

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.M.S.A.NO.2 OF 2014

JUDGMENT:

The petitioner before the Additional Senior Civil Judge Court, Eluru, in I.P.No.46 of 2005 preferred this appeal against the decree and judgment dated 17.04.2013 in A.S.No.71 of 2010 on the file of the Court of I Additional District Judge, West Godavari, Eluru, whereunder the order passed by the Additional Senior Civil Judge, Eluru, dated 30.04.2009 in I.P.No.46 of 2005 was set aside.

For convenience sake, the parties hereinafter will be referred to as they were arrayed before the trial Court.

Petitioner Nos.1 and 2 filed I.P.No.46 of 2005 under Section 9 of the Provincial Insolvency Act, 1920 ("the Act" for brevity) to adjudge the first respondent as an insolvent, annul the alienation made by the first respondent in favour of the second respondent as transfer is intended to defeat and delay the claim of creditors and to appoint Official Receiver for general administration.

The first respondent borrowed an amount of Rs.50,000/- on 05.09.2002 from the first petitioner under a promissory note, agreeing to repay the same together with interest @ 24% per annum as and when demanded by the first petitioner. The first respondent also borrowed an amount of Rs.2,25,000/- from the first petitioner on 15.03.2003 and executed a promissory note on even date agreeing to repay the same together with interest @ 20% per annum as and when demanded by the first petitioner. The first respondent borrowed Rs.2,00,000/- from the second petitioner on 15.04.2004 under a promissory note agreeing to repay the same with interest @ 18% per annum as and when demanded. Subsequently, the first respondent made part payment of an amount of Rs.10,000/- and endorsed the same on the reverse of the promissory note executed in favour of the second petitioner.

The first respondent borrowed Rs.1,50,000/- from the third

petitioner on 10.09.2003 and executed a promissory note agreeing to repay the same together with interest @ 21% per annum as and when demanded.

It is specifically contended by the petitioners that the first respondent invested the amount borrowed from the petitioners in Shriram Chits and also for payment of chit instalments. The first and second respondents used to purchase bonds in Shriram Chits and used to participate in chit auctions. Both the respondents are having financial dealings since long time. The first respondent is a Financial Advisor to the second respondent. The second respondent used to oblige and set whatever the first respondent advised her. The first respondent was indebted to some other creditors and to avoid the payment of amount due to the petitioners and with a view to delay and defeat the claim of the petitioners, the first respondent executed a gift deed in favour of her son on 08.07.2004 donating the schedule property with a view to defeat and delay the genuine creditors and it is collusive work.

The first respondent executed a sale deed dated 20.08.2004 in favour of the second respondent with an intention to delay and defeat the claim of the petitioners 1 to 3 and the said sale deed is sham, nominal and collusive. Thus, the transfer of whole or part of property in favour of the second respondent amounts to an act of insolvency under Section 6(1)(b) of the Act. Hence, the petitioners sought adjudging the first respondent as insolvent and to annul the transfer covered by sale deed dated 20.08.2004 executed by the first respondent in favour of the second respondent.

The first respondent remained *ex parte*.

The second respondent filed counter denying material allegations, *inter alia*, contending that the petition is not maintainable as the second respondent is not aware about the transaction between the petitioners and the first respondent, called upon the petitioners to put the same to strict proof. She also denied the financial dealings

between the first and second respondents while contending that originally, the property belongs to G.V.Ramana Murthy from whom the son of the first respondent purchased under registered sale deed dated 28.03.2003 and later by registered settlement deed dated 08.07.2004 executed by the son of the first respondent, the first respondent became owner of the property and that the first respondent sold the same to the second respondent by executing a registered sale deed for valuable consideration and thereby, the transaction cannot be said to be sham and nominal, intending to defeat and delay the claim of the genuine creditors.

It is further contended that the first respondent was having debentures worth Rs.10,00,000/- in Shriram Chits as on 20.11.2002 and that the first respondent has got sufficient means to discharge the debts due to the petitioners and thereby, they never committed any act of insolvency and the question of adjudging the first respondent as insolvent and to annul the transfer covered by sale deed dated 20.08.2004 executed by the first respondent in favour of the second respondent does not arise and prayed for dismissal of the petition.

