The State Of Punjab vs S. Rattan Singh on 16 December, 1963

Equivalent citations: 1964 AIR 1223, 1964 SCR (5)1098, AIR 1964 SUPREME COURT 1223

Author: Raghubar Dayal

Bench: Raghubar Dayal, P.B. Gajendragadkar, K.N. Wanchoo, J.C. Shah

PETITIONER:
THE STATE OF PUNJAB

Vs.

RESPONDENT:
S. RATTAN SINGH

DATE OF JUDGMENT:
16/12/1963

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
GAJENDRAGADKAR, P.B.
SUBBARAO, K.
WANCHOO, K.N.
SHAH, J.C.

CITATION:
1964 AIR 1223 1964 SCR (5)1098

ACT:
The Patiala Recovery of State Dues Act (Act IV of 2002 BK), ss. 4 and 11-- Scope of-Civil Court-Jurisdiction to decide if a person is defaulter.

HEADNOTE:
Provincial Insolvency Act (5 of 1920), s. 4--Whether Insolvency Court can go behind decree.
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Jyoti Parshad was indebted to the Bank of Patiala. As he could not pay the debt, he asked the Bank in 1952 to allow him to pay the same in instalments and the Bank agreed. Rattan Singh, Respondent stood surety to the extent of Rs. 2 lacs and entered into a contract of guarantee with the Bank to discharge the liability of Jyoti Parshad to the extent of

Rs. 2 lacs in case of default by Jyoti Parshad. A deed of guarantee was also executed. As Jyoti Parshad did not pay, the Bank started proceedings against Rattan Singh under the Act. The Managing Director of the Bank dismissed the objections raised by Rattan Singh. The Board of Directors dismissed the appeal. The appellant filed a petition in the Court of the Insolvency Judge praying for adjudication of Rattan Singh Respondent as insolvent on account of his transfer of his houses and agricultural lands without consideration to his wife and two sons within 3 months of the petition with intent to defeat and delay his creditor Bank having full knowledge of his liability towards the State. The contention of the Respondent was that he did not stand surety and that the impugned transfer of lands and houses was made on account of natural love and affection for his wife. The insolvency petition was dismissed by the Insolvency Judge on the ground that the Respondent had not executed a deed of guarantee. The appellant went in appeal to the District Judge but the appeal was dismissed. The revision was also dismissed by the High Court. The appellant came to this court after obtaining special leave.
The contentions of the appellant before this court were that the Civil Court had no jurisdiction to determine matters which could be determined by the Head of the Department under the provisions of the Act, that the Head of the Department in the exercise of the powers conferred under s. 4 on him could not only determine the amount due from the defaulter but also could determine whether the alleged defaulter was really a defaulter or not and that in view of s. 1 1 of the Act, a civil court could not determine the question of the liability of the alleged defaulter to pay the debt demanded from him. The contentions of the Respondent were that the Head of the Department could only determine the amount of debt due from a person alleged to be a defaulter but could not determine whether that person was defaulter or not and even if the Head of the Department could determine the liability of the alleged defaulter to pay the debt, the jurisdiction of the Insolvency Court itself to decide whether the debt was due from the alleged debtor sought to be declared insolvent was not ousted by the provisions of s. II of the Act and that the Insolvency Court was not a civil court. Dismissing the appeal,
Held : The provisions of s. 4 of the Act empower the Head of department to determine not only the amount of State dues recoverable but also the liability of the alleged defaulter to pay those debts. In view of the provisions of s. 11 of the Act, no civil court has jurisdiction to determine the amount of State
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dues recoverable and the liability of the alleged defaulter to pay that amount. Such powers were however possessed by the Insolvency Court. In the present case, the Insolvency Court had found that the Respondent had not executed the

