THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS SECOND APPEAL No.25 of 2011

JUDGMENT:

This Civil Miscellaneous Second Appeal is filed challenging the decree and judgment dated 18.02.2011 passed in A.S.No.109 of 2009 on the file of the Judge, Family Court-cum-Additional District Court, East Godavari at Rajahmundry (for short, 'the lower appellate Court'), whereunder the finding of the Principal Senior Civil Judge, Rajahmundry (for short, 'the trial Court') in I.P.No.38 of 2005 dated 06.04.2009 was upheld.

2. For convenience of reference, the ranks given to the parties in I.P.No.38 of 2005 before the trial Court will be adopted throughout the judgment.

3. The petitioner/creditor filed a petition in I.P.No.38 of 2005 before the trial Court under Section 9 of the Provincial Insolvency Act, 1920 (for short, 'the Act') to adjudge respondent No.1 as an insolvent and to annul the settlement deed dated 24.01.2005 executed by the 1st respondent in favour of the 2nd respondent, alleging, that the 1st respondent/debtor borrowed an amount of Rs.60,000/- from the petitioner on 20.07.2002 and executed a promissory note in favour of the petitioner agreeing to repay the same with interest at 24% per annum on the even date. Despite the demand made by the petitioner/creditor, the 1st respondent/debtor did not discharge the debt. Hence, the petitioner/creditor filed O.S.No.132 of 2005 on the file of the Junior Civil Judge's Court, Tuni and he also filed I.A.No.268 of 2005 in the said suit for attachment of the immovable property before judgment.

4. While the matter stood thus, the 1st respondent executed a settlement deed dated 24.01.2005 in favour of the 2nd respondent with an intention to delay and defeat the claim of the petitioner/creditor. Hence,

the settlement deed dated 24.01.2005 is not binding and finally prayed to adjudge the 1st respondent/ debtor as insolvent and annul the said settlement deed.

5. The 1st respondent filed counter denying the material allegations made in the petition, *inter alia*, contending that she never borrowed Rs.60,000/- from the petitioner/creditor and never executed any promissory note. As the 1st respondent/debtor is suffering from paralysis, she was totally bedridden and thereby the question of her approaching the petitioner/creditor does not arise and she never played fraud in execution of settlement deed dated 24.01.2005 and not intended to delay and defeat the claim of the petitioner/creditor. In fact, son of the 1st respondent by name Veera Venkata Satyanarayana for his agricultural purpose borrowed Rs.10,000/-, and at that time, the signature of 1st respondent was obtained on blank promissory note and fabricated the said document, thereby she is not bound by the said promissory note and prayed to dismiss the petition.

6. The 2nd respondent filed a memo adopting the counter filed by the 2nd respondent.

7. During the course of enquiry, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A.1 and A.2 were marked; and on behalf of the respondents, R.Ws.1 to 3 were examined and Exs.B.1 to B.9 were marked.

8. Upon hearing argument of both the learned counsel, the trial Court allowed the petition adjudging the 1st respondent as insolvent vesting the property on Official Receiver, East Godavari District for administration and issued a direction to take steps to annul the registered gift deed dated 24.01.2005 by the Official Receiver.

9. Aggrieved by the order and decree passed by the trial Court, respondent Nos.1 and 2 in the I.P. preferred the appeal in A.S.No.109 of

2009 before the lower appellate Court and the finding of the trial Court was confirmed while dismissing the appeal.

10. Aggrieved by the judgment and decree of the lower appellate Court, the present civil miscellaneous second appeal is preferred raising several contentions on the following substantial question of law raised before this Court:

> "Whether the petition filed on 25.04.2005 is strictly in compliance of Section 9(1)(c) of the Provincial Insolvency Act, 1920?"

11. Section 9 of the Act prescribes various conditions to be satisfied enabling the petitioner/creditor to file a petition for the alleged acts of insolvency committed under Section 6 of the Act and Section 9(1)(c) of the Act is relevant for deciding the present controversy. According to Section 9(1)(c) of the Act, a creditor shall not be entitled to present an insolvency petition against a debtor unless the act of insolvency on which the petition is grounded has occurred within three months before presentation of the petition, but it is a condition precedent and the provisions of the Limitation Act are not attracted. Section 9(1)(c) of the Act reads as follows:

> "**Section 9(1)(c)**: A creditor shall not be entitled to present an insolvency petition against a debtor unless the act of insolvency on which the petition is grounded has occurred within three months <u>before</u> the presentation of the petition."

12. The act of insolvency complained by the petitioner is execution of Ex.A.2 settlement deed dated 24.01.2005. The petition was presented on 25.04.2005. Therefore, three months time was expired by 25.04.2005 from the date of execution of Ex.A.2. Therefore, the act of insolvency took place within three months before presentation of the petition. Undoubtedly, Section 12 of the Limitation Act has no application, since the time fixed under Section 9(1)(c) of the Act is not of limitation, but it is only a condition precedent, which enables the creditor to file a petition. Since the act of insolvency took place within three months before presentation of the petition by the creditor, it is a ground to

adjudge the petitioner as an insolvent. The trial Court and the lower appellate Court concurrently held that the petition was filed by the petitioner/creditor complying the due procedure under Section 9(1)(c) of the Act, as the alleged act of insolvency took place within three months before presentation of the petition under Section 9 of the Act. Hence, I find no merits in this appeal warranting interference by this Court. Accordingly, this point is answered in favour of the petitioner (respondent herein) and against respondents (appellants herein).

13. The counsel for the respondents (appellants herein) would submit that though the transaction covered by Ex.A.2 was not annulled both by trial Court and lower appellate Court, a decree was drafted as if the transaction covered by Ex.A.2 was annulled. As seen from the decree, no such relief was granted, simply directed the Official Receiver to take steps to annul the transaction covered by Ex.A.2, as such the decree is in consonance with the operative portion of judgment, both in trial Court and lower appellate Court.

14. In the result, this civil miscellaneous second appeal is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in this appeal, shall stand closed.

M.SATYANARAYANA MURTHY, J.

Date: 06-07-2015

siva