official Receiver being to realise the property and sell it and to distribute the proceeds, he advertised the property for sale; and on the day before the sale took place the insolvent put in an application asking for two reliefs; one to stay the sale, and the other to scale down the debt. The application, as far as the prayer for stay was concerned, was dismissed; but the application to scale down was adjourned. The sale took place on the advertised date; and ten days later, on 14th March, 1941, the insolvent put in another application to stay all further sale proceedings and to set aside the sale on account of certain irregularities. As that application, too, was dismissed, the insolvent carried the matter in appeal to the District Judge, who dismissed his application on several grounds. One was that the insolvent had no locus standi; because he was not an interested party. Another was that the persons who had acquired rights under the sale were not made parties, and thirdly, on the merits, the learned District Judge thought that the objections raised were frivolous.

3. One of the points raised by the appellant was that the Official Receiver had no power to sell; and for that purpose he relied on some observations in the judgment of King, J., in the Full Bench decision in Moturi Veerayya Vs. Rao Bahadur P.V. Srinivasa Rao, The Official Receiver and Others, . The learned

Judges were there considering the powers of a receiver or other person appointed to continue the administration of the property after the annulment, and they held that the receiver or other person appointed has only such powers as are necessarily implied by the vesting order, which are to carry out the directions of the Court, which direction should, as far as the realisation and distribution of the debtor's property are concerned, be in accordance with the provisions of the Insolvency Act. I do not read into these sentences any finding that the Official Receiver or other person appointed has to apply to the Insolvency Court for directions with regard to powers that are obviously intended to be conferred by the order vesting the property in the Official Receiver. The principal purpose of continuing the property in the Official Receiver is that he might sell the property and distribute the proceeds. That power must be implied from the order itself.

4. I agree with the learned District Judge that the appellant was not a person aggrieved, within the meaning of Section 68 of the Provincial Insolvency Act. Coutts-Trotter, C.J., in *S. Hari Rao Vs. The Official Assignee, High Court, Madras and Others*, , discussed certain English cases on the subject and pointed out that the insolvent has nothing more than a mere hope that something might be left over if the estate was administered, and that that would not make him a person aggrieved. Coutts-Trotter, C.J., approved of a dictum of James, L.J., to the effect that,

the mischief of allowing a bankrupt on the contingent chance of his ultimately acquiring title to some surplus which might never be realised, to interfere with and embarrass the administration of the estate, would be immeasurable.

It is argued that the insolvent has a higher right in the property after the adjudication has been annulled and that he has title in the property subject to such rights as the official Receiver might have in administering the property. I am not prepared to concede that he has higher rights in the property after the adjudication has been annulled; but even if he had, the arguments adopted in *S. Hari Rao Vs. The Official Assignee, High Court, Madras and Others*, , would apply equally strongly to the case of a person whose adjudication had been annulled, but whose property continued to vest in the Official Receiver. As King, J., has said in *Moturi Veerayya Vs. Rao Bahadur P.V. Srinivasa Rao, The Official Receiver and Others*, :

It is obvious that the only reason for the annulment under that section (section 43) is the conduct of the insolvent himself, and from Sub-section (2) of that section, that its primary object is to punish the insolvent by depriving him of any protection which he may hitherto have been enjoying under the insolvency law.

Even after annulment the insolvent can have no greater expectation of realising any surplus in the assets than he would have had if he continued to remain an insolvent.

5. As to the point made by the learned District Judge that the petition to set

aside the sale was not maintainable on the ground that the auction purchasers had not been made parties, it has been pointed out that all that is required under Order 2,1, Rule 92, Civil Procedure Code, is that notice should go to all persons interested, and that notice did go in this case. It has not however been proved that notice did go, although an extract from the B diary indicates that the Official Receiver was instructed to tell the persons interested of this application. Whether he did so or not we have no information.

6. I agree with the learned advocate for the appellant that if this matter had to be decided on the merits, then the District Judge was bound to hear all the evidence that the appellant chose to adduce and that he could not decide the matter on the evidence of two witnesses selected by him on the ground that as any other witnesses examined would have said the same thing there was no object in examining them.

7. Another ground on which the learned District Judge thought that the appellant had no locus standi was that he had alienated the property in question. Although in an application by the Official Receiver under Sections 53 and 54 of the Insolvency Act an alienation may be declared void as against the Official Receiver, it is still binding on the parties to the transaction, namely, the insolvent and the alienee; and that therefore the person interested in the surplus of the property was not the insolvent but the alienee. In view of what has been held in earlier paragraphs, it is not necessary to consider this question, although it has been pressed here by the learned advocate for the respondent.

8. The appeal is dismissed with costs. The Official Receiver may, if he wishes, recover his costs from the property of the. appellant vested in him.