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*** THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI**

+CMA.NO.118 OF 2017

% 19.08.2026

#Between:

Mallampudi Veera Venkata Krishna Reddy and Others ...Appellant(s)

$And:

Syamala Satyanarayana Reddy and Others ...Respondent(s)

! Advocate for Appellant: D KRISHNA MURTHY

^ Advocate for Respondent: M V SURESH

<Gist:

>Head Note:

? Cases referred:

1. 2010 (3) ALD 721
2. AIR 1969 AP 318
3. 2011 (5) ALD 498
4. 2011 (6) ALD 736
5. 2015 Law Summary 361
6. AIR 1989 AP 204
7. AIR 1966 SC 918
8. AIR 1982 Allahabad 179
9. 2011 (4) ALD 119
10. AIR 1991 Gujarat 143
11. 1996 (3) ALT 34
12. 2017 (3) ALT 767
13. AIR 1960 SC 70

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

***

+C.M.A.NO.118 OF 2017

Mallampudi Veera Venkata Krishna Reddy and Others ...Appellant(s)

$And:

Syamala Satyanarayana Reddy and Others ...Respondent(s)

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of order may be marked to Law Reporters/Journals? Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

JUSTICE BALAJI MEDAMALLI

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

CIVIL MISCELLANEOUS APPEAL NO: 118/2017

JUDGMENT:

This Civil Miscellaneous Appeal is filed against the Order dated 17.09.2012 passed in I.P.No.6 of 2011 on the file of learned I Additional District Judge, East Godavari District at Rajahmundry (For the sake of convenience, the parties herein are referred to as they are arrayed before the Trial Court).

2. The petitioners filed Insolvency Petition under Section 9 of Provincial Insolvency Act to adjudicate the 1st respondent as insolvent and to appoint an official receiver to administer the A-schedule property with a direction to the official receiver to take steps for annulment of the documents dated 30.12.2010 in favour of respondent Nos.2 to 4.

3. The case of the petitioners is that the 1st respondent borrowed an amount of Rs.6,50,000/- from the 1st petitioner on 21.06.2008, Rs.6,00,000/- from the 2nd petitioner on 26.08.2008 and Rs.6,50,000/- from the 3rd petitioner on 05.06.2008, and executed promissory notes to that effect. Despite several demands made by the petitioners, the 1st respondent failed to discharge the amounts due thereunder. While so, the petitioner came to know that on 30.12.2010, the 1st respondent had executed three registered sale deeds in favour of respondent Nos.2 to 4, nominally and with an intention to avoid debts to the creditors including the debt of the petitioners. Thus, the 1st respondent committed the act of insolvency, and therefore, the petitioners approached the Trial Court seeking to adjudge the 1st respondent as insolvent.

4. The 1st respondent filed counter denying the averments in the petition and contended that the petition is not maintainable, as no act of insolvency has been committed by him. It is further contended that the 1st respondent is having valuable properties other than the properties that were sold and the said petition is filed only to defame his image and sought dismissal of the petition. A counter was also filed by respondent Nos.2 to 4 denying the allegations made in the insolvency petition. They contended that there is collusion between the petitioners and the 1st respondent, and they had purchased the property for valuable consideration and are *bona fide* purchasers. As such, the sale deeds cannot be annulled, and sought dismissal of the petition.

5. On behalf of the petitioners, PW.1 was examined and Exs.A1 to A8 were marked. On behalf of the respondents, R.W.1 was examined and Exs.B1 to B5 were marked.

6. The Trial Court framed the following points for consideration.

1. *Whether the petitioners proved the debt by the 1st respondent in their favour?*
2. *Whether the 1st respondent committed acts of insolvency? If so, whether the sale deed in favour of respondent Nos.2 to 4 are liable to be annulled?*

7. In regard to point No.1, learned Trial Court after considering the entire evidence on record and placing reliance on the judgment of this Court in ***Gunapati Radha Krishna Reddy Vs Cheemala Venkata Ramana*[1]*,*** held that, in order to invoke Section 9 by a creditor like the petitioners, there should be an adjudication of the debt or admission of the debt by the proposed insolvent, and the decree should be by a competent Court of civil jurisdiction. Accordingly, the Trial Court held that the petitioners had obtained decree from a competent Court against the 1st respondent. In view of the same, it was held that the debts in favour of the petitioners stood proved by means of adjudication by competent civil Court, and the same was established in the insolvency petition, as the 1st respondent did not contest the claim regarding debts.

8. In regard to point No.2, learned Trial Court placed reliance on Section 6 of the Provincial Insolvency Act, particularly Section 6(1)(b), which reads as under:

> *"6. **Acts of insolvency**.—(1) A debtor commits an act of insolvency in each of the following cases, namely: —*
>
> *a….*
>
> *b. If, in India or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;"*

Placing reliance on the above provision, the Trial Court held that, under Ex.A4, which is a sale deed, the reasons for sale of the properties are stated

[1] 2010 (3) ALD 721

to be for meeting medical expenses and discharging sundry family debts and other family expenses. It is further recited under Ex.A1 that the 1st respondent got some property from his father through a Will dated 16.10.1986 and the said property is sold under Exs.A1 to A3. The Trial Court further held that no evidence adduced by the petitioners to show that the remaining property of Ac.1.34 cents was transferred by the 1st respondent to anyone. It was further held that a mere allegation that the properties were transferred with an intention to defeat or delay the creditors, without any supporting evidence, is not sufficient, particularly when the 1st respondent is having other properties apart from those conveyed under Exs.A1 to A3.

9. Learned Judge also placed reliance on ***Pydimarri Venkateswarlu Vs Pydimarri Jalamma[2],*** wherein it was held that an out and out sale in favour of a third person by a debtor is not a transfer for the benefit of creditors and it will not attract the provision of Section 6 of the Insolvency Act. Further, learned Judge has also placed reliance on ***Gutta Nirmala Vs Gutta Nageswara Rao[3]*** and ***Boddeti Rameswaram Vs Polamarasetti Trimurthulu[4],*** wherein it was held that a sale of property to a third person without any proof of intention to defeat or delay the creditors by merely giving preference to a particular person who is not a creditor then there is no act of insolvency when the sale is supported by consideration and was for discharge of a debt of a debtor.

