

Hans Raj

Vs

Rattan Chand Etc.

Appeal No. 212 of 1961

(K. N. Wanchoo, V. Bhargava, G. K. Mitter JJ)

03.04.1967

JUDGMENT

MITTER J.-

This is an appeal by a certificate against a judgment of a Division Bench of the High Court at Chandigarh in Letter Patent Appeal No. 212 of 1961. The High Court allowed the appeal on the ground that the application out of which it arose was incompetent as barred by limitation and in our opinion it did so correctly. The short question before us is whether application leading to this appeal was one under s. 68 of the Provincial Insolvency Act and as such having been made beyond the period of 21 days from the date of the act of the receiver complained of was covered by the proviso to that section? In substance the argument on behalf of the appellant was that the application was one under s. 4 of the Act in which there is no mention of any period of limitation.

The facts necessary for the disposal of this appeal are as follows : Brij Lal and Hans Raj were brother. On an application having been made by the creditors of Brij Lal in the year 1949 that insolvency Judge Barnala adjudicated him as an insolvent on 23rd November 1954. Two days after one Mohinder Lal was appointed as a receiver in insolvency by the order of the Court and he was directed to take possession of the property of insolvent and attached some urban property and agricultural land which are the subject matter of the present litigation. Hans Raj filed an objection application on 21st December 1954 alleging that the property detailed therein belonged to him and was exclusively in his provision. He prayed for release of the property from attachment and restoration of possession to him. The receiver pleaded that he had taken possession thereafter at the instance of two creditors. The insolvency Judge framed two issues namely (1) Is the objector owner of the suit property and in possession thereof and is it accordingly not liable to be attached by the receiver? and (2) whether the objection petition was time barred? The learned Judge decided the first issue against the objector but held that the application was not covered by s. 68 of the Act. In appeal the District Judge differed from both the findings. He held that there had been no partition of the Joint Hindu family of the insolvent and his brother but on the point of limitation he found against the objector. In the result he accepted the appeal and dismissed the objection petition. Hans Raj went up in Second Appeal to the Punjab High Court. The learned single Judge of the High Court came to the conclusion that the property in dispute must be deemed to be the separate property of Hans Raj and held that the application was within time. Rattan Lal who replaced the original receiver on the latter's death filed a Letters Patent Appeal to the High Court. The High Court as already noted held that the application of Hans Raj was not within time resulting in the dismissal of the objection petition.

We must first consider the nature of the application made by the objector and then find out whether

it is covered by s. 68 of the Act. Section 4 of the Act on which great reliance was placed by learned counsel for the appellant is one of the three sections in part I of the Act i.e., ss. 3, 4 and 5. Section 3 lays down that the District Court shall be the court having jurisdiction under the Act. Section 4 defines the jurisdiction of the Court and runs as follows :

(1) Subject to the provision of this Act the Court shall have full power to decide all questions whether of title or priority or of any nature whatsoever and whether involving matters of law or of fact which may arise in any case of insolvency coming within the cognizance of the Court or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force every such decision shall be final and binding for all purposes as between on the one hand the debtor and the debtors estate and on the other hand all claimants against him or it and all persons claiming through or under them or any of them.

(3) Where the Court does not deem it expedient or necessary to decide any question of the nature referred in sub-section (1) but has reason to believe that the debtors has saleable interest in any property the Court may without further inquiry sell such interest in such manner and subject to such conditions as it may think fit".

Section 5 lays down the general powers of court under the Act. Para II which has the heading "Proceeding from the act of insolvency to discharge "details generally with the course of the proceeding in insolvency beginning from the acts of insolvency to the order for discharge of insolvency. Part III is headed "administration of Property" and deals with different subject like method of proof of debts effect of insolvency on antecedent transactions realisation of property distribution of property"and lastly "appeals to court against receiver". The last topic is covered by s. 68 which provides as follows :

"If the insolvent or any of the creditors or any other person is aggrieved by an act or decision of the receiver he may apply to the Court and the Court may confirm reverse or modify the act or decision complained of and make such order as it thinks just :

Provided that no application under this section shall be entertained after the expiration of twenty one days from the date of the act or decision complained of".

