

Official Assignee, High Court, Bombay

Vs

Haradagiri Basavanna Gowd and Others

Civil Appeal No. 291 of 1960

(CJI B. P. Sinha, P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta, J. C. Shah JJ)

01.11.1962

JUDGMENT

GAJENDRAGADKAR, J. –

This appeal by special leave arises out of insolvency proceedings taken against the firm of T. A. Doshi, Bombay (hereinafter called the firm) by its creditors on the original side of the Bombay High Court, as well as in the District Court, Bellary. The orders of adjudication passed against the said firm by the two Courts have led to some avoidable complications and delay, with the result that the claim made by the respondents in respect of a portion of the property of the insolvent before the District Court at Bellary still remains to be tried, though the insolvency orders were passed as early as 1950.

It appears that on January 25, 1950, an application was presented (I.P. No. 2 of 1950) in the District Court, Bellary, by some of the creditors of the firm for adjudicating the firm as insolvent, and on December 13, 1950, an order of adjudication was passed. Pending the adjudication proceedings, the District Court appointed the Official Receiver as interim Receiver at the instance of the petitioning creditors. The Receiver was authorised to take possession of certain goods alleged to belong to the insolvent which were then in transit to Bombay. Accordingly, the Receiver took possession of the said goods and under the orders of the Court, disposed of them. The sale-proceeds were then deposited in court. Thereupon, the respondents moved the District Court and claimed that they were entitled to a part of the money deposited by the Official Receiver, because the Railway Receipt in respect of the goods which had been sold by the Receiver had been made over to them by the insolvent for consideration. On his allegation, they prayed that as an interim measure, the sale proceeds should be paid over to them, because they had borrowed money from a bank on the security of the Railway Receipt in question and since the goods had been taken over by the Receiver, the bank was demanding immediate repayment of the loss. This application was allowed by the Court and the respondents were permitted to withdraw the amount on giving security and an undertaking to re-deposit the amount in court with interest @ 6% per annum when called upon to do so. In accordance with this order, the respondents withdrew the money on April 6, 1950. The claim made by the respondents in this way still remains to be tried though they withdrew the amount as far back as 6-4-50.

Whilst the insolvency proceedings before the District Court had proceeded in this manner, similar proceedings had already been taken against the firm by some other creditors on the original side of the Bombay High Court on April 14, 1950, (I.P. No. 52 of 1950). On this application, an adjudication order was passed on April 17, 1950. As a result of this order of adjudication all the properties of the insolvent vested in the Official Assignee of Bombay. The Official Assignee then

moved the District Court at Bellary (I.A. No. 183 of 1950), and prayed that insolvency proceedings pending against the firm in that Court should be stayed and that all the assets and books of account belonging to the insolvent should be transferred to Bombay. To this application, the respondents were made parties.

On December 13, 1950, whilst making an order of adjudication, the District Court passed an order on the application made before it by the Official Assignee of Bombay. It directed its Official Receiver to move the Bombay High Court to annul the adjudication order made by it on April 17, 1950. It observed that when such an application is made before the Bombay High Court, the said Court will consider all the relevant facts and circumstances and decide whether it would be convenient for all concerned to allow the assets and effects of the insolvent to be administered at Bellary or at Bombay. Having made this order, the District Court instructed the Official Receiver not to part with any portion of the assets and effects of the insolvent until he moved the Bombay High Court and final orders were passed on his application. It, however, added that if the High Court decides that the assets and effects of the insolvent should be administered from Bombay, all the assets, documents and account books belonging to the insolvent will be handed over to the Official Assignee at Bombay. Pending the final decision of the application to be made by the Official Receiver, status quo was allowed to be maintained. This order was not challenged by the respondents by preferring an appeal against it.

Though the District Court had directed the Official Receiver to move Bombay High Court, no action was taken by him for a long time; and so, the Official Assignee had to file another application before the Distt. Court (I.A. No. 171 of 1951) on October 15, 1951. By this application, the Official Assignee brought it to the notice of the Court that the Official Receiver had taken no action in accordance with the orders already passed by the Court and so, it was necessary in the interests of justice that the Court should direct the respondents to deposit all the amounts drawn by them on furnishing security and to transfer the said sums and other sums in deposit in Court and all the assets, movables and the books of account of the insolvent's firm together with the file of the Insolvency Case No. I.P. 53/1950 to the Bombay High Court. It was alleged that unless these steps were taken, the estate would suffer irreparable loss and injury.

Meanwhile, the Official Receiver moved the Bombay High Court for annulment of the adjudication order already passed by it. The High Court declined to annul its adjudication order and directed the continuance of the insolvency proceedings before it because it took the view that the estate of the insolvent could be administered more conveniently in Bombay than in Bellary.

