

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.2690 OF 2016

ORDER:

This revision petition under Article 227 of the Constitution of India is filed against the order dated 18.04.2016 passed by the Additional Judge, City Small Causes Court, Hyderabad in I.A.No.87 of 2011 in I.P.No.61 of 2008, whereby the petition filed by the revision petitioner – B.Yadagiri under Section 4, 53 and 54 of the Provincial Insolvency Act (for short 'the Act') read with Section 151 of the Code of Civil Procedure (for short 'CPC') was dismissed, raising certain objections while declining to enquire into the dispute.

2. The petitioner herein was the 15th respondent in the insolvency petition filed seeking annulment of sale transaction pertaining to the mulgi bearing No.G-7, Ground Floor, with mezzanine floor in premises bearing No.15-8-1 to 3 admeasuring 100 sq. feet at Tola Ram Buildings with an undivided share of 5 sq. yards situated at Siddiamber Bazar, Gold Market, Hyderabad, which is marked as Ex.B.6 and which is item No.7 of the 'B' schedule property alleging that the 1st respondent filed insolvency petition to adjudge him as insolvent and he possess sufficient amounts and moveable and immovable properties even in the name of benami holders and carrying on business in purchase and sale of Gold Biscuits and silver in the Gold Market at Siddiamber Bazar, Hyderabad for the last several years. Respondent No.1 suppressed moveable and immovable properties and disclosed only six items of common movable properties in Schedule – B to defeat

the claims of creditors. The petitioner herein on enquiry came to know that respondent No.1 got petition schedule property by virtue of registered sale deed, document No.1211 of 2007, dated 18.05.2007 registered in SRO, Dood Bowli, Hyderabad, which is marked as Ex.B.1 and further the respondent No.1 has fraudulently and nominally executed sale deed on 21.11.2008 and transferred the petition schedule property in the name of respondent No.11, which is marked as Ex.B.6. The said sale deed is collusive, sham, nominal, fictitious etc. and failed to annul the transaction under Ex.B.6.

3. The 1st respondent filed counter denying material allegations while contending that this petition is filed to harass the insolvency petitioner/1st respondent and that there are no merits.

4. Respondents 19, 20, 22 filed separate counters raising several contentions, which are not required for deciding the present petition.

5. At the stage of hearing an objection was taken by this Court about the maintainability of revision petition under Article 227 of the Constitution of India when a substantive appeal is provided under Section 75 of the Act. Learned counsel for the petitioner contended that the order under challenge is in interlocutory application filed under Section 4, 53 and 54 of the Act read with Section 151 CPC and a similar question was decided by this Court in **Pinnamashetty Kavitha v. Gajelli Gangadhar**¹ where this Court decided the revision filed against the order passed in a petition filed under Section 4 of the Act without examining about

¹ AIR 2007 AP 239

maintainability of revision petition when substantive right of appeal is available and no law was declared in the judgment regarding maintainability of revision or appeal against the order passed in a petition filed under Section 4, 53 and 54 of the Act. Therefore, the principle laid down in the above judgment has no application to the present facts of the case and on that ground the revision cannot be entertained.

6. Learned counsel for the revision petitioner further drawn the attention of this Court to the case of **Surya Dev Rai v. Ram Chander Rai and others**², wherein the supreme Court in paras 8 and 39 held as follows:

“The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for

² AIR 2003 SC 3044(1)

exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where 'a stitch in time would save nine'. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

7. The order under challenge before this Court was an order passed in the interlocutory application, which was challenged before the High Court under Section 115 C.P.C by filing revision and the High Court dismissed the said revision and then the matter challenged before the Supreme Court and the Supreme Court held that the High Court can exercise the supervisory jurisdiction over the Subordinate Courts and Tribunals in the State within the jurisdiction of the High Court. There is no dispute regarding the law declared in the above judgment that this Court can exercise the supervisory power under Article 227 of the Constitution of India sparingly where the subordinate Court or Tribunal failed to exercise its jurisdiction, which is vested on it or exercised, based on extraneous material or irregular manner. But in other cases, the Court cannot interfere with the order passed by the Subordinate Court as held by the Supreme Court.