Part IV deal with penalties, Part V with summary administration Part IV with appeals and Part VII with topic like costs, Power to make rules etc.

Under s. 20 (contained in Part II) the court when making an order admitting the petition may and where the debtor is the petitioner ordinarily shall appoint an interim receiver of the property of the debtor or of any part thereof and the interim receiver shall thereupon have such of the powers conferable on a receiver appointed under the Code of Civil Procedure as the court may direct. If an interim receiver is not so appointed the court may make such appointment at any subsequent time before adjudication. Under s. 21 at the time of making an order admitting the petition or at any subsequent time before adjudication the court may either of its own motion or on the application of any creditor make orders to suit the occasion namely direct the attachment by actual seizure of the

whole or any part of the property in the possession or under the control of the debtor, order a warrant to issue with or without bail for his arrest or order the debtor to give reasonable security for his appearance until final order are made on the petition. Under s. 28(2) on the making of an order of adjudication the whole of the property of the insolvent is to vest in the court or in a receiver as provided in the Act and become division among the creditors in terms of the Act. Under s. 56(1) the court may at the time of the order of adjudication or at any time afterward appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver. Under sub. s. (3) of the section where the court appoints a receiver it may remove the person in whose possession or custody any such property any person whom the insolvent has not a present right so to remove. Under sb. s. (5) the provisions of this section shall apply so far as may be to interim receiver appointed under s. 20.

It will be noted from the above s. 4 sub. s(1) lays down the ambit of the power of the court exercising insolvency jurisdiction. Its primary object is to empower such courts to decide all questions whether of title or priority of any nature whatsoever and whether involving matters of law or fact which may arise in any case of insolvency coming within the cognizance of the court. In other words the aim of this provisions is that all questions of title or priority arising in insolvency should primarily be disposed of by the insolvency courts so as to achieve expedition. It will be noted at once that resort to ordinary courts of law is not prescribed and at the same time the legislature provided that a person could resort to the insolvency court if the matter arise in insolvency proceedings. Under sub-s. (2) however every such decision arrived at by the insolvency court was to be final and binding for all purposes as between on the one hand the debtor and the debtors estate and on the other hand all claimant against him or it and all persons on the other hand all claimants against him or it and all persons claiming through or under them or any of them. This provision is however subject to the other provisions of the Act and notwithstanding anything contained in any other law for the time being in force. It is also to be noted that this section does not lay down what procedure or what steps should be taken by any person who is aggrieved by any order of the insolvency court or of any act or omission or commission of the receiver.

Section 20 of the Act empowers the court to appoint an interim receiver of the property of the debtor as soon as an order is made admitting the petition. For the preservation of the insolvents property the court may direct such interim receiver to take immediate possession of the whole or any part thereof. A duty is therefore cast on the interim receiver to see that the property of the debtor is not lost and for that purpose he must act quickly. As it is not possible for him except on the application of the debtor to know all the details of the insolvents property. he may take the help of the creditors to ascertain what they are. In this case on the day of the making of the order for adjudication the court did not appoint a receiver but did so two days afterwards directing him to take possession of the property of the insolvent. It is possible that the receiver may be misled by the creditors and he may attach properties in which as a matter of fact the insolvent has no interest. In such a case the stranger to the insolvency proceedings is not without remedy. He need not resort to the ordinary and dilatory proceedings by fitting a suit and getting an adjudication of title to his property removal of the attachment etc section 68 is aimed at the giving him speedy relief by enabling him to make an application to the court straightway against any act or decision of the receiver and asking for appropriate relief. If however the party aggrieved seeks to benefit by his provision he must also bring his case within the four corner of the section and prefer his application within 21 days from the date of the act or decision of the receiver complained of. When the receiver does an act under the express direction or of. When the receiver does an act under the express directions or orders of the court an application by a third party complaining thereof does not fall within s. 68 because the receivers act is a ministerial one. The aggrieved person is however not

without a remedy. He can inter alia apply to the insolvency court for undoing the wrong complained of and the court can give such relief as the circumstances may call for. The jurisdiction of the court and the ambit of its power are as contained in section 4 which however does not lay down any procedure for obtaining such relief. It is not therefore correct to describe an application for relief as one under s. 4.