During the enquiry before the trial Court, on behalf of the petitioners, P.Ws.1 to 4 were examined and Exs.A1 to A5 and Exs.X1 and X2 were marked. On behalf of the second respondent, she herself was examined as R.W.1 and no documents were marked.

Upon hearing argument of both the counsel and considering oral and documentary evidence available on record, the Additional Senior Civil Judge at Eluru allowed the Insolvency Petition with costs adjudging the first respondent as insolvent while vesting the petition schedule property on the Official Receiver for administration and to take possession of the schedule property granting one year time for discharge.

Aggrieved by the order and decretal order passed by the Additional Senior Civil Judge at Eluru dated 30.04.2009, the second respondent, B.Nirmala Devi, the transferee of the debtor filed appeal in

A.S.No.71 of 2010 on various grounds.

Upon hearing argument, the learned I Additional District Judge, West Godavari at Eluru, allowed the appeal on 17.04.2013, setting aside the order and decretal order dated 30.04.2009 passed by the Additional Senior Civil Judge at Eluru and dismissed I.P.No.46 of 2005.

Aggrieved by the order and decretal order passed by the I Additional District Judge, West Godavari at Eluru, the petitioners (creditors) in I.P.No.46 of 2004 filed the present appeal challenging the order and decretal order dated 17.04.2013 on various grounds.

The only substantial question of law raised in the grounds of appeal is

“Whether in facts and circumstances of the case, filing of the suit for recovery of debts is a condition precedent under the provisions of the Insolvency Act for the creditors against the debtor under Section 9 of the Provincial Insolvency Act?”

During the hearing, Sri Nimmagadda Satyanarayana, learned counsel for the appellants, contended that dismissal of insolvency petition by the I Additional District Judge, West Godavari District at Eluru, in appeal A.S.No.71 of 2010 is erroneous for the reason that Section 9 of the Act does not contemplate filing of a suit and obtaining a decree to file an insolvency petition before a Court exercising jurisdiction under the Act. In the absence of any such precondition, dismissal of the insolvency petition by the appellate Court is erroneous. However, the order passed by the Additional Senior Civil Judge at Eluru does not warrant interference by the I Additional District Judge, West Godavari at Eluru, since there is no error or perversity in the decretal order passed by the Additional Senior Civil Judge at Eluru but on erroneous appreciation of the facts and law, the appellate Court dismissed the insolvency petition setting aside the order and decretal order passed by the trial Court and prayed to set aside the judgment and decree passed in A.S.No.71 of 2010 and confirm the order passed

by the trial Court in I.P.No.46 of 2005.

Sri Hari Sridhar, learned counsel for the respondents, would contend that C.M.S.A.No.2 of 2004 is not maintainable under Section 75 of the Insolvency Act. It is further contended that when the debtor own and possessed sufficient means to discharge the debt due to the petitioners, the order passed by the trial Court adjudging the debtor as insolvent is erroneous. On this ground also, the order is liable to be set aside. Finally, it is contended that when the first respondent own and possessed sufficient means, the Court cannot adjudge the first respondent as insolvent and prayed to confirm the judgment and decree passed by the appellate Court while setting aside the order and decretal order passed by the trial Court in I.P.No.46 of 2005.

Considering the rival contentions and oral and documentary evidence on record, including the order and decretal order dated 30.04.2009 in I.P.No.46 of 2005 and judgment and decree dated 17.04.2003 in A.S.No.71 of 2010, the points that arises for consideration are

“(1) whether obtaining a decree for recovery of the amount based on the promissory note is a precondition to file a petition under Section 9 of the Insolvency Act and

(2) Whether possessing means to discharge the debt by the first respondent /debtor is a ground to dismiss the Insolvency Petition, if so, whether such a plea is open to the second respondent-transferee of the debtor?

