

**\* THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**+ CIVIL MISCELLANEOUS SECOND APPEAL No.29 OF 2011**

% Date 24-06-2015

# Tadikamalla Venkata Ramana Kishore and ...  
Appellants  
another.

V.  
\$ Padarathi Santhakumari and others  
...Respondents

! Counsel for the Appellants : Sri Koneti Raja Reddy

^ Counsel for Respondent No.1 : K.Chidambaram

< **GIST :**

> **HEAD NOTE:**

? **CASES REFERRED:**

1. AIR 1969 AP 318
2. 2011 (4) ALT 171
3. AIR 1977 AP 346
4. AIR 1968 Madras 216
5. AIR 1983 A.P.13
6. AIR 1967 A.P.243

C/15

-

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**  
**CIVIL MISCELLANEOUS SECOND APPEAL No.29 of 2011**

-

**JUDGMENT:**

Respondent Nos.2 and 3 in I.P.No.26 of 2004 on the file of I Additional Senior Civil Judge, Guntur preferred this appeal questioning the judgment and decree in A.S.No.16 of 2009 passed by II Additional District Judge, Guntur, dated 29.04.2011.

2. For convenience of preference, the ranks given to the parties in I.P.No.26 of 2004 before I Additional Senior Civil Judge, Guntur will be adopted throughout the judgment.

3. The petitioner (first respondent herein) filed I.P.No.26 of 2004 under Section 9 of Provincial Insolvency Act, 1920 (for short, 'the Act') contending that the first respondent borrowed Rs.40,000/- on 17.10.2001, Rs.20,000/- on 24.10.2001 and Rs.10,000/- on 06.08.2002 from her, under three promissory notes executed on the even dates for her family and other necessities, agreeing to repay the same together with interest. Despite the demands made by the petitioner, the first respondent did not discharge the debt and on the other hand, the first respondent offered to sell the only property she own and possessed and thereupon, the second respondent issued a paper publication from the public calling objections, if any, from the public. Immediately, the petitioner on noticing the publication, came to know that the first respondent is trying to alienate the schedule property only to evade payment of debt due under the promissory notes and therefore, she immediately got issued a notice dated 21.01.2004 demanding the first respondent to pay the debt due while informing the second respondent that he would be liable for debts due under the

promissory notes in case he purchases the property. In spite of notice, respondent Nos.2 and 3 purchased the petition schedule property under sale deeds dated 10.03.2004 for Rs.8,40,000/- and Rs.1,40,000/- vide document Nos.2605 of 2004 and 2606 of 2004 respectively. The value of the property is more than Rs.15,00,000/- as on the date of sale and the sale is only with a view to defeat and delay the claims of the creditors. Thus, the first respondent transferred substantial part of her property with a view to defeat and delay the creditors and prayed to adjudge her as insolvent annulling the sale transactions dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004 vesting the property on the Official Receiver.

4. Respondent No.1 remained *ex-parte*.

5. Respondent Nos.2 and 3 filed counter denying material allegations while contending that the second respondent is working as a Medical Area Manager at Vijayawada in "Mano Pharmaceuticals" for the last six years, possessing sufficient amount to purchase the property and proposed to purchase the property from the first respondent and the publication, dated 20.01.2004 issued in Eenadu Daily News Paper calling upon objection from the public against proposed purchase. Thereupon, the petitioner issued a notice dated 21.01.2004 through her advocate informing that the first respondent borrowed Rs.40,000/-, Rs.20,000/- and Rs.10,000/- under three promissory notes. One Shaik Mohammad Rafee also issued a notice informing that he filed a suit O.S.No.1439 of 2003 on the file of III Additional Senior Civil Judge, Guntur for recovery of money of Rs.28,800/-. Respondent Nos.2 and 3 could know about the tax liability to Guntur Municipal Corporation and the debt due to Mohammad Rafee and the petitioner only after paper publication issued and having satisfied with the debt of Shaik Mohammad Rafee and the tax liability to Guntur Municipal Corporation, they discharged the debt due, while denying to discharge the debt due to the petitioner on the ground that it is collusive debt. Thus, they are *bona fide* purchasers for valuable consideration and therefore, the first respondent cannot be adjudged as insolvent and prayed for dismissal of the petition.

6. During the course of enquiry, on behalf of the petitioner, the petitioner herself was examined as PW.1 and marked Exs.A.1 to A.12. On behalf of the contesting respondents, RWs.1 and 2 were examined and marked Exs.B.1 to B.36.