[2] AIR 1969 AP 318
[3] 2011 (5) ALD 498
[4] 2011 (6) ALD 736

10. Basing on the above, learned Trial Judge held that the second limb of Section 6 of the Act i.e., intention to defeat or delay the creditors is not established by the petitioners. Accordingly, it was held that the petitioners failed to establish the intention on the part of the 1st respondent to delay or defeat their debts. Hence, the same cannot be declared as an act of insolvency, as such, the 1st respondent cannot be adjudged as an insolvent.

11. Aggrieved by the said order of the Trial Court, the petitioners/appellants filed the present appeal on the following grounds:

- Having held that the debts in favour of the petitioners stand proved by means of adjudication by a competent civil Court, the learned District Judge erred in dismissing the insolvency petition.
- Learned Judge failed to consider the fact that the properties were sold in favour of respondent Nos.2 to 4 on the same day with an intention to delay and defeat the debt of the petitioners.
- Learned Judge failed to consider that the sale deeds are nominal, as the recitals in the documents do not disclose any real exchange of amounts, but merely stated that the amounts were paid prior to execution on different occasions, without furnishing any particulars.
- That apart, there is variance in the evidence of RW.1 who was examined on behalf of respondent Nos.2 to 4.
- Though the 1st respondent filed a counter, he did not enter the witness box and remained ex parte. Therefore, respondent Nos.2 to

4, being purchasers, cannot establish that the 1st respondent had no intention to delay or defeat the creditors, and as such, the allegations in the petition regarding the act of insolvency remained unrebutted.

12. Heard Sri D.Krishna Murthy, learned counsel for the appellants and Sri M.V. Suresh, learned counsel for respondent Nos.2 to 4.

13. Learned counsel for the appellants submits that the 1st respondent suffered decrees in O.S. Nos.77, 75 and 78 of 2011 on the file of the learned Senior Civil Judge, Ramachandrapuram, vide judgments and decrees dated 16.11.2011, 29.07.2011 and 27.07.2011 respectively, passed in favour of appellant Nos.1 to 3. As on the date of passing of the decrees, the amount due was Rs.27,05,700/-. It is further submitted that the 1st respondent possessed Ac.9.29 cents of land, out of which he alienated Ac.7.95 cents in favour of respondent Nos.2 to 4 under three registered sale deeds vide document Nos.3697/2010, 3698/2010 and 3699/2010 dated 30.12.2010 and the said alienations were made only with an intention to delay and defeat the claims of the creditors. It is further submitted that though the 1st respondent filed counter, he did not contest the proceedings and failed to enter the witness box. Respondent Nos.2 to 4, who are subsequent purchasers belonging to one family, claimed to have purchased the said lands.

14. Learned counsel for the appellants further submits that the insolvency petition was dismissed mainly on two grounds –

i) A single creditor cannot maintain an insolvency petition

ii) Even after alienation of the property, still Ac.1.34 cents of land is available with the 1st respondent, as such, he cannot be adjudged as an insolvent.

15. In respect of ground No.i is concerned, learned counsel on either side fairly submitted that the said issue is no longer *res integra*. Therefore, the finding recorded by the learned Trial Judge on this aspect is erroneous, and it is well settled that even a single creditor is entitled to seek adjudication of a debtor as an insolvent.

16. In respect of ground No.ii is concerned, learned counsel for the appellants placed reliance on the recitals in Exs.A1 to A3 which read as under:

> "షెడ్యూలు దాఖల య2-93ట్లు భూమిని నాకుటుంబ చిల్లర ఋణములు, వైద్య ఖర్చుల నిమిత్తం చేసిన ఋణములు, కుటుంబానసర ఖర్చుల నిమిత్తం సొమ్ము అవసరం వుండి షెడ్యూలు ఆస్తిని విక్రయింపచూపగా అడిగినవారందరి కంటే మీరే హెచ్చుధర ఆఫర్ చేయుటచేత మీకు సైనుదహరించిన రూ.5,86,000/-లుకు విక్రయించడమైనది.
>
> సదరు క్రయధనం రూ .5,86,000/-లు అక్షరాల అయిదు లక్షల ఎనభై ఆరు వేల రూపాయిలున్ను యీ క్రయదస్తావేజా వ్రాతకాలము నాటికి మధ్యవర్తుల కృతముగా దపదఫాలుగా మీరు నాకు యిచ్చినారు కావున పూర్తిగా ముట్టినవి. గాన షెడ్యూలు దాఖల క్రయాస్తిని యీ రోజుననే మీకు నేను స్వాదీనం చేయడమైనది."

Placing reliance on the above, learned counsel submits that a bare reading of the recitals in the above sale deeds under Exs.A1 to A3, which is same in verbatim, clearly indicates that the consideration amounts were not paid at the time of execution, but are stated to have been paid on different occasions, and that, upon such receipt, the sale deeds were executed and possession was delivered. The averments with regard to the nominal execution of the sale deeds in favour of respondent Nos.2 to 4 have not remained unrebutted, as respondent No.1 himself remained ex parte. The execution of the promissory notes in favour of the appellants/petitioners and the consequent decrees passed by the competent Civil Courts are also undisputed. The Trial Court, therefore, rightly adjudicated that the debt stood proved. However, insofar as the recitals in the documents of alienations in favour of respondents No.2 to 4 is concerned, there is no denial by the respondent No.1 and the pleadings set out by the petitioners became unrebutted. In such a case, the learned Trial Judge ought to have adjudged the respondent No.1 as insolvent as no evidence rebutting the evidence placed by the appellants / petitioners is forthcoming.