When the application made by the Official Assignee (No. 171/1951) came to be heard by the District Court, it was duly apprised of the order passed by the Bombay High Court on the application made by the Official Receiver. Having regard to the fact that the Bombay High Court had declined to annul its adjudication order, the District Court took the view that the application made by the Official Assignee should be allowed. It, therefore, directed the Official Receiver to transmit all the accounts and deposits lying in court and called upon the respondents to refund the amounts drawn by them on furnishing security with interest @ 6% per annum, so that the same could as well be transferred to Bombay.

This order was challenged by the respondents by preferring an appeal before the High Court of Andhra Pradesh. The High Court has allowed the appeal. It was held that the application made by the Official Assignee did not satisfy the requirements of section 77 of the Provincial Insolvency Act and that, on the whole, it would be more convenient that the estate of the insolvent should be

administered by the District Court at Kurnool which had been clothed with jurisdiction to try the said proceedings as a result of the reorganisation of the States. It is against this decision of the High Court that the Official Assignee (hereinafter called the appellant) has come to this Court.

The first question which calls for our decision in this appeal is in whom does the property of the insolvent vest ? For deciding this question, the relevant provisions of the Provincial Insolvency Act and the Presidency Towns Insolvency Act have to be considered. Sec. 17 of the Presidency Act provides, inter alia, that on the making of an order of adjudication, the property of the insolvent wherever situate shall vest in the official assignee and shall become divisible among his creditors. Under s. 51 of the said Act it is provided, inter alia, that the insolvency of a debtor shall be deemed to have relation back to, and to commence at, (a) the time of the commission of the act of insolvency on which an order of adjudication is made against him, or (b) if the insolvent is proved to have committed more acts of insolvency than one, the time of the first of the acts of insolvency proved to have been committed by the insolvent within three months next preceding the date of the presentation of the insolvency petition. It is thus clear that when an adjudication order is made under s. 17, it relates back to the date specified by s. 51. As a result of the combined operation of the said two sections, the insolvency under the Presidency Act commences on the commission of the act of insolvency and it is on that date that the property of the insolvent vests in the Official Assignee. Sec. 51 clearly shows that the insolvency is deemed to commence from the moment when the debtor committed the earliest act of insolvency which is proved to have been committed within three months before the presentation of the petition on which the order of adjudication is made. This petition can be made either by the debtor himself or by any of his creditors. This position about the effect of the doctrine of 'Relation back' is not in dispute. Applying this principle, it would follow that the adjudication order passed by the Bombay High Court on April 17, 1950, on the insolvency petition filed before it goes back not only to the date on which the said petition was presented, viz, April 14, 1950, but to the earliest act of insolvency within three months prior to the said presentation which is March 14, 1950. In other words, the adjudication order passed by the Bombay High Court relates back to March 14, 1950.

Let us now examine the effect of the order of adjudication passed by the District Court at Bellary. Sec. 28(2) of the Provincial Insolvency Act provides, inter alia, that on the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a Receiver as hereinafter provided, and shall become divisible among the creditors. This corresponds to s. 17 of the Presidency Act. s. 28(7) of the Provincial Act which provides for relation back of the adjudication order, lays down that an order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made. Unlike s. 51 of the Presidency Act which relates back the adjudication order to the earliest act of insolvency within three months before the presentation of the insolvency petition, s. 28(7) of the Provincial Act relates back the adjudication order to the date when the petition was presented; and that means that the order of adjudication passed by the District Court on December 13, 1950, will relate back to January 15, 1950 when the petition was presented in the said Court. This position also is not in dispute.

The question which then arises is in whom does the insolvent's estate vest ? Does it vest in the Official assignee by reason of the fact that the order of adjudication was made by the Bombay High Court before the District Court made a similar order, or does it vest in the Official Receiver of the District Court because the adjudication order passed by the Distt. Court relates back to a date earlier than the date to which the Bombay High Court's adjudication order relates ? In our opinion, the property of the insolvent vests in the Official Assignee by virtue of the operation of s. 17 of the Presidency Act. Section 17 provides for the vesting of the property on the making of the order of