7. Upon hearing the argument of both the counsel, considering oral and documentary evidence, the trial Court adjudged the first respondent as insolvent and annulled the transactions covered by Exs.A.8 and A.9 sale deeds, dated 10.03.2004 bearing document Nos.2605 of 2004 and 2606 of 2004 of Guntur District Registration Office, Guntur, granting one year time for discharge.

8. Aggrieved by the order and decretal order passed by the trial Court, respondent Nos.2 and 3 preferred an appeal before II Additional District Judge, Guntur, and the same was dismissed confirming the order and decree passed by the trial Court.

9. Aggrieved by the judgment and decree in A.S.No.16 of 2009, the unsuccessful respondent Nos.2 and 3/appellants preferred this appeal raising several contentions and the main contention raised before this Court is that a single creditor is not entitled to file a petition to adjudge the debtor as insolvent basing on the principle laid down in **Pydimarri Venkateswarlu v. Pydimarri Jalamma**<sup>[1]</sup> and **Gutta Nirmala v. Gutta Nageswara Rao and others**<sup>[2]</sup> and that unless it is proved that the alienation is to defeat the genuine claim of general body of creditors, the debtor cannot be adjudged as insolvent and prayed to allow the appeal setting aside the concurrent findings recorded by both the trial Court and appellate Court.

10. During the course of hearing, Sri K.Raja Reddy, the learned counsel for the appellants, would contend that unless it is proved that the alienation is only to defeat and delay the claim of general body of creditors, the debtor cannot be adjudged as insolvent and placed reliance on the above two judgments and prayed to allow the appeal by applying the principles laid down in the above two judgments.

11. Per contra, Sri K.Chidambaram, the learned counsel for respondent

No.1, would submit that a single creditor can maintain a petition under Section 9 of the Act to adjudge the debtor as insolvent and it need not be for the benefit of general body of creditors for the reason that the word 'creditors' includes 'creditor' and a plural can be read as singular or vice versa interpreted the word in the constitute under Section 13 (2) of General Clauses Act and prayed to dismiss the appeal confirming the concurrent findings recorded by the trial Court and the appellate Court.

12. In view of the rival contentions, the substantial questions of law that arises for consideration are that:

***"1. Whether a single creditor can file a petition under Section 9 of the Act? and***

***2. Whether a debtor can be declared as insolvent without proving that the alienation is to defeat and delay the claim of general body of the creditors?"***

**POINT Nos.1 and 2:**

13. Undoubtedly, there are three creditors including the Municipality, but the tax liability of the Municipal Corporation, Guntur and debt due to Shaik Mohammad Rafee was discharged by respondent Nos.2 and 3 – appellants herein having found that their claims are genuine, but did not discharge the debt due to the sole creditor – petitioner before the trial Court on the ground that her claim is not genuine. Alienation of property in favour of respondent Nos.2 and 3 by the first respondent under registered sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004 is not in dispute. When the debtor alienates the whole or substantial part of the property, it constitutes act of insolvency under Section 6(1)(b) of the Act, such petition can be dismissed only on the grounds enunciated under Section 25 of the Act. But here, the debtor – first respondent did not contest the matter. Therefore, respondent Nos.2 and 3 are incompetent to raise any of the grounds under Section 25 of the Act.

14. The whole controversy in this appeal is that a single creditor cannot maintain a petition under Section 9 of the Act. This question is no more *res*

integra in view of the Division Bench judgment of this Court in

**G.Ramachander v. The Collector, Excise, Hyderabad and another**<sup>[3]</sup>,

wherein the Division Bench of this Court held as follows:

““decree-holder”, ‘debtor’ includes a judgment-debtor. S.6 or 7 also entitles an individual to launch proceeding under the Act. S.10 of the Act also empowers individual debtor to present insolvency proceeding, if, he satisfied the conditions mentioned therein. None of the clauses of S.10(1) speaks of more than one creditor S.13(2) of the General Clauses Act (10 of 1897) says that the words in the singular shall also include the plural and vice versa. Therefore, no special significance need be attached to the words ‘debts’ or ‘Creditors’ used in several provisions of the Act. Therefore it was held that even a single debtor could file an application u/S. 10 of the Act to get declared insolvent even if there is a single creditor.”

Similar question came up before the Madras High Court in

**Sarangapani Chetty v. Perumal Naidu**<sup>[4]</sup>. The Division Bench of Madras

High Court while considering the same issue held that single creditor can maintain a petition. In the last para of the said judgment, the Division Bench held as follows:

““The transfer which defeats or delays creditors is not an instrument which prefers one creditor to another, but an instrument which removes property from the creditor to the benefit of the debtors.”

