

(2007) 07 AP CK 0008

Andhra Pradesh High Court

Case No: CMP No. 170 of 2007 in CRP (SR) No. 35884 of 2006

P. Lakshmipathi Chetty

APPELLANT

Vs

P. Janardhana Chetty and Others

RESPONDENT

Date of Decision: July 20, 2007

Acts Referred:

- Provincial Insolvency Act, 1920 - Section 75(1)

Citation: (2007) 5 ALD 723

Hon'ble Judges: A. Gopal Reddy, J

Bench: Single Bench

Advocate: Muni Reddy, for the Appellant; B. Rajendra, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A. Gopal Reddy, J.

The CMP No. 170 of 2007 is filed to condone the delay of 23 days in presenting the revision against the judgment of the learned VIII Additional District Judge (FTC), Chittoor dated 21 7-2006 passed in AS No. 32 of 1998, whereunder the appeal filed by the petitioner against the dismissal of the orders dated 2-12-1997 passed by the learned Additional Sub-Judge, Chittoor in I.P. No. 4 of 1997, was confirmed.

2. Brief facts of the case are that the petitioner, who filed I.P. No. 4 of 1997, admitted that he came to know that O.S. No. 109 of 1995, on the file of the learned Additional Senior Civil Judge, Chittoor was decreed, but he did not know whether his business premises was attached in the said suit; the fact of his father filing OS No. 109 of 1995 claiming title to the attached properties; and also he did not know whether he was a party to the said claim petition filed by his father or not.

3. The evidence of PW-2 is to the effect that the petitioner was residing in a rental house bearing Dr.No.8-191 in Jail Khana Street, Chittoor and there is also a "pathi"

complex building at a distance of 100 yards from "Premala talkies, Chittoor and the first floor was let out to a computer institute and in the ground floor, "Pathi General Stores" was located and the cellar is being used as a go-down and the complex is worth more than 1 crore. The petitioner and his family members had partitioned the said building. PW-2 further admitted that apart from the said buildings, the petitioner's family possessed two go-downs in Gopal Reddi Street worth Rs. 10 lakhs.

4. Basing on the said evidence, the lower appellate Court dismissed the appeal preferred by the petitioner, confirming the order passed by the Insolvency Court, dismissing the I.P. filed by the petitioner.

5. It is well-settled that the Legislature did not confer on the High Court under the 1st proviso to Section 75(1) of the Provincial Insolvency Act, 1920 (for short "the Act") an appellate power nor did it confer on it a jurisdiction to re-appreciate the evidence on record. The High Court, while exercising that power, by and large is bound by the findings of fact reached by the District Court. Therefore, Section 75(1) of the Act does not enable the High Court to de novo examine the findings of fact reached by the District Court (see the decision reported in Malini Ayyappa Naicker (dead) by his Malini Ayyappa Naicker (Now Dead) through I.R. etc. Vs. Seth Manghraj Udhavadas Firm by Managing Partner Chathurthuj Chhabildas (Dead) Thereafter by I.Ss. and Others, .

6. Therefore, in the absence of any allegation to the effect that the material evidence adduced has not been considered by the Insolvency Court as well as the appellate Court, the order under challenge does not suffer from any illegality or perversity.

7. In the result, both the CMP No. 170 of 2007 and CRP (SR) No. 35884 of 2006 are dismissed. There shall be no order as to costs.