adjudication, and so, when the District Court at Bellary passed an adjudication order in the insolvency proceedings pending before it, s. 28(2) could not in law operate in respect of the insolvent's property because the said property had by virtue of the statutory provisions contained in s. 17 of the Presidency Act already vested in the Official Assignee. The doctrine of relating back on which s. 28(7) of the Provincial Act and s. 51 of the Presidency Act are based, could have no application in the present case because the vesting in the Official Assignee is the result of a statutory provision; and so, in the absence of any provision in the Provincial Act for the divesting of the property which has already vested in the Official Assignee, it cannot be said that the doctrine of relating back has that effect. The object of providing for the vesting of the insolvent's property in the Court Officer obviously is to protect the said property in the interests of the creditors of the insolvent and to facilitate its fair and just administration. If for achieving that object by operation of an adjudication order passed by the Bombay High Court in exercise of its jurisdiction under s. 17 the said property has vested in the Official Assignee, there would be no purpose in providing that the said property should be divested from the Official Assignee and vested in the Official Receiver of the District Court. In a case where adjudication orders are made by two different courts, the procedure to be followed may depend upon considerations of convenience, fair play and justice; but there is no justification for the argument that because s. 28(7) takes the adjudication order of the District Court to an earlier date, the property which has vested in the Official Assignee should be divested and should be deemed to be vested in the Official Receiver. The reasonable way to reconcile s. 28(2) read with s. 28(7) of the Provincial Act with s. 17 and 51 of the Presidency Act is to hold that the doctrine of relation back prescribed by s. 28(7) has no application to cases where the insolvents' property has already vested in the Official Assignee. Therefore, we must hold that the property of the firm has validly vested in the Official Assignee.

A similar question fell to be considered by the Madras High Court in *The Official Assignee of Madras v. The Official Assignee of Rangoon by his Agent Subramania Aiyar* [I.L.R. 42 Mad. 121]. Wallis, C.J., who delivered the judgment of the Court held that where there are successive adjudications in insolvency by two Courts, all the property of the insolvent vests in the Official Assignee appointed by the Court in which the prior adjudication was made and it will not be divested from him by the subsequent adjudication of the other Court, even if the later adjudication be based on acts of insolvency committed earlier in date than those upon which the prior adjudication was made. It is true that in that case both the competing orders of adjudication had been passed by the High Courts in proceedings which were governed by the provisions of the Presidency Act. But the principle which was enunciated by Wallis, C.J., in dealing with that case would apply as such to the present case where the competing adjudication orders have been passed under the provisions of the Presidency and the Provincial Acts respectively. "The provision in s. 17", observed Wallis, C.J., "that on the making of an order of adjudication the property shall vest in the Official Assignee is express, and there is no provision in the Act divesting the property so vested in that Official Assignee and transferring it to another Official Assignee under a later adjudication." (p. 125). Sec. 51 like s. 28(7) is really intended to enable the Official Assignee or the Official Receiver to recover property from third parties and it is with that object that the said provisions prescribe the doctrine of relation back. The said doctrine is not intended to divest the property which has already vested in the Official Assignee by virtue of an order of adjudication and vesting it in another official assignee or Official Receiver. As Dicey [Dicey's Conflict of Laws. 7th Ed. P. 691] has observed, the property to be vested in the Court Officer under the Insolvency Law "must be in strictness property of the bankrupt. Property which once belonged to the bankrupt, if it has before the commencement of the bankruptcy become already vested in some other person, e.g., the trustee under a Scottish bankruptcy, is not the property of the bankrupt, and does not vest in the trustee

under the English bankruptcy." Therefore, in dealing with the present dispute, we must proceed on the basis that the property of the firm has vested in the Official Assignee at Bombay and the Bombay High Court is entitled to deal with all matters arising in respect of the insolvency of the firm.

The High Court of Andhra Pradesh has held that the application made by the Official Assignee does not meet the requirements of section 77 of the Provincial Act; and so it has set aside the order passed by the District Court directing the transfer of the assets and account-books to Bombay. Section 77 of the said Act lays down that Courts should be auxiliary to each other, and it provides that all Courts having jurisdiction in insolvency and the officers of such Courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of insolvency; and it adds that an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions. Substantially, the same provision is contained in sec. 126 of the Presidency Act. According to the High Court, an application made by the Official Assignee cannot be said to be a request made by the Bombay High Court to the District Court at Bellary, and unless a request is made as required by s. 77 of the Provincial Act, the Bellary Court should not have acted upon the application made by the Official Assignee. In our opinion, this view is substantially correct in so far as the construction of s. 77 is concerned. Section 77 lays down the procedure whereby one Court can make a request to another Court, and in that behalf it provides that considerations of decorum and courtesy require that the request should be made by the Court itself and not by its officers. Therefore, if the Bombay High Court had to make a request to the Court at Bellary under s. 77, it would have been necessary for the said High Court to make an order in that behalf and follow it up by a letter of request addressed to the District Court at Bellary, vide in re. L. King & Co. [30 Cal. 542].