Point No.1: The first contention raised by the learned counsel for the respondents, Sri Hari Sridhar, is that the appeal itself is not maintainable in view of first proviso of Section 75 of the Act. Section 75 deals with appeals but clause (2) of Section 75 says that “any such person aggrieved by any such decision or order of a District Court as is specified in Schedule I, come to or made otherwise than in appeal from an order made by a subordinate Court, may appeal to the High Court or any other ground mentioned in sub-Section (1) of Section 100

CPC. Similarly, sub-Section (2) provides a right of appeal to an aggrieved person against the decision or order of the District Court as is specified in Schedule I. Thus, sub-Section (2) permits a person aggrieved to file an appeal against the order of the District Judge as specified in Schedule I. According to Schedule II read with Section 75(2) of the Act, an appeal lies to the High Court under Section 75(2) against the decision of question of title, property etc., arising in insolvency provision under Section 4, order of dismissing the petition under Section 25 and other provisions. But in the present case, the trial Court adjudged the first respondent as insolvent but the appellate Court dismissed the Insolvency Petition on the ground that the petitioners did not obtain a decree based on promissory note, which is a precondition to file an Insolvency Petition under Section 9 of the Act. Therefore, in view of Section 75(2) read with Schedule I of the Provincial Insolvency Act, the CMSA is maintainable against the decree and judgment passed by the I Additional District Judge, West Godavari at Eluru. Therefore, the contention of the appellant is without any substance and the same is, accordingly, rejected.

The only ground on which the appellate Court dismissed the Insolvency Petition is that the petitioners did not file any suit and obtained a decree and it is a condition precedent to file a petition under Section 9 of the Act. Section 9 of the Act prescribes the preconditions to file insolvency petition, which are as under:-

Conditions on which creditor may petition:- (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:

Provided that where the said period of three months

referred to in Clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens.

(2) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors in the event of the debtor being adjudged insolvent, or give an estimate of the value of the security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

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None of the conditions under Section 9 speaks about filing of a suit and obtaining a decree for filing an insolvency petition and at the same time, Section 2 Clause (1)(a) defines the 'creditor' as "it includes a decree-holder, 'debt' includes a judgment-debt, and 'debtor' includes a judgment-debtor". In view of the definition of the creditor, a person, who lent amount, is also a creditor as defined under Section 2(1)(a) of the Act. The word 'creditor' is much wider than a mere decree-holder and when I turn to Section 9, it is clear and it is not disputed that for the purposes of Section 9(a) to (h) the expression "Creditor" used in that section is used in its wider connotation and would include not only a decree-holder but also an assignee of a decree-holder. Therefore, the person, who advanced money to the first respondent, the petitioners are entitled to initiate proceedings under Section 9 of the Act since obtaining decree against the debtor is not a precondition to adjudge the first respondent as insolvent. Therefore, dismissal of the application on the ground that the petitioners are not the judgment-debtors and failed to obtain any decree by filing a suit is not a ground to dismiss the Insolvency Petition but the first appellate Court on erroneous appreciation of law dismissed the Insolvency Petition, setting aside the order passed by the Additional Senior Civil Judge at Eluru.

Learned counsel for the respondents specifically contended that unless the petitioners proved that the transfer of whole or part of the

property was with an intention to defeat and delay the creditors, the debtor cannot be adjudged in support of it he placed reliance on the judgment of this Court in **Dandamudi Chakradhararao And Another v. Pidikiti Koteswararao And Another**^[1], wherein this Court held that there must be an existing debt in favour of the petitioner/creditor, which is a precondition to adjudge a person as insolvent besides proof of intention of the debtor to delay and defeat the claims of the creditor. He also placed reliance on the judgment reported in **Modadugula Sreeramulu v. Perakam Singayya**^[2], wherein the Division Bench of this Court held as under.

“In this case, the house of Sreeramulu, even according to the value put or it by the first petitioner as P.W.1 is worth much more than the debt on Exhibit A-1 which has been proved and the other debts which had been admitted by Sreeramulu as his genuine debts. The mortgage (Exhibit A-3) is only on a vested remainder of property in which Sreeramulu’s sister has a life interest namely, within a right to enjoy so long as she is alive. The petitioners have failed to prove that the transfer by Exhibit A-3 is calculated to defeat or delay the creditors.