17. It is further submitted that neither the 1st respondent in his counter nor respondent Nos.2 to 4, in their counters or in their evidence, have furnished any particulars or placed any material to substantiate such alleged payments made on different occasions, except merely reiterating the recitals. In this context, the cross-examination of RW.1 reads as under:

> *"I have no acquaintance with the family of the 1st respondent prior to execution of Exs.A1 to A3. The distance between my village and the village of 1st respondent is about 6 kms. The reason for sale of land covered by Exs. A1 to A3 is that he was not maintaining good health and the land is not suitable for cultivation. Further, I enquired about the debts 1st respondent in the village and as well as 1st respondent. 1st respondent produced receipts evidencing discharge of debts amounting to Rs.1,30,000/- and 1st respondent torn all the receipts. No paper publication is given to know about the debts due by 1st*

respondent to others other than the debts amounting to Rs.1,30,000/- There is a reference about the pending litigation regarding Ac.5.23 cents of land in Ramachandrapuram Village on the file of learned Principal District Judge, Rajahmundry in the will.

….

I did not take any legal action against 1st respondent after receiving notices in this petition. It is not true to suggest that the 1st respondent did not collude with the petitioners."

From the above said evidence of RW.1, it is clear that there is no acquaintance with the family of the 1st respondent. However, the recitals of the sale deeds show that the amounts were paid on different occasions much prior to the sale deeds which would run contrary to the pleadings of the RW.1.

18. That apart, learned counsel for the appellants further submits that, the petitioners in paragraph No.7 of the petition have pleaded that the 1st respondent with a fraudulent intention, with an intention to avoid debts and with an intention to outreach the property from the hands of the creditors, brought into existence nominal sale deeds in the name of the 2nd respondent. Thus, the averments in the said paragraph would squarely attract section 6(b) of Provincial Insolvency Act. However, the same was not rebutted by the 1st respondent, who, despite filing a counter, failed to contest the matter and remained ex parte, and respondent Nos.2 to 4, being subsequent purchasers, cannot step into the shoes of the 1st respondent to disprove the act of insolvency. Thus, the learned Trial Court failed to appreciate the facts and evidence on record and erred in holding that the petitioners failed to establish the act of insolvency.

19. Learned counsel for the appellants placed reliance on the judgment of this Court in ***Tadikamalla Venkata Ramana Kishore Vs Padarthi Santhakumari***[5], wherein the relevant portion reads as under:

> *14.The whole controversy in this appeal is that a single creditor cannot maintain a petition under Section 9 of the Act. This question is no more res integra in view of the Division Bench judgment of this Court in G.Ramachander v. The Collector, Excise, Hyderabad and another AIR 1977 Andhra Pradesh 346, wherein the Division Bench of this Court held as follows:*
>
> > *""decree-holder", 'debtor' includes a judgment-debtor. Section 6 or 7 also entitles an individual to launch proceeding under the Act. Section 10 of the Act also empowers individual debtor to present insolvency proceeding, if, he satisfied the conditions mentioned therein. None of the clauses of Section 10(1) speaks of more than one creditor section 13(2) of the General Clauses Act (10 of 1897) says that the words in the singular shall also include the plural and vice versa. Therefore, no special significance need be attached to the words 'debts' or 'Creditors' used in several provisions of the Act. Therefore it was held that even a single debtor could file an application Under Section 10 of the Act to get declared insolvent even if there is a single creditor."*
>
> *Similar question came up before the Madras High Court in Sarangapani Chetty v. Perumal Naidu AIR 1968 Madras 216. The Division Bench of Madras High Court while considering the same issue held that single creditor can maintain a petition. In the last para of the said judgment, the Division Bench held as follows:*
>
> > *"The transfer which defeats or delays creditors is not an instrument which prefers one creditor to another, but an instrument which removes property from the creditor to the benefit of the debtors."*
> >
> > *Consequently, we are of the view that the decisions cited at the Bar, can all of them be distinguished, with reference to the facts and the situation in insolvency law of the present case. This is a case where the facts abundantly and clearly establish the round of adjudication set forth in Section 6, Sub- Section (d)(i)(ii) and (iii). The fact that the general body of creditors was represented by the sole creditor, is no reason for declining adjudication, for the insolvency law has always recognized that the sole creditor of debtor could obtain an adjudication in insolvency."*

[5] 2015 Law Summary 361

> *15. The Trial Court placing reliance in K.D.Nagappa v. Sannakka AIR 1983 Andhra Pradesh 13, held that a single creditor can maintain an insolvency petition under Section 9 of the Act. In the said judgment, the single Judge of this Court relied on both Division Bench judgments of this Court and the judgment of Division Bench of Madras High Court.*

20. The Division Bench of this Court in the above said judgment placed reliance on the judgment in ***G.Ramchander's case,*** wherein it was held that decree-holder", 'debtor' includes a judgment-debtor. Section 6 or 7 also entitles an individual to launch proceeding under the Act. Section 10 of the Act also empowers individual debtor to present insolvency proceeding, if, he satisfied the conditions mentioned therein and finally held that even a single creditor is also entitled to launch proceedings under the Provincial Insolvency Act. However, the said fact was also fairly conceded by the learned counsel for the respondents in view of the above said judgment passed by the Division Bench of this Court.

