Baseshwar Dayal And Anr. vs Mst. Bhagwati Devi And Ors. on 13 January, 1954

Equivalent citations: AIR1954ALL742, AIR 1954 ALLAHABAD 742

JUDGMENT

Maik, C.J.

1. These four Civil Revisions under Section 75 of the Provincial Insolvency Act, 1920 (Act 5 of 1920) can be disposed of by one judgment.

2. L. Bisheshwar Dayal and Dhanushdhari Kirpal were adjudicated insolvents in the year 1928. The Official Receiver in possession of the estate of the insolvents paid by instalments a sum of Rs. 28,678/- odd to the creditors of the insolvents. The total debts entered in the schedule amounted to Rs. 1,49,190/- odd. The insolvency proceedings had been pending till 1945 and the insolvents, it is said, approached a relation or friend of theirs who advanced them a substantial sum of money and from that amount the insolvents paid a total sum of Rs. 69,928/- odd to some of the creditors in full satisfaction of their debts, Debts to the extent of Rs. 47,611/- odd entered in the schedule remained unpaid and as the creditors refused to accept the amount out of Court that amount was deposited in Court and in November, 1945 an application for annulment of the adjudication was made on behalf of the insolvents on the ground that all the debts by reason of the deposit of Rs. 47,611/- odd must be deemed to have been paid up in f ull.

3. This application was opposed by certain creditors and on 29-3-1946 the learned Civil Judge exercising insolvency powers came to the conclusion that the adjudication could not be annulled unless the insolvents paid a certain further amount so that interest payable to all the creditors during the period of adjudication could also be paid up. On 26-4-1946 the insolvents filed an application for review which was granted by the learned Judge on 8-5-1946. Against the order granting the review application, four appeals by four sets of creditors were filed in the Court of the learned District Judge who allowed these appeals on 25-1-1947. The learned Judge held that grounds of granting review bad not been made out and the learned Civil Judge exercising insolvency powers should not have therefore granted the application of 26-4-1946. Even on the merits the learned District Judge was not satisfied that all the creditors had been paid in full.

4. It has been conceded by Mr. Pathak that if we are not satisfied that all the debts were paid in full the application for annulment must fail on that ground and it would therefore be not necessary to go into the question whether review was properly granted. The learned Judge pointed out that apart from other defects notice of the review application was not served on four of the creditors Anand

Prakash, Kasturi Devi, Shiam Sunder and Kamala. Notices were not issued to them and information of the review application was not given even to their counsel. Mr. Pathak has however urged that that might be a ground for sending the case back to the learned Civil Judge but the lower appellate Court was not justified in allowing the appeals and dismissing the application for annulment of the adjudication.

5. Coming to the merits of the application, Section 35 of the Provincial insolvency Act provides that where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court, that the debts of the insolvent have been paid in full, the Court may annul the adjudication. It is not the applicants' case that the applicants should never have been adjudged insolvents. They based their case on the second part of the section that the debts of the insolvents had been paid in full. In that connection reference has been made to Section 33 which provides preparation of the schedule of debts and Section 48 which provides for interest prior to the date of adjudication and before the date of payment.

6. The amount deposited by the applicants was sufficient to pay off the amount mentioned in the schedule. If the applicants are liable to pay up the interest alter the date of adjudication then it is admitted that it cannot be said that the amount deposited is sufficient to pay off all the debts in full. The argument of Mr. Pathak, learned counsel for the applicants, however, is that under Section 61(6) of the Provincial Insolvency Act interest after the the date of adjudication is payable only on debts which carried interest, and he has submitted that as the bulk of the liability consisted of bahi khata debts for which there was no stipulation as regards payment of interest Section 61(6) of the Provincial Insolvency Act did not entitle the Court to allow interest after the date of adjudication.

7. The point, therefore, for consideration, is the interpretation of Section 61(6). It being admitted that if Section 61(6) provides that interest has to be paid! on all debts irrespective of the fact whether there was stipulation or not about payment of interest then it cannot be said that the amount deposited was sufficient to pay off all the debts including interest payable thereon.

8. Section 48 of the Provincial Insolvency Act deals with the question as to payment of interest up to the date of adjudication (which under Section 28(7) dates back to the date of application) both on debts which carried interest as well as debts regarding which there is no stipulation as regards payment of interest. Under Section 48(1) on any debt whereon interest is not reserved or agreed for, interest is payable at the rate not exceeding 6 per centum per annum if there is a written instrument under which the debt is payable at a certain time and the time has already expired before the date of adjudication or when a demand in writing has been made for payment of the amount and the debtor has been notified that interest will be claimed from the date of demand until the time of payment.