surety bond and therefore, was not liable to make good any payment under it. The order of the Insolvency Judge dismissing the insolvency petition was correct. An insolvency court can go behind a decree and probe into the genuineness of the debt on which it is founded.
Lachhman Dass v. State of Punjab, [1963] 2 S.C.R. 353, Kanshi Ram v. The State of Punjab, I.L.R. [1961] 2 Punjab 823, Ex parte Kibble. In re Onslow, (1875) 10 Ch. A.C. 373, Ex parte Lennox. In re Lennox (1885), 16 Q.B.D 315, In re Freser, Ex parte Central Bank of London, [1892] 2 Q.B.D 633, In re Van Laun, Ex parte Chatterton, [1907] 2 KB 23, In re Van Laun Ex parte Pattullo, [1907] 1 KB 155, Narasimha Sastri v. Official Assignee, Madras, A.I.R. 1930 Madras 751 and Sadhu Ram v. Kishori Lal A.I.R. 1938 Lah. 148, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6 of 1962. Appeal by special leave from the judgment and order dated May 14, 1959 of the Punjab High Court in Civil Revision No. 404 of 1957.

S. V. Gupte, Additional Solicitor-General of India, D.D. Chaudhuri and B.R.G.K. Achar, for the appellant. M.C. Setalvad, S.N. Andley, and Rameshwar Nath, for the respondent.

December 16, 1963. The Judgment of the Court was delivered by RAGHUBAR DAYAL J.-This appeal, by special leave, raises mainly the question whether the Insolvency Court can, at the hearing of a petition by a creditor for declaring a debtor insolvent, determine the liability of the alleged debtor for the payment of the debt for the recovery of which the creditor had obtained an order under the Patiala Recovery of State Dues Act, 2002 BK (Act IV of 2002 BK), hereinafter called the Act. To appreciate how the question arises on the facts of the case, reference to the provisions of the Act is necessary, and we set them out first. The Act was enacted to consolidate and amend the law relating to the recovery of State dues. According to cl. (1) of s. 3 'State dues' included debts due to the Patiala State Bank. The expression 'department' includes the Patiala State Bank, and the expression 'defaulter' means a person from whom State dues are due and includes a person who is responsible as surety for the payment of any such dues. 'Head of department' means, among other things, the Managing Director in the case of the Patiala State Bank. Chapter 11 purported to deal with determination of State dues and modes of recovery thereof. Section 4 which falls in this Chapter provides that the head of department shall determine in the prescribed manner the exact amount of State dues recoverable by his department from the defaulter. Section 5 lays down the modes for the recovery of State dues. Section 6 provides for the transmission of a certificate as to the amount of State dues recoverable from the defaulter to the Nazim and to the Accountant-General and its sub-s. (2) is:

> "A certificate transmitted under the preceding sub-section shall be conclusive proof of the matters stated therein and the Nazim or the Accountant-General shall not

> question the validity of the certificate or hear any objections of the defaulter as to the amount of State dues mentioned in the certificate or as to the liability of the defaulter to pay such dues."

Section 10 provides that no action shall be taken by the Nazim or the Accountant-General on a certificate coming from the Managing Director, unless it is sent to him within the period of limitation specified in that section. Section 11 reads:

> "No Civil Court shall have jurisdiction in any matter which the head of department, or any authority or officer authorised by the head of department is empowered by this Act or the rules made thereunder to dispose of, or take cognizance of the manner in which any such head of department, or authority, or officer, exercises any powers vested in him or it by or under this Act or the rules made thereunder."

Section 12 empowers the Government of the State to make rules for the purpose of carrying out the provisions of the Act. Sub-s. (2) thereof states that the rules may provide the manner in which the amount of State dues shall be determined by a head of department.

The Patiala Recovery of State Dues Rules, 2002 hereinafter called the rules, lay down the mode of determination of State dues in rr. 3 to 7. Rule 3 requires the head of department to serve a notice on the defaulter specifying therein the amount of State dues and from whom such dues were recoverable and shall require the defaulter to pay such dues on or before a specified date or to appear before the authority specified therein (called the Inquiry Officer) and present a written statement of his defence. If the defaulter appears and pays the amount of State dues, the head of department issues a receipt to him, under r. 4 and the matter is closed. If he does not appear on the specified date and the Inquiry Officer be satisfied that the notice has been duly served, he may proceed ex parte and determine by order in writing the amount of State dues recoverable from him.' The order is to be subject to confirmation by the head of department. If the Enquiry Officer is not so satisfied another notice is issued to the defaulter.

