THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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C.M.S.A.No. 33 OF 2010

JUDGMENT:

The creditors in I.P.No. 29 of 2004 on the file of the Court of Principal Senior Civil Judge, Rajahmundry (for short, 'the trial Court'), preferred the present appeal challenging the decree and judgment dated 23-06-2009 passed in A.S.No. 206 of 2007 on the file of the Court of Family-cum-Additional District Judge, East Godavari at Rajahmundry (for short, 'the Appellate Court'), whereunder the decree and decretal order of the trial Court dated 11-10-2007 were reversed.

2. The appellants were the petitioners and the respondents were the respondents before the trial Court. For convenience of reference, the ranks given to the parties before the trial Court will be adopted throughout this judgment.

3. The petitioners filed I.P.No. 29 of 2004 under Sections 6, 7 and 9 of the Provincial Insolvency Act, 1920 ('the Act of 1920' for brevity), to adjudge respondent Nos. 1 and 2 as insolvents and to annul the transactions covered by originals of Exs.A17 to A19 while vesting schedule property on Official Receiver for administration, alleging that the petitioners are carrying on chit fund business having its registered office at Suryaraopeta, Kakinada. Respondent Nos. 1 and 2 joined as subscribers in different chits. The 1st respondent joined as a subscriber in chit group No. S.F. 01 with ticket Nos. 5 and 11 for chit amount of Rs.3,00,000/- under each ticket. The 1st respondent was declared as successful bidder or prized subscriber on 11-08-2001 for ticket No. 5 and on 09-02-2002 for ticket No. 11 and received chit amount from the petitioners. Thereafter, the 1st respondent paid subscriptions for the said chits up to 20-09-2002 but committed default in payment of subsequent installments. The 1st respondent also joined as

subscriber in chit group No. SB-3 under ticket No. 23 for Rs.5,00,000/- with the 2nd petitioner. On 16-01-1999, the 1st respondent became the successful bidder, received prize amount and paid installments up to 15-09-2001 but committed default in payment of subsequent monthly installments.

The 2nd respondent joined as a member in chit group No. S.B.-3 for Rs.5,00,000/-, declared as successful bidder on 15-04-2004 and received prize amount on the same day. The 2nd respondent paid installments up to 19-09-2002 but thereafter committed default in payment of subsequent installments to a tune of Rs.80,825/-. Despite demands made by the petitioners, respondent Nos. 1 and 2 failed to discharge the debt due towards chits. Having no other alternative, the petitioners got issued legal notice dated 30-05-2004 but respondent Nos. 1 and 2 failed to discharge the debt.

While the matter stood thus, respondent Nos. 1 and 2, with a *mala fide* intention to defraud and defeat the claims of the petitioners and other creditors, fraudulently and collusively executed sale deeds in favour of respondent Nos. 3 to 5 under originals of Exs.A17 to A19 conveying B schedule property. Thereby, the sale transactions are fraudulent and nominal and not supported by consideration. Hence, the petitioners filed the petition to adjudge respondent Nos. 1 and 2 as insolvents and annul the transactions covered by originals of Exs.A17 to A19 executed in favour of respondent Nos. 3 to 5 while vesting the property on Official Receiver.

4. Respondent Nos. 1 and 2 filed counter denying material allegations *inter alia* contending that respondent Nos. 1 and 2 used to transact with the petitioners; in the course of those transactions, their signatures were obtained by the petitioners and those papers were pressed into service to make false claim. There is no debtor and creditor relationship between the petitioners and respondent Nos. 1 and 2, the alienations made by them in

favour of respondent Nos. 3 to 5 are purely for discharging debts; therefore, they did commit no act of insolvency and prayed to dismiss the petition.

5. Respondent Nos. 1 and 2 also filed additional counter contending that they sold house bearing D.No. 29-14-26 to Madireddi Chandrasekhara Narasimharao on 26-05-2004, house site to Midathani Appaji on 15-06-2004 and another house site to M.Veeramanga on 15-06-2004. All those transactions are shown in income tax returns and the sale consideration was utilized only to discharge the debts. A sum of Rs.4,48,000/- was paid to Challa Shankara Rao on 23-06-2004, a sum of Rs.1,32,160/- was paid to B.V.V.Rajyalakshmi on 20-08-2004 and another sum of Rs.18,92,708/- was paid to Aryapuram Co-operative Urban Bank. Thereby, the amount realized by sale of the property was utilized for the purpose of discharging debts and, therefore, it does not amount to an act of insolvency.

