

# GUJARAT HIGH COURT

Sampatraj Chhogalalji

Vs.

V.S. Patel

Special Application No. 797 of 1963

(J.M. Shelat, C.J. and P.N. Bhagwati, J.)

04.12.1964

## JUDGMENT

**Shelat, C.J.**

1. The petitioners are the trustees of the assets and properties of Messrs G. Bhagwandas Ramchand, a firm which, prior to 31st December, 1962, was carrying on business in cloth in the Sindhi Market at Ahmadabad. The firm became involved in financial difficulties having become indebted in an aggregate sum of ₹ 6,65,856.87 nP. By a deed of arrangement dated 31st December, 1962, made between the said firm of Messrs G. Bhagwandas Ramchand and the two partners thereof, Narandas Aishiram and Govindram Aishiram on the one hand and the six petitioners on the other hand, the petitioners were appointed trustees with powers to realise and sell the properties and other assets of the said firm set out in the schedules thereto and to pay from the sale proceeds thereof rateably the debts due by the firm to its creditors. Clause (1) of the said deed of arrangement provided that the debtors, namely, the said firm and the two partners thereof, thereby assigned unto the trustees all their personal property mentioned in the first part of the first schedule to the deed as also immovable properties, free-hold as well as lease-hold, belonging to the debtors and described in the second part of the first schedule thereto. Under the said deed, the trustees were to hold the said properties upon trust for the benefit of the said creditors. The deed directed the trustees to collect all the outstanding debts due to the debtors or any one or more of them, to sell the properties described in the first schedule and convert the same into money at such time and in such manner as they by majority should think fit, and out of the moneys so realized first pay and retain all costs, charges and expenses of and incidental to the preparation and execution of the deed, in the next place to pay in full all those debts due by the debtors which were by statute directed to be paid in priority to other debts in the distribution of the property of a bankrupt, and lastly, to divide and distribute the residue of the said moneys among creditors (a list of whom was attached to the said deed as and by way of the second schedule), ratably according to the amounts of their respective debts in like manner as if the

debtors had been adjudged bankrupts on the execution of the deed, and so that all debts which would have been provable against the estate of the debtors in bankruptcy shall be provable in like manner against their estate under the deed. The deed also in express terms provided that the arrangement should be deemed for the benefit of all those creditors who signed and accepted it within such time as the trustees may prescribe. The three assets which were assigned under the deed to the petitioners as trustees and set out more particularly in the first schedule to the deed, were, (1) the stock-in-trade, outstanding and all movable properties belonging to and lying at the shop premises of the debtor-firm, namely, Messrs G. Bhagwandas Ramchand, (2) the stock-in-trade, outstanding and all movable properties belonging to and lying in the shop premises and godown of Messrs Harsh Radio Corporation, and (3) the stock-in-trade, outstanding and movable properties lying in the business premises of two other concerns by the name of Jay Ambe Sahayak Vastra Bhandar and Union Radios.

2. The firm of Messrs G. Bhagwandas Ramchand consisted of two partners, the said Narandas Aishiram and Govindram Aishiram. The firm of Harsh Radio Corporation consisted of three partners, Narandas Aishiram, Govindram Aishiram and their widowed mother Tejibai, and the firm of Union Radios consisted of two partners, Narandas Aishiram and Govindram Aishiram. The two partners, Narandas and Govindram, were thus common partners in all the three concerns. According to the petitioners, the firm of Harsh Radio Corporation was indebted to Messrs G. Bhagwandas Ramchand in the sum of ₹ 61,867.70 nP. and in part consideration of this debt, its stock-in-trade was assigned to the petitioners as trustees under the said deed of arrangement. The petitioners' case that they sold the stock-in-trade belonging to Harsh Radio Corporation and realised therefrom ₹ 40,000. The position taken up by the petitioners, however, does not seem to be correct, for the deed of arrangement clearly shows that the stock-in-trade, outstanding and all movable properties belonging to Messrs Harsh Radio Corporation were therein treated as properties belonging to Messrs G. Bhagwandas Ramchand, and it was on that footing that these properties and assets were assigned to the petitioners who, as trustees, sold them and deposited the sale proceeds thereof in a bank account opened by them in the United Commercial Bank Ltd., Ahmadabad. As regards the Union Radios, the petitioners' case was that they were unaware of the nature and extent of the interest of the debtors in that firm and, in any event, they had no realized any amount from the stock-in-trade or outstanding of that firm. So far as Union Radios are concerned, no amount by way of sale proceeds of the stock-in-trade or by way of outstanding appears to have been collected by the petitioners or deposited by them in the said bank account.

3. It appears from the affidavit in reply that Harsh Radio Corporation was a registered dealer under the Bombay Sales Tax Act, 1959, for the period between 1st April, 1961, to 31st March, 1962, and 1st April, 1962, to 31st December, 1962. The aggregate amount of tax due by this firm under the assessment for these two assessment periods, when ultimately assessed, came to ₹ 5,184.78 nP. and under the notice issued for payment, that tax was payable on or before 28th

September, 1963. The firm of Union Radios likewise was registered as a dealer. The firm had failed to pay the tax amounting to ₹ 1,560 in respect of the quarter ending 31st December, 1962, and upon such failure a requisition certificate was issued to the revenue authorities on 5th July, 1963, for the recovery of the said arrears. In the meantime, the firm of Union Radios was assessed ex parte for the period from 1st April, 1961 to 31st March, 1962, and 1st April, 1962 to 31st December, 1962, and as a result of this assessment, the tax amount of ₹ 7,309.16 nP. became due and payable. This amount was payable on or before 8th October, 1963.

