

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
CIVIL MISCELLANEOUS SECOND APPEAL No.32 of 2011

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JUDGMENT:

_____ The 4th respondent in I.P.No.7 of 2004 preferred this appeal challenging the judgment and decree in A.S.No.126 of 2009, dated 09.03.2011 on the file of XI Additional District and Sessions Judge (Fast Track Court), Tenali, Guntur District.

2. For convenience of reference, the ranks given to the parties in I.P.No.7 of 2004 before the Additional Senior Civil Judge, Tenali will be adopted throughout the judgment.

3. The first petitioner, Parchuri Gopi Krishna, and second petitioner filed a petition under Section 9 of the Provincial Insolvency Act, 1920 (for short, 'the Act') to adjudge the first respondent, Kurra Subrahmanyam as insolvent and pass an order to vest the schedule property on the Official Receiver for administration alleging that the first respondent borrowed a sum of Rs.80,000/- from the first petitioner on 06.01.2003 for his family and agricultural expenses agreeing to repay the same with interest at 18% (compound interest) with yearly rests and executed a promissory note in his favour. Subsequently, the first respondent borrowed another sum of Rs.85,000/- from the second petitioner on 14.02.2003 for his family and agricultural expenses agreeing to repay the same together with interest at 18% (compound interest) with yearly rests, and executed a promissory note on the even date. Despite demands, the first respondent did not repay the debt due to the petitioners. The first respondent with an intention to delay and defeat the claims of the creditors executed gift deeds dated 26.06.2003 in favour of respondent Nos.2 and 3, who are the daughters of the first respondent, and also executed a registered sale deed in favour of the fourth respondent in collusion with the fourth respondent to avoid

payment of the debt due to the petitioners. Therefore, the transfer of immovable property under both gift deeds and sale deed is only to delay and defeat the claims of the creditors, it amount to an act of insolvency. Hence, requested to adjudge the first respondent as insolvent granting consequential reliefs.

4. The first respondent remained *ex parte*. Respondent Nos.2 and 3 filed their counter. The fourth respondent filed his separate counter.

5. The contentions of respondent Nos.2 and 3 needs no consideration in this appeal for the reason that they did not file any appeal against the adverse findings recorded against them and the findings recorded against them attained finality.

6. The fourth respondent filed separate counter contending that respondent Nos.1 to 3 did not transfer the property with an intention to delay and defeat the claims of the creditors and that the sale was for Rs.2,00,000/- and out of sale consideration of Rs.2,00,000/-, Rs.1,89,800/- was paid to discharge the debts and balance of Rs.10,200/- was paid to the first respondent. Thus, the sale was only to discharge the debts due by the first respondent to various creditors.

7. It is further contended that the first respondent own house and Ac.4.00 of agricultural land, which was converted into prawn tanks, rearing prawn for the last 20 years. The total property own and possessed by the first respondent is worth about Rs.10,00,000/-. Finally, it is contended that the claim of the petitioners is barred and prayed to dismiss the petition.

8. During the course of enquiry, PWs.1 and 2 were examined and marked Exs.P.1 to P.5. On behalf of the respondents, RWs.1 and 2 were examined and marked Exs.R.1 to R.9.

9. The trial Court upon hearing argument of both the counsel and considering oral and documentary evidence on record, adjudged the

first respondent as insolvent, vesting the property on the Official Receiver for general administration.

10. Aggrieved by the order and decretal order passed by the Additional Senior Civil Judge, Tenali in I.P.No.7 of 2004, the fourth respondent alone filed A.S.No.126 of 2009 and also filed an application I.A.No.529 of 2010 under Order XLI Rule 27 of C.P.C. to receive additional evidence on various grounds.

11. The appellate Court upon hearing the argument of both the counsel, dismissed the appeal confirming the order passed by the Additional Senior Civil Judge, Tenali. Thus, concurrent findings were recorded by both the trial Court and appellate Court and now the concurrent findings of both the trial Court and appellate Court are under challenge in this appeal.

