

REVISIONAL CIVIL

Before Daya Krishan Mahajan, J.

INDER SINGH,—Petitioner

versus

SARDAR SAHIB BALWANT SINGH,—Respondent

Civil Revision No. 686 of 1968

September 10, 1968.

Provincial Insolvency Act (V of 1920)—Ss. 28 and 28-A—Property of an insolvent vesting in the Receiver—Insolvent not applying for discharge—Insolvency terminated on annulment—Property continuing to vest in Receiver—Such insolvent—Whether has locus standi to evict a tenant from property vesting in the Receiver.

Head, that where the property of an insolvent vests in the Receiver and the insolvency is terminated on annulment because of the failure of the insolvent to apply for discharge, but the property continued to vest in the Receiver, there is nothing in the Provincial Insolvency Act which debars such an insolvent to recover the property from a third party. The insolvent cannot sue the Receiver or the creditor, but apart from these two categories of parties, there is nothing in the Act, which prevents him to bring suits to recover the property to make it good to the Receiver or to the Insolvent's Estate. The ultimate residue of the property goes back to the insolvent and his property is only vested in the Receiver for the benefit of the creditors. Whatever residue remains after satisfying the creditors necessarily belongs to the insolvent. (Para 4)

Petition under section 115 Code of Civil Procedure for revision of the order of the Court of Shri Baghair Singh Teji, Subordinate Judge IIInd Class, Amritsar, dated 3rd July, 1968, holding that the insolvency proceedings had no effect on the property of the insolvent, the plaintiff if insolvency is terminated on annulment and that the plaintiff is not barred from bringing the suit for ejectment on the basis of rent note because of the insolvency proceedings.

H. L. SIBAL, SENIOR ADVOCATE, WITH R. K. CHHIBBER, ADVOCATE, for the Petitioner.

TIRATH SINGH MUNJRAL, ADVOCATE, for the Respondent.

JUDGMENT.

MAHAJAN J.—This petition for revision is directed against the order of the trial Court holding that the undischarged insolvent

has *locus standi* to evict the tenant from the property belonging to him which had vested in the Receiver due to his insolvency.

(2) On facts, there is no dispute. The respondent was declared an insolvent and a Receiver of his estate was appointed. The insolvent did not apply for discharge within the time specified and, therefore, the insolvency was terminated on annulment of the adjudication; but the property continued to vest in the Official Receiver. The respondent filed the present suit, out of which this revision has arisen for ejection of the defendant-petitioner on the ground that he is the tenant of the property in dispute and as he had not paid the rent, he was entitled to be evicted and the plaintiff put in possession. The tenant raised the plea that as the property of the plaintiff had vested in the Receiver, the plaintiff had no *locus standi* to bring the present suit.

(3) The only preliminary issue, that arose for determination, was—

“Whether the plaintiff has no *locus standi* to file the present suit ? ”

The trial Court has come to the conclusion on the basis of the decision of the Andhra Pradesh High Court in *Mutha Sarvarayudu and others v. Vammi Kondalarayudu and others* (1), that the plaintiff has the *locus standi* to bring the present suit. Against this decision, the present petition for revision has been preferred.

(4) Mr. H. L. Sibal, who appears for the petitioner-tenant, has raised the contention that as the property of the insolvent has vested in the Receiver and has continued to so vest by reason of the Annulment Order and there being no discharge of the insolvent, the insolvent has no *locus standi* to bring a suit for ejection with regard to property which has so vested. Mr. Sibal relies upon sections 28 and 28-A of the Provincial Insolvency Act, 1920. However, the matter is not *res integra*. Precisely, the same question arose for decision in *Mutha Sarvarayudu's case* (1) and in some what similar circumstances, it was held that there was nothing in the Provincial Insolvency Act, which would debar the insolvent to

(1) A.I.R. 1961 A.P. 219.

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recover property from a third party. The rule is well-settled that the insolvent cannot sue the Receiver or the creditors. But Apart from these two categories of parties, there is nothing in the Act which prevents him to bring suits to recover the property and make it good to the Receiver or to the Insolvent's Estate. It is also to be kept in mind that the ultimate residue of the property goes back to the insolvent and his property is only vested in the Receiver for the benefit of the creditors. Whatever residue remains after satisfying the creditors necessarily belongs to the insolvent. As already said, in the Andhra Pradesh case, it was held that :—

“ * * The order, dated 10th December, 1934 suspending the operation of the discharge for six months did not have the effect of divesting the Official Receiver before he closed his administration nor of restoring the properties to the plaintiff immediately after the expiry of six months.

However, the main object of vesting the insolvent's property in the insolvency Court or a receiver is to realise the assets and distribute the proceeds among the creditors—see Section 28. If an Official Receiver closes or abandons the administration and no creditor opposes such a course, the vesting order must be deemed to have worked itself out and the residue of the estate would naturally revert to the insolvent even without a specific order reverting it. In any event, the recovery of his property by the insolvent from the wrongdoer would not be against the policy of the Act and the doctrine that the vesting order divested the insolvent of all properties would not be a just ground for refusing the recovery. * * *”

(5) Those observations fully apply to the facts of the present case. There is a clear default, according to the allegations of the insolvent, by the defendant in not paying the rent. Of course, in the circumstances, the rent had to be paid to the Receiver and if the rent had been paid to the Receiver, the suit for ejection on that ground would have failed. But such a suit cannot be thrown out on the ground that the property of the insolvent have vested in the Receiver, when the Receiver has taken no steps to recover the arrears of rent due. Moreover, it is stated by the learned counsel for

the tenant that the property was kept secreted by the respondent and the Receiver did not know of it. Same was the case in *Mutha Sarvarayudu's case* (1). There too the property had been secreted from the Insolvency Court and in spite of that the above-quoted observations were made by the learned Judges of that Court. In principle, I see nothing wrong in these observations and I am in entire agreement with the same.

(6) Mr. Sibal then urged that the Receiver should be made a party to the suit. I have no doubt that in case an application is made by the petitioner asking that the Receiver be impleaded as a party to the suit, the trial Court will make him a party to the suit.

(7) The petition is accordingly dismissed the order of the trial Court is upheld and the case remitted to it for proceeding further according to law. The parties are directed to appear in the trial Court on the 14th of October, 1968. In the circumstances of the case, however, there will be no order as to costs.

K. S. K.

REVISIONAL CIVIL

Before Mehar Singh, C.J. and Bal Raj Tuli, J.

NARANJAN KAUR,—Petitioner

versus

DR. SIRI RAM JOSHI,—Respondent

Civil Revision No. 153 of 1966

September 11, 1968.

East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 2(d) and 13(2) (ii)—Non-residential premises let for trade or business—Tenant residing in part thereof—Such user by the tenant—Whether changes the character of the premises—Tenant—Whether can be evicted.

Held, that from the definition of the expression 'non-residential building', read along with the provision in clause (d) of section 2 of East Punjab Urban Rent Restriction Act, it is clear that such a building is solely to be used for