P. Srinivasa Naicker

Vs

Smt. Engammal and Another

Civil Appeal No. 274 of 1959

(K. N. Wanchoo, J. C. Shah JJ)

28.11.1960

JUDGMWENT

WANCHOO, J. –

This is an appeal by special leave in an insolvency matter. The brief facts necessary for present purposes are these. S. V. N. Nanappa Naicker and his sons were adjudged insolvents on an application of Smt. Engammal (hereinafter referred to as the respondent). They had preferred an appeal before the High Court of Madras but it was dismissed on April 17, 1953. Thereafter the official receiver took steps to sell the property of the insolvents, which consisted of two lots, the first lot comprising 145 acres 10 cents of dry land and masonry house, and the second lot, 8 acres and odd of dry land. Both these properties were subject to mortgage. The official receiver fixed September 28, 1953, for sale of the properties by auction. Fifteen of the creditors were present when the sale by auction took place, including the son of the respondent. No request was made on that day by anyone for postponing the sale and consequently bids were made. The highest bid for lot 1 was of Rs. 4500/- and the highest bid for lot 2 was of Rs. 70/-. Both these bids were made by the appellant who is a brother-in-law of Nanappa Naicker. The reason why the two lots were sold for Rs. 4570/- was that there was an encumbrance on the entire property of Rs. 17,200/-. The official receiver did not close the sale on that day in the hope that some higher offers might be made by the creditors and postponed it to various dates upto October 26, 1953. On all these dates, the respondent's son was present but no higher offer was made on behalf of the respondent. On October 26, 1953, an application was made on behalf of the respondent praying that the sale be postponed for another three months apparently on the ground that there had been drought in that area for some years past and agricultural lands were not fetching good price. The official receiver, however, saw no reason to postpone the sale, particularly when no higher offer was forthcoming from the side of the respondent and decided to knock down the properties in favour of the appellant.

Later, an application was made on behalf of the respondent on November 18, 1953 under s. 68 of the Provincial Insolvency Act, No. V of 1920 (hereinafter referred to as the Act). The case of the respondent was that the sale had been made for a very inadequate price and there had been drought in the village for several years in the past and there was very great stringency in the money market and it was hoped that if the sale was postponed for three or four months, the properties would fetch a good price of not less than Rs. 15,000/-, exclusive of the sum due on the encumbrances. The respondent also stated that if the sale was postponed for three months she would be prepared to bid more than Rs. 7500/- for the properties. There were some other allegations in the petition suggesting collusion between the official receiver on the one side and the insolvent and the appellant on the other. The respondent therefore prayed that the official receiver should be ordered not to sell the properties to the appellant at the price bid by him. The application was opposed by the official

receiver as well as by the appellant. The official receiver contended that he had done his best and that no higher bid could be obtained. He also denied the allegation made against him in the nature of collusion and also about the manner of conducting the sale.

The Subordinate Judge allowed the application on the ground that the price fetched was low and that the general body of creditors to whom debts to the extent of Rs. 30,000/- were payable would be considerably prejudiced if the sale was allowed to stand. Thus the only ground on which the application under s. 68 was allowed was that the price fetched was low.

Thereupon there was an appeal to the District Judge under s. 75 of the Act. The District Judge allowed the appeal. He appointed out that there was nothing to show that there was any irregularity in the conduct of the sale. He also pointed out that there was no reason to hold that the official receiver was in any way in collusion with the insolvent and the appellant. He also pointed out that the respondent's son was all along present and if he really thought that the price fetched at the auction sale was low he could offer a higher price on behalf of the respondent. Finally, the District Judge held that the Subordinate Judge was not right in this view that the property had been sold for a law price and gave various reasons for coming to that conclusion.

