HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS SECOND APPEAL No.4 OF 2007

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JUDGMENT:

The 2nd respondent in I.P. No.35 of 2001 preferred this Appeal challenging the decree and judgment dated 06.11.2006 passed in A.S. No.75 of 2005 by the I Additional District Judge, Anantapur (for short, 'the appellate Court') wherein the appellate Court adjudged the 1st respondent therein as insolvent.

For convenience of reference, the ranks given to the parties in I.P. No.35 of 2001 before the Senior Civil Judge, Kadiri (for short, 'the trial Court') will be adopted through this judgment.

The petitioner, Mulla Aswarthanarayana Reddy (creditor), filed petition under Section 9 of the Provincial Insolvency Act, 1920 (for short, 'the Act') to adjudge the 1st respondent as insolvent alleging that the 1st respondent borrowed an amount of Rs.10,000/- and Rs.17,000/- respectively from the petitioner on 24.06.1998 and 15.05.2000, by executing two promissory notes, agreeing to repay the same together with interest at 24% *p.a.* either to the petitioner or to his order, but in spite of several demands he did not discharge the debt; thereupon, the petitioner filed a Suit in O.S. No.331 of 2001 on the file of the Court of Principal Junior Civil Judge, Kadiri and obtained a decree against the 1st respondent; and subsequently got attached the property before judgment by filing an Interlocutory Application No.742 of 2001 under Order XXXVIII Rule 5 of C.P.C. While the matter stood thus, the 1st respondent alienated the schedule property to the 2nd respondent-appellant herein, to defeat and delay the claim of the petitioner-creditor. Thus, the 1st respondent committed an act of insolvency within the meaning of Section 6 of Provincial Insolvency Act; hence, the petition.

The 1st respondent remained *ex parte* before the trial Court.

2nd respondent filed counter denying material allegations including borrowing of amount and execution of two promissory notes. She further contended that she purchased the schedule property for valid consideration of Rs.3,24,000/- and obtained vacant possession of the property. The wife of 1st respondent and her minor children also joined as parties, to avoid future complications, and signed as executants on the registered sale deed dated 25.04.2001, marked as Ex.B-1, and as such the sale proceeds of the schedule property were utilized by them for discharging the registered mortgage deed debts of Rs.20,000/- to T. Venkata Subbaiah and Rs.40,000/- to T. Venkata Ramaiah and Rs.40,000 and Rs.20,000/- to T. Vijaya Kumar and also discharged the debts of various creditors. Therefore, the alleged sale transaction was not a collusive transaction and that it is only to discharge the debts due to various creditors referred *supra*. Therefore, the transfer of property under the sale deed dated 25.04.2001 was not executed with an intent to delay and defeat the claim of the petitioner-creditor and prayed for dismissal of the petition.

During course of enquiry, on behalf of the petitioner, petitioner himself was examined as PW.1 and marked Exs.A-1 to A-5. On behalf of the respondents, as the 1st respondent remained *ex parte*, 2nd defendant herself was examined as RW.1 and got examined RWs.2 to 6 and marked Exs.B-1 to B-15.

Upon hearing argument of both the counsel, considering oral and documentary available on record, the trial Court dismissed the petition on the sole ground that a single creditor cannot file Petition under Section 9 of the Act placing reliance on a decision of this Court in ***Pydimarri Venkateswarlu Vs. Pydimarri Jalamma***[1].

Aggrieved thereby, the unsuccessful petitioner preferred Appeal Suit 75 of 2005 raising various contentions, wherein the appellate Court allowed the Appeal, *setting-aside* the decree and judgment, impugned therein, adjudging the 1st respondent as insolvent.

Aggrieved thereby, the 2nd respondent therein preferred the instant Second Appeal raising several contentions and the main contention of the 2nd respondent before this Court is that the sole creditor cannot file an

Insolvency Petition under Section 9 of the Act and as such the judgment of the appellate Court is erroneous and prayed to allow the Appeal setting-aside the decree and judgment of the appellate Court.

During course of argument, learned counsel for the 2nd respondent-appellant while reiterating the contentions raised in the grounds of Appeal would submit that a petition under Section 9 of the Act by a sole creditor is not maintainable, in view of the language used under Section 9 of the Act and prayed to allow the Appeal setting-aside the decree and judgment of the appellate Court.

Per contra, learned counsel appearing for the petitioner-1st respondent argued totally in support of the finding recorded by the appellate Court and prayed to dismiss the Appeal confirming the decree and judgment of the appellate Court.

Considering rival contentions and perusing the material available on record, the following is the recasted substantial question of law that arises for consideration:

> Whether a single creditor can maintain an Insolvency Petition under Section 9 of the Provincial Insolvency Act, 1920?