As regards the debts which carried interest, Section 48(2) provides a maximum limit of 6 per centum per annum in the rate of interest, but preserves the right of a creditor to receive out of the debtor's estate any higher rate of interest, to which he may be entitled after all the debts proved have been paid in full. Section 48 has nothing to do with interest after the date of adjudication and the only section dealing with this matter is Section 61(6) which is as follows:

> "61(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule."

9. On the clear language of the sub-section it cannot be denied that if there is a surplus after payment of the debts entered in the schedule then all debts so entered are to carry interest at a fixed rate of six per centum per annum. This appears to us to be also just and equitable as this interest has accrued during the pendency of the insolvency proceedings. The delay in the payment after the adjudication of the insolvent works exactly in a similar manner on all creditors and they are all equally prevented from claiming their dues by reason of the pendency of the insolvency proceedings.

The proceedings after the date of adjudication, it appears to us, therefore, should be deemed to have affected all the creditors in the same way and there is 110 reason why a difference should be made between one set of creditors and another set of creditors. The words "all debts entered in the schedule" can be interpreted only to mean that the legislature had intended that all debts so entered must carry interest at 6 per centum per annum. In all ordinary civil cases Section 34, Civil P. C. gives the civil Courts a right to direct payment of interest though the interest is payable at the discretion of the Court. Only in suits based on mortgages the contractual rate of interest has to be paid up to the date fixed for payment.

10. Mr. Pathak's argument however is based on the marginal notes and the heading. The marginal note -to Section 61 is 'Priority of debts' and the heading is 'Distribution of Property'. Mr. Pathak has urged that Section 61(6) was not intended to give to the creditors a right which they did not possess and the section merely sets out how the property has to be divided and in what order the debts are to be paid. The interpretation of the clear language of the section however cannot be controlled either by the marginal notes or by the heading. And, as we read the section, we have no doubt that the section was intended to provide that if there is a surplus after payment of all the debts entered in the schedule then all the creditors are to be treated equally and for the deprivation during the pendency of the Court proceedings they are to be compensated at a fixed rate.

11. Only two cases of this Court that have been cited and which, at is said have some bearing are the decision of Sulaiman and Mukerji JJ. in --'Muhammad Ibrahim v. Bam Chandra', AIR 1926 All 289 (A) and Sulaiman and Boys JJ. in --'Ganga Sahai v. Mukarram Ali Khan', AIR 1926 All 361 (B). 'Muhammad Ibrahim's case (A)' is not a direct authority on the point. The question for consideration before the Bench was whether it could be said that all the debts had been paid in full when the debts had been paid in part and the creditor had foregone his claim to the rest and the learned Judge relying on a decision in 'In re: Keet' (1905) 2 KB 655 (C) and certain decisions of Indian Courts came to the conclusion that in such circumstances it could not be said that the debts had been paid in full. It was pointed out in that case that the annulment of adjudication really meant that the insolvent should not have been adjudged insolvent at all or even though there might have been some justification for ad-judging him an insolvent at a particular date the circumstances had so changed that he was no longer an insolvent at all. The learned Judge pointed out the difference between annulment of adjudication and discharge of the insolvent.

In the other case of 'Ganga Sahai v. Mukarram Ali Khan (B)' from the judgment it does not ap pear that the point was clearly considered though the observation in the body of the judgment of Sulaiman J. is in favour of the view that we are inclined to take as he has in more places than one in the judgment laid stress on the words "all debts entered in the schedule".

12. In support of learned counsel's contentions decisions of Norris J. in 'In re Mahomed Mahmud Shah' 13 Cal 66 (D) and in 'In re Thomas Pereira', 1 Mad H C R 217 (E) have been cited. Learned counsel has however admitted that these cases are no authority on the interpretation of Section 61(6) and are based on the view taken in England. Reference has also been made to the case of --Official Receiver v. Rao & Co.', AIR 1948 Mad 64 (P), a case under the Indian Companies Act, where the learned Judge, Mr. Justice Clark, referred to certain English cases and held that during the pendency of the liquidation proceedings only those creditors whose debts carried interest were entitled to interest on the debts. The learned Judge differed from a decision of Young J. and pointed out that Young J. had not given any reason of his own for coming to a contrary conclusion but had relied on a decision of the Lahore High Court in -- 'Devi Ditta v. Official Liquidator, Amritsar Bank Ltd.', AIR 1921 Lah 346 (G); but that the Lahore case was no authority for the proposition as in that case there was stipulation as regards payment of interest. In the judgment of Clark J. also no reference was made to the provisions of the Provincial Insolvency Act.

