

Sheo Raj Bahadur Mathur vs Abdul Aziz on 21 April, 1955

Equivalent citations: AIR1956ALL68, AIR 1956 ALLAHABAD 68

JUDGMENT

Mukerji, J.

1. This is a second appeal from order against the decision of a Judge hearing an insolvency appeal. The case raises an important and an interesting question of law.
2. The facts which give rise to this question, briefly stated, are these: On 4-9-1947, two creditors of one Noor Ahmad applied under Section 9, Provincial Insolvency Act for declaring Noor Ahmad an insolvent. In their petition they stated the act of insolvency to have been a transfer by Noor Ahmad of his entire immovable properties, by a sale deed dated 4-6-1947 in favour of Abdul Aziz, the opposite party to this revision.
3. Noor Ahmad was declared an insolvent on 9-1-1948, by the Insolvency Judge. The Insolvency Judge found that the transfer by Noor Ahmad of his immovable properties made on 4-6-1947, in favour of Abdul Aziz had been made with the object of defeating his creditors. The act of Noor Ahmad in making the transfer of his entire immovable property to Abdul Aziz with the object of defeating and delaying his creditors was an act of insolvency within the meaning of Section 6(b), Provincial Insolvency Act, and, therefore, the adjudication of Noor Ahmad as an insolvent was perfectly justified on the finding arrived at by the Insolvency Judge. After the adjudication order had been made, the assets or the property of Noor Ahmad vested in the official receiver under the law.
4. The official receiver made an application on 30-4-1948. to the Insolvency Judge to declare the sale deed dated 4-6-1947, void in view of Section 53, Provincial Insolvency Act. The trial Judge went into the question and came to the conclusion, on the evidence which was adduced before him that the sale deed was not a "fictitious document" and, therefore, he refused to set it aside. It may be here noted that there was some evidence produced on behalf of the official receiver to show that the sale of 4-6-1947, was a fictitious document. The trial Judge did not consider the question as to whether or not the object with which the sale deed was executed by Noor Ahmad was to defeat or delay his creditors.
5. Feeling aggrieved by the decision of the Insolvency Judge, the official receiver went up in appeal to the District Judge. The District Judge, in appeal affirmed the decision of the trial Judge. Before the learned District Judge the decision of the Privy Council in the case of -- 'Mohammad Saddique Yousuf v. Official Assignee of Calcutta', AIR 1943 PC 130 (A) was cited and it was urged on behalf of the official receiver that once it had been found by the insolvency Court, which adjudged Noor Ahmad an insolvent, that the transfer in question was an act of insolvency, then the alleged transferee could no longer contend that the transfer was not void on that ground.

The learned District Judge did not rely on this decision on grounds which were, in my view, thoroughly inadequate. According to the learned Judge, the Privy Council decision only applied to cases where the transfer is declared automatically void by the insolvency Court at the time of adjudication, and that the Privy Council decision has no application to a case where the official receiver subsequent to a debtor's adjudication, makes an application under Section 53, Provincial Insolvency Act for having a document adjudged void. In my view, no such distinction can be drawn.

In 'Mohammad Saddiq's case (A)' the Privy Council has very clearly said that the order of adjudication was conclusive and could not be disputed. Their Lordships came to this deliberate conclusion even though they were conscious of the fact that their view was likely to cause hardship to a person who had taken the transfer from the insolvent, inasmuch as, he was not a party to the insolvency proceedings in which his transferor was adjudged an insolvent, and, therefore, he had had no opportunity to contest the creditor's version.

Their Lordships said in connection with this aspect of this matter:

"No doubt it is anomalous that a decision affecting the right of a third party should be conclusively determined against him in his absence and even without notice to him; but the words of the section and the importance of maintaining the status of the debtor as determined by an order of adjudication, and, the necessity of securing the stability of the administration of the debtor's estate once his status has been fixed have been justly held to outweigh the consideration of hardship to the private citizen."

Their Lordships further pointed out that the aggrieved third party's remedy was to prefer an appeal against the order of adjudication. Their Lordships even went to the length of saying this in order to relieve any apparent hardship:

"This being the sole remedy is one which justice demands that courts should carefully protect: and, if an extension of time for appealing is reasonably required such extension should be granted 'ex debito justitiae', to use the words of James L. J. in -- 'Ex parte, Tucker', (1879) 12 Ch D 308 (B)."

6. In view of the decision of the Privy Council just noticed, I must hold that it was not open to Abdul Aziz, the transferee from Noor Ahmad, to contest that the transfer in favour of Abdul Aziz, dated 4-6-1947, was not void and could not be set aside under Section 53, Provincial Insolvency Act.

7. I may here point out that although the decision of the Privy Council was given in a case that arose under the Presidency Towns Insolvency Act, even then the decision is equally applicable to a case arising under the Provincial Insolvency Act because the provisions of the Provincial Insolvency Act are similar to the provisions of the Presidency Towns Insolvency Act.

8. I accordingly allow this revision, set aside the order of the Courts below and declare that the transfer dated 4-6-1947, by Noor Ahmad in favour of Abdul Aziz was void and was not binding on

the official receiver.