

In Re: Malavaraya Padayachi

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Court : Chennai

Decided On : Aug-21-1936

Reported in : AIR1937Mad151; (1936)71MLJ809

Appellant : In Re: Malavaraya Padayachi

Judgement :

Stodart, J.

1. The petition arises in insolvency.
2. The chief question for consideration is the scope of Section 68 of the Provincial Insolvency Act.
2. Petitioner had a mortgage from the insolvent. It was annulled by the Court under Section 54(1) of the Provincial Insolvency Act. In the same proceedings the Court at the instance of the Receiver considered the question whether the mortgage should be annulled under Section 53 as being not supported by consideration. The Court decided this in favour of the petitioner holding that the mortgage debt was true.
3. The petitioner then filed proof of the debt before the Official Receiver relying on this finding in his favour. The Official Receiver it appears declared that he would not admit the debt to the schedule without further enquiry. Against this declaration of the Official Receiver the petitioner applied to the Insolvency Court contending

that the Official Receiver was 'bound to accept proof of the debt and to admit it to schedule. The Insolvency Court allowed the petition. The petitioning creditors then appealed and the District Judge held first that the Official Receiver was entitled to hold further enquiry and secondly that the' petition was premature. On the first point, namely, whether the Official Receiver was bound to accept as final the decision in the annulment petition, it is possible that new information may have come to the Official Receiver since that petition was tried. I do not say that any such new information has been obtained in this case. All I do say is it is possible that the Official Receiver has acquired further information as to the validity of the debt or that when the fact is known that this petitioner is proving his debt other creditors who knew nothing about the annulment proceedings may come forward to attack the debt. I am not prepared therefore to say that the Official Receiver was acting ultra vires in posting petitioner's application for further enquiry though of course there would have been nothing wrong and., perhaps it would have been better if he had admitted the debt and put the onus of getting it expunged from the schedule on the other creditors. Whatever the force of this reasoning I think however that the petition must fail on the ground that it is premature. It appears to me that the Official Receiver should not in any way be fettered in the course of making enquiries into the validity of debt of which proofs are tendered. I do not think that the act or decision indicated in Section 68 applies to some step taken in the course of such an enquiry. Let the Official Receiver decide that the debt is or is not to be admitted to the schedule. Then the party aggrieved has his remedy. For all we know in this case the decision of the Official Receiver may be that the finding in the annulment proceedings is binding on him or that until it is shown that fresh evidence of a very cogent nature has been discovered he is not prepared to re-open the matter. But I do think the Official Receiver must be given an opportunity of considering the case and coming to a decision; and that till ht does so petitioner has no grievance and is not entitled to make an application under Section 68. It is argued by learned Counsel that petitioner is aggrieved because he has to produce witnesses and so on. But there does not appear to be any need for him to adduce any further evidence till he knows on what new grounds his mortgage debt is being attacked.

4. I dismiss this petition.

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