Rule 6 provides that where the defaulter appears on the date fixed in the notice and presents his written statement, the head of department, or the Inquiry Officer, as the case may be, shall examine the objections of the defaulter stated in written statement in the light of the relevant records of the department and shall then, by order in writing, determine finally the exact amount of State dues recoverable from such defaulter. The Inquiry Officer is to submit his report to the head of department before the latter shall finally determine the State dues recoverable. Rule 7 provides that if the defaulter does not pay the State dues within the period specified in that rule, the head of department may proceed to recover them through the Nazim or the Accountant-General or both. Rule 8 provides for appeal by the defaulter against the orders passed under rr. 5 or 6. Rule 9 provides for a revision by the defaulter in case his appeal is dismissed. Rule 12 provides that the appellate or revisional authority may pass such order in appeal or revision as it thinks fit. The facts of the case may be briefly stated now. One Jyoti Parshad, proprietor of M/s. Ralla Ram Jai Gopal, a firm at Patiala, was indebted to the Bank of Patiala. Being unable to pay the debt of rupees 5 lacs, Jyoti Parshad approached the Bank in 1952 with a request to forbear from recovering the amount

just then all at once and grant time and allow him to pay the amount in instalments. The Bank agreed. In pursuance of the agreement between Jyoti Parshad and the Bank, Sardar Rattan Singh, respondent, stood surety to the extent of Rs. 2 lacs and entered into a contract of guarantee with the Bank to discharge the liability of Jyoti Parshad to the extent of rupees 2 lacs in case of default. He executed a deed of guarantee on July 1, 1952. When Jyoti Parshad made default in payment of the requisite amount, the Bank started proceedings for the recovery of its dues under the Act against Rattan Singh, the defaulter under its terms. On May 26, 1955, the Managing Director of the Bank dismissed the objections Rattan Singh had raised by his written statement and held him liable for the amount he had undertaken to pay under the surety bond. An appeal by him to the Board of Directors was dismissed on December 24, 1955.

Meanwhile, on May 10, 1955 during the proceedings for the recovery of the debt under the Act, the State of Patiala filed a petition in the Court of the Sab-Judge, 1st Class (Insolvency Court) Patiala, praying for the adjudication of Rattan Singh, respondent, an insolvent on account of his transferring all his houses at Patiala and agricultural lands at Sunihal Heri and Patiala without consideration to his wife and two sons within three months of the petition with intent to defeat and delay his creditor-Bank having full knowledge of his liability towards the State.

By his written statement dated June 16, 1955 the respondent denied having stood surety or having signed the deed of guarantees and stated that he was not liable to the State and that the impugned transfers of land and houses were made on account of natural love and affection for his wife. He also challenged the jurisdiction of the Insolvency Court to entertain that application.

The learned Insolvency Judge rejected the insolvency petition holding that the respondent had not executed the deed of guarantee. It, however, held that the Insolvency Court was competent to consider the question of the liability of the respondent to the State under the deed of guarantee, its jurisdiction being not ousted by the provisions of S. 11 of the Act which excluded the jurisdiction of the Civil Court in any matter which the head of the department was empowered by the Act or the rules made thereunder to dispose of or take cognizance of, as the head of the department could, under the Act, determine only the amount of the debt due from the alleged defaulter and not the question whether the alleged defaulter was really a defaulter in case this was disputed.

The State of Punjab, successor of the State of Patiala, appealed against this order to the District Judge who agreed with the findings of the trial Court and dismissed the appeal. The State then went in revision to the High Court under s. 75 of the Provincial Insolvency Act. Two contentions were raised there. One relating to the respondent's executing the deed of guarantee was repelled as being concluded by the finding of fact by the courts below. The other contention was that in view of the provisions of the Act the Managing Director of the Bank had exclusive jurisdiction to determine whether a certain person was or was not a surety or a defaulter and what the extent of his liability to the bank, if any, was and that therefore the Insolvency Court had no jurisdiction to reconsider and determine it. The High Court did not agree with this contention and dismissed the revision. It is against this order that the State of Punjab has preferred this appeal after obtaining special leave. The contention for the appellant in this Court is that the Civil Court had no jurisdiction to determine matters which could be determined by the Head of the Department under the provisions of the Act,

