

Kotwaleshwar Prasad vs Abdul Shakoor And Ors. on 15 September, 1950

Equivalent citations: AIR1952ALL356, AIR 1952 ALLAHABAD 356

JUDGMENT

P.L. Bhargava, J.

1. This is an application in revision, under Section 75, Provincial Insolvency Act (v [5] of 1920). The facts which have given rise to the application are these: On the application of certain creditors Kotwaleshwar Prasad, the applicant, was adjudged an insolvent by the Insolvency Judge of Kanpur. On 18-1-1939 the opposite-party, Abdul Shakoor, Abdul Rashid and Abdul Waheed, filed an affidavit affirming that the insolvent had executed certain pronotes in their favour; and they prayed that the debts due thereunder be entered in the schedule of debts. The insolvent filed a counter-affidavit, on 21-1-1939, asserting that the debts were fictitious. On 8-11-1940, the Official Receiver of Kanpur, on the basis of the affidavit and the counter-affidavit filed before him, accepted the debts and made an order that they may be entered in the schedule. Against the order of the Official Receiver the insolvent preferred an appeal to the Insolvency Judge, who, on 14-12-1942, made an order directing the Official Receiver to hold an enquiry and find out whether the debts were genuine or otherwise. The order of the Insolvency Judge was challenged in an appeal, filed by the opposite party in the Court of the District Judge of Kanpur; but the appeal was dismissed. The matter came up in revision to this Court; but the revision was also rejected. On 1-4-1946, the Official Receiver, after making inquiries into the nature of the debts, came to the conclusion that the debts were fictitious. There was an appeal, against the order of the Official Receiver, to the Insolvency Judge, who recorded a finding that the debts were genuine; and made an order, on 12-4-1948, directing the Official Receiver to enter the debts in the Schedule. He made a further order that "Kotwaleshwar will bear all the costs of the creditors hitherto incurred." Then, the applicant filed an appeal in the Court of the District Judge challenging the said order of the Insolvency Judge. This appeal was held to be incompetent and dismissed on 18-7-1950. The present application is directed against the order of the District Judge dismissing the appeal.

2. The ground on which the learned District Judge proceeded was that the Official Receiver represents the estate of the insolvent, and it was for him to prefer an appeal if he thought fit to do so; and that the insolvent was not an aggrieved person, within the meaning of Section 75, Insolvency Act, and as such he had no locus standi to prefer an appeal.

3. The learned District Judge has referred to certain cases cited before him; and one of these cases is shown as reported *Badri Prasad v. Bhagwati Dhar*, 16 ALL. 243. Learned counsel for the opposite party pointed out that the reference is incorrect and the case cited before the learned Judge was the one reported in *Sakhawat Ali v. Radha Mohan*, 41 ALL. 243. It is always desirable to give in a

judgment or order full particulars of the cases cited or relied upon to avoid confusion. The learned Judge has referred to another case reported in 97 Ind. Cas. 556 (2) which is also reported in Ganga Sahai v. Mukarram Ali Khan, 24 ALL. L. J. 441, The third case cited by the learned Judge is Shankar Lal v. Radhakisan, (1950 Nag. L. J. 100).

4. The facts of Ganga Sahai v. Mukarram Ali, (97 Ind. Cas. 536 (1) : 24 ALL. L. J. 441), were entirely different. In that case the appellant was one of the creditors and the insolvent was the respondent. After he had been adjudged an insolvent on his own application, the respondent had made an application, under Section 38, Insolvency Act, expressing his willingness to pay his creditors the actual amount which, after enquiry, might be found due. The Insolvency Judge, without passing any formal order as to whether he approved of the proposal or not, at once appointed a commissioner to go into the question of accounts of the creditors and, on the receipt of the commissioner's report, the creditors were asked to file an objection. The appellant objected; still one of his claims was disallowed. Later on, the Judge made an order of annulment under Section 35 of the Act. The appellant preferred an appeal from the order expunging one of his claims without obtaining leave to do so. At the hearing of the appeal an objection was raised that the appeal was incompetent in view of the subsequent order of annulment; but the objection was overruled.

5. In Sakhawat Ali v. Radha Mohan, (41 ALL, 243) in the course of proceedings in insolvency before a District Judge the insolvent filed an application in Court complaining of a sale of property which had been held by order of the receiver and urging that it should not be confirmed. His objection having been disallowed, and the sale confirmed, the insolvent appealed to the High Court, having obtained leave to appeal under Section 45(3), Provincial Insolvency Act. It was held that no appeal lay, inasmuch as the insolvent could not be held to be a "person aggrieved" in the legal sense of the term, and the fact that he had obtained leave to appeal from the Court below could not give him a right which was not conferred by the Act. This case is also distinguishable on facts; and the observation made therein must be confined to the facts of that case.

6. The decision in Shankar Lal v. Radha kisan, (1950 Nag. L. J. 100) proceeded on the ground that on the passing of a vesting order the insolvent loses all right, title or interest in his property except for the purposes of composition and schemes of arrangement; but in neither of these cases the insolvent was made a party to the proceeding and an order was obtained or made against him. A case in which the insolvent is made a party and an order is obtained against him stands on an entirely different footing; and in such a case the insolvent would be an aggrieved person, entitled to prefer an appeal against the order made against him.

7. Learned counsel for the opposite party has urged that the insolvent was not a necessary party in these proceedings; but the opposite party having themselves made him a party, this plea is not open to them. Even if they were allowed to take that plea it would make no difference as the insolvent was made and treated as a regular party, and an order, including one for payment of all the costs was made against him.

8. On behalf of the opposite party it has been further contended that Section 75, Insolvency Act, refers to debtor and not to an insolvent; but in the section we also find the words "any other person".

They are wide enough to include even an insolvent.

9. The learned District Judge has rightly pointed out that the Official Receiver represents the estate of the insolvent and he was the proper person to prefer an appeal; but, for the reasons already stated, the insolvent was also entitled to prefer the appeal. The insolvent was provided with funds by the Official Receiver for the appeal, under the orders of the Insolvency Judge.

10. In our opinion, therefore, as the insolvent was made a party to the proceedings initiated by the opposite party in his individual capacity --the insolvent's estate being represented by the Official Receiver--and an Order was passed against him (not against the insolvent's estate), he will be deemed to be an aggrieved person within the meaning of Section 75, Insolvency Act. Consequently the applicant was entitled to prefer an appeal against the decision of the Insolvency Judge. The contrary view taken by the learned District Judge is erroneous.

11. Accordingly, we allow this application, set aside the order of the learned District Judge dismissing the appeal and remand the case to the lower Court with a direction to re-admit the appeal to its original number and dispose of the same in accordance with law. The costs here and hitherto will abide the ultimate result.

12. As the insolvency proceedings have been pending since a very long time, the learned District Judge will proceed to dispose of the appeal at an early date.