Leaving aside the decision which were cited at the Bar it appears to us on a plain reading of the sections mentioned above and in particular as ss. 4 and 68 that there can be no doubt that a person (like the appellant before us) complaining of the receiver taking possession of or attaching property in which the insolvent has no interest must apply for relief within 21 days of the wrongful act of the receiver. He cannot be heard to say that his application is not under s. 68 but under s. 4 and thus seek to avoid the short period of limitation prescribed under s. 68. Moreover subs. (1) and sub. s. 4 envisaged the making of an application for relief such application would be subject to s. 68 of the Act.

We may now consider some of the decisions cited at the Bar for or against the proposition put forward on behalf of the appellant

The sheet anchor of the appellants case is the decision of the Allahabad High Court in Nathu Ram v. Madan Gopal. There the Official Receiver in pursuance of an order of the insolvency court attached a property on 8th June 1929 on the 2nd July following the son of the insolvent applied to the insolvency court alleging that the property belong to him and not in solvent. The court decided in favour of the son but was not allowed to go into the question as to whether the application

"This question of limitation was raised before the District Judge and the objection was over ruled by him. It was observed by a Division Bench of the Allahabad High Court :

"The House was attached under an order of the Insolvency Court and not by any independent decision of the official Receiver. The actual attachment was a mere ministerial act done in pursuance of the order of the Court. The objection was not challenging the act of the receiver who had no voice in the matter but the order of attachment passed by the court ex parte. It seems to us that it was not an act or decision of the receiver within the meaning of s. 68. On the other hand it was a claim put forward by a stranger to the insolvency proceedings setting up his own independent title. and it fell within the scope of s. 4 provincial Insolvency Act."

The learned Judges distinguished the cases of Bhairo Prasad v. S. P. C. Dass and Hussaini v. Muhammad Zamir Abdi on the ground that in those case there was no order of the court directing attachment but the act complained of was an act of the receiver himself.

In Bhairo Prasad's case the Provincial Insolvency Act 1907 was in operation and there a stranger to the insolvency complained of an act of attachment after the lapse of 21 days. A Division Bench of the Allahabad High Court held that the application was barred by limitation observing at the same time :

A stranger to the insolvency is not bound to go to the Insolvency Court at all. He has the ordinary right civil court for any grievance or trespass to his property whether committed by an Official Receiver or anybody else but he can if he please if he complains against the act of the receiver apply

under s. 22 to the insolvency court itself. But similarly if he applies under s. 22 he must comply with the terms of s. 22."

In Mt. Husaini Bibi case certain houses were proclaimed for the sale on 14th June 1922 and on 1st July the appellant the wife of the insolvent put in a claim that the properties belong to her. The insolvency court referred the appellant to the civil court and a suit was filed on 4th July 1922. The properties were sold by the receiver on 5th July before an injunction of the civil court restraining a sale could be served on the receiver. On 3rd August 1922 the appellant applied to the District Judge for the cancellation of the sale. This was dismissed. The subject of appeal before the High Court was the order of dismissal. The learned single Judge relied upon Bhairo Prasad case and observing that the application presented on 3rd August was apparently one under s. 68 of the Act held that it was barred before the 3rd of August. It was further pointed out that a stranger to the insolvency may seek his redress in ordinary civil court when aggrieved by any act of the Officer Receiver or he may apply under section 68 of the Act (corresponding to s. 22 of the previous Act) Reference may also be made to an earlier decision of the Allahabad High Court in Mul Chand v. Murari Lal. There the receiver in insolvency seized certain movable property on the information laid by one of the creditors as property of the insolvents. The appellant before the High Court claimed that the property was his and presented an objecting purporting to be one under O. XXI r. 58 of the Code of Civil Procedure. This was dealt with by the Second Additional Judge of Meerut on the merits who after taking evidence came to the conclusion that the property seized belonged to the insolvents and dismissed the appellant's position was that of a person aggrieved by an act of the receiver and his remedy was by an application under s. 22 of Act III of 1907.