Consequently, we are of the view that the decisions cited at the Bar, can all of them be distinguished, with reference to the facts and the situation in insolvency law of the present case. This is a case where the facts abundantly and clearly establish the round of adjudication set forth in Sec. 6, Sub-Sec.(d)(i)(ii) and (iii). The fact that the general body of creditors was represented by the sole creditor, is no reason for declining adjudication, for the insolvency law has always recognized that the sole creditor of debtor could obtain an adjudication in insolvency.”

15. The trial Court placing reliance in **K.D.Nagappa v. Sannakka**<sup>[5]</sup>,

held that a single creditor can maintain an insolvency petition under Section 9 of the Act. In the said judgment, the single judge of this Court relied on both Division Bench judgments of this Court and the judgment of

Division Bench of Madras High Court.

16. Learned counsel for respondent Nos.2 and 3 (appellants) drawn the attention of this Court to the judgment of this Court in **Pydimarri Venkateswarlu's** case (supra 1), where the single judge of this Court held that unless the creditor proved that the alienation was made to delay and defeat the claims of general body of creditors, the debtor cannot be adjudged as insolvent placing reliance on the judgment in **Sanjeeva Reddy v. Ellappa Reddy** <sup>[6]</sup>. Further, this Court, in a recent judgment in **Gutta Nirmala's** case (supra 2) reiterated the same principle. But in both the judgments, the Division Bench judgment of this Court in **G.Ramachander's** case (supra 4) was not referred. Similarly, the judgment of the Madras High Court was also not brought to the notice of this Court. Therefore, these two judgments can be said to be *per incurium*. Hence, the principle laid down in **Gutta Nirmala's** case (supra 2) is not a precedent, in view of the Division Bench judgment of this Court. If the interpretation of the word 'creditor' and 'creditors' laid down in the judgment of Division Bench of this Court is accepted, a single creditor can maintain a petition under Section 9 of the Act and even if transfer of property is made to defeat the claim, a single creditor can maintain a petition for the reason that the plural 'creditors' and debts has no significance in insolvency law as held by the Division Bench of this Court. Even according to Section 13 (2) of the General Clauses Act, a singular includes plural and vice versa. For better appreciation of the facts Section 13 of the General Clauses Act, 1897 is extracted hereunder:

"13 Gender and number. — In all— (Central Acts) and Regulations, unless there is anything repugnant in the subject or context,

\_\_\_\_\_ (1) words importing the masculine gender shall be taken to include females; and

\_\_\_\_\_ (2) words in the singular shall include the plural, and vice versa."

\_\_\_\_\_ Even if this principle is applied to the present facts of the case, I have no hesitation to hold that the single creditor can maintain a petition under

Section 9 of the Act though the transfer of property is to defeat the claim of a single creditor. Hence, I find no substance in the contention of the learned counsel for respondent Nos.2 and 3.

17. The trial Court while adjudging the petitioner as insolvent annulled the sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004 and ordered to vest the property on the Official Receiver for administration. The same was confirmed by the appellate Court. But the finding of the trial Court with regard to the annulment of sale deeds is erroneous *ex facie* for the reason that the order of annulment of transactions cannot be passed simultaneously while adjudging the debtor as insolvent.

18. To decide real controversy between the parties, I feel that it is relevant to advert to the provisions of the Act, more particularly, Sections 53, 54, 4 and 54-A of the Act. Section 53 of the Act, says that, any voluntary transfer made by the debtor if the transferor is adjudged as insolvent can be avoided and at the same time, Section 54 of the Act says that, every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as he become due from his own money in favour of any creditor, and giving preference over the other creditors, and if such person is adjudged insolvent on a petition presented, shall be deemed to be fraudulent and void against the receiver, and shall be annulled by Court saving transaction entered into in good faith and for valuable consideration.

19. A fraudulent transfer under Section 53 of the Act and transaction to give fraudulent preference under Section 54 of the Act are void against the receiver and they shall be annulled on the petition filed within specific time. Section 54-A of the Act specifies procedure for annulment of any transfer under Sections 53 or 54 of the Act. According to it, for annulment of any transfer under Sections 53 or 54 of the Act, a petition may be presented by a receiver, with the leave of the Court, by any creditor who has proved his debt and who satisfies the Court that the receiver has been requested and has refused to make such petition.

