M. Muni Reddy Vs. M. Muni Reddy

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Court : Chennai

Decided On : Jan-31-1941

Reported in : AIR1941Mad434; (1941)1MLJ499

Appellant : M. Muni Reddy

Respondent : M. Muni Reddy

Judgement :

King, J.

1. These appeals involve the interpretation of certain sections of the Madras Debt Conciliation Act. The appellant is a debtor who made an application under the Act. He had ten creditors and of these ten, eight came to an amicable settlement with him, the eight representing more than one half of the total indebtedness of the appellant. Under Section 14 therefore the settlement was reduced to writing. The remaining two who refused to agree to the settlement already held decrees as evidence of the debts due to them from the appellant. A certificate was given to the debtor under Section 18. The recalcitrant creditors proceeded to execute their decrees and the question now is whether they are entitled to execute their decrees against the whole of the assets of the appellant, which amount to Rs. 5,125, standing to his credit in the Co-operative Central Bank, or whether they are to be confined to such portions of those assets as have not been earmarked by the settlement under Section 14 for the benefit of those creditors who agreed to the

settlement. The learned District Judge has examined Section 18 of the Act and pointed out that it does not definitely deal with the situation now before us.

2. The effect of granting to the debtor a certificate that creditors have unreasonably refused to come to an amicable settlement with him are set out in Sub-sections

(2) and

(3) of Section

18. They deal with the refusal by the court to grant costs to any such creditor who afterwards sues for his debt or to grant any interest in excess of simple interest at six per cent. and with a restriction against the rights of such a creditor, when he has obtained a decree after the settlement, of proceeding against any of the assets set apart in the settlement until those creditors who agreed to the settlement have been fully satisfied. As the learned District Judge has pointed out, nothing is said in Section 18 about the position of a creditor who at the time of the settlement to which he refused to agree has already obtained a decree. It is argued in appeal that it was unnecessary to make any such provision in Section 18, as the effect of Sub-section

(2) of Section 14 was to constitute a charge in favour of such property as is earmarked in the settlement. That sub-section enacts that an agreement made under Sub-section

(1) shall within thirty days from the date of the making (hereof, be registered under the Registration Act and it shall then take effect as if it were a decree of a Civil Court and be executable as such. Of course the agreement definitely prescribes what assets of the debtor shall be available for the creditors, but it does not seem to me that that is enough to constitute a charge which is to be binding upon all the world and in particular upon the non-consenting creditors who have already obtained decrees. If that were so, I feel sure that it would have been clearly expressed in the Act itself and not left to deduction from arguments. The very fact that Section 18 does deal with certain contingencies and not with others seems to

me to be an indication that the contingencies not dealt with were deliberately excluded from the effect of the section. It would have been easy for the legislature to have enacted that where a Debt Conciliation Board was dealing with debts due to several creditors and was of the opinion that the scheme proposed by the debtor was a reasonable one which all the creditors ought to accept, then if a majority of the creditors accepted it, the scheme should be binding upon all the creditors. There is a provision of this nature, for instance, in Section 38

(2) of the Provincial Insolvency Act and the omission of any such provision in the Debt Conciliation Act is a very strong indication that those creditors who do not consent to the settlement are not to be adversely affected by their failure to consent in any other way than that laid down explicitly by the Act itself. I am accordingly of opinion that the learned District Judge has rightly held that the Act imposes no obstacle against the execution petitions of the respondents.

3. These appeals therefore fail and must be dismissed with costs.

4. Leave to appeal is refused.