The relevant sections of the Provincial Insolvency Act in the matter are section 6, section 9, section 24 and section 25. Section 6 deals with acts of insolvency. Under section 6(5), if the debtor makes a transfer of his property or of any part thereof with intent to defeat or delay his creditor, he commits an act of insolvency. Under section 6(g), if the debtor given notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts, he also commits an act of insolvency. Section 9(1)(a) is in the following terms:- “Section 9(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.

“Section 24(1) – On the day fixed for the hearing of the petition.....the Court shall require proof of the following matters, namely :- (a) that the creditor or the debtor, as the case may be, is entitled to present the petition : (Section o). (c) that the debtor has committed the act of insolvency alleged against him (section 6).”

Section 25 deals with dismissal of insolvency petition. According to Clause (1) of the section, in the case of a petition presented by a creditor, where the Court is satisfied by the debtor that he is able to pay his debts, or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition. In this case, the condition required in section 9(1)(a) of the Act has been proved on the basis of finding by the learned Additional District Judge. This and other features in the evidence show that the requirement of section 24(1)(a) is fulfilled. The act of insolvency alleged against Sreeramulu by the petitioners came under section 6(b) and section 6(g). Section 6(g) has not been found by the learned Judge to be proved. We also agree with him and find that the requirement of section 6(g) has not been proved. The act of insolvency required under section 6 is also not proved as shown by us above. Therefore, the condition required in section 24(1)(c) has not been fulfilled.”

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The creditor has to prove the act of insolvency so as to enable the Court to exercise jurisdiction under the Insolvency Act to adjudge the debtor as insolvent. In the absence of proof of intention of the debtor, the debtor cannot be adjudged as insolvent and mere transfer of property is not sufficient. There is no quarrel about the law declared by the Division Bench and Single Judge of this Court.

Learned counsel for the second respondent has drawn attention of this Court to various admissions in the evidence of P.W.4, the Manager of Shriram Chits to substantiate the contentions of the second respondent that the debtor has means to pay the debt due to the petitioners and that he had no intention to defeat and delay the creditors. However, learned counsel for the petitioners-appellants drawn the attention of this Court to the observations made in paragraph No.40 of the judgment of the I Additional District Judge at West Godavari, Eluru, wherein the District Judge referred, the evidence of P.W.4, the Executive Director of Shriram Chits. On consideration of the testimony of P.W.4, it is evident that the first respondent invested a sum of Rs.27,84,000/- on various dates during 2001-2002 in the form of debentures with Shriram Chits and he joined

as a subscriber in 31 chits of Shriram Chits Company and in all chits, participated in the auction and became prized subscriber and received prize amount from Shriram Chits, on furnishing bonds as collateral security. As the first respondent became defaulter in payment of subsequent instalments of chits, the bonds were adjusted towards chits amount. Even after adjusting the bonds, the first respondent was still due Rs.19,31,580/-. In view of these admitted facts, the first respondent-debtor was unable to pay the chit instalments after receiving prize amount from Shriram Chits. Mere possessing debentures worth Rs.27,84,000/- is not sufficient to deny the relief of adjudging the first respondent as insolvent in view of the voluminous evidence available on record.

The only contention of the first respondent is that the deposit of debentures is not borne out in the pleadings and it is a subsequent event. Even if it is a subsequent event, unless the plea of the respondent is supported by any pleading, the same cannot be looked into. Similarly, the second respondent also did not raise any contention specifically about possessing debentures worth Rs.27,84,000/- except alleging that he possessed debentures worth Rs.19,00,000/- and odd. In any view of the matter, transfer of movable or immovable property in favour of third parties with a view to delay and defeat the claim of the creditors itself amounts to an act of insolvency. Hence, transfer under the original of Ex.A5 is sufficient to hold that the first respondent-debtor committed an act of insolvency since the circumstances of the case established that the transfer was with an intention to delay and defeat the claim of the creditors but the appellate Court, on erroneous appreciation of facts and law, dismissed the Insolvency Petition. Hence, the finding of the appellate Court is hereby set aside while confirming the order passed by the trial Court.