20. In view of the language used in Sections 53 and 54 of the Act, more

particularly, the words “if the transferor is adjudged insolvent” under Section 53 of the Act and “if the person is adjudged insolvent” under Section 54 of the Act indicates that for annulling transaction of transfer, the debtor must be an adjudged insolvent. So, to annul a transaction of transfer, a pre-condition is adjudging the debtor as an insolvent. But, here the petition was filed by the creditor seeking two reliefs both under Sections 9 and 53, 54 of the Act avoiding a fraudulent preference and annul the transactions covered by sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004. Thus, he sought for two reliefs simultaneously and the relief claimed by the petitioner/creditor is against the spirit of language used under Sections 53, 54 and 54-A of the Act.

21. Section 54-A of the Act, it is clear that, before moving Court for annulment of transfer, more particularly, covered by the sale deeds dated 10.03.2004, it is the duty of the petitioner to prove her debts before the Official Receiver as required under Section 49 of the Act and then move Court exercising insolvency jurisdiction for annulling transfer, if receiver refuses to make such petition for annulment on the request made by the creditor. So, even according to Section 54-A of the Act, it is the duty of the creditors to prove the debt before the Official Receiver.

22. Section 49 of the Act specifies procedure to be followed for proof of debt. According to it, a debt may be proved under this Act by delivering, or sending by post in a registered letter, to the Court an affidavit verifying the debt. The affidavit shall contain or refer to a statement of account showing particulars of the debt, and shall specify the vouchers by which the same can be substantiated by the Court at any time and call for production of vouchers.

23. Therefore, the debt shall be proved by following necessary procedure contemplated under Section 49 of the Act, after entrusting the matter to Official Receiver duly adjudging the debtor as insolvent.

24. Part-III of the Act from Sections 45 to 50 laid down procedure for proof of debts. Following of such procedure under Sections 45 to 50 of the Act would arise only after adjudging the debtor as insolvent. But here, the relief

under Sections 53, 54 of the Act was claimed simultaneously with the relief of adjudging the debtor as insolvent. The conditions laid down under Section 54-A of the Act, were not complied by the petitioner to get the transaction covered by sale deeds dated 10.03.2004 annulled. A perusal of language used under Sections 53, 54 and 54-A of the Act and the mode of proof of debt under Part-III of the Act (From Sections 45 to 50), it is clear that before moving an insolvency Court to annul transfer of property, a creditor has to satisfy the following conditions:

**1) The debtor must be adjudged as insolvent.**

**2) The creditor should prove his debt by following the procedure contemplated under Part-III of the Act**

**3) He should have made a request to the Official Receiver for moving insolvency Court for annulling fraudulent transaction and that the Official Receiver refused to move such petition for annulment.**

25. In the instant case, by the date of filing the petition, seeking annulment under Section 53 or 54 of the Act, the petitioner was not even adjudged as insolvent. So, the first condition was not satisfied. The petitioner did not approach the Official Receiver and proved his debt as contemplated under Part-III of the Act and complied Section 54-A of the Act. Thereby, the order annulling the sale transaction covered by sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004 passed by the trial Court as confirmed by the appellate Court, is erroneous *ex facie* and contrary to provisions of Act. Hence, the orders of the trial Court and the appellate Court to the extent of annulling the sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004, is illegal and the same is liable to be set aside. However, the petitioner is at liberty to move an application after compliance of Sections 45 to 50 and 54-A of the Act to annul the transfer of immovable property under Sections 53, 54 or 4 of the Act.

26. In view of my foregoing discussion, I find no grounds to interfere with the findings of the trial Court and the appellate Court except to the extent

indicated above in para 23 of this judgment.

27. Accordingly, the Appeal is allowed in part and the order of the trial Court and the appellate Court to the extent of annulling the sale deeds dated 10.03.2004 vide document Nos.2605 of 2004 and 2606 of 2004 is hereby set aside while confirming the order adjudging first respondent as insolvent. However, the petitioner is at liberty to move an application after compliance of Sections 45 to 50 and 54-A of the Act to annul the transfer of immovable property under Sections 53, 54 or 4 of the Act, but without costs, in the circumstances.

28. Consequently, Miscellaneous Petitions, if any, pending in this Civil Miscellaneous Second Appeal shall stand closed.

-

---

**M.SATYANARAYANA MURTHY, J**

-

Date: 24.06.2015  
lvd

---

[\[1\]](#) AIR 1969 AP 318

[\[2\]](#) 2011 (4) ALT 171

[\[3\]](#) AIR 1977 AP 346

[\[4\]](#) AIR 1968 Madras 216

[\[5\]](#) AIR 1983 A.P. 13

[\[6\]](#) AIR 1967 A.P. 243