21. Learned counsel for the appellants also placed reliance on the judgment in ***Vemulla Rosaiah Vs P.Subramanyam***[6]***,*** wherein the relevant portion reads as under:

> **5**. *Further the expression "sufficient cause" is to be understood in the context in which it is used. In 7. Malludora v. P. Seethatathnam (3) AIR 1966 SC 918 the scope of section 25(1) is considered and it is observed thus:—*
>
> > *"In addition the Court has been given a discretion to dismiss the petition if it is satisfied that there is other sufficient cause for not making the order against the debtor. The last clause of the section need not necessarily be read ejusdem generis with the previous ones, but even so there can be no sufficient cause if after an act of insolvency is established the debtor is unable to pay his debts. The discretion to dismiss the petition can only be exercised under very different circumstances. What those cases would be, it is neither easy nor*

[6] AIR 1989 AP 204

necessary to specify, but examples of sufficient cause are to be found when the petition is malicious and has been made for some collateral or inequitable purpose such as putting pressure upon the debtor or for extorting money from him, or where the petitioning creditor having refused tender of money, fraudulently and maliciously filed the application. An order is some times not made when by the receiving order the only asset of the debtor would be destroyed such as a life interest which would cease on his bankruptcy. Cases have also occurred where a receiving order was not made because there were no assets and it would have been a waste of time and money to make a receiving order against the debtor. These examples merely illustrate the grounds on which orders are generally made in the exercise of the discretion conferred by the last clause of Section 25".

The Supreme Court has only indicated some of the circumstances under which the Court can exercise its discretion to dismiss the petition on the basis that there is sufficient cause. But it is not indicated that the transferees of the debtor can set up a plea that the debtor is able to discharge the debts and that can be sufficient cause to exercise the discretion by the Court. As a matter of fact, a reference to S.24 also clarifies the position. This section deals with the procedure of hearing the petitions. Sub-sec. (2) to S.24 lays down that the Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon. It can, therefore, be seen that the debtor can plead about his ability to pay his debt as that is one of the grounds for dismissal of the petition. In the instant case, as already mentioned, the debtor remained ex parte and therefore the transferees cannot substitute themselves for the debtor and raise a plea on his behalf.

22. Placing reliance on the above, learned counsel for the appellants submitted that an insolvency petition cannot be dismissed on the plea of the debtor's transferees that the debtor has sufficient means to discharge the debts. In this regard, while considering the scope of Section 25(1) of the Act, referred to the judgment of the Hon'ble Apex Court in ***Y.Malludore V. P.Seethrathnam***[7], wherein it was held that the transferees of the debtor cannot set up a plea that the debtor is able to discharge the debts and that

[7] AIR 1966 SC 918

can be sufficient cause to exercise the discretion by the Court for dismissing the petition. In the instant case, as the debtor – 1st respondent remained ex parte, the transferees cannot substitute themselves for the debtor and raise a plea on his behalf regarding his capacity to discharge the debts.

23. On the other hand, Sri M.V. Suresh, learned counsel for respondent Nos.2 to 4, drawn the attention of this Court to Section 6(b) of the Act and contended that there must be an intention to defeat or delay the claim of the creditors, and such intention could not be gathered from any of the pleadings of the petitioners. Learned counsel further drawn the attention of this Court to paragraph No.6 of the petition, wherein there is no mention about the intention to defeat or delay the claims of the creditors, and the recitals only speak about the nominal nature of the sale deeds executed in favour of respondent Nos.2 to 4, without any material placed in support of the said plea. It is further contended that the ingredients of Section 6(b) are not satisfied and, as such, the 1st respondent cannot be said to have committed an act of insolvency. Therefore, the petition is not maintainable and the Trial Court has rightly dismissed the same.

24. Learned counsel for the respondents further submitted that since the 1st respondent is having other properties, it cannot be said that the subject sales were effected with an intention to defeat or delay the debts of the petitioners.

In support of the said contention, reliance is placed on the judgment in ***Pirthi Vs Budh Singh***[8], wherein the relevant portion reads as under:

> ***9.*** *The acts of insolvency are defined in S. 6 of the Provincial Insolvency Act Clause (b) provides that a debtor who makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors he commits an act of insolvency. In order to adJudge him an insolvent the Court has to record a finding that the debtor had made a transfer of his property with an intent to delay or defeat his creditors. Therefore, unless the Court can find that a transfer of property by a debtor has been made with an intent to delay or defeat the creditors, it cannot adJudge the debtor an insolvent, one of the tests to determine whether the transfer is made by the debtor to delay and defeat the creditor, is to find out whether after the transfer the debtor has assets sufficient to pay his creditors.*
>
> ***10.*** *In fact, we have found that the assets remaining with Pirthi after the transfer made by him were sufficient to discharge his debts.*
>
> ***11.*** *Now coming to the question as to whether a debtor can be declared an insolvent if he does not have in hand sufficient liquid assets to pay his debts, no absolute proposition can be laid down that in all circumstances where the debtor while possessing assets, had not enough liquid assets in hand, he must be adjudged an insolvent. It all depends on the circumstance of each individual case. If the assets in a normal case can be liquidated within a reasonable time and the creditor paid, the debtor cannot be declared an insolvent. If, however, the assets are not presently saleable or are encumbered then the debtor may be declared an insolvent.*

25. Placing reliance on the above, learned counsel submitted that unless the Court finds that transfer of property by a debtor has been made with an intention to delay or defeat the creditors, the Court cannot adjudge the debtor as an insolvent and no absolute proposition can be laid down that in all circumstances where the debtor while possessing assets, had not enough liquid assets in hand, he must be adjudged an insolvent. It all depends on the circumstance of each individual case. If the assets in a normal case can be liquidated within a reasonable time and the creditor paid, the debtor cannot be

[8] AIR 1982 Allahabad 179

declared an insolvent. As such, unless it is established that the debtor is having an intention to delay and defeat the claim of the creditors, it cannot be said that he had committed an act of insolvency.