The difficulty in accepting the conclusion of the High Court that the District Court at Bellary should not have allowed the official Assignee's application however arises from the fact that the said application does not purport to have been made and is, in fact, and, in law, not made under s. 77. It will be recalled that the order passed by the District Court at Bellary on December 15, 1950 calling upon the Official Receiver to move the Bombay High Court for annulment of its adjudication order had not been complied with by the said Receiver, and so, the principal object of the Official Assignee in making the subsequent application was to invite the attention of the Court to the failure of its officer to comply with the order already passed and to request the Court to transfer the assets and books of account of the firm to Bombay. The Official Assignee, in substance, contended that since the earlier order of the Court had not been complied with, the last operative portion of the order should be enforced and transfer made as requested by him. We have already noticed that meanwhile the Official Receiver moved the Bombay High Court without success, and before the District Court finally dealt with the Official Assignee's application, the said earlier order became fully operative. Therefore, the order passed by the District Court directing the transfer of the assets and account-books of the firm to Bombay, was, in a sense, a corollary to the earlier order passed by it on December 13, 1950. That being the nature of the proceedings taken by the Official Assignee before the District Court, it is inappropriate to hold that s. 77 of the Provincial Act came into play and it had not been complied with.

Dealing with this aspect of the matter, the High Court was inclined to take the view that the earlier order was not a final order and did not amount to *res judicata* between the parties. In our opinion, this view is erroneous. The said order was passed in proceedings to which the respondents were

parties, and so far as the District Court was concerned, it dealt with the whole of the dispute then pending between the Official Assignee and the respondents. In terms, the order had provided that if the Bombay High Court decided that the assets and effects of the insolvent should be administered from Bombay, the said assets and account books should be handed over to the Official Assignee at Bombay, and so there can be no doubt that the said order was complete and final. In view of the subsequent events, the said order became effective and the Official Assignee was entitled to request the District Court to act upon it and send the assets and account books and documents to Bombay. We must accordingly hold that the High Court was in error in reversing the order of the District Court and directing instead that the insolvency proceedings in so far as they related to the dispute between the Official Assignee and the respondents should be tried at Kurnool. It would be noticed that when the Official Assignee moved the District Court by his second application, he was really claiming that the assets of the insolvent should be transferred to him because they had vested in him already, and he wanted that the claim made by the respondents has to be tried between him and them and that can be done by the Bombay High Court which had passed an adjudication order under s. 17 of the Presidency Act. This aspect of the matter does not appear to have been properly placed before the High Court.

Mr. Ram Reddy for the respondents, however, contends that though the Bombay High Court may be the principal Court entitled to deal with the insolvency proceedings against the firm, the subsidiary question raised by the respondent can nevertheless be tried by the District Court at Bellary. This argument is based mainly on grounds of convenience of parties. We do not propose to express any opinion on this point in the present appeal. We are satisfied that the assets which have been ordered by the District Court to be transferred to Bombay include the amounts allowed to be withdrawn by the respondents on conditions imposed by the District Court in that behalf. If the respondents desire that their claim to the said amount should be tried by the Bellary Court on grounds of convenience, it is open to them to make an application to the Bombay High Court in that behalf. The entire insolvency proceedings against the firm must be tried by the Bombay High Court. It would, however, be open to the Bombay High Court to allow the dispute between the respondents and the Official Assignee to be tried by the Bellary Court if it came to the conclusion that it would be convenient, fair and just to adopt such a course. Therefore, we will not direct the respondents to re-deposit the amount in the Bellary Court with interest accrued due because we propose to allow the respondents liberty to make an application in that behalf to the Bombay High Court within two months from today. If the Bombay High Court accepts their plea and orders that the dispute between the respondents and the Official Assignee should be tried at Bellary, the said High Court may also decide whether the amount already withdrawn by the respondents should be redeposited before the said dispute is disposed of, or only after it is decided against them. That is a matter which would be in the discretion of the Bombay High Court. If, however, the respondents do not make an application to the Bombay High Court within two months, they will have to re-deposit the entire amount in Bellary Court and the said Court will thereupon transfer the said amount to the Bombay High Court to be dealt with in accordance with the provisions of the Insolvency Law. We ought to add that Mr. Ram Reddy has conceded, and we think, rightly, that if the Bombay High Court allows the matter in dispute between the respondents and the Official Assignee to be tried in the District Court, it should be so tried not in the District Court of Kurnool but in the District Court of Bellary.

In the result, the appeal is allowed, the order passed by the High Court is set aside and that of the District Court restored with the modification in respect of the amount withdrawn by the respondents, as indicated above. The appellant will be entitled to his costs from the respondents throughout.

Appeal allowed.

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