

**Gunupudi Subba Rao and Co., Reptd. by Partner Gadamsetti Narasimham Vs. Boggarapu Guruswamy**

**LegalCrystal Citation :** [legalcrystal.com/425707](http://legalcrystal.com/425707)

**Court :** Andhra Pradesh

**Decided On :** Jul-08-1964

**Reported in :** AIR1966AP25

**Judge :** Kumarayya, J.

**Acts :** [Provincial Insolvency Act, 1920](#) - Sections 28(2), 37 and 78(2); Limitation Act, 1908 - Schedule - Article 182(2)

**Appeal No. :** A.A.A.O. No. 126 of 1961

**Appellant :** Gunupudi Subba Rao and Co., Reptd. by Partner Gadamsetti Narasimham

**Respondent :** Boggarapu Guruswamy

**Advocate for Def. :** M.V. Ramana Reddy, Adv. for ;P. Babulureddy and ;M. Narayana Rao, Advs.

**Advocate for Pet/Ap. :** A. Kuppuswamy, Adv.

**Disposition :** Appeal allowed

**Judgement :**

Kumarayya, J.

1. The only question that arises in this appeal against the order passed by the Subordinate Judge, Kavali in execution proceedings is, whether the present execution petition filed on 1-12-1958 is within time.

It would appear from the facts of the case that the appellant had brought O.S.No. 367/1950 and obtained a decree against the respondent and several other defendants. The decree was passed on 31-8-1951 and it became final as no appeal has been preferred, On 2-5-1952 the decree-holder put his decree into execution but that petition was dismissed on 18-6-1952 as the batta was not paid. This was followed by another E. P. on 25-6-1952 which again was dismissed on 29-8-1952 as no property liable to be attached could be found. A third application was filed on 18-11-1952 and this is marked as Ex. A. 6. By this time, nay on 29-8-1952 itself, the 1st defendant on the petition of this very creditor decree-holder had been adjudged insolvent. So then according to law, the decree-holder had to take permission of the insolvency court for taking execution proceedings against the insolvent. He did not comply with this provision. He filed his E. P. on 18-11-1954 without such leave of the insolvency court.

Of course the petition was against all the judgment-debtors including the insolvent. This petition was however, dismissed on 20-4-1955 on the ground that no batta was paid. The next petition was filed on 18-11-1957 again without the leave of the insolvency court and it met the same fate on 9-12-1957 on the same ground that batta was not paid. Sometime thereafter on 11-8-1958 the adjudication of insolvency was annulled unconditionally. Thereafter the present E. P. was brought on 1-12-1958. This time statute of limitation was set up against the tenability of E. P. The executing court repelled this contention raised by the J. D. but on appeal the learned Subordinate Judge having regard to the provisions of Section 78(2) held that the E. P. is barred by limitation. Against this order, the decree-holder has come in appeal to this Court.

2. It was argued that when once an adjudication is annulled without imposing any condition and without vesting the property in any other person, the effect of annulling the adjudication would be that the insolvent is automatically reverted to his original position. The Execution petition, therefore, filed without the leave of the Court would be taken as valid applications and they would constitute a step in aid of the execution.

3. The next ground taken is that the decree being against several judgment-debtors, the execution petition which is valid against one judgment-debtor would save limitation against others. It is further contended, though not pressed at all, that under Section 78(2), the Decree holder is entitled to exclude the time between the adjudication and annulment.

In support of these contentions raised the learned counsel Mr. Kuppaswamy has referred me to a decision of this Court in Rangappa v. Reddi Govinda Reddy, : AIR1963AP228 That case is on all fours with the facts of the present case. It was held thus therein after referring to the relevant provision of the Provincial Insolvency Act and the authorities of the Full Bench of the Madras High Court,

'the law is well settled that when an adjudication was annulled without imposing any conditions and without vesting the property in any person, it must be taken that the effect of annulling the adjudication is to wipe out the effect of insolvency altogether and the insolvent automatically reverts to his original position with all his powers and rights in respect of the property as though the adjudication was but a dream and a hollow unreality. If that is the effect of unconditional annulment, as it is under the express provisions of law, the reverter must benefit both the debtor and the creditor. All disabilities and limitations directly flowing from the adjudication shall automatically get remedied or obliterated. Whatever the vitiating short coming on account of the E. P. being filed without the leave of the Court, it will, with the order of annulment, get automatically neutralised. The insolvent having reverted to his original status by the operation of law, it can no longer be argued that the E. P. filed against him was not a proper application in accordance with law by reason of insolvency. The retrospective effect being given to his status, the consequences will necessarily reach back to the date of the rev(sic)'

4. In view of this pronouncement, the argument that the decree-holder did not comply with the provisions of Section 28(2) of the Provincial Insolvency Act is inconsequential in view of the provisions of Sections 37 and 43 of the Provincial Insolvency Act. It is argued that the provisions of Section 78(2) cannot be rendered nugatory by re-sorting to the provisions of Sections 37 and 43 of the Act. Section 78, it may be remembered reads thus:

'(1) The provisions of Sections 5 and 12 of the Indian Limitation Act, 1908, shall apply to appeals and applications under this Act, and for the purpose of the said Section 12, a decision under Section 1 shall be deemed to be a decree.

(2) Where an order of adjudication has been annulled under this Act, in computing the period of limitation prescribed for any suit or application for the execution of a decree (other than a suit or application in respect of which the leave of the Court was obtained under Sub-section (2) of Section 28) which might have been brought or made but for the making of an order of adjudication under this Act. the period from the date of the order of adjudication to the date of the order of annulment shall be excluded.

Provided that nothing in this section shall apply to a suit or application in respect of a debt provable but not proved under this Act.' This provision was considered in the case referred to above and it was observed that even though the provisions of Section 78(2) may not avail the decree-holder, it is open to him to take advantage of the effect of Section 37 and Section 43 of the Act. It was further held that when there are more than one defendants and the decree has been passed against them jointly, the E. P. against any one of them shall take effect and save limitation against all of them. This position is in no way affected by Section 78(2) of the Provincial Insolvency Act which only confers some concession on the creditors who satisfy the requisite conditions. Such being the case, this appeal must be allowed.

5. At the time when the learned Subordinate Judge rendered his judgment, he was in doubt on account of absence of any direct decision on the point. The case referred to has been decided subsequent to that judgment. In view of the above decision, it is also plain that the plea taken under Article 182(5) of the Indian Limitation Act also must prevail. Of course, Section 78(2) will not avail the petitioner. There was no occasion either for the decree-holder to resort to the petition when it is clear that all his applications were filed within time. The only defect to be found therein as at the time of filing was that in two of his petitions though the leave of the Insolvency Court was necessary, the decree-holder did not obtain any leave. But, as already noticed that when once the adjudication has been annulled without imposing any conditions, it must be taken that there was no insolvency at all and by reversion the prior state of things was restored. It must be assumed by reason of reversion, that the condition of obtaining leave was inapplicable.

6. On these grounds, the appeal is allowed with costs. The order under appeal is set aside, the executing court will proceed with the E. P. and dispose of it in accordance with law.