8. The order under challenge before this Court is an order passed by the Additional Judge, City Small Causes Court, Hyderabad exercising jurisdiction under the Provincial Insolvency Act, 1920 against which an appeal under Section 75 of the Act is provided and which reads as follows:

(1) The debtor, any creditor, the receiver or any other person aggrieved by a decision come to or an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court, may appeal to the District Court, and the order of the District Court upon such appeal shall be final: Provided that the High Court, for the purposes of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit: Provided further, that any such person aggrieved by a decision of the District Court on appeal from a decision of a subordinate Court under section 4 may appeal to the High Court on any of the grounds mentioned in sub-section (1) of section 100 of the Code of Civil Procedure, 1908 (5 of 1908).

(2) 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.

(3) Any such person aggrieved by any other order made by a District Court otherwise than in appeal from an order made by a subordinate Court may appeal to the High Court by leave of the District Court or of the High Court.

(4) The periods of limitation for appeals to the District Court and to the High Court under this section shall be thirty days and ninety days, respectively. State Amendments Andhra Pradesh.—In section 75, after sub-section (3), insert the following sub-section, namely:— “(3A) Any such person aggrieved by any such decision or order may appeal—

(i) to the Chief Judge, City Small Causes Court, where such decision or order is made by an additional Judge of that Court;

(ii) to the High Court where such decision or order is made by the Chief Judge of the City Small Cause Court.” [Vide Andhra

Pradesh Act 23 of 1965, sec. 10 (w.e.f. 1-6-1966).] Goa, Daman and Diu.—In section 75, for the words ‘High Court’ (whether in singular or plural) wherever occurring, substitute the words “Judicial Commissioner’s Court”. [Vide Goa, Daman and Diu Act 1 of 1968, sec. 3(2).] COMMENTS Appeal against the order Where with the permission of the Court, bank filed a suit against the insolvent, appeal can be made against its order under section 75; *State Bank of India v. Madan Lal Mehta*, 43 (1991) DLT 358. Where the transfer made by the insolvent was held to be fraudulent one by the Insolvency Court, the transferee can file an appeal as he is the “aggrieved person/ party”; *Hiralal v. Firm S.S.G. Bangle Merchants*, AIR 1961 MP 15.

9. The petition was filed aggrieved by the said decision or order of District Court dealt with only under Sections 4, 53 and 54 of the Act and invited a decision of the Additional Judge, who is exercising jurisdiction under the Act. Therefore, such an order passed by the Court exercising jurisdiction under the Act is covered by Section 75(1) of the Act and appeal alone lies and not a revision under Article 227 of the Constitution of India.

10. A similar question came up before this Court in **Angadi Santhanna and another v. G.Nagabhushanam and others**³ where a third party filed petition under Order 1 Rule 10 CPC to come on record in a petition filed under the Act, to adjudge the party as insolvent under the Act, the trial Court dismissed the petition and aggrieved by the same, revision petition under Section 115 CPC was filed. But the Court held that such an order is appealable under Section 75(1) of the Act and not revision under Section 115 CPC. This Court also followed the judgment of the

³ 1992(3) ALT 487

Madras High Court in **Pedda Iswara Reddy, In Re**⁴ and held that the only question to be decided is whether the orders in question were made and decisions come to by the Judge in the exercise of insolvency jurisdiction and that they are such orders and they definitely conclude particular dispute between the parties, namely, whether the alienees were to be made parties or not and fall within the words 'a decision come to or an order made' within the meaning of Section 75(1) of the Act and that the revisions against those orders to the High Court would be incompetent inasmuch as appeals lie to the District Court.

11. In view of the law declared by the Division Bench of Madras High Court followed by this Court in the above judgment in **Angadi Santhanna's** case supra, I find that the revision petition under Article 227 of the Constitution of India is not maintainable and regular appeal under Section 75(1) of the Act lies and hence, the revision is liable to be dismissed.

12. Accordingly, the revision petition is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the revision shall stand closed.

M.SATYANARAYANA MURTHY,J

08.09.2016
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⁴ 1948(1)MLJ 310