No other case either of Indian Courts or Courts in England has been cited at the Bar. We have, however, looked into the Presidency Towns Insolvency Act, 1909 (Act 3 of 1909) Section 49(6) of which is exactly similar and its provisions are as follows :

> "49(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts proved in the insolvency."

13. The words "proved in the insolvency" or the words "entered in the schedule" do not seem to make any difference as all debts proved in the insolvency have to be entered in the schedule. We have also looked up the English Bankruptcy Act, 1914, 4 and 5 George V, Chapter 59, Section 33(8) of which is as follows:

> "33(8). If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of four pounds per centum per annum on all debts proved in the bankruptcy."

14. In Williams on Bankruptcy, sixteenth edition, no case relevant on the point has been cited. The only note on this sub-section at page 234 is as follows:

> "Sub-section (8) does not apply to a deed of arrangement unless there is some provision, express or implied, in the deed for payment of interest."

We have examined the case to which reference has been given for the said proposition and find that it is not relevant for the decision of the point raised before us.

15. The result, therefore, is that though the language of the Bankruptcy Act in England as also the Presidency Towns Insolvency Act, 1909 are similar to the language of Section 61(6) of the Provincial Insolvency Act, no authority directly on the point and helpful to the interpretation of the section has been cited or is available.

16. Mr. Pathak after we had delivered the judgment so far referred us to certain remarks made by Lord Justice Lindley in 'In re Browne, Ex parte Ador.', (1891) 2 QB 574 at p. 580 (H). The learned Lord Justice says:

> "The only express provisions relating to interest in the Bankruptcy Act, 1883, and the Rules of 1886 are Section 40, Sub-section 5, and Rule 20 in the Second Schedule to the Act. Section 40, Sub-section 5, applies to interest after the date of the receiving order; it applies to all debts proved, whether they bear interest or not (thus extending the old law, Cooke's Bankruptcy Law, 8th Ed, Vol. 1, p. 207); it gives interest on all debts proved at 4 per cent, from the above date; but it only comes into operation where there is a surplus after payment in full of all the debts proved."

This is a "very high authority and is in complete support of the view that we have taken. We have, therefore, no hesitation in holding that Section 61(6) of the Provincial Insolvency Act applies to all debts entered in the schedule whether there was or was not a stipulation between the creditors and the debtors as regards some of the debts about payment of interest.

17. The question then arises whether there was a surplus. It is not denied that there is house property and zamindari properly (and now after abolition of the zamindari the compensation payable for it) in the hands of the Official Receiver at the time when the order of annulment was made. The fact that the insolvents had provided funds from some private source which they claimed was a loan made to them by some kind friend or relation would make no difference. Therefore, the position is that the insolvents have paid out of Court Rs. 69,928- odd to creditors and have paid into Court Rs. 47,6,11/- odd. The Official Receiver has paid to the creditors Rs. 28,678/-. The debts entered in the schedule can therefore, be said to have been paid up. The house property and the zamindari property in the hands of the Official Receiver must now be deemed to be surplus in his hands and the creditors were entitled to claim interest under Section 61(6) of the Act. So long as that interest is not paid, it cannot be held that the debts have been paid up in full. In this view, it is not necessary to go into the question whether the learned Civil Judge exercising insolvency powers couid entertain the application for review and grant it.

18. The result, therefore, is that these revisions fail and are dismissed. These are, however, cases where in our view the insolvents have behaved in a very decent manner in securing funds exceeding Rs. 1,16,000/- for payment to their creditors. As we have already remarked in another case, interest at 6 per cent provided in Section 61(6) , according to the rates now prevailing, is excessive. Civil Courts do not now award interest at a rate higher than 3 to 3 1/2 per cent, per annum as pendente

lite and future interest. In the circumstances, in our view, these are fit cases where the parties should be directed to bear their own costs in all the Courts.