

Rameshwar Swarup vs Surajmal Shyam Sunder And Anr. on 21 February, 1955

Equivalent citations: AIR1955ALL676, AIR 1955 ALLAHABAD 676

JUDGMENT

Agarwala, J.

1. These are 8 connected appeals arising out of two insolvency petitions filed by two creditors against the same debtor. The facts briefly stated are as follows:

Two persons Govind Ram and Gopal Das carried on a business of supplying goods to order at Farrukhabad under the name and style of Ram Swarup Govind Ram. They set out to swindle a large number of persons in different places by pretending to be able to supply a large stock of various commodities. They would offer to supply goods against payment of 50 per cent. of the price which was to be paid against Railway Receipts of the goods on condition that the balance of 50 per cent, was to be paid as and when the goods were sold by the consignees.

This being a very tempting offer, attracted many persons who on getting Railway Receipts paid various amounts of moneys to Govind Ram and Gopal Das. It, however, turned out that the Railway Receipts were bogus as they were not in respect of any real goods. When the customers discovered the fraud, they rushed to the criminal Court and obtained orders for freezing of the money paid by them to these persons and later on two sets of creditors filed insolvency petitions against them.

These were petitions Nos. 1 and 2 of 1950. Ultimately Govind Ram and Gopal Das were declared insolvents by an order dated 8-9-1950. The Official Liquidator was appointed Receiver of the assets of the insolvents and he seized various amounts lying to the credit of the insolvent Firm in several Banks.

Thereupon five sets of creditors applied to the insolvency Court under Section 4, Provincial Insolvency Act that certain amounts specified in their applications which formed part of the amounts seized by the Official Receiver in the Banks may be declared to belong to them and not to the insolvents or in any case a charge may be declared in their favour in respect of the aforesaid amounts over the assets of the insolvents in the hands of the Official Receiver.

The Official Receiver objected to the claims on the ground that the money which he had seized was in the account of the insolvents and was the money of the insolvents

and could not be claimed by the claimants. The Insolvency Court allowed the claims of Messrs. Mahadeo Lal Ram Kumar, Seth Tara Chand and others, Messrs. Surajmal Shyam Sunder and Messrs. Ram Desh Lachmi Narain and it was ordered that the money which they had paid to the insolvents and which was traceable in the accounts of the insolvents in the various Banks be paid over to them as it belonged to them and not to the insolvents. But the claims of K. Raja Gopal-Pillai were disallowed. Both K. Raja Gopal Pillai and the Official Receiver appealed against the decision of the Insolvency Court.

The learned District Judge allowed the appeal of K. Raja Gopal Pillai and declared that he should have a charge for the amount of Rs. 8000/- and Rs. 8500/- claimed by him over the assets of the insolvents and dismissed the appeal of the Official Receiver. The Official Receiver has now come up in second appeals against these orders.

2. Second Appeal No. 4 of 1953 is against Surajmal Shyam Sunder, S. A. No. 6 of 1953 is against Seth Tarachand and others, S. A. Nos. 7 and 11 of 1953 are against Messrs. Ram Desh Lachmi Narain and S. A. No. 9 of 1953 is against Firm Mahadeolal Ram Kumar. Appeals Nos. 7 and 11 of 1953 refer to the very same claim. In all these five appeals the Courts below had declared that the amounts claimed by the claimants belonged to them.

Appeals Nos. 5, 8 and 10 of 1953 are against K. Raja Gopal Pillai. Appeals Nos. 8 and 10 of 1953 are with reference to one and the same claim in respect of Rs. 8500/- and the other appeal No. 5 of 1953 is in respect of the claim for Rs. 8000/-.

3. The necessary facts in appeals Nos. 4, 6, 7, 9 and 11 are common. In all these cases what happened was that as against the bogus Railway Receipts sent by the insolvents to the various claimants Hundies were drawn by the insolvents and the claimants paid the amounts of the Hundies through Bank and they were credited to the amounts of the insolvents with the Bank. After the payments were made and credited to the insolvents' account there were no withdrawals by the insolvents.

There was some amount of the insolvents also in the account so that in all these cases the amount in deposit to the insolvents' credit was larger than the amount paid by the claimants and since there had been no withdrawal after the amounts paid by the claimants had been deposited in the insolvents' account, the Courts below held that the amounts could be traced and identified.