that the head of the department in the exercise of the powers conferred under s. 4 on him, can not only determine the amount due from the defaulter but also whether the alleged defaulter is really a defaulter or not in case such an objection be raised by that person and that therefore the Civil Court, in view of s. 11 of the Act, cannot determine the question of the liability of the alleged defaulter to pay the debt demanded from him. It is contended for the respondent that (i) the head of department can only determine the amount of the debt due from a person alleged to be a defaulter, but cannot determine whether that person is a defaulter or not, i.e., the question whether the debt is due from that person or not if the, person disputes his liability to pay the alleged debt; (ii) that even if the bead of department can determine the liability of the alleged defaulter to pay the debt, the jurisdiction of the Insolvency Court itself to decide whether the debt was due from the alleged debtor sought to be declared insolvent is not ousted by the provisions of s. 11 of the Act; and (iii) that the Insolvency Court is not a Civil Court. The first question to determine then is whether the head of a department can determine the objection of an alleged defaulter that he is really not a defaulter, i.e., no State dues are due from him as he is not liable for any dues to the State irrespective of the question whether what amount is due if he is liable for that debt to the State. The contentions for the respondent are based on these grounds:

> (i) s. 4 empowers the head of the department to determine the exact amount of State dues recoverable and does not empower him to determine the liability of the alleged defaulter to pay those dues in case the liability is disputed (ii) The question of liability may raise complicated questions of fact and law for determination and to determine which the head of department cannot be competent; (iii) The Managing Director of the Patiala Bank cannot be taken to be an independent person to determine the question of the alleged defaulter's liability to pay the amount as he is an official of the bank and the dispute is between the bank and the alleged defaulter.

The vires of the Act came up for consideration before this Court in Lachhman Dass v. State of Punjab(1). This Court held the Act to be valid and in considering the various contentions, Venkatarama Aiyar J., delivering the majority judgment, said at p. 235.

> "The Managing Director is a high-ranking official on a salary of Rs. 1,600-100-2,500, with a free furnished residence. He has no personal interest in the transaction and there is no question of bias, or any conflict between his interest and duty. "

The vesting of the power to determine the matters covered by s. 4 in the Managing Director who has no personal interest in the matter cannot therefore be a ground for holding that the Act could not have provided and does not provide for the head of depart- ment to determine the liability of an alleged defaulter in case he disputes it.

In construing r. 6 it was said at the same page:

> "It does not bar the parties from examining witnesses or producing other documentary evi- dence. The Managing Director, has, under this Rule, to examine the statement and the records of the Bank in so far as they bear on the points in

dispute and that normally, would be all that is relevant. But he is not precluded by the Rule from examining witnesses or taking into (1) [1963] 2 S.C.R. 353.

account other documentary evidence, if he con- siders that, is necessary for a proper deter- mination of the dispute."

it follows that the Managing Director or the head of a department can record evidence with respect to the objections raised before him by the alleged defaulter about his liability to pay the dues.

Section 4 is really concerned with the determination of the amount of State dues recoverable from a defaulter and therefore the determination can take into account both the amount and also its recoverability from the person said to be a defaulter. There is nothing in it which directly makes the head of department incompetent to determine the question of the liability of the alleged defaulter in case of dispute.

