

ALLAHABAD HIGH COURT

Ram Lal Tandon

Vs

Kashi Charan

(Ashworth, J.)

24.11.1927

JUDGMENT

Ashworth, J.

1. This is an appeal from an order of the District Judge of Kumaun directing that a certain debt be included in the schedule of debtors in the matter of the insolvency of Lala Chandra Lal Sah. We have not been able to discover the exact stage in the insolvency proceedings at which the creditor Kashi Charan requested the inclusion of these three promissory notes in the list of claims, but we have come to the conclusion that the District Judge's procedure was taken both under Section 33(3) and also under Section 50, Prov. Insol. Act; in other words, at the same time as he was ordering a debt to be entered in the schedule, he was arriving at a decision that debt had been duly proved upon objection raised.

2. The District Judge held that these promissory notes were proved by reason of the presumption arising under Section 118, Negotiable Instruments Act.

3. This appeal is based on the contention that this presumption cannot be invoked in insolvency

proceedings, where an alleged debt against the insolvent is called in question by the Official Receiver or by a creditor. No direct authority for this contention has been produced, but we consider that the contention is a correct one on the analogy that a Court of bankruptcy is entitled to go behind a decree of the Court. In the case of *ex parte Kibble*, in *re Onslow* [1875] 10 Ch. 373 Sir W.M. James, Lord Chief Justice, said:

It is the settled rule of the Court of bankruptcy on which we have always acted, that the Court of bankruptcy can enquire into the consideration for a judgment-debt. There are obviously strong reasons for this, because the object of the bankruptcy laws is to procure the distribution of a debtor's goods among his just creditors. If a judgment were conclusive, a man might allow any number of judgments to be obtained by default against him by his friends or relations without any debt being due on them at all. It is, therefore, necessary that the consideration of the judgment should be liable to investigation.

4. We follow and agree with the decision in the recent case of *Re Union Indian Sugar Mills Co. Ltd. v. Brij Lal, Jagannath*¹ from which the above is a quotation.

5. On a parity of reasoning it appears to us obvious that a presumption of receipt of full consideration, arising from a debtor's signature on a promissory-note, can only be available against that debtor personally, and cannot be invoked against the Official Receiver or a creditor in insolvency proceedings.

6. The District Judge by the invocation of this presumption shut out certain evidence that had been taken, and also shut out further evidence. We consider that this evidence was admissible and that the united burden of proof to prove consideration is on the creditor. In view of the fact that the creditor may have further evidence, which he was prevented by this view of the law from producing, we consider it permissible to regard the District Judge's decision as one upon a preliminary legal point, and we remand the case for decision on the merits. The parties may produce further evidence, and the case will be decided on that further evidence, and on evidence already on the record.

7. The Official Receiver, who has appeared to support this appeal, must be treated as a party and at liberty to cross-examine any witness already called, or tender any evidence that he may choose to call. The Official Receiver and the appellant will receive their costs of this appeal from the respondent Kashi Charan. The other costs will abide the result.

Case Referred.

1 A.I.R. 1927 All. 426