12. The fourth respondent raised several contentions in the grounds of appeal and the following two substantial questions of law are framed in the grounds of appeal.

(A) Whether the Courts below are right in not excluding the property of the appellant under Ex.P1/Ex.R1 as the respondents 3, 4 and 5 herein has sufficient properties to meet the liability of the respondents 1 and 2 herein under Ex.P2 and Ex.P3 which are gift deeds executed by the 3rd respondent herein in favour of the 4th and 5th respondents herein?

(B) Whether the Courts below are correct in disregarding the claim and right to the appellant in bonafidely purchasing the property under Ex.P1/Ex.R1 for a valid consideration?

13. Except these two substantial questions of law, no other substantial question of law was urged before this Court even during arguments. In view of the substantial questions of law mentioned in para No.10 of the grounds of appeal, it is the duty of this Court to decide the substantial questions of law raised in para No.10 of the

grounds of appeal.

14. During the course of argument, Sri Subba Rao Korrapati, learned counsel for the fourth respondent, contended that when the sale of property under Ex.P.1 equivalent to Ex.R.1 is for discharging the debts, such act would not amount to act of insolvency under Section 6 (1) (b) of the Act and that this Court has got power to frame a substantial question of law modifying the substantial questions of law raised in the grounds of appeal. No doubt, this Court can frame any substantial question of law depending upon the facts and grounds urged in the grounds of appeal, but this Court cannot make out a separate substantial question of law, which is not raised either in the grounds of appeal or before the trial Court. Therefore, I would like to refrain myself to decide the substantial questions of law raised in ground No.10 of the grounds of appeal.

Substantial Question of Law - (A):

15. The first and foremost contention raised before this Court in the substantial question of law is that when the first respondent own and possessed sufficient property to meet the liability of petitioner Nos.1 and 2, the first respondent cannot be adjudged as insolvent. Undoubtedly, sale of property under Ex.P.1 is a transfer even under Section 2(f) of the Act and there is no dispute regarding amount due to the petitioners by the first respondent, since he did not contest the matter denying his liability to pay any amount to petitioner Nos.1 and 2. However, the fourth respondent denied the liability, but he is not the competent person to dispute the liability of the first respondent.

16. The only question to be decided by this Court is that whether the fourth respondent, transferee of the debtor, is competent to raise a plea under Section 25(3) of the Act to dismiss the insolvency petition or not?

17. This question is no more *res integra* in view of the law laid down

by the Hon'ble Apex Court in **Y.Malludore vs. P.Seetharathnam**^[1], wherein the Hon'ble Apex Court ruled as follows:

"In addition, the Court has been given a discretion to dismiss the petition if it is satisfied that there is other sufficient cause for not making the order against the debtor. The last clause of the section need not necessarily be read ejusdem generis with the previous ones, but even so there can be no sufficient cause if after an act of insolvency is established, the debtor is unable to pay his debts. The discretion to dismiss the petition can only be exercised under very different circumstances. What those cases would be, if is neither easy nor necessary to specify, but examples of sufficient cause are to be found when the petition is malicious and has been made for some collateral or inequitable purpose, or where the petitioning creditor having refused tender of money, such as putting pressure upon the debtor or for extorting money from him fraudulently and maliciously filed the application. An order is sometimes not made whereby the receiving order the only asset of the debtor would be destroyed such as a life interest, which would cease on his bankruptcy. Cases have also occurred where a receiving order was not made because there were no assets and it would have been a waste of time and money to make a receiving order against the debtor. These examples merely illustrate the grounds on which orders are generally made in the exercise of the discretion conferred by the last clause of Section 25."