This appears more clearly from the provisions of sub-s. (2) of s. 6 which provides for the certificate issued under sub- s. (1) of s. 6 to be conclusive proof of the matters stated therein, the matters being that such and such amount was recoverable from the person shown as defaulter. This sub- section further provides that the specified authorities will not bear any objections of the defaulter as to the amount of State dues mentioned in the certificate or as to the liability of the defaulter to pay such debt. The Act therefore contemplated that there might be a dispute about the liability of the alleged defaulter to pay the dues and therefore, directed the authorities to whom the certificate is Submitted not to bear objections about it. When the authorities were conscious of the possibility of such objections, it must be presumed that they intended these objections to be decided by the authority determining the amount of State dues recoverable from a defaulter under s. 4 of the Act. If it was not so intended by the Act, the legislature would have provided for the determination of such an objection either by an agency specified in the Act or by the regular courts. The Act would have made some mention about the agency and would not have left this matter without a definite provision in the Act. What would be the consequence of so construing the provisions of s. 4 as to exclude ,the objection to liability of the alleged defaulter from the purview of the head of department? It would be that the Bank will have to go to the Civil Court for a declaration that the alleged person is liable to pay its dues. The suit will have to be merely ,for a declaration, as, the determination of the amount he has to 'pay, if liable, will inevitably have to be made by the head of department and in accordance with s. 4 of the Act. Two proceedings for achieving one object are neither desirable nor convenient and if the Bank has to go to the Civil Court for the deter- mination of the liability of the alleged defaulter, there can be no good reason for enacting that the Civil Court which ordinarily decides such disputes cannot determine the amount, if any, the alleged defaulter has to pay to the Bank.

Further, the proceedings in the Civil Court may take a long time for final disposal and that may affect the limitation prescribed under s. 10 of the Act for the Nazim or the Accountant-General to take action for the recovery of the amount due. Section 10(.1) provides that no action shall be taken by the Nazim or the Accountant-General on a certi- ficate from the Managing Director of the Bank unless it is sent to him within such period of limitation prescribed by the Limitation Act for the time being in force in the State within which the Bank would have instituted a suit in a Civil Court for the

recovery of its debts or dues respectively, if such debts or dues were not declared as State dues under the Act. This means that if the period of limitation for the institution of a suit for the recovery of a debt has elapsed, that debt could not be recovered as State dues under the procedure laid down by the Act. The usual period of limitation for filing a suit for recovery of a debt is three years and the time taken in obtaining a final decision from the Civil Courts for the declaration of liability of a certain person may take longer time. So long as the final decision about that person's liability is not reached in those proceedings, the relevant authority under s. 4 of the Act cannot proceed to determine the exact amount of debt due and even if it determined the amount it cannot obviously issue any certificate to the Nazim or Accountant-General for the recovery of that amount.

In view of these considerations, it is reasonable to conclude that the provisions of s. 4 of the Act empower the head of department to determine not only the amount of State dues recoverable but also the liability of the alleged defaulter to pay those debts. It follows therefore that in view of the provisions of s. 11 of the Act no Civil Court can have jurisdiction to determine these two matters, viz., determining the amount of State dues recoverable and the liability of the alleged defaulter to pay the amount. We may mention that the Punjab High Court itself has, in Kanshi Ram v. The State of Punjab(1) has taken the view we have expressed and did not approve its earlier decision under appeal.

The next question then to decide is whether the Insolvency Court can, in spite of the provisions of s. II of the Act and the jurisdiction which the head of the department has, under s. 4 as construed by us, go into the question whether the alleged debtor sought to be adjudicated insolvent really owed the debt which has been determined or could be deter- mined only by the head of department under s. 4 of the Act. It is well-settled that the Insolvency Court can, both at the time of hearing the petition for adjudication of a person as an insolvent and subsequently at the stage of the proof of debts, reopen the transaction on the basis of which the creditor had secured the judgment of a court against the debtor. This is based on the principle that it is for the Insolvency Court to determine at the time of the hearing of the petition for Insolvency whether the alleged debtor does owe the debts mentioned by the creditor in the petition and whether, if he owes them, what is the extent of those debts. A debtor is not to be (1) I.L.R. [1961] 2 Punj. 823.

adjudged an insolvent unless he owes the debts equal to or more than a certain amount and has also committed an act of insolvency. It is the duty of the Insolvency Court therefore to determine itself the alleged debts owed by the debtor irrespective of whether those debts are based on a contract or ,under a decree of Court. At the stage of the proof of the debts, the debts to be proved by the creditor are scrutinized by the Official Receiver or by the Court, in order to determine the amount of all the debts which the insolvent owes as his total assets will be utilised for the payment of his total debts and if any debt is wrongly included in his total debts that will adversely affect the interests of the creditors other than the judgment creditor in respect of that particular debt as they were not parties to the suit in which the judgment debt was decreed. That decree is not binding on them and it is right that they be in a position to question the correctness of the judgment debt. It is on their behalf that the Insolvency Court or the Official Receiver is to scrutinize the proof of debts to be proved and can even demand proof of the debts on which the judgment debt has been decreed. The decree is binding only on the parties. The debtor sought to be adjudged is bound by it and so is the creditor.

