

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.4708 OF 2017

ORDER:

1 This petition is filed under Article 227 of the Constitution of India assailing the order dated 31.10.2016 passed in CFR No.2426 of 2016 in unregistered I.P.No.----- of 2016 on the file of the Court of the Principal Senior Civil Judge, Mancherial.

2 Heard the learned counsel for the petitioner and perused the record.

3 A perusal of the record reveals that the petitioner filed I.P.No.--- of 2016 on the file of the Court of the Principal Senior Civil Judge, Mancherial. The trial court returned the I.P bundle with the following observations:

“Very recently, the Insolvency and Bankruptcy (31 of 2016) Code 2016 came into force with effect from 28.05.2016. Under Section 243 (1) of the Code, the Provisional Insolvency Act is repealed. When once the Act itself is repealed, this Court cannot entertain any petition under Sec.10 of the Act. Hence, the petition is returned for presentation before proper forum.”

4 The learned counsel for the petitioner submitted that the Central Government has not issued notification as on the date of filing of the petition under Insolvency and Bankruptcy Code 2016. To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this Court to the Common Orders of a Division Bench of this Court passed in W.P.No.41022 of 2016 and Batch dated 18.09.2017 wherein the Division Bench held as follows:

Sri K. Lakshman, learned Assistant Solicitor General, would submit, based on the instructions received from the Executive Director, Insolvency and Bankruptcy Board of India, dated 14.9.2017, that Sections 179(1) and Section 243 of the Code have not been brought into force; the Central Government (Ministry of Corporate Affairs) has not issued a notification under Sub-section (3) of Section 1 of the Code to bring these Sections into force; therefore, these provisions are not in force; the Finance Ministry issued a press release on 28.8.2017 clarifying that Section 243 of the

Code, which provides for the repeal of the Provincial Insolvency Act, 1920 and the Presidency Towns Insolvency Act, 1909, have not been notified till date; Section 243 which provides for repeal of the said enactments, and the provisions relating to insolvency resolution and bankruptcy for individuals and partnerships as contained in Part-III of the Code, have not been notified till date; and stakeholders, who intend to pursue their insolvency cases, may approach the appropriate authority/Court under the existing enactments, instead of approaching the Debts Recovery Tribunals. A copy of the press release of the Government of India dated 28.8.2017 has also been placed for our perusal.

As Section 243(1) of the Code has not been brought into force, by way of a notification to be issued by the Government of India under Section 1(3) of the Code, it is clear that neither the Presidency Towns Insolvency Act, 1909 nor the Provincial Insolvency Act, 1920 have been repealed; and both these enactments continue to remain in force. Further, as Section 179(1) of the Code has also not been brought into force, the Debts Recovery Tribunal is justified in not entertaining such applications.

We consider it appropriate, therefore, to direct that the adjudicating authorities (Senior Civil Judges concerned) under the Provincial Insolvency Act, 1920 shall entertain the insolvency applications in as much as the provisions of the said Act continues to remain in force, and does not stand repealed till date.

5 The facts of the case on hand are almost identical to the facts of the case in W.P.No.41022 of 2016 and Batch. Having regard to the facts and circumstances of the case and also the principle enunciated in the judgment of this Court, referred to above, I am of the considered view that this is a fit case to allow the revision.

6 In the result, the Civil Revision Petition is allowed, setting aside the order dated 31.10.2016 passed in CFR No.2426 of 2016 in unregistered I.P.No.----- of 2016 on the file of the Court of the Principal Senior Civil Judge, Mancherial. The learned Principal Senior Civil Judge, Mancherial is hereby directed to number the I.P.-- ----- 2016, if it is in accordance with law. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

7 Registry is directed to return the original bundle to the learned counsel for the petitioner under proper acknowledgement.

T.SUNIL CHOWDARY, J

Date: September 17, 2018

Kvsn

