

Sudhandiran Vs. S. Krishnan

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Court : Chennai

Decided On : Sep-17-2005

Reported in : AIR2006Mad10; 2005(5)CTC617; (2005)4MLJ127

Judge : A. Kulasekaran, J.

Acts : Insolvency Act; [Provincial Insolvency Act, 1920](#) - Sections 52

Appeal No. : C.R.P. (NPD) No. 1247 of 2005, C.M.P. No. 8863 of 2005 and V.C.M.P. No. 13443 of 2005

Appellant : Sudhandiran

Respondent : S. Krishnan

Advocate for Def. : S. Umapathy, Adv.

Advocate for Pet/Ap. : R. Karthikeyan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A. Kulasekaran, J.

1. Heard both sides. The only question to be decided in this revision petition is as to whether an execution petition can be proceeded when an application under

Insolvency Act is filed against the judgment debtor.

2. The learned counsel appearing for the revision petitioner relied on the decision rendered in (Mahendrakumar Baishya Shaha v. Deeneshchandra Ray Chaudhuri) : AIR1933 Cal561 to say that filing of petition before the Insolvency Court is sufficient to stay the proceedings pending before the executing Court.

3. The learned counsel appearing for the respondent relied on the decision reported in (Pothuganti Venkateshwarulu and Anr. v. Yangala Mallaiah) AIR 2001 AP 358 to say that mere filing of an application before the Insolvency Court is not sufficient to stay the proceedings of the execution Court. It is relevant to extract paragraphs 3 and 4 of the said decision, which runs as follows:-

'3. On the other hand, the learned counsel appearing for the respondent/deeree holder submitted that no doubt I.P. No. 11 of 2000 was filed but there was no order passed by the Court before which the Insolvency proceedings are pending exercising power under Section 52 of the [Provincial Insolvency Act, 1920](#). Therefore, the properties are still covered by the order of attachment passed by the court below. He further submitted that merely because I.P. No. 11 of 2000 was filed the right of the creditor would not wither away. In support of his contention he placed reliance on the judgment rendered in Kuppu Boyan v. Sengottaiyan : AIR1983 Mad314 , wherein it was held as follows: (Para 6)

'Just because the judgment-debtor has filed an insolvency petition before the insolvency Court, it cannot be said that the execution proceedings should be stayed. In this case it was not stated that the properties of the petitioners were taken by the official liquidator in pursuance of the order of the Insolvency Court nor the order of the Insolvency Court was brought to the notice of the executing Court.'4. The said judgment was rendered relying upon a decision in Ponnudurai v. Kumaraswami Mudaliar 1971 2 Mad LJ 252, wherein it was held as:'Section 52 will have no application when a Receiver had not been appointed in respect of the insolvent's properties. So an executing Court while executing a decree passed against the insolvent need not stay its hands merely on the admission of an insolvency petition.'

4. I have carefully perused the decisions relied on by the counsel on either side. In the decision relied on by the learned counsel for the petitioner reported in (Mahendrakumar Baishya Shaha v. Deeneshchandra Ray Chaudhuri) : AIR1933 Cal561 , a receiver was appointed by the Insolvency Court after the application for insolvency was filed at the instance of another creditor, hence, the said judgment is not applicable to the facts and circumstance of the case on hand.

5. Considering the facts and circumstance of the case, this Court is of the view that the judgment relied on by the counsel for the respondent can be made applicable to the facts of the case on hand. Just because of an application has been filed by the petitioner himself before the insolvency Court, in the absence of any order or adjudication by the said Court, the executing Court need not stay its proceedings. Considering the above said facts as well as the oral and documentary evidence, the trial court has rightly refused to stay the execution proceedings and dismissed the application filed by the revision petitioner herein. I do not find any reasons to interfere with the order passed by the court below, hence, the civil revision petition is dismissed. No costs. Consequently, connected CMP as well as VCMP are closed.