26. Learned counsel for the respondents also placed reliance on ***Bachu Srinivasa Rao v. Yerramsetti Saraswatamma***[9], wherein the relevant portion reads as under:

> ***13.*** *In the present case, though the creditor has filed petition under Section 6(1)(a) of the Act, has stated that the sale in favour of the third party purchaser by the debtor was with an intention to delay and defeat the creditors. The concept of intention to delay and defeat the creditors, occurs in clause (b) of Section 6(1) of the Act. Both sub-clauses (a) and (b) of sub-section (1) of Section 6 of the Act are extracted as under to see which provision of law is to be invoked in view of the averments of the creditor:*
>
> > *6. Acts of insolvency (1) A debtor commits an act of insolvency in each of the following cases namely:*
> >
> > *(a) If, in India or elsewhere, he makes a transfer of all or substantially all his property to a third party for the benefit of his creditors generally;*
> >
> > *(b) If, in India or elsewhere, he makes a transfer of his property or of any part thereof, with intent to defeat or delay his creditors;*
> >
> > *…………*
>
> ***14.*** *From a reading of the above provision it is clear that if the allegation is that the debtor transferred his property or of any part thereof, with intent to defeat or delay his creditors, the same falls under clause (b) of sub-section (1) of Section 6. Though the petitioner has filed the petition under Section 6(1)(a) of the Act, there are no pleadings to that effect that he transferred the property to a third party for the benefit of his creditors generally, curiously, both the Courts found that the transfer under Ex. A1 is an act of insolvency as defined under Section 6(1)(a) of the Act, because, admittedly RWI sold the property and discharged some debts only, but she did not sell the property for the benefit of all his creditors generally. In the absence of pleadings, any amount of evidence cannot be looked into. Hence, in view of the averments of the petitioner with regard to intention of the debtor to delay and defraud the creditors, it is expedient to look into the material on*

[9] 2011 (4) ALD 119

record to see whether the said ingredient is proved based on evidence, to declare the debtor as 'insolvent'. This Court in Sanjeevi Reddy v. Ellappa Reddy (supra), while considering clauses (b) and (c) of sub-section (1) of Section 6, held as under:

> *"5. A careful reading of the Section, particularly the above said two provisions, would reveal that the Section is exhaustive with regard to what constitutes an act of insolvency. It is therefore plain that nothing can be considered as an act of insolvency unless it can be brought under one or the other clauses of Section 6. Adjudging a person as insolvent results in bringing about serious consequences. It becomes therefore necessary to take particular care to see that the provision of law is observed strictly and correctly applied. The Section discloses that the condition precedent to adjudicate a debtor insolvent on the petition of a creditor is that the debtor must have committed one or the other of the acts of insolvency set out in Section 6. It is, therefore, necessary before he is adjudicated an insolvent that the facts alleged must constitute an act of insolvency within the meaning of Section 6."*

15. In view of the above provision and the law laid down by this Court, it is necessary to examine whether the creditor could prove his averments with regard to the intention of the debtor to delay and defraud the creditor and whether the acts complained, would result in declaring the debtor as insolvent?

16. To prove the case of the petitioner, he examined himself as PW1 and deposed as per the petition averments and the witnesses examined on his behalf as PWs. 2 and 3, supported his case and deposed that Ex. A2 promissory note was executed by the 1st respondent.

17. The 1st respondent-debtor denied the averments in the petition and in the cross-examination deposed that her family were in debt trap for the last five years and she has been borrowing from others to discharge the debts incurred by her son and for that purpose, she sold the land under Ex. A1. She also deposed that still there are certain debts to be discharged. In her further cross-examination, she deposed that she has promised to PVV1 also that she will discharge the debt, which was incurred by her originally at Rs. 14,000/- after selling the land to 4th respondent, but he did not wait and filed this petition. PW1 obtained a promissory note for Rs. 28,000/- from her though he lent Rs. 14,000/- and that he filed the suit on the basis of the pronote only.

18. From a perusal of the evidence on record, there is no tangible evidence to the effect that the debtor made transfer of her property or of any part thereof, with intention to defeat or delay his creditors.

27. Placing reliance on the above, learned counsel submits that nothing can be considered as an act of insolvency unless it can be brought under one or the other clauses of Section 6. The Section discloses that the condition precedent to adjudicate a debtor insolvent on the petition of a creditor is that the debtor must have committed one or the other of the acts of insolvency set out in Section 6. Since the claim of the petitioners/appellants is under Section 6(b), the burden lies on the creditors to prove and establish that the debtor had the intention to delay or defeat their claims, which has not been done in the instant case by the petitioners/appellants.

28. Learned counsel for the respondents also placed reliance on judgment reported in ***Maneklal Kantilal & Company, Kolahpur v. Shavarlal Harjivandas***[10]***,*** wherein the relevant portion reads as under:

> ***7.*** *The learned counsel for the appellants/original petitioner has contended that the transfer of the bungalow for Rs. 23,000/- on 6-6-1965 was with a view to defraud the creditors. There is no dispute about the fact that the opponents had sold off their bungalow. It is also true that the learned Trial Court Judge failed to appreciate the date of sale. It is observed in the impugned judgment that the date of sale of the said bungalow has not been brought on record. This observation appears to be erroneous as pointed out by the learned advocate for the petitioner Mr. Shah. He has drawn the attention of the Court to Ex. 52. It is an extract from the office of the sub-Registrar. It is found in the said extract that the sale of the said bungalow took place on 6-7-1965. The petition came to be filed on 31-8-1965. However, the contention that the said bungalow was sold off by the opponents with a view to delay and defeat the creditors has not been proved. It is found from the evidence on record that the said bungalow was purchased for Rs. 25,000/- and it was sold with tenancy rights for a sum of Rs. 23,000/-. It is also true that the purchaser of the said bungalow had accepted the vendor/opponents as the tenants in the said bungalow. Simply because the opponents sold off the said bungalow for Rs. 23,000/- retaining the possession in capacity of tenants would not "ipso facto"*

[10] AIR 1991 Gujarat 143

indicate an act of insolvency. There is no evidence on record to suggest that the bungalow was sold off by the opponents with tenancy right for a lesser amount than what was the market value of the said bungalow and that the said act would tantamount to delay or defeat the claims of the creditors. So, the material ingredient to defraud the creditors in so far as the sale transaction of the bungalow is concerned, is absent and missing. The learned Trial Court Judge, of course, failed to appreciate the fact that there is a record about the date of said transaction. However, his conclusion that there was no intention to defeat or delay the creditors is fully justified in the circumstances of the case. It may also be mentioned that it is apparent from the record that the consideration received by the opponents out of the sale of the said bungalow had also been defrayed and used for the payment of debts to the creditors. Thus, the sale proceeds of the said bungalow were utilised to pay the debts. This aspect, on the contrary, runs counter to the contention that the transaction was entered into with a view to defeat the claims of the creditors. There is no force, therefore, in the first contention raised on behalf of the petitioner.

