

Pulli Goundan Vs. Kumarasami Goundan and ors.

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Court : Chennai

Decided On : Sep-03-1931

Reported in : (1931)61MLJ714

Appellant : Pulli Goundan

Respondent : Kumarasami Goundan and ors.

Judgement :

Madhavan Nair, J.

1. The purchaser of the properties from the Official Receiver of one Karuppa Goundan's estate is the petitioner before us. In I.A. No. 208 of 1928 one of the creditors filed an application before the Subordinate Judge of Coimbatore under Section 68 of the Provincial Insolvency Act to set aside the sale. This application was not pressed and was dismissed. Another creditor took this order in appeal before the learned District Judge under Section 75, Clause (1) of the Act and the District Judge ordered that the application should be restored to file and enquired into by the Subordinate Judge. This Court directed the District Judge himself to go into the merits of the application and submit findings on two questions, Viz., (1) whether or no the withdrawal of the petition under Section 68 was collusive, and (2) whether the appeal under Section 75 of the Act to the District Court was bona fide and not merely in the insolvent's interest. The District Judge has now submitted his findings that the withdrawal was collusive and that the appeal under

Section 75 was a bona fide appeal. The correctness of these findings has not been challenged before us.

2. What is argued on behalf of the appellant is that the appeal to the Lower Appellate Court by the creditor who filed the appeal was incompetent, inasmuch as he was not a party to the application under Section 68 filed before the Subordinate Judge and that since he was a stranger to that application he was not competent to prefer the appeal under Section 75. This argument was pressed before the learned District Judge also. He overruled the argument. The question has to be decided with reference to the terms of Section 75, Clause (1) of the Provincial Insolvency Act which are as follows:

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.

3. The terms of the section are very wide. Under this section any aggrieved person may prefer an appeal against an order passed by the Judge in Insolvency. It is not contended that the creditor who preferred the appeal before the District Judge having regard to the facts and the findings is not an 'aggrieved person' within the meaning of the term, the only contention being, as we have said, that he was a stranger to the proceedings. In our opinion though the creditor who preferred the appeal was not a party to the proceedings, still having regard to the fact that he is aggrieved by the order appealed against, he would come within the terms of Section 75 and would be entitled to prefer the appeal.

4. Section 8, Clause (2) of the Presidency Towns Insolvency Act gives a right to 'any person aggrieved' to prefer an appeal against an order passed by the Judge in Insolvency. In this respect the language of that section is similar to the language used in Section 75 of the Provincial Insolvency Act. In a case in which that section had to be considered it was pointed out by the learned Judges of the Calcutta High Court in *Sarat Kumar Ray v. Nabin Chandra Ram Chandra Shaha* I.L.R. (1928) 56 C. 667 that the permission given to a person who is not a party to an order to prefer an appeal on the ground that he is an aggrieved person is a peculiarity of

the Insolvency Act, inasmuch as proceedings in bankruptcy will affect not only parties thereto but also other people--see also the observations in Chowdappa Gounder v. Kathaperumal Pillai I.L.R. (1926) 49 M. 794 : 50 M.L.J. 602.

5. We have no doubt that under Section 75, Clause (1) of the Provincial Insolvency Act the 1st respondent in the present case was competent to prefer the appeal to the Lower Appellate Court. In these circumstances we dismiss the Revision Petition with costs.

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