The matter was then taken in revision under the proviso to s. 75 of the Act, which lays down that "the High Court for the purpose of satisfying itself that an order made in any appeal decide by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit". The High Court however did not consider the question whether the order of the District Judge was according to law. It appears that before the High Court an offer was made by the respondent that she was prepared to deposit Rs. 9,000/- if a fresh auction was held and would start the bid at Rs. 9,000/- and also that she would pay Rs. 1,000/- to the appellant for any loss caused to him. The High Court accepted this offer, though it was of opinion that it could not be said that the price fetched at the auction was unconscionably low; it however held that the price was low considering the extent and nature of the properties, and if Rs. 9,000/- or more could be got for the properties the creditors would receiver appreciably more as dividend. It therefore allowed the revision on the terms offered by the respondent.

It is this order of the High Court which has been brought before us by special leave and the only question that has been urged on behalf of the appellant is that the High Court had no jurisdiction to interfere with the order of the District Judge unless it came to the conclusion that that order was not according to law. It is contended at the High Court's order does not show that it applied its mind to the question whether the order of the District Judge was according to law or not and that the High Court seems to have been carried away by the offer made by the respondent to make minimum bid of Rs. 9,000/- for those properties. It is pointed out however that this offer was made three years after the auction and is no indication that the price fetched in the auction in 1953 was inadequate, for prices may have risen during this period of three years.

On the other hand, it is contended on behalf of the respondent that the court's power under s. 68 in appeal from an act of the receiver is much wider than the power of the court in dealing with auction sales in execution proceedings and therefore the Subordinate Judge was right in setting aside the act of the receiver in knowing down the properties to the appellant and the High Court was consequently right in setting aside the order of the District Judge and restoring that of the Subordinate Judge.

It may be accepted that the power of the court under s. 68 in not hedged in by those considerations

which apply in cases of auction sales in execution proceedings. Even so, the power under s. 68 is a judicial power and must be exercised on well recognised principles, justifying interference with an act of the receiver which he is empowered to do under s. 59(a) of the Act. The fact that the act of the receiver in selling properties under s. 59(a) is subject to the control of the court under s. 68 does not mean that the court can arbitrarily set aside a sale decided upon by the official receiver. It is true that the court has to look in insolvency proceedings to the interest in the first place of the general body of creditors; in the second plea to the interest of the insolvent, and lastly, where a sale has been decided upon by the official receiver to the interest of the intending purchaser in that order. Even so, the decision of the official receiver in favour of a sale should not be set aside unless there are good grounds for interfering with the discretion exercised by the official receiver. These grounds may be wider than the grounds envisaged in auction sales in execution proceedings. Even so, there must be judicial grounds on which the court will act in setting aside the sale decided upon by the official receiver. These grounds may be, for example, that there was fraud or collusion between the receiver and the insolvent or the intending purchaser; the court may be also interfere if it is of opinion that there were irregularities in the conduct of the sale which might have affected the price fetched at the sale; again, even though there may be no collusion, fraud or irregularity, the price fetched may still be so low as to justify the court to hold that the property should not be sold at that price. These grounds and similar other grounds depending upon particular circumstances of each case may justify a court in interfering with the act of the official receiver in the case of sale by him under s. 59(a) of the Act.

The High Court had therefore to see whether the Subordinate Judge's order was justified on these grounds and whether the District Judge made any mistake in law in reversing that order. If the Subordinate Judge's order was not justified on these grounds or if the District judge made no mistake in law in interfering with that order. the High Court cannot interfere in revision under the proviso to s. 75, for the High Court's jurisdiction to interfere arises only if it is of opinion that the District Judge's order was not according to law. If the High Court comes to that conclusion, it can then pass such order as it may think fit.