POINT: As seen from the judgment of the trial Court in I.P. No.35 of 2001, the learned Senior Civil Judge, Kadiri dismissed the Petition only on the sole ground that an Insolvency Petition under Section 9 of the Act is not maintainable by a sole creditor relying on the decision of this Court in ***Pydimarri***[1] but whereas the appellate Court, relying on a Division Bench decision of this Court in ***G. Ramachander Vs. The Collector, Excise, Hyderabad***[2], allowed the Appeal. While arguing the matter, no other decision was brought to the notice of this Court, contrary to the principle laid down by the Division Bench of this Court in ***Ramachander***[2].

However, I feel it appropriate to advert to Section 9(1) of the Act, which reads as follows:

> "(1) A creditor shall not be entitled to present an insolvency petition against a debtor unless —

(a) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and
(b) the debt is a liquidated sum payable either immediately or at some certain future time, and
(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition."

Taking advantage of the word 'creditors' used in Section 9(1) of the Act, which is plural, it is contended that the sole creditor cannot maintain an Insolvency Petition. While interpreting a specific word used in the provision of any statue the Court has to fall back on the provisions of the General Clauses Act, 1897 and Section 13(2) of the General clauses Act is relevant for deciding the present issue, for interpretation of the language used in Section 9(1)(a) of the Act. According to Section 13(2) of the General Clauses Act, the words in the "*singular*" shall include the "*plural*" and *vice-versa*. Therefore, no specific significance need be attached to the words 'debtors' or 'creditors' used in several provisions of the Act.

Based on Section 13(2) of the General Clauses Act, I am of the view that the words 'debtors' or 'creditors' used in Section 9(1) of the Act has no significance at all and they can be taken as singular or *vice-versa*.

The short question that fell for consideration is no more *res integra* in view of the law laid down by the Division Bench of this Court in ***Ramachander***[2], wherein the Division Bench of this Court, overruling the judgment of this Court in ***Pydimarri***[1], held that a single creditor can maintain a petition under Section 9 of the Act. Later, when similar question came up for consideration before this Court in ***K.D. Nagappa Vs. Sannkka***[3], this Court reiterated the same principle laid down by the Division Bench of this Court in ***Ramachander***[2] and held that a single creditor can maintain an Insolvency Petition. Long prior to these decisions, in ***Sarangapani Chetty Vs. Perumal Naidu***[4], the Madras High Court took a similar view and held that the word 'creditors' would include singular 'creditor' and that there was no basic reason in insolvency law why a person should not be declared insolvent on the motion of his sole creditor. The fact that the general body of creditors was represented by the sole creditor was no reason for declining adjudication; the insolvency law has always recognized that the sole creditor or a debtor could obtain adjudication in insolvency.

In view of the law declared by the Division Bench of this Court in ***Ramachander***[2], and Madras High Court in ***Perumal Naidu***[4], I have no slightest hesitation to hold that a single creditor can maintain a Petition under Section 9 of the Act to adjudge the debtor as insolvent, when the debtor committed an act of insolvency within the meaning of Section 6 of the Act. If the law laid down by this Court in ***Pydimarri***[1] is accepted, it would be difficult for any single creditor irrespective of the amount involved to realize his debt; even if such principle is accepted, it will denude the rights of genuine creditors; therefore, such interpretation cannot be accepted.

One of the contentions raised by the counsel for the 2nd respondent-appellant before the trial Court is that the act of insolvency complained by the petitioner-1st respondent herein is under Section 6(1)(b) of the Act but the 1st respondent transferred the property by executing registered sale deed dated 25.04.2001, marked as Ex.B-1, to discharge the debts due to several creditors. Hence, the act of the 1st respondent would not fall within the ambit of Section 6(1)(b) of the Act. No doubt, discharging debts of various creditors referred above would not fall within the ambit of Section 6(1)(b) of the Act, but it would directly fall under Section 6(1)(a) of the Act since discharging debt of creditors by sale of the property amounts to undue preference to the creditors ignoring the debt to the petitioner. Even if the act of the 1st respondent falls within the ambit of Section 6(1)(a) of the Act, the 1st respondent is liable to be adjudged as insolvent.

Viewed from any angle, it is clear that the 1st respondent committed an act of insolvency within the ambit of Section 6(1)(b) of the Act and thereby I find no legal infirmity in the finding recorded by the appellate Court, warranting interference of this Court, as it is devoid of merits and deserves to be dismissed.

In the result, the Civil Miscellaneous Second Appeal is dismissed confirming the decree and judgment dated 06.11.2006, passed in A.S. No.75

of 2005 by the learned I Additional District Judge, Anantapur.

In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs.

JUSTICE M. SATYANARAYANA MURTHY

Date.12.06.2015.
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[1] AIR 1969 AP 318

[2] AIR 1977 AP 346

[3] AIR 1983 AP 13

[4] AIR 1968 Madras 216