These decisions in our opinion do not assist the appellant on whose behalf it was argued that an application might be made either under s. 68 or under s. 4 of the Act. It is clear from the above decisions that a person complaining of the act of the receiver may either apply under s. 68 or proceed under the ordinary law of the land section 4 does not prescribe any application for relief under that section. Its object is to define the limits of jurisdiction of the courts exercising powers in solvency. It is not correct to say that a person aggrieved by an act of the receiver has the choice of making an application under s. 4 or under s. 68. Section 4 comes into operation whenever any question of the nature mentioned therein is sought to be canvassed before a court exercising insolvency jurisdiction. Such questions may arise because of acts or decision of the receiver complained of. A question as to whether an insolvent has any interest in the property attached by the receiver would fall within the purview of s. 4 but the application for the adjudication of such a question when the receiver acts otherwise than under the order of a court would be covered by s. 68 and as such the period of limitation of twenty one days would be attracted to any such application.

Mr. Bishan Narain referred us to a few decisions of different High Courts as illustrating his proposition that applications are permissible under s. 4 of the Provincial Insolvency Act. In Vellayappa Chettiar v. Ramanathan Chettiar cited on behalf of the appellant the facts were as follows. The respondent obtained a mortgage decree against a person who was subsequently adjudicated an insolvent and the Official Receiver assumed jurisdiction over his properties. While the latter was taking steps to release the assets the appellant asserted that some of the properties covered by mortgage decree were his and denied the right of the insolvent to such properties at the same time preferring a claim petition before the Official Receiver. The Receiver enquired into the same and allowed it. Against that order the mortgagee-decree-holder filed a petition before the District Judge under s. 68 who set aside the order of the Official Receiver and further directed that the claim petition also do stand dismissed. The claimant were up in appeal to the Madras High Court. The learned Judge of the Madras High Court said that the whole of the proceedings was

misconceived observing that the Official Receiver had no power to make any order in a claim petition as this was not a power delegated to him under s. 80 of the Provincial Insolvency Act of 1920. According to the High Court if the claimant wanted to prevent the sale of the property as belonging to the insolvent he should have applied to the District Judge direct to take action under s. 4 of the Act. He did not however do so. In the result the High Court set aside all the proceedings in the lower court and left the parties in status quo ante commenting at the same time that if the claimant found that the Official Receiver proposed to sell the properties he might apply to the District Judge under s. 4 of the Act. The last portion of the above paragraph was quoted as supporting the proposition that an application lay under s. 4 of the Act. That is not what the learned Judges of the Madras High Court meant. In our view what was meant was that the claimant might make an application to the District Judge who would under s. 4 of the Act have jurisdiction to pass a proper order thereon.

Our attention was also drawn to the case of Venkatrama v. Angathayammal where the above Madras decision was cited and at more than one place the learned Judge used the expression an application under s. 4 and an appeal under s. 68 with all respect to the learned Judge it seems to us that these expressions were not accurate for s. 68 although headed appeals to court against receiver does not as a matter of fact use the word appeal in the body of the section. The application under s. 68 however in reality amounts to an appeal to a court from a decision of the receiver but the section itself lays down that the party aggrieved must apply to the court similarly a proceeding application under s. 4. The proceeding has to be started by way of an application whenever anybody seeks to have an adjudication by the court of the nature described in s. 4.

In this connection our attention was drawing to several other decisions it is not necessary to go into the facts of these cases. In G. N. Godbole v. Mt. Nani Bai and Muthupalaniappa v. Raman Chettiar the expression "proceeding under s. 4 had been used while in Herrabai v. Official Receiver the petitioner before the High Court mother of the two insolvents laid a claim before the High Court of the two insolvents laid a claim to 1/3rd share in the properties which the Official Receiver sold on 16th April 1960 purporting to be those of the insolvents. According to the judgment the petitioner filed I. A. No. 1900 of 1960 on 28.6.1960 purporting to be under ss. 4 and 68 of the Provincial Insolvency Act. She also filed I. A. No. 1899 of 1960 for condoning the delay in filing this application as ordinarily the appeal under s. 68 should have been filed by her on or before 5.7.1960. The insolvency court held in the proceeding under s. 68 that there could be no condonation of delay but failed to ascertain with reference to the nature of I. A. No. 1900 of 1960. Whether it fell under s. 4 of the Provincial Insolvency Act. The learned Judge found that the Petitioner had not made any claim before the Official Receiver and even if she chose to make any such claim. the Official Receiver and even if she choose to make any such claim the Official Receiver had no power whatever to decide upon such claim petitions. It was observed :