4. On 7th August, 1963, the Sales Tax Officer, Recovery and Record Branch, Ahmadabad, passed an order to the effect that the petitioners as the trustees under the said deed of arrangement were liable to pay the aforesaid tax amounts payable by the said two concerns, Harsh Radio Corporation and Union Radios. In that order, he observed that the Harsh Radio Corporation consisted of three partners out of whom two were common partners in Messrs Union Radios and Messrs G. Bhagwandas Ramchand. "Therefore, the trustees of Messrs G. Bhagwandas Ramchand are liable to pay sales tax of the above two firms." On the same day, i.e., 7th August, 1963, that same officer issued a notice on the United Commercial Bank Ltd., Ahmadabad, purporting to act under section 39 of the Bombay Sales Tax Act, 1959, to pay forthwith any amount due by the bank or held by the bank on account of the firm of Harsh Radio Corporation or the partners therein set out or on account of the said two firms, namely, Harsh Radio Corporation and Union Radios. The notice set out the names of the two partners, i.e., Narandas Aishiram and Govindram Aishiram, and also the names of the six trustees under the said deed of arrangement. Copies of this notice were served on the said two partners, the petitioners and also the firms of Harsh Radio Corporation and Union Radios. By a revised notice dated 20th August, 1963, the first respondent demanded from the petitioners' bankers ₹ 5,184.78 nP. being the sales tax due from Harsh Radio Corporation, and ₹ 7,309.60 nP. from Union Radios, the assessments of the two firms having been completed on 19th August, 1963. The petitioners have challenged the two notices dated 7th August, 1963, and 20th August, 1963.

5. Before we proceed to deal with the contentions of the petitioners against the two notices, it is necessary to observe that there is no dispute that what was assigned under the said deed of arrangement to the petitioners were the assets and properties of the aforesaid three firms and though a fairly lengthy affidavit in reply has been filed, it is not the case of the respondent therein that the businesses of the three firms were transferred to the petitioners or that the petitioners in any way succeeded to the said businesses or became transferees of the said business. The short question, therefore, which arises in this petition is whether the provisions of section 39 of the 1959 Act would apply to the facts and circumstances of the present case.

6. Section 39 provides a special mode of recovery of arrears of tax, and lays down that

notwithstanding anything contained in any law or contract to the contrary, the Commissioner may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last address known to the Commissioner, require (a) any person from whom any amount of money is due, or may become due, to a dealer on whom notice has been served under sub-section (4) of section 38, or (b) any person who holds or may subsequently hold money for or on account of such dealer, to pay to the Commissioner, either forthwith upon the money becoming due or being held or at or within the time specified in the notice, so much of the money as is sufficient to pay the amount due by the dealer in respect of the arrears of tax, penalty and sum forfeited under this Act, or the whole of the money when it is equal to or less than that amount. Therefore, the Commissioner can require a person, from whom any amount is due to a dealer, or a person who holds money for and on account of such a dealer. It is obvious that the dealer in this case would be the debtor-firm of Messrs G. Bhagwandas Ramchand or the said firm of Harsh Radio Corporation or Union Radios. The point for determination, therefore, is whether the moneys deposited in the bank by the petitioners can be said to be moneys due to the debtor-firm or the said two firms or held on account of them. As already stated, under the deed of arrangement, the debtor-firm assigned and transferred to the petitioners the stock-in-trade, assets and properties belonging to the said two firms or to the partners, either jointly or individually, upon trust to dispose of the said properties and to pay out of the sale proceeds thereof ratably the creditors of the firm of G. Bhagwandas Ramchand. Such a deed of arrangement by way of an assignment to a trustee for the benefit of the debtor's creditors is an assignment well-recognized in law of the debtor's property to a trustee for realization and distribution of the proceeds ratably either amongst all the debtor's creditors, or amongst those who assent to and take the benefit of the assignment. Such an assignment operates to place the administration of the debtor's estate in the hands of a trustee for the benefit of the debtor's creditors. Such an assignment is a voluntary act on the part of the arranging debtor and it is by virtue of his act that the assignment becomes operative to vest the property comprised in it to the trustee, and the trust to which the assignment is subject is that which the debtor himself creates. The effect of the assignment is to create a valid title in the trustees and a valid and enforceable trust for the benefit of the creditors as soon as the deed has been executed and the creditors have assented to it. It is thus clear that under the said deed of arrangement, the petitioners as trustees became the legal owners of the properties assigned to them, holding the trust premises upon trust to collect them in the first instance and after selling them to distribute the sale proceeds thereof ratably amongst the various creditors, a list of whom was annexed to Schedule II to the deed of arrangement. It follows, therefore, that the trustees were not holding the sale proceeds which they deposited with the said bank in a separate account in their names as agents of the said firms or any one of them, nor were they the transferees of or successors to those businesses. That being the position, it is not possible to say that the United Commercial Bank Ltd., Ahmadabad Branch, was holding the moneys lying in the said deposit account for or on account of the dealer, the dealer in this case being either the debtor-firm of G. Bhagwandas Ramchand or the union Radios or the Harsh Radio Corporation. It is also not possible to say that the bank was a person from whom any amount of money was due to any one of the aforesaid firms who were the dealers in respect of the arrears of tax. That being

the position, the very first condition necessary for the application of section 39 is totally wanting in this case. The respondent, therefore, was not entitled to invoke the provisions of section 39 and to issue the said notices upon the petitioners' bankers. Both the notices, therefore, were contrary to the provisions of section 39 and were without jurisdiction and must therefore be set aside.

7. In the result, the petition is allowed and the rule is made absolute. The respondent will pay to the petitioners the costs of this petition.

Petition allowed.