

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

CIVIL REVISION PETITION No.3657 of 2011

ORDER :

This revision petition is arising out of the orders in I.A.No.361 of 2010 dated 19th October 2010 in I.P.No.8 of 2003 on the file of Senior Civil Judge, Jagtiyal.

2. The revision petitioner has filed insolvency petition before the Senior Civil Judge's Court, Jagtiyal. His case before the trial Court was that he used to run a retail wine shop under the name and style of 'Himalaya Wines' at Mallapoor, which was taken on lease from one Nagula Gangadhar by borrowing amounts from the respondents to a tune of Rs.4,85,000/-. There were 17 respondents arrayed in the insolvency petition. It is the further case of the revision petitioner that he gave Rs.50,000/- to the original owner as goodwill and paid Rs.3,00,000/- rentals to the Government. It is the specific contention of the revision petitioner that the villagers of Mallapoor Ikya Sangham demanded Rs.1,00,000/- from him for development of the village and as he refused to pay the said

amount, they passed a resolution not to purchase liquor from his shop and for a period of one month, there was no business for him.

3. Later, the petitioner agreed to give Rs.50,000/- to the Ikya Sangham and that the customers of the shop have not paid him the amounts for the liquor purchased by them and were due to him in a sum of Rs.1,00,000/-. It is his case that due to the downfall of the business and also due to the pressure and threatenings by the respondents to repay the debts, he was constrained to file the insolvency petition showing the B-Schedule property as the sole property available to repay the debts to all the 17 respondents. In the A-Schedule, the petitioner has given the particulars of amounts payable by him to each of the respondents, totalling to Rs.4,85,000/-.

4. It is the contention of the revision petitioner that the I.P. was dismissed for non-prosecution against R-3 to R-7. An Interlocutory application was filed by the revision petitioner praying the Court to appoint a Receiver to take possession of the B-Schedule property and the trial Court accordingly appointed the

Advocate-Receiver pending disposal of the Insolvency Petition. The respondents filed a petition i.e. I.A.No.318 of 2005 praying to direct the Receiver to sell the B-Schedule property and deposit the sale proceeds in to the Court, for which, the petitioner filed counter opposing the petition on 25.08.2005.

5. Heard learned counsel for petitioner and the counsel for the respondents and also perused the record.

6. It is urged by the learned counsel for petitioner that the order of the trial Court is arbitrary, since the same was passed after dismissal of the insolvency petition itself for default on 14.07.2006. It is further urged that the petition filed by the petitioner herein in I.A.No.361 of 2010 to restore the insolvency petition by setting aside the order dated 14.07.2006, was dismissed by the trial Court with an observation that “the petitioner failed to explain how the petition is within limitation and which special statute, if any, empowers him to seek the relief of setting aside the sale dated 14.07.2006”.

7. On the other hand, it is urged by the learned counsel for respondents that the trial Court has rightly dismissed the I.A. as the petition was not filed within the period of limitation. It is further contended that the specific provision of statute was also not mentioned in the petition. Therefore, he prayed to dismiss the present revision petition as it is devoid of merits.

8. The record reveals that I.P.No.8 of 2003 was dismissed for default on 14.07.2006 and on the same day, the Court directed the receiver to sell the B-Schedule property in public auction and distribute the amount among the creditors. Accordingly, the Advocate-Receiver had auctioned the property of the petitioner i.e. the house, which was knocked down by the respondents herein for Rs.50,000/-. The Receiver, after receiving the auction amount, filed a report before the Court and another I.A.No.229 of 2003 (for appointing Receiver) underwent several adjournments and the trial Court has closed the said I.A. on 11.12.2009, ordering distribution of an amount of Rs.26,190/- to Respondent No.1 and Rs.18,710/- to Respondent No.2 out of the auction amount. The record further reveals that I.A.Nos.32 and 33 of 2010 (cheque petitions) were

filed by the respondents 1 and 2 for issuing cheques in their favour for the said amounts. At that point of time, I.A.No.361 of 2010 was filed by the revision petitioner seeking to set aside the order dated 14.07.2006.

9. Admittedly, the trial Court has dismissed the insolvency petition i.e. I.P.No.8 of 2003 for default on 14.07.2006. Once the main petition is dismissed for default or disposed of either way, all the miscellaneous applications therein shall stand closed. Therefore, in the present case, the trial Court ought not to have passed orders in the miscellaneous applications when the main I.P. itself was dismissed for default earlier. Miscellaneous applications cannot be treated as separate applications after the main petition itself is dismissed. The trial Court has erred in passing independent orders in the miscellaneous application without there being main petition pending before the Court. Further, if any person approaches the Court under the provisions of the Insolvency Act seeking to declare him as an insolvent, unless and until the Court declares him as insolvent, the properties of such person shall not be auctioned or distributed. In the present case, without

declaring the petitioner as insolvent, the Court below has auctioned and distributed his property by passing orders in the miscellaneous application, much after the closure of the main petition, which is a grave irregularity.

10. In this regard, a reference can be made to the judgment of Madras High Court in the case of **R. Chandra v. N.Allimuthu**¹, wherein, it is held that the petitioners cannot be permitted to withdraw the insolvency petitions filed by them and the Courts also shall not dismiss such insolvency petitions for non-prosecution, if rights are accrued to the creditors.

11. In view of the above discussion, this Court is of the considered view that the trial Court has erred in dismissing the insolvency petition for default and it further erred in passing orders in miscellaneous applications without there being the main petition pending before the Court, and as such, any orders passed by the trial Court in I.P.No.8 of 2003 on the file of Senior Judge's Court, Jagtiyal on or after 14.07.2006, are liable to be set aside.

¹ CMSA.No.32/2018, dt.22.03.2022

11. Accordingly, the revision petition is allowed. Consequently, the impugned order dated 19.10.2010 passed in I.A.No.361 of 2010, is set aside. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 29.06.2022

ajr