

C.D. Desikachari Vs. the Official Receiver and ors.

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Court : Chennai

Decided On : Jul-03-1942

Reported in : AIR1943Mad26; (1942)2MLJ714

Appellant : C.D. Desikachari

Respondent : The Official Receiver and ors.

Judgement :

King, J.

1. This is an extraordinary case. The appellant on his own petition was adjudicated an insolvent in December, 1930. In July, 1932, he was granted an absolute order of discharge and the order shows that this was granted for two reasons--(1) because there was no mala fide conduct on the part of the insolvent and (2) because no creditor had proved his debt before the Official Receiver and therefore no one was entitled to oppose his petition for an order of absolute discharge. At the time of the insolvent's discharge apparently the insolvent was in possession of a number of acres of wet and dry lands and this property was vested in the Official Receiver. Naturally when the order of discharge was granted the Official Receiver had done nothing in regard to the disposal of this property as there were no creditors properly before him. More than 7 years later one of the Official Receiver's creditors applied that the insolvent's property should be sold and the learned District Judge of Chingleput has ordered that the property can be sold at the

instance of this creditor by the Official Receiver. It is clear that if such an order can be justified, it amounts to a complete frustration of the intention of the Insolvency Law. The whole purpose of the Insolvency Act is that proceedings in insolvency shall be dealt with as expeditiously as possible, that the creditors shall be satisfied as expeditiously as possible from the property of the insolvent, and that the insolvent shall then be free to start life again unburdened by his debts. The situation in 1932 clearly was that--for whatever reason it is impossible now to say--none of the creditors of the insolvent took the slightest interest in the insolvency proceedings. There must have been plenty of time for them to prove their claims, but they did not care to do so. As the learned Subordinate Judge in 1932 has made special reference to this fact there is good reason to assume that although he was aware that there was property belonging to the insolvent he held that the administration of that property had come almost automatically to an end because none of the creditors took any interest in it. The present contention on behalf of the creditor at whose instance the Official Receiver was ordered to sell the property amounts to this: that he can proceed at any time he pleases against the insolvent's property no matter how many years he may have waited after the insolvency proceedings began before he attempted to prove his debt. This is a position of which no Court can possibly approve.

2. No doubt it is argued that the granting of an absolute order of discharge does not necessarily put an end to the administration of the insolvent's property. There is nothing to prevent the Court granting an absolute order of discharge when it has been satisfied for instance, that the insolvent had placed all his property within the control of the Official Receiver so that from his - insolvent's--point of view nothing more remains to be done. We think that although Section 37 of the Act does not in terms apply to the circumstances of this case, the principle which is embodied in that section should apply. It is clear that when an adjudication is annulled, it is for the Court to decide whether the property should continue to vest in the Official Receiver or not. Nothing specific has been stated on this point in the order of 1932 granting an absolute order of discharge, and if there were anything to show that the Court had in its mind any contemplation of the future administration of the insolvent's estate we would agree that the order could not have the effect of re-vesting the property in the insolvent. It is however clear that when the learned

Subordinate Judge gave as one reason for his order of absolute discharge the fact that no creditor had proved his debt that means in effect that there is no chance of any administering of the insolvent's property. We cannot confirm the order of the learned District Judge passed eight years later which in effect thus cancels and nullifies the order of 1932. That, in our opinion, would be a complete breach of faith on the part of the Court towards the insolvent. We accordingly hold that the administration of this particular insolvency was brought to an end by the Court's order granting the absolute order of discharge in 1932 and therefore there is no longer power in the Official Receiver to bring any of the properties of the ex-insolvent to sale. This appeal must accordingly be allowed and the order of the learned District Judge set aside with costs throughout.

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