But this binding effect of the decree is only to be respected by the Insolvency Court in circumstances where nothing is reasonably alleged against the correctness of the judgment debt. The Insolvency Court has the jurisdiction to reopen such debts and will do so ordinarily when such judgments have been obtained by fraud, collusion or in circumstances indicating that there might have been miscarriage of justice. On similar grounds it must be held that the determination of the amount of the debt and the liability of the defaulter to pay it could be open for scrutiny by the Insolvency Court in the aforesaid circumstances in spite of the provisions of s. 11 of the Act which provisions really contemplate a decision of the dispute about the matters covered by it between the same parties, viz., the creditor Bank and the alleged defaulter. The determination of the amount of State dues recoverable from the defaulter under S. 4 of the Act can have no better status than the ordinary judgment and decree of a civil court have. The head of the department could not have decided a dispute about the amount of the State dues recoverable from the defaulter between creditors other than the Bank and the defaulter and therefore such a dispute between the creditors in general and the defaulter cannot be a dispute which comes within the mischief of s. II of the Act.

Such a jurisdiction of the Insolvency Court is readily made out by the provisions of the Provincial Insolvency Act, 1920 (Act 5 of 1920) hereinafter called the Insolvency Act. According to s. 2, sub-s.(1), cl. (a), 'creditor' includes a decree holder , 'debt' includes a judgment-debt, and 'debtor' includes a judgment-debtor. Section 3 confers insolvency jurisdiction on the District Courts. Civil Courts, as such, have not got this jurisdiction. Courts subordinate to the District Courts can, however, be invested with jurisdiction in any class of cases by the State Government.

Section 4 deals with the power of the Insolvency Court with respect to the questions it can decide. It reads :

> "(1) Subject to the provisions of this Act, the Court shall have full power to decide all questions whether of title or priority or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.
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> (2) Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force, every such deciSion shall be final and binding for all purposes as between, on the one hand, the debtor and the debtor's estate and, on the other hand, all claimants against him or it and all persons claiming through or under them or any of them. (3) Where the Court does not deem it expedient or necessary to decide any question of the nature referred to in sub-section (1), but has reason to believe that the debtor has a saleable interest in any property, the Court may 'without further inquiry sell such interest in such manner and subject to such conditions as it may think fit."

It is to be noticed that the Insolvency Court has full power to decide all questions of any nature whatsoever which arise in any insolvency case before it. It can also decide all questions which it may

consider expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case. Nothing could be more expedient or necessary for exercising its jurisdiction in adjudicating a person insolvent or in distributing the assets of the insolvent than to probe into the question of the genuineness of the debts said to be owed by the debtor. The 'decisions of the Insolvency Court in view of sub-s. (2) of s. 4 are final and binding for all purposes despite what is contained in any other law for the time being in force. This finality and binding nature of the decisions for all purposes are between the debtor and the debtor's estate on the one hand and all claimants against him or it. The binding nature of such decisions is clearly not just between the individual creditor and the debtor but is between all the creditors on one side and the debtor and his estate on the other. The jurisdiction of the Insolvency Court is therefore much larger than that of an ordinary civil court deciding a particular claim between the claimants and the other party.