Let us therefore turn first to the order of the Subordinate Judge and see if it is justified on the ground mentioned above. Now both the Subordinate Judge and the District Judge found that there was no reason to hold that there was any fraud or collusion on the part of the official receiver in this case. Further, the Subordinate Judge did not find that there was any irregularity committed by the official receiver in conducting the sale and the District Judge has definitely found that there was no such irregularity. The only ground on which the Subordinate Judge held that the sale should be set aside was that the price fetched was low. Now if that ground is justified, the Subordinate Judge would have been right in interfering with the sale proposed by the official receiver. That matter has been considered by the District Judge and he has held that there is no reason to hold that the properties were being sold for a low price. The Subordinate Judge in dealing with the question of price has pointed out that the insolvent had valued the properties at Rs. 80,000/-, though he was conscious of the fact that this was properly an exaggeration. He therefore did not hold that the properties were worth Rs. 80,000/-. He came to the conclusion that the properties would be worth at least Rs. 40,000/- and the main reason why he said so was that the properties had been mortgaged for over Rs. 20,000/- in 1936. According to him there seems to be some infallible rule that one must double the mortgaged money in order to arrive at the valuation of the properties mortgaged. The District Judge has pointed out - and we think, rightly - that there can be no such rule. Therefore, the main basis on which the Subordinate Judge held that the properties were worth Rs. 40,000/- and therefore the bid of the appellant was low, falls to the ground as pointed out by the District Judge. The Subordinate Judge also pointed out that the insolvents were in possession of the properties

during the pendency of the insolvency appeal and had been depositing Rs. 2000/- annually on the order of the High Court in order to remain in possession. The Subordinate Judge however did not calculate the value of the properties on the basis that their annual income was Rs. 2,000/- and rightly so - because the amount deposited by a litigant on the order of a court in order to retain possession of some property cannot necessarily lead to the inference that that was the annual income of the property. It seems therefore that the District Judge was right when he held that there was no evidence on the record which would justify the finding of the Subordinate Judge that the price fetched by the sale in this case was inadequate or unreasonable. We may add that it was open to the respondent to show to the Subordinate Judge by well recognised methods of valuation as to what the value of the properties was. The Subordinate Judge should have then taken into account the total amount of the encumbrance on these properties. The mortgage deed is not on the record and we do not know what interest, if any, the mortgage money carried. Before the Subordinate Judge could come to the conclusion that the price offered by the appellant was low, he had first to find out the price of the properties by some recognised method. He had then to find what was the total amount of encumbrance on the properties. If on finding these things if appeared that the difference between the two was much larger than the price bid by the appellant, the Subordinate Judge would have been justified in interfering with the order of the official receiver, even if there was no question of fraud, collusion or irregularity in the present case. But no such findings have been given by the Subordinate Judge and the District Judge consequently was right when he said that the view of the Subordinate Judge that the price fetched was inadequate and unreasonable is incorrect. Unfortunately, the High Court did not address itself to the question whether the order of the District Judge was according to law or not. It seems to have been impressed by the offer made by the respondent, overlooking the fact that the offer of Rs. 9,000/- as the minimum bid and Rs. 1000/- for the appellant was being made three years after the auction during which, for all that we know, the prices might have risen. Further, the High Court has remarked that the price offered by the appellant it was not unconscionably low but if felt that it was still low on a comparison with the offer made by the respondent in 1956. As the High Court did not consider the question whether the order of the District Judge was according to law or not and did not come to the conclusion that that order was not according to law, the High Court would have no jurisdiction to interfere with that order.

Learned counsel for the respondent urged that even though the High Court may not have considered the matter from this aspect, we should not interfere with the order of the High Court if we are satisfied that in fact the price offered by the appellant was low, in the circumstances prevailing in 1953. We agree that if it was possible for us to come to the conclusion that the price offered by the appellant was low, there would be no reason to interfere with the order of the High Court, even though it might not have considered what was necessary for it to do for interfering under the proviso to s. 75; but as we have pointed earlier, there is not sufficient material on the record on which we can say that the price offered by the appellant is low. As we have already pointed out, no attempt was made in the Subordinate Judge's court to value the properties by any of the well recognised methods by which properties are valued. Further no attempt was made to show the total encumbrance on the property. Unless the valuation was properly made and the encumbrance was found out, it is not possible to say that the offer made by the appellant was low, for that would depend upon the difference between the value of the properties and the amount of encumbrance. In these circumstances, it is not possible for us to say that the order of the District Judge when he held that the Subordinate Judge was not right in holding that the price fetched was inadequate or unreasonable, is not according to law.

We therefore allow the appeal, set aside the order of the High Court and restore the order of the District Judge. The appellant will get his costs in this Court from the first respondent.

Appeal allowed.

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