10. *The petitioner filed the above Insolvency Petition under the provisions of S. 9 of the Act alleging that the opponents have committed acts of insolvency relying upon the provisions of S. 6(1)(b) and 6(1)(d) of the Act. S. 6 of the Act prescribes the acts of insolvency. The maintainability of the insolvency petition is upheld by the Trial Court. However, the Trial Court found that there was no proof to prove that the opponents who are debtors of the petitioner firm had, as such, committed any act of insolvency. The findings of the Trial Court Judge are fully justified in holding that the opponents have not committed any act of insolvency. In an insolvency petition, it is incumbent upon the petitioner to prove the intention of the debtor to delay and defeat the creditors. No doubt, the intention has to be gathered from the surrounding set of circumstances as direct evidence to prove such an intent is unobtainable. The petitioner has totally failed to prove the dishonest intention on the part of the opponents. There is no any credit worthy and reliable evidence to prove the intention to delay and defeat the creditors which is the lynch pin to declare a debtor insolvent. A debtor can be said to have committed an act of insolvency only when there is a proof of an intention to defeat or delay the creditors. Not only that the petitioner has miserably, failed to prove that the opponents have committed any act of insolvency but the circumstances emerging from the evidence on record would go to show that there was no such intention on the part of the opponents. The petition came to be filed on 31-8-1965. The opponents had paid a sum of Rs. 15,000/- by transfer of the actionable claim to the petitioner-creditor only within a spell of eight days before 21-8-1965. There is ample evidence on record to show that the sale proceeds of the sale transaction of the residential bungalow sold out by the opponents on 6-7-1965 had been utilised for the purpose of payment to the creditors. Therefore, in the light of the facts and circumstances of the present case, it* *cannot be said even for a moment that the opponents had committed any act of insolvency.*

29. Placing reliance on the above, learned counsel submitted that in an insolvency petition, it is incumbent upon the petitioners to prove the intention of the debtor to delay and defeat the creditors. No doubt, the intention has to be gathered from the surrounding set of circumstances as direct evidence to prove such an intent is unobtainable. In the instant case, the petitioners had miserably failed to prove such an intention, as such, the petition cannot be entertained and the learned Judge dismissed the same rightly.

30. Learned counsel for the respondents also placed reliance on ***Dandamudi Chakradhararao Vs Pidikiti Koteswararao***[11], wherein the relevant portion reads as under:

> ***10.*** *Having given by anxious thoughts to the arguments advanced from both the sides I am of the opinion that the revision deserves to be allowed. It must be remembered in the first place that adjudicating a person as an insolvent in insolvency proceedings is a very serious act and before adjudicating a person as insolvent and making such adjudication the Court has to satisfy that all the requirements for adjudication are established very convincingly and beyond reasonable doubt.*
>
> ***13.*** *Apart from the fact that there is no convincing proof of the existing debt in favour of the petitioner, the admitted evidence in the case will show that 1 st respondent had properties apart from the property which is sold to respondents 2 and 3. The person commits act of insolvency only if he transfers the property to any one else with intent to defeat or delay his creditors. Section 6 of Insolvency Act runs as follows:*
>
> *Acts of Insolvency:*
>
> *A debtor commits an act of insolvency in each of the following cases, namely:*

[11] 1996 (3) ALT 34

> *(a) if, in (the Provinces) or elsewhere, he makes a transfer of all 6r substantially all his property to a third person for the benefit of his creditors generally;*
>
> *(b) if, in (the Provinces) or elsewhere, he makes transfer of his property or of any part thereof with intent to defeat or delay his creditors.*

This is the relevant provision relied upon by the petitioner. The evidence of the petitioner appears to have been ignored by the learned Appellate Court. The petitioner in his evidence during the course of cross examination has stated that by the date of Ex. A-1 Respondent No. 1 was having terraced building, sites and land. Ex. A-2 is the pronote which was allegedly executed by 1 st respondent in favour of the petitioner. Thus, it is clear that apart from the property transferred vide Ex. A-1 in favour of respondents 2 and 3, respondent No. 1 had also a terraced building, site and land. The contention of the petitioner that the property transferred under Ex. A-1 in favour of respondents 2 and 3 was worth more than Rs. 18, 000/- which is the consideration shown, is unconvincing from the material on record. The property which was purchased by respondents 2 and 3 was for a charge of maintenance of the wife of respondent No. 1 Therefore respondents 2 and 3 were required to pay the maintenance amount to the wife of 1 st respondent. This naturally reduces the value of the property. Apart from that it is also clear from reading of the Ex. A-1 itself, that certain other debts of respondent No. 1 were to be paid by the said transaction. However, the learned Counsel for the petitioner contended that the terraced building was given as security to respondents 2 and 3 at the time of execution of sale deed and this can be seen from the contents of Ex. A-1. It was therefore tried to be suggested on behalf of the petitioner that the said property was not available to respondent No. 1 and therefore, it cannot be considered while deciding as to whether respondent No. 1 had other properties or not. This does not impress me. The terraced building was said to be only a security in case any dispute arose regarding the property conveyed by Ex. A-1 in favour of respondents 2 and 3. There was no indication whatsoever that any dispute had infact arisen. In any event the terraced building was not transferred as such to any one, But it was said to be only a security. The respondent no. 1 thus continued to be the owner of the said property. Furthermore one site was also belonging to respondent No. 1. R.W. 1, who is the Karanam of the village, has also pointed out this fact. What is contended on behalf of the petitioner is that earlier respondent No. 1 filed O.P. No. 60/80 for getting declaration that he was pauper indigent. The said O.P. was filed for instituting a suit against respondents 2 and 3 for cancellation of the sale deed Ex. A-1. In the said O.P. The Court found that respondent No. 1 as indigent as he was not having sufficient property, other than the property in dispute, worth more than Rs. 3, 000/- Ex. B-1 which is the copy of the order in the said O.P. will make it clear that the Court at that time held that this site of Ac. 0.07 cents

