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In Re: Pedda Iswara Reddy

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Court : Chennai

Decided On : Feb-17-1948

Reported in : AIR1948Mad520; (1948)1MLJ310

Appellant : In Re: Pedda Iswara Reddy

Judgement :

Rajamannar, O.C.J.

1. The question for decision is whether appeals lie to the District Court of Kurnool from two orders made by the Subordinate Judge of Kurnool, viz., an order granting an application made under Order 1, Rule 10, Civil Procedure Code, praying that certain alienees from the insolvent may be added as party respondents to an insolvency application, and an order excusing delay in filing the former application. Two revision petitions have been filed in this Court against the said two orders, and they will be incompetent if appeals lie to the District Court.

2. These two orders were passed by the learned Subordinate Judge in the course of an insolvency application. They must therefore be deemed to have been passed in the exercise of insolvency jurisdiction. Section 75 of the Provincial Insolvency Act specifically provides for appeals and revision petitions against orders made in the exercise of insolvency jurisdiction. 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. If the orders in question are orders made or amount to decisions come to in the exercise of insolvency jurisdiction, then certainly appeals lie against them to the District Court.

3. It was contended by Mr. Chandra Reddi on behalf of the petitioners that Section 75 has to be read with Section 5 of the Act, which prescribes that the Court, in regard to proceedings under the Act, shall have the same powers and shall follow the same procedure as it respectively has and follows in regard to civil suits. This provision makes, as it were, the entire Code of Civil Procedure, so the argument ran, applicable to the proceedings in insolvency, including the provisions of the Code of Civil Procedure relating to appeals. It follows that unless an order is appealable under Order XLIII of the Civil Procedure Code or any other similar provision an appeal will not lie from a Subordinate Court to a District Court or from a District Court to the High Court under Section 75. In the case of the two applications before us, there can be no doubt that treated as orders under the Code of Civil Procedure appeals do not lie under Order XLIII or any other provision of the Code. We do not, however, agree with this contention. It is not necessary to decide how far Section 5 confers revisional jurisdiction on this Court, but in our opinion it is clear that Section 5 cannot override the provisions of Section 75 in so far as the latter section confers a right of appeal in any instance. It is not permissible to read the provisions of Section 75 with a further modification that the provisions are subject to the provisions of the Civil Procedure Code in regard to appeals. The only question, therefore, is whether the orders made by the learned Subordinate Judge of Kurnool are orders made or decisions come to in the exercise of insolvency jurisdiction. If they are, appeals lie to the District Court. Though several decisions were cited before us, both of this Court and other Courts, we have been unable to derive much assistance as to the test to be applied to determine whether a parti-cular order falls within Section 75(1) of the Provincial Insolvency Act. The decision of a Bench of this Court in Lakshmappa v. Venkatareddi : AIR1942 Mad305 was cited to us, in which it was held that an order merely holding that the Insolvency Court had jurisdiction to entertain an application was not appealable under Section 75 of the Provincial Insolvency Act. The learned Judges say that while they are sensible of the difficulty of stating in sufficiently clear-cut and definite terms what is and what is not an order for purposes of

Section 75 of the Provincial Insolvency Act, they were convinced that the recording of a mere finding that the Court has jurisdiction to entertain an application cannot be deemed to be an order within the meaning of that section. It is not necessary for us to canvass the correctness of this decision on the facts before the learned Judges. But this decision does not directly govern the facts of the present case. Here, we have orders, the result of which is definitely to conclude a particular dispute between the parties, namely, whether the alienees should or should not be made parties to the insolvency application. This matter has been finally decided by the Subordinate Judge. These orders would therefore fall within the words, ' a decision come to or an order made ' in Section 75(1) of the Provincial Insolvency Act. It has been urged that it will be anomalous to hold that orders which will not be appealable under the Code of Civil Procedure when made in suits should be held to be appealable when made in the exercise of insolvency jurisdiction. That, however, is not a ground which should influence us in construing Section 75. It is a matter of common knowledge that though cer-tain orders made by Subordinate Courts are not appealable under the Code of Civil Procedure, similar orders made by a single learned Judge of this Court on the Original Side are appealable under Clause 15 of the Letters Patent.

4. Though it may be difficult to define the words, ' a decision come to or an order made ' which occur in Section 75(1) of the Provincial Insolvency Act, we consider that an order which finally decides a point of controversy between the parties would fall within the expressions. The orders before us are such orders. We, therefore, hold that appeals could have been filed to the District Court and therefore the civil revision petitions filed in this Court are not competent.

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