Therefore an application such as I. A. No. 1900 of 1960 cannot be taken in any sense to be an appeal against the act of the official Receiver as such on the other hand when the petitioner herein wanted that her share should be untouched it is certainly a case where the petitioner approached the court to determine the question of her title which it is competent to do only under s. 4 of the Provincial Insolvency Act. Therefore in my view it is idle to contend that I. A. No. 1900 falls within the purview of s. 68 and that it should be taken to be an appeal and not an application which is contemplated and competent under s. 4 of the Provincial Insolvency Act.

It is difficult to accept the soundness of some of the dicta in the above Judgment. The Official Receivers act in selling the property on 16.4.1960 may have been wholly wrong but if the petitioner

wanted the same to be set aside she could either have made an application under s. 68 to the court or she could have filed a suit for relief under the ordinary law of the land. She could not after a period of 21 days start proceeding in the insolvency court describing it is one under s. 4 so as to get out of the bar of limitation imposed by s. 68 she need not have waited till the sale of property. She might have applied to the court as soon as the receiver took the first step by attaching the property.

In our opinion Jai Lal J correctly pointed out the correlation between ss. 4 and 68 in *Daulat Ram v. Bansilal*. The appellant had a money decree against the insolvents which he executed by attachment of a moiety of a share in house which he alleged belonged to the Judgment debtors. This was before the order of adjudication. An objection was raised by the respondent, Bansilal that he was purchaser for consideration of the attached property. The objection having been allowed a suit was filed under O. 21 r. 63 C. P. C. by the attaching decree holder and ultimately decreed it having been held that the sale by the judgment debtors was fraudulent as against the creditors. The receivers in insolvency then took possession of the property attached by the appellant and sold the same in the insolvency proceedings. Bansilal thereupon made an application under s. 68 on the ground that the action of the receivers was illegal. The District Judge allowed the application holding that the decree passed in the suit under O. 21 r. 63 was operative only so far as the execution proceedings were concerned and that it did not enure for the benefit of the other creditors. He therefore set aside the sale by the receivers. The creditors including the appellant came in appeal from the order of the District Judge. An objection was raised by respondents that no appeal lay without the leave either of the District Judge or of the High Court. In disposing of this Jai Lal J. observed :

"I am inclined to think that though the District Judge was moved under s. 68 which is not one of the sections mentioned in Sch. J, the investigation which he is expected to make in a case like the present should be under s. 4 Provincial Insolvency Act, and any order passed by him under s. 4 is appealable as of right to this Court."

An observation similar to the above was made by the same learned Judge in *Mul Raj v. Official Receiver*. This point was also brought out in *Ganda Ram v. Shiv Nand Ganesh Das*. The scope of the two sections was brought out even more clearly in a judgment of the Rangoon High Court in *Ma Sein Nu v. U Mg. Mg. ()* where it was said :

Now s. 4 defines the powers of the Insolvency Court to decide questions of law and fact arising in insolvency proceedings but it does not lay down how the court is to be moved to exercise those powers..... Of course the powers of the court in deciding such an application are defined in s. 4 but this does not mean that the application itself is made under s. 4 and clearly it cannot be for s. 4 contains no provisions as to how the court is to be moved to exercise its power and for the mode of invoking the authority of the Court other provisions of the Act such as ss. 53,54 and 68 have to be consulted."

In the result we hold that the application being one under s. 68 was incompetent on the ground of limitation after the lapse of 21 days from November 25 1954. The appeal is therefore dismissed with costs.

R. K. P. S. Appeal dismissed.

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