Point No.2: The major contention of the second respondent is that she is a *bona fide* purchaser for valuable consideration and that when the first respondent possessed sufficient means to discharge the

debt due, the first respondent cannot be adjudged as insolvent in view of Section 25 of the Act. No doubt when the debtor possessed sufficient means, the petition is liable to be dismissed under Section 25 of the Act, if such plea is raised by the debtor. In the present case, the transferee of the debtor raised such plea and it is not legally permissible in view of the judgment reported in **Vemulla Rosaiah v. P.Subrahmanyam**^[3] following the principle laid down by the Apex Court in **Yenumula Malludora v. Peruri Seetharathnam**^[4], wherein the Apex Court held that Section 25 of the Provincial Insolvency Act is in wide terms but it means to give effect to those wide terms so as to consider the jurisdiction to ignore the act of insolvency at least in cases where the debtor continues to be heavily indebted and there is no proof that he is able to pay the debts. Similar view is expressed by this Court in **Vemulla Rosaiah** (3 supra). Hence, by applying the principle laid down in the above judgments, it is difficult to accept the contention of the second respondent as the said plea is not open to her for the first time in the appeal and before this Court in the Second Appeal. Hence, I find that the second respondent-transferee of the debtor is incompetent to raise such contention.

In the judgment reported in **Dandamudi Chakradhararao** (1 supra), Section 25(1) of the Act was discussed but not Section 25(3) of the Act. Similarly, in the earlier judgment of the Division Bench of this Court Section 25(1) of the act was discussed but not Section 25(3) of the Act. Section 25(1) of the Act deals with the satisfaction of the Court that the debtor is in a position to pay his debts or for any other reason sufficient cause, the Court may decline to pass an order adjudging the debtor insolvent. But here, the first respondent-debtor did not contest the matter and did not raise any plea that he is able to discharge the debt due to the petitioners-creditors. Therefore, by applying the principle enunciated in **Vemulla Rosaiah's** case (3 supra), I am not inclined to accept the contention of the second respondent. Hence, I

find no substance in the contention raised by the learned counsel for the second respondent.

Turning to annulment of the transaction covered by Ex.A5, the order passed by the trial Court is *ex facie* erroneous for the reason that while adjudging the debtor as insolvent, the transaction cannot be annulled. The trial Court, while adjudging the first respondent as insolvent, annulled the transaction covered by Ex.A5. The same was set aside by the appellate Court but on different grounds.

Similar question came up before this Court in **Tadikamalla Venkata Ramana Kishore & Anr. V. Padarthi Santhakumari & Ors**^[5]. To decide the real controversy between the parties, I feel paragraph Nos.18, 19, 20, 21, 22, 23, 24 and 25 in the above judgment have to be gone through.

“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.”

This Court held that the transaction covered by any registered document amounts to an act of insolvency under Section 6(1)(b) of the Act. It cannot be annulled except on an application filed under Sections 53 and 54 of the Act after compliance of procedure prescribed under Sections 45 to 50 and 54-A of the Act.

The similar principle is applicable to the present facts of the case. I hold that the annulment of the transaction covered by Ex.A5 by the trial Court is erroneous and illegal and the same is set aside while allowing the appeal in part restoring the order of the trial Court to the extent of adjudging the first respondent-debtor as insolvent. However,

the petitioners are at liberty to file an appropriate application for annulment of the transaction covered by original of Ex.A5 subject to compliance of various provisions referred in the earlier paragraphs. Accordingly, the point is decided.

In the result, the appeal is allowed in part restoring the order of the Additional Senior Civil Judge at Eluru in I.P.No.46 of 2005 to the extent of adjudging the first respondent-debtor as insolvent while setting aside the order of annulment of the transaction covered by original of Ex.A5. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

6th October 2015
RRB

[\[1\]](#) 1996(3) ALT 34

[\[2\]](#) Andhra Weekly Reporter 1967-2-329

[\[3\]](#) AIR 1989 AP 204

[\[4\]](#) AIR 1966 SC 918

[\[5\]](#) 2015(2) L.S. 361