In the case of K. Raja Gopal Pillai what had happened was that after he had paid in the two sum, of Rs. 8000/- and Rs. 8500/- on the basis of Hundies drawn by the insolvents in lieu of the bogus Railway Receipts and after these amounts had been credited in the insolvents' account in the Bank, the insolvents had withdrawn large amounts from the Bank and the balance at their credit at the time when the amount was seized by the Official Receiver was less than the amounts paid by him to the account of the insolvents.

In the former group of cases the Courts below held that the amount paid by the claimants could be identified and therefore those amounts were ordered to be paid over to the claimants, but in the case of K. Raja Gopal Pillai, the lower appellate Court held that the amount could not be clearly identified because it was mixed up by the insolvents with their own money and a charge was declared in his favour over the assets of the insolvents.

4. In these appeals learned counsel for the Official Receiver has vehemently urged that because the amount was paid in cash by the claimants and it was mingled with the cash belonging to the insolvents it could not be said that the amount paid by the claimants was identifiable. According to learned counsel the amount can be said to be identifiable only when the very same coins which had been paid in by the claimants could be identified and separated from the coins that had been put in by the insolvents in the Bank.

There is no force in this contention. In the case of money it is not necessary that coins in specie should be identifiable. It is enough that the amount can be ascertained and separated from the other amount with which it has been mingled. See-- '*Banque Beige P. Etranger v. Hambrouck*', (1921) 1 KB 321 (A). There can be no doubt that this was a case in which the amounts were paid by the claimants under a fraud committed upon them.

Equity protects a person who has been defrauded and therefore declares that if the amount paid by him can be traced in the hands of the person who has received it, the receiver is charged with a trust for the benefit of the person defrauded. The principle is embodied in S. 86, Trusts Act which says:

"Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to the re-payment by the latter of the consideration actually paid."

In the present case no consideration was actually paid because the Railway Receipts were bogus. So there is no question of the re-payment of any consideration. The money was transferred by the claimants to the account of the insolvents under a contract which was liable to be rescinded and was induced by fraud. The money, therefore, which was lying to the credit of the insolvent with the Bank was liable to be treated as trust money in the hands of the bank and not money over which the insolvents would have a disposing power for their own benefit.

In the groups of appeals Nos. 4, 6, 7, 9 and 11, the amount to the credit of the insolvents being larger than the amounts which were paid by the claimants had there being no withdrawals after the claimants had made the payment, the amount paid by the claimants was clearly identifiable, traceable and severable from the rest of the amount. The Court below was, therefore, perfectly justified in making the order that it did.

5. So far as the case of K. Raja Gopal Pillai is concerned, his amounts were held by the Court below to be incapable of identification because of the, subsequent withdrawals of amounts by the insolvents. Since in his case also the amounts had been paid under a contract which was vitiated by

fraud, the amounts would be deemed to be held by the insolvents upon trust for the benefit of the claimants, and a charge would be created in favour of claimant over the fund with which the amount was mingled. This principle is embodied in Section 66, Trusts Act which reads as follows:

"Where the trustee wrongfully mingles the trust property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him."

The withdrawals in a case of this kind are deemed to be out of the amount belonging personally to the insolvents so far as the same could extend. The principle established in -- 'Clayton's case', (1816) 1 Mer 572 (B), attributing the first drawing out to the first payments in, does not apply to such cases, see -- 'In re, Hallet's estate; Knatchbull v. Hallet', (1880) 13 Ch D 696 (C).

As the balance of the moneys in deposit in the insolvent's account was less than the amount claimed by the claimant, the whole of it was liable to be paid out to him as his property. The Court below was in error in holding that the amount belonging to the claimant was not traceable. Since, however, there is no appeal by the claimant, we cannot interfere with the order of the Court below. The Receiver's contention obviously has no force and his appeals must be dismissed.

6. We, therefore, dismiss all the appeals with costs.

7. As appeals Nos. 7 and 11 of 1953 relate to the same claim, there will be only one set of costs in these appeals. Similarly as appeals Nos. 8 and 10 relate to the same claim, there will be only one set of costs in these two appeals also.