> *was not shown to be worth more than Rs3, 000/- and therefore the Court held respondent No. 1 as pauper". The said decision does not in any way help to prove or to do away with the fact that respondent No. 1 is having property other than the one which is conveyed under Ex. A-1. The petitioner in his petition u/s. 9 of Insolvency Act has tried to suppress this fact. Unless it is proved that respondent No. 1 transferred the property with intent to defeat or delay the creditors the act of Insolvency cannot be said to have been established. If a person is having sufficient other property, then the sale of one property alone does not amount to act of defeating the creditors claim. The same principle was laid down in M. Sriramulu v. P. Singaih [1967 (2) An. W.R. 329.] .*

31. Placing reliance on the above, learned counsel submitted that adjudicating a person as an insolvent in insolvency proceedings is a very serious act, and before making such an adjudication, the Court has to satisfy that all the requirements for adjudication are established very convincingly and beyond reasonable doubt.

32. Learned counsel for the respondents also placed reliance on ***Channa Dhanalakshmi v. Rajyalakshmi General Traders***[12], wherein the relevant portion reads as under:

> ***18.*** *Though the relationship of creditor and debtor was accepted by the Trial Court as well as the appellate Court, both the Courts dismissed the petition on the ground that the petitioner failed to establish the transfer of property was with an intention to defeat and delay the debt due to the creditors, which is sine qua non, for adjudging a person as insolvent under Section 6(1)(b) of the Act, 1920. The said finding is now under the challenge before this Court on the sole ground that the 2nd respondent admitted the relationship of creditor and debtor between the petitioner and respondents, and in such case the initial onus of proof is on the 3rd respondent and others, who contested the petition before the Trial Court and appellate Court, but instead of placing initial onus of proof on the respondents, the Trial Court placed initial onus of proof on the petitioner erroneously and that apart when a particular plea set up by the petitioner regarding alienation of the property by the respondents with an intention to defeat and delay the creditors, it is for the 3rd respondent to establish that it*

[12] 2017 (3) ALT 767

was not intended to delay and defeat the claim of the creditor and the 3rd respondent did not even deny the alleged plea of intention to delay and defeat the claims of the creditors. In such case, the Court has to accept the plea of the petitioner in the absence of any specific denial by applying Rule 5 of Order VIII of the Code of Civil Procedure, 1908 (for short, 'the Code'). But the Trial Court did not consider the same in proper perspective, whereas the counsel for respondents supported the concurrent findings of both the Courts.

19. *In view of the controversy between the parties, it is for this Court to decide whether the transfer of property by executing sale deed in favour of the 4th respondent by the 3rd respondent is aimed to defeat and delay the creditors, based on the evidence. Proof of intention of the parties depends upon the evidence available on record and attending circumstances. In the present case, there is relationship of creditor and debtor and the alleged act of insolvency is transfer of property of the 3rd respondent one of the partners of the Firm - first respondent with an intention to defeat and delay the creditors, which falls within the ambit of Section 6(1)(b) of the Act, 1920.*

20. *When the petitioner approached the Court with a specific plea that the 3rd respondent committed an act of insolvency by transfer of immovable property to defeat and delay his creditors, the ordinary rule is that the person who approached the Court he has to prove that the transfer of property is aimed to delay and defeat the creditors under Section 102 of the Indian Evidence Act, 1872. Adjudging a person as insolvent, results in bringing about the serious consequences, therefore, it is necessary to take particular care to see that the provision of law is observed strictly and applied correctly. Even if the debtor after selling major portion of his property, still possesses property to meet the claims of creditors, such act cannot be construed as an act of insolvency. But it is a peculiar case, where a Firm is sought to be adJudged as insolvent which consists of two partners i.e. respondents 2 and 3. But adjudication of firm as insolvent depends upon the solvency of its partners.*

33. Placing reliance on the above, learned counsel submitted that when the petitioners approached the Court with a specific plea that the 1st respondent committed an act of insolvency by transfer of immovable property to defeat or delay, the ordinary rule is that the person who approached the Court has to prove that the transfer of property is aimed to delay and defeat the creditors under section 102 of Indian Evidence Act, 1872. Adjudging a person insolvent has serious consequences, and even if the debtor, after selling major portion of the property, still possesses the property to meet the claim of the creditors, such act cannot be construed as an act of insolvent.

34. With the above submissions, learned counsel for respondents finally submitted that the learned trail Court had rightly passed the impugned order and there is no illegality or irregularity warranting interference by this Court.

35. Having considered the facts and circumstances of the case and the judgments relied upon by the learned counsel appearing for the parties, it is evident that the liability of respondent No.1 under the promissory notes referred to supra stands established and was duly adjudicated by the competent Civil Courts in the decrees passed in favour of the respective appellants/petitioners. On the basis of the said decrees, the Trial Court held that the debts stood proved, and the said finding has attained finality, no appeal having been preferred by respondent No.1. Respondent No.1 neither entered the witness box nor adduced any evidence in rebuttal and remained ex parte. Respondent Nos.2 to 4, being transferees of the properties, cannot step into the shoes of respondent No.1 and seek to establish, on his behalf, that the properties retained by him were sufficient to discharge the debts due to the appellants/petitioners. Their adjudication is confined to the question as to whether they are bona fide purchasers of the properties in question. As held in *Y. Malludore v. P. Seethrathnam*, referred to supra, transferees cannot substitute themselves for the debtor and raise a plea on his behalf regarding his capacity to discharge the debt. In view of the aforesaid settled principle, respondent Nos.2 to 4 cannot agitate that the act of insolvency committed by respondent No.1 has not been proved merely because respondent No.1 remained ex parte before the Court.

