

In Re: Kuppuswami Vanniar

In Re: Kuppuswami Vanniar

SooperKanoon Citation : sooperkanoon.com/794393

Court : Chennai

Decided On : Sep-06-1954

Reported in : AIR1955Mad554

Judge : Krishnaswami Nayudu, J.

Acts : [Provincial Insolvency Act, 1920](#) - Sections 68 and 75(1)(3)

Appeal No. : S.R. Nos. 36313 and 36520 of 1954

Appellant : In Re: Kuppuswami Vanniar

Advocate for Pet/Ap. : O. Radhakrishnan, Adv.

Judgement :

ORDER

Krishnaswami Nayudu, J.

1. This appeal sought to be filed is against the order of the Subordinate Judge of Mayuram in I. A. No. 53 of 1954 in I. P. No. 1 of 1951. The appellant is the legal representative of one Ponnuswami Vanniar, who claims to be a creditor of the insolvent. The creditor preferred a claim before the Official Receiver, which was rejected by his order dated 23-9-1953. An appeal was preferred before the Sub Court and it was rejected confirming the order of the Official Receiver. The creditor now files a civil miscellaneous appeal and a civil revision petition purporting to be

under Sections 75(3) and 75(1) of the Provincial Insolvency Act respectively.

2. The right of appeal and revision is dealt with under Section 75 of the Act and under Section 75(1):

'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.'

Under the proviso a right of revision is given to the High Court against any order made in any appeal decided by the District Court. Further an appeal is provided under any of the grounds mentioned in Sub-section (1) of Rule 100, C. P. C., i.e., a second appeal is provided if the order that is appealed against is an order under Section 4 passed in appeal by a District Court from a decision of the Subordinate Court.

3. It is contended that an appeal lies to the High Court directly under Section 75(3) of the Act. Section 75(3) provides that any person aggrieved by any other order made by a District Court against orders other than under Section 75(2) and passed otherwise than in appeal from an order of the Subordinate Court may appeal to the High Court by leave of the District Court or of the High Court. The answer to this contention is that the order which is now sought to be appealed against is not an order of the District Court, but one made by the Subordinate Judge's Court.

It is argued that though under Section 3 the District Courts are vested with insolvency jurisdiction by virtue of a notification in the Official Gazette, the Provincial Government having conferred on the Subordinate Judge's Court at Mayuram with insolvency jurisdiction, such jurisdiction being concurrent with the District Court, the Subordinate Judge's Court, while exercising its insolvency jurisdiction, ceases to be subordinate to the District Court. I am unable to appreciate this contention. The mere vesting of concurrent jurisdiction in the subordinate court does not make the court cease to be subordinate to the District Court.

In support of this contention reliance was placed on a decision of the Calcutta High Court in -- 'Digendra Chandra Basak v. Ramani Mohan Goswami', AIR 1919 Cal 900 (A) which, it may be observed, is a decision on a totally different set of facts. In that case on a report by the Official Receiver against the insolvent, the subordinate Judge refused to interfere and punish the insolvent under Section 43(2) of Act III of 1907. There was an appeal to the District Court and the District Court interfered and punished the insolvent. The insolvent appealed to the High Court and the question was whether an appeal lay to the High Court. The view taken was that such an appeal lay, for the reason that the proceeding under Section 43(2) was in the nature of a criminal proceeding and also that the District Court could not be held to have acted in the exercise of its appellate jurisdiction but of its original jurisdiction. On both the grounds it was found that an appeal lay to the High Court, as no appeal lay to the District Court in the circumstances.

The order which is now sought to be appealed against is made under Section 68 of the Act where the court has confirmed the decision of the Official Receiver in respect of the appellant's claim and there can be no doubt that such an order is a decision come to and made in the exercise of the insolvency jurisdiction by the Subordinate Judge's Court and the Subordinate Judge's court not ceasing to be subordinate to the District Court by having vested in it insolvency jurisdiction concurrent with the District Court, a right of appeal is provided under Section 75(1). The appellant has therefore no right of appeal to the High Court and I do not see how any such appeal could lie under Section 75(3) as obviously this is not an order by the District Court, but only by a Subordinate Judge's Court.

I agree with the objection raised by the office as regards the maintainability of either the C. M. A. or the C. R. P. In support of the view I have taken there is the decision of a Bench of this court in -- 'Pedda Iswara Reddi, In re AIR 1948 Mad 520 (B), which says that once a decision is come to, or an order has been made within the meaning of Section 75(1) of the Provincial Insolvency Act, revisions against those orders to the High Court would be incompetent inasmuch as appeals lie to the District Court. The proper remedy of the appellant will be to file the appeal in the District Court and not in the High Court. The papers will be returned to the advocate for presentation before that court.