18. A similar case came up before this court in **Vemulla Rosaiah and another vs. P.Subramanyam and another**^[2] and **Harnam Singh vs. Gopal Das**^[3], wherein the Court held that, the ground that the debtor is able to pay the debt is not open to the debtor's transferee and such contention can be raised by the debtor alone. Like wise, in the judgment in **Gadi Bhikaji vs. Govindrao Bapuji**^[4], the Nagpur High Court held that the petition cannot be dismissed, when the debtor did not contest the matter under Section 25 of the Act. In the first judgment of this Court, the second respondent-debtor remained *ex parte* and the creditor – first respondent alone contested the matter and raised a ground that the debtor is able to discharge the debt due to

the first respondent – creditor. But, this Court declined to set aside the order holding that it is not open to the debtor's transferee to raise such a plea. Therefore, on this ground, the plea of the transferee of the debtor is unsustainable.

19. Under Section 25 of the Act, the Court can dismiss a petition for any other sufficient reason. What is "sufficient reason" is not explained under Section 25 of the Act, but in a judgment of the Supreme Court in **Y.Malludore's case** (supra 1) gave certain illustrations under what circumstances the Court can dismiss the insolvency petition by exercising power under Section 25 of the Act. But these illustrations are elliptic, not exhaustive.

20. In view of the law declared by the Division Bench and the Hon'ble Apex Court, the plea that the first respondent is able to discharge the debt due to the creditors is not open to transferee of the debtor. Hence, on this ground, the judgment under challenge cannot be set aside. Accordingly, the first substantial question of law is answered.

Substantial Question of Law - (B):

21. The second contention raised in the substantial question of law is that the fourth respondent is a *bona fide* purchaser for a valid consideration under Ex.P.1/Ex.R.1. No doubt, as seen from the contents of Ex.P.1/Ex.R.1, the fourth respondent discharged the debt due to various creditors to a tune of Rs.1,89,800/- and paid balance of consideration to the first respondent. On the strength of such payment, it is contended that the fourth respondent is a *bona fide* purchaser for a valid consideration. Such plea is always open to the purchaser in a petition filed under Section 53 or 54 of the Act after proof of debts before the Official Receiver during general administration as required under chapter- 3 of the Act commencing from Sections 45 to 49 of the Act or in an application filed by the creditor himself after following

necessary procedure prescribed under Section 54A of the Act. But, at this stage, it is not open to the transferee of the debtor to raise a specific contention that he is a *bona fide* purchaser for a valuable consideration and such *bona fide* transfers are protected under Section 55 of the Act. The limited scope of enquiry in a petition filed under Section 9 of the Act is to enquire whether the debtor committed an act of insolvency or not? If relief of annulling the transaction covered by Ex.P.1 is sought for, then the question of *bona fides* in the claim of the fourth respondent is required to be enquired into, but such enquiry cannot be conducted simultaneously in a petition filed for adjudging the debtor as an insolvent. Annulment of transaction would arise only after proof of debts under chapter-3 of the Act in view of the specific language used under Sections 52 to 53 of the Act. Hence, leaving it open to the fourth respondent to raise a plea that he is a *bona fide* purchaser in a petition filed under Sections 53, 54 or 4 of the Act, the substantial question of law is decided against the fourth respondent.

22. In view of my foregoing discussion, I find no grounds warranting interference with the findings of the trial Court and the appellate Court. Hence, the judgment and decree of the appellate Court is hereby confirmed and the appeal deserves to be dismissed.

23. In the result, the Civil Miscellaneous Second Appeal is dismissed, confirming the judgment and decree of the appellate Court in A.S.No.126 of 2009 on the file of XI Additional District and Sessions Judge (Fast Track Court), Tenali, Guntur District, with a liberty to the fourth respondent to raise a contention that he is a *bona fide* purchaser in any petitions filed under Sections 52 or 53 or 54 or Section 4 of the Act, but without costs, in the circumstances.

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

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M.SATYANARAYANA MURTHY, J

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Date: 26.08.2015

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[\[1\]](#) AIR 1966 SC 918

[\[2\]](#) AIR 1989 Andhra Pradesh 204

[\[3\]](#) AIR 1929 Lahore 79 (Ref.)

[\[4\]](#) AIR 1937 Nagpur 127