36. As stated above, there is no dispute with regard to the existing debt, and the learned Judge, while considering point No.1 for consideration, had categorically held that the debts due in favour of the petitioners are proved.

37. With regard to the alienation of the property by the 1st respondent in favour of respondent Nos.2 to 4, who are the son, son's wife and father of the son's wife of the 1st respondent under three sale deeds executed on the same day and containing identical recitals, it is evident that the said sale deeds were effected without any real exchange of money at the time of execution of the sale deeds. The recitals only disclose that certain amounts were allegedly paid on different occasions prior to the execution of the sale deeds and that the said amounts were towards discharge of sundry debts, medical expenses and family expenses of the 1st respondent. However, no particulars whatsoever were furnished by respondent Nos.2 to 4 to substantiate the said alleged payments or the circumstances under which such payments were made.

38. In the insolvency petition, there is a specific averment that the sale of the property was a nominal one in favour of respondent Nos.2 to 4 and the same was done only to defraud and evade payments to the petitioners, which is akin to the provisions of Section 6(b) of the Act relating to intention to delay or defeat the claims of creditors, though it is not worded in the exact language of the said section. The language employed in Paragraph No. 7 of the petition is that the 1st respondent with fraudulent intention, with an intention to avoid the debts and with an intention to outreach the property from the hands of the creditor, brought into existence nominal sale deeds in the name of respondent Nos.2 to 4, clearly reveals the pleadings with regard to the intention of the 1st respondent. However, the said pleadings remained unrebutted in view of his remaining ex parte in the proceedings.

39. Respondent Nos.2 to 4 attempted to explain and contend that there was no intention to delay or defeat the claim of the petitioners and placed heavy reliance on the recitals contained in the documents and tried to establish that there was no intention on the part of Respondent No.1 to defeat or delay the claim of the petitioners, which, in fact, is not permissible for them to plead or to shoulder the responsibility of disproving the contentions raised by the appellants/petitioners, in view of the judgment of the Hon'ble Supreme Court in ***Y. Malludore v. P. Seethrathnam*****, case** cited supra; however, the evidence of RW.1 shows that there was no prior acquaintance between the 1st respondent and respondent Nos.2 and 4, which has been categorically admitted. As such, the plea that the amounts were paid much prior to the execution of the sale deeds and towards discharge of sundry debts, apart from meeting medical expenses, cannot be believed, as such, the intention of the 1st respondent can be gathered from the above evidence that it was only done for the purpose to defeat or delay the dues to the creditors - petitioners herein. Thus, the finding recorded by the learned Trial Judge that the intention was not established cannot be sustained. The case laws relied upon by the either side would clearly indicate that the intention cannot be drawn directly, it can be gathered from the circumstances in the given situation. Though the petitioners have pleaded that the sales were nominal and effected with fraudulent intention to avoid debts and to keep the properties out of the reach of the creditor, such plea itself is in compliance with Section 6(b). Hence, the arguments advanced by the learned counsel for the respondents cannot be accepted.

40. Though the 1st respondent had filed a counter, he did not choose to contest the matter by entering the witness box for placing facts before the Court, or subjecting himself to cross-examination; as such, the claim of the petitioners remained unrebutted. The petitioners, having placed the material on record to show that the 1st respondent was indebted to them under the aforesaid decrees passed by the competent civil Court and the 1st respondent had transferred the properties in favour of respondent Nos.2 to 4 without any real exchange of money, have clearly established the acts of insolvency. The respondent Nos.2 to 4, being transferees, cannot shoulder the responsibility of respondent No.1 to disprove the allegations/ averments in the petition and to rebut the evidence of PW.1 as was relied upon by the petitioners/appellants in the judgment in ***Vemulla Rosaiah's case (cited supra)***. The subsequent purchasers are entitled only to contest the proceedings under section 53 and 54 of the Provincial Insolvency Act with regard to the sale, particularly as to whether they were bona fide purchasers or not, and in the further proceedings after the adjudication of the debtor as insolvent. Except to the aforesaid extent, there cannot be any role for the purchasers to agitate before this Court or to enter into the shoes of the respondent No.1 debtor. The Hon'ble Supreme Court in ***Rm.NI. Ramaswami Chettiar and others V. The Official Receiver, Ramanathapuram***[13] held that transfers before filing of the petition are binding on the Receiver unless they are annulled under section 53, 54 and 54(a) of Provincial Insolvency Act. Therefore, the transfers made prior to the filing of the petitions have to be dealt with in accordance with the provisions of Section 53, 54 and 54(a) of the Act, subsequent to adjudging the respondent No.1 as insolvent.

41. Thus, the findings recorded by the learned Judge are contrary to law. A plain reading of the unrebutted averments and the material placed on record would clearly establish that the 1st respondent committed the act of insolvency, as such, the Order dated 17.09.2012 passed in I.P.No.6 of 2011 on the file of learned I Additional District Judge, East Godavari District at Rajahmundry is hereby set aside.

42. Accordingly, the Civil Miscellaneous Appeal is ***allowed*** adjudging the 1st respondent as insolvent and the learned I Additional District Judge, East Godavari at Rajahmundry, is directed to take all further consequential steps, including appointment of official receiver, and for taking of further

13 AIR 1960 SC 70

consequential actions under the provisions of the Provincial Insolvency Act, 1920. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE BALAJI MEDAMALLI

Date: 19.08.2026
Dvs / Sak

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

CIVIL MISCELLANEOUS APPEAL NO: 118 of 2017

Date: 19.08.2026

Dvs / Sak