6. The 3rd respondent filed counter contending that he is *bona fide* purchaser for valuable consideration of Rs.10,20,000/- and respondent Nos. 1 and 2 utilized the amount realized by sale only for the purpose of discharging debts. Respondent Nos. 1 and 2 are leading doctors and earning not less than Rs.1,00,000/- p.m. but the petitioners and respondent Nos. 1 and 2, colluding together, filed the present petition to cause loss to the 3rd respondent.

7. The other respondents remained *ex parte*.

8. During the course of enquiry, on behalf of the petitioners, P.W.1 was examined and got marked Exs.A1 to A27. On behalf of the respondents, R.Ws.1 and 2 were examined and got marked Exs.B1 to B7.

9. Upon hearing argument of both counsel, the trial Court adjudged respondent Nos. 1 and 2 as insolvents while ordering vesting of schedule property on Official Receiver for administration and rest of the claim was dismissed.

10. Aggrieved by the order and decretal order, respondent Nos. 1 and 2 filed appeal before the Appellate Court.

11. Upon hearing argument of both counsel, the Appellate Court, holding that respondent Nos. 1 and 2 had sufficient means to discharge debts, being doctors, besides possessing house worth of Rs.40,00,000/-, dismissed the petition by applying Section 25 (1) of the Act of 1920.

12. Aggrieved by the decree and judgment of the Appellate Court, the petitioners preferred the present appeal raising several substantial questions of law.

13. During the course of argument, learned counsel for the petitioners would contend that the Appellate Court, basing on evidence without any factual foundation in pleading, concluded that respondent Nos. 1 and 2 got sufficient means to discharge debts due to the petitioners and the same is erroneous. It is further contended that transfer of property to respondent Nos. 3 to 5 for discharging debts due to other creditors also amounts to fraudulent preference under Section 6 (1) (a) of the Act of 1920 but the Appellate Court did not appreciate the facts with reference to law, committed an error and finally prayed to allow the appeal setting aside the decree and judgment of the Appellate Court confirming the order and decretal order of the trial Court.

14. Learned counsel for the respondents, reiterating the grounds urged before the Appellate Court, drawn attention of this Court to various contentions raised in counter and additional counter filed by respondent Nos. 1 and 2 to establish that they are able to discharge the debts but no argument was advanced with regard to the act of insolvency.

15. Considering rival contentions, perusing oral and documentary evidence, order and decretal order of the trial Court and decree and judgment of the Appellate Court, the substantial questions of law framed by this Court are thus:

(1) *Whether alienation of property in favour of respondent Nos. 3 to 5 to discharge the debts due to other creditors amounts to an act of insolvency, if so, whether respondent Nos. 1 and 2 be adjudged as insolvents?*

(2) *Whether the 3rd respondent is competent to raise the plea that respondent Nos. 1 and 2 are able to discharge the debts under Section 25 (1) of the Act of 1920, if not, whether the finding recorded by the Appellate Court be set aside?*

16. **In Re. Point No. 1:**

The petitioners filed the petition under Section 9 of the Act of 1920 alleging that respondent Nos. 1 and 2 committed an act of insolvency as they transferred whole or substantial part of the property in favour of respondent Nos. 3 to 5 with a view to delay and defeat the claim of creditors *i.e.* the petitioners. Undisputedly, the property was transferred by executing originals of Exs.A17 to A19 on different dates conveying B schedule property but the only defence urged in the counter is that the property was sold for discharging the debts due to a tune of Rs.4,48,000/- to Challa Shankara Rao, Rs.1,32,160/- to B.V.V.Rajyalakshmi and Rs.18,92,708/- to Aryapuram Co-operative Urban Bank and the said fact is supported by oral evidence of respondent Nos. 1 and 2.

17. Section 6 of the Act of 1920 specifies certain acts which amount to acts of insolvency. The present act of respondent Nos. 1 and 2 directly falls within the ambit of Section 6 (1) (a) of the Act of 1920 as the transfer of property was for the benefit of some creditors. Even if it is not treated for the benefit of general body of creditors, it falls under 6 (1) (b) of the Act of 1920. Assuming for a moment that the plea of respondent Nos. 1 and 2 is true, still the act of respondent Nos. 1 and 2 falls within the ambit of Section 6 (1) (a) of the Act of 1920 as respondent Nos. 1 and 2 gave fraudulent preference to creditors *viz.*, Challa Shankara Rao, B.V.V.Rajyalakshmi and Aryapuram Co-operative Urban Bank. The trial Court accepted this contention but the

