

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.2003 of 2015

DATE: 19.06.2015

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Between :

M. Linga Murthy.

.....Petitioner

And

R.M.Rama Devi & others.

.....Respondents.

For petitioner : Sri M. Satish Kumar, Advocate.

For Respondents : None appeared.

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> Head Note:

? CITATIONS:

1. AIR 1973 AP 245

2. AIR 1973 AP 312

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ORDER :

This civil revision petition is filed under Article 227 of the Constitution of India, by the petitioner in I.A.No.777 of 2014 in O.S.No.2577 of 2010, aggrieved by order dated 03.02.2015, passed by the V-Senior Civil Judge, City Civil Court, Hyderabad.

2. Respondent No.1 herein has filed the aforesaid suit in O.S.No.2577 of 2010 against the petitioner herein and three others, for recovery of an amount of Rs.5,00,000/-.

In the aforesaid suit, the petitioner/1st defendant has filed the present application in I.A.No.777 of 2014 under Order 7 Rule 11 r/w.Sec.151 CPC, for rejection of plaint on the ground that the same is barred under law. It is the case of petitioner that he has already filed insolvency petition which is pending in I.P.No.34 of 2010, seeking to declare him as insolvent and soon after receipt of summons in the aforesaid I.P., the 1st respondent/plaintiff has filed suit for recovery of money. Precisely, it is the case of petitioner that in view of pendency of insolvency proceedings in I.P.No.34 of 2010, the suit filed by the 1st respondent is

barred under Section 28(2) of the Provincial Insolvency Act, 1920.

3. The 1st respondent herein has filed counter affidavit in the I.A., denying the various allegations made by the petitioner and specifically pleading that the suit is filed in the year 2010 and after sufficiently dragging the proceedings for a long time, only to protract the litigation, the present application is filed though there are no grounds for rejection of plaint. It is the case of 1st respondent/plaintiff that in the absence of any adjudication in the insolvency application, there is no need to obtain leave of the Court to file the suit. The civil Court, by impugned order dated 03.02.2015, has dismissed the petition. As against the same, the present revision is filed.

4. In this civil revision petition, it is contended by Sri M.Satish Kumar, learned counsel appearing for petitioner that since the insolvency petition filed by the petitioner is pending consideration, in the absence of obtaining leave from the insolvency Court, it is not open to any creditor to file a suit and pursue the same, and in this case, as there is no leave granted by the competent Court, the suit filed by the 1st respondent is barred under law. It is submitted that in view of the provision under Order VII Rule 11(d) of CPC, the Court below ought to have rejected the plaint by allowing the petition filed by the petitioner. Learned counsel, in support of his contentions, has placed reliance

on the Division-Bench-judgments of this Court in **Pentala Githavardhana Rao & others v. The Andhra Bank Ltd. & others**^[1] and in **Kalamalla Babakka & another v. Official Receiver, Cuddapah & another**^[2].

5. Having perused the affidavit and counter affidavit and on hearing the learned counsel, I have closely examined the provision under Section 28 of the Provincial Insolvency Act, 1920. Section 28 deals with the effect of an order of adjudication by the competent Court. From a reading of the provision under Section 28(2) of the said Act, it is clear that, on making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as provided in the said Section and shall become divisible among the creditors, and thereafter, after adjudication, it is not open to any creditor to commence any suit or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose. It is clear from the said provision that Section 28(2) comes into effect only after adjudication of the application filed by the applicant under the provisions of the Provincial Insolvency Act, 1920. Therefore, after adjudication of the application filed by the applicant seeking to declare him as insolvent and during pendency of further proceedings for division of properties to the creditors, no creditor can institute any suit or commence any legal proceedings without the leave of the Court.

Pendency of proceedings as referred under Section 28(2) of the Act refers to the pendency of proceedings subsequent to adjudication of the application, but not on mere filing of application seeking declaration of applicant as insolvent.

6. Coming to the judgments relied on by the learned counsel for petitioner, **Kalamalla Babakka's** case (2 supra) deals with the issue of date of vesting of properties of insolvent in the receiver of the Court. Further, in **Pentala Githavardhana Rao's** case (1 supra), a Division Bench of this Court has considered the scope of Section 28(2) of the Act and held that the intendment and purpose of Section 28(2) is broadly two-fold; (i) to make the entire estate of the insolvent vest in the Court or in a receiver the moment an order of adjudication is made and to make it available for distribution among the body of creditors, and (ii) to prohibit any creditor of the insolvent from proceeding against his property in respect of his debt or commence any suit or other legal proceeding, without the leave of the insolvency Court during the pendency of the insolvency proceedings. So, even in this judgment, it is not held that the provision under Section 28(2) of the Act comes into play on mere filing of application for declaration of petitioner as insolvent. Both the aforesaid judgments would not render any assistance in support of the case of petitioner in the present case, as much as the application of the petitioner seeking declaration as insolvent, is still

pending and the same is not yet adjudicated. Apart from the same, it is clear from the material on record that the suit is filed in the year 2010 and nearly two long years after filing of the suit, written statement is filed and instead of proceeding with trial in the suit, it appears, the petitioner herein is trying to protract the litigation by filing this kind of applications nearly after more than 3½ years of filing suit.

7. For the aforesaid reasons, I do not find merit in this revision and the same is accordingly dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

19th June 2015
SUBHASH REDDY, J
N.B:

L.R.Copy be marked.

(b/o)

ajr

R.

[\[1\]](#) AIR 1973 AP 245

[\[2\]](#) AIR 1973 AP 312