

HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION No.941 of 2015

ORDER :

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/creditor aggrieved by the order dated 04.02.2015 in G.L.No.1719 of 2014, in un-numbered I.P., rejecting the petition filed by her under Sections 7 and 9 of the Provincial Insolvency Act, 1920 seeking to declare the 1st respondent/debtor as an insolvent by declaring that the sale deeds (i) No.936/2013, dated 26.3.2013 executed by 1st respondent in favour of 3rd respondent; (ii) No.1393/2013, dated 25.4.2013 executed by respondent Nos.1 and 2 in favour of respondent No.4; (iii) No.1743/2013, dated 30.5.2013 executed by respondent Nos.1 and 2 in favour of respondent No.5; in respect of 'B' schedule property are null and void and set aside the same and to vest the petition 'B' schedule property with the official receiver, for administration of the benefit of her debt.

2. The petitioner/creditor filed the aforesaid insolvency petition under Sections 7 and 9 of the Provincial Insolvency Act, 1920 to declare the 1st respondent/debtor as insolvent and also to declare the sale deeds executed in favour of respondents 3 to 5 as null and void. When the office of the Court below took

objections with regard to maintainability of the said petition, at the request of the petitioner/creditor, it was called on the Bench. Though the matter was adjourned on several occasions, no arguments were advanced on behalf of the petitioner/creditor and, as such, the impugned order is passed stating that respondent Nos.3 to 5 are not the creditors of the 1st respondent/debtor and they are only purchasers of the property under registered sale deeds dated 26.3.2013, 25.4.2014 and 30.5.2013, respectively, and accordingly rejected the petition filed by the petitioner/creditor. Hence, the present civil revision petition.

3. Learned counsel for the petitioner contended that such sale deeds are collusive and sham one, which are executed only to defeat the rights of the petitioner/creditor and other parties. It is further contended that in any event, even if the petition filed by the petitioner/creditor is not maintainable against the other respondents, there is no reason in rejecting the same against 1st respondent/debtor.

4. Heard learned counsel for the petitioner/creditor and perused the impugned order.

5. From a perusal of the impugned order, it is clear that respondent Nos.3 to 5 are only the purchasers under various sale deeds. Though several opportunities are given to the learned counsel for petitioner to advance his arguments as to the maintainability of the petition, it

appears that he has not chosen to avail such opportunity. As it is submitted that the petition is maintainable against the 1st respondent/debtor, I deem it appropriate to give one more opportunity of hearing to the petitioner before passing the impugned order.

6. For the aforesaid reasons, the impugned order dated 4.2.2015 is set aside and the matter is remanded with a direction to the Court below to give one more opportunity of hearing to the petitioner/creditor by serving notices on all the relevant parties and pass appropriate orders afresh in accordance with law as to the maintainability of the petition.

7. Accordingly, this civil revision petition is allowed. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE R. SUBHASH

REDDY
13.03.2015.
Msr

HON'BLE SRI JUSTICE R.SUBHASH REDDY

CIVIL REVISION PETITION No.941 of 2015

13.03.2015

Msr