Appellate Court reversed the said finding on different grounds. The Appellate Court did not consider the purport of Section 6 (1) (a) and (b) of the Act of 1920. If the contention of respondent Nos. 1 and 2 is accepted, the transfer of property may fall either under Section 6 (1) (a) or 6 (1) (b) of the Act of 1920. The admissions made by respondent Nos. 1 and 2 both in pleadings and evidence are sufficient to conclude that respondent Nos. 1 and 2 committed an act of insolvency which enabled the petitioning creditors to file the petition under Section 9 of the Act of 1920 but the Appellate Court, on erroneous appreciation of facts and law, disbelieved the act of insolvency committed by respondent Nos. 1 and 2. Hence, the same is hereby set aside holding that respondent Nos. 1 and 2 have committed an act of insolvency within the ambit of Sections 6 (1) (a) and 6 (1) (b) of the Act of 1920. Accordingly, the point is answered in favour of the petitioners and against the respondents.

18. **In Re. Point No. 2:**

The second contention raised by learned counsel for respondent Nos. 1 and 2 before this Court is that respondent Nos. 1 and 2 are practicing doctors earning not less than Rs.1,00,000/- p.m. each besides possessing house worth of Rs.40,00,000/-; thereby, they are able to discharge the debts due to the petitioners and, therefore, the petition is liable to be dismissed. In support of his contention, learned counsel drawn attention of this Court to ***Yenumula Malludora Vs. Peruri Seetharathnam***[1]. Undoubtedly, this plea is open to respondent Nos. 1 and 2 under Section 25 (1) of the Act of 1920. Strangely, there is no factual foundation in pleadings *i.e.* counter and additional counter filed by respondent Nos. 1 and 2 about their ability to discharge the debts as required under Section 25 (1) of the Act of 1920. In the absence of any plea, adducing any amount of evidence is of no use since Courts cannot travel beyond pleadings and grant relief. Therefore, the evidence whatever adduced in support of their contention, which is an afterthought about their ability to discharge the debts due to the petitioners, is of no avail to dismiss the petition by exercising power under Section 25 (1) of the Act of 1920 and, therefore, the principle laid down in the above judgment is not applicable to the present facts of the case.

19. Learned counsel for the respondent Nos. 1 and 2 drawn attention of this Court to the contents of counter filed by the 3rd respondent, wherein the 3rd respondent pleaded that respondent Nos. 1 and 2 are able to discharge the debts as they are earning not less than Rs.1,00,000/- p.m. as doctors but such plea is not open to the 3rd respondent being the transferee of respondent Nos. 1 and 2. This Court had an occasion to deal with a similar situation in ***Vemala Rosaiah Vs. P.Subrahmanyam***[2], wherein it was held that

> *"Creditor's petition cannot be dismissed under Section 25 on the basis of plea of debtor's transferee that debtor has means to discharge the debt."*

If the principle laid down in the above judgment is applied to the present facts of the case, it is not open to the 3rd respondent to raise such plea, about ability of respondent Nos. 1 and 2 to discharge the debts due, under Section 25 (1) of the Act of 1920. So far as the plea of respondent Nos. 1 and 2 is concerned, there is absolutely no pleading. Consequently, the evidence whatever they adduced cannot be looked into to grant relief.

20. The Appellate Court, without looking into pleadings filed by respondent Nos. 1 and 2, went on discussing about means of respondent Nos. 1 and 2 and decided their ability to discharge the debts. Thereby, the approach of the Appellate Court is erroneous on the face of record and the Appellate Court ought not to have exercised such power to dismiss the petition in the absence of any pleadings. Therefore, the finding of the Appellate Court is hereby set aside holding this point in favour of the petitioners and against the respondents.

21. In view of my finding on point Nos. 1 and 2, the decree and judgment of the Appellate Court are liable to be set aside and is, accordingly, set aside.

22. In the result, the appeal is allowed; setting aside the decree and judgment dated 23-06-2009 passed in A.S.No. 206 of 2007 on the file of the Court of Judge, Family Court-cum-Additional District Judge, East Godavari At Rajahmundry; confirming the decree and decretal order dated 11-10-2007 passed in I.P.No. 29 of 2004 on the file of the Court of Principal Senior Civil Judge, Rajahmundry. Miscellaneous petitions pending in this appeal, if any, shall stand closed in consequence. No order as to costs.

M.SATYANARAYANA MURTHY, J.

Date: 20th July, 2015.

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[1] AIR 1966 SC 918

[2] 1989 (1) ALT 262