Section 7 provides for an Insolvency petition being presented either by a creditor or by a debtor and for the Court adjudicating the debtor insolvent, if the debtor commits an act of insolvency. Section 9 lays down the condition which a creditor must satisfy before presenting an insolvency petition. In view of the definition of creditor, debtor and debt already referred to, the judgment-creditor can present a petition for the adjudication of the judgment debtor an insolvent on the basis of the judgment debt. Section 10 lays down the condition on which the debtor can present a petition. Section 14 provides that no petition presented, whether by a creditor or by a debtor, shall be withdrawn without leave of the Court. This fits in with the position that insolvency proceedings are not proceedings between the petitioning- creditor and the debtor alone. Section 16 provides for the substitution of any other creditor in place of the original creditor who had filed the petition in case he does not proceed with due diligence with his petition. Even after the death of the debtor, insolvency proceedings can continue for the realisation and distribution of the property of the debtor in view of s. 17. Section 24 lays down the procedure at the hearing of the insolvency petition, and provides that the Court shall require proof of the fact that the creditor or the debtor as the case may be, is entitled to present a petition. One of the conditions for the creditor to present the petition is that the debt owing by the debtor to him amounts to Rs. 500 and one of the conditions for the debtor to apply for adjudication is that his debts amount to Rs.

500. The Court, therefore, has to be provided with proof about the existence of the debt and its amount, even though the debt be a judgment debt. The judgment or decree can be prima facie evidence of the debt, but in view of the Court's requiring proof of the debt, it is not bound to treat the judgment or decree to be conclusive proof of the existence of the debt for which the decree had been passed. Subsequent to the adjudication of the debtor as an insolvent, the next stage for the preparation of the schedule of creditors under s. 33 of the Insolvency Act comes. All persons alleging themselves to be creditors of the insolvent in respect of the debts provable under the Act have to tender proof of the respective debts by producing evidence of the amount and the particulars thereof and the Court has then to determine the person who have proved themselves to be creditors of the insolvent in respect of such debts and the amount of debts, respectively, and then frame a schedule of such persons and debts. Creditors other than the creditor who had applied for the adjudication of the insolvent may have judgment debts against that insolvent and they will have to prove by evidence the amount and particulars of the debts owed by the insolvent to them. Judgments or

decrees may be good evidence for proving of such debts, but it is open to the Court to require independent roof of the debt which had merged in the judgment debt.

It is clear from the above provisions of the Insolvency Act that it is the duty of the Insolvency Court and therefore clearly within its jurisdiction to require proof to its satisfaction of the debts sought to be proved at the stage of the hearing of the insolvency petition or subsequent to the adjudication.

There is plenty of case law in support of the view that the Insolvency Court can go behind the decree of a court in order to probe into the genuineness of the debt in connection with which the decree is passed. In Ex parte Kibble. In re Onslow(1) it was said by Sir James, L.J., at p. 376:

> "It is the settled rule of the Court of Bankruptcy, on which we have always acted, that the Court of Bankruptcy can inquire into the consideration for a judgment debt. There are obviously strong reasons for this, because the object of the bankruptcy laws is to procure the distribution of a debtor's goods among his just creditors. If a judgment were conclusive, a man might allow any number of judgments to be obtained by default against him by his friends or relations without any debt being due on them at all; it is therefore necessary that the consideration of (1) [1875] 10. Ch. A.C. 373.

the judgment should be liable to investiga- tion."

In this case the probe into the judgment debt was made at the time of the adjudication proceedings.

In Ex parte Lennox, In re Lennox(1) Lord Esher, M.R., said at p. 323:

> " The authority, however, of Ex parte Kibble(2) seems to me quite sufficient, and I think it was decided on right principles. If that be so it is not true to say that the mere fact of a judgment existing ought to prevent the Court at the instance of the debtor at the first stage of the proceedings, viz., when a receiving order is applied for, from inquiring whether there was any real debt as the foundation of the judgment, and, although by consenting to a judgment the debtor is estopped everywhere else from saying that there was no debt due-although the judgment is binding upon him by reason of his consent, and of its being the judgment of the Court, yet no such estopped is effectual as against the Court of Bankruptcy. The Court is not estopped by the conduct of the parties, but it has a right to inquire into the debt."

Cotton, L.J., said at p. 325:

> "It has been long established, as regards the proof of a debt in bankruptcy, that the trustee, acting on behalf of the creditors, can go behind a judgment, and that, although the judgment is prima facie evidence of a debt due to the creditor who claims to prove for the judgment debt, yet the trustee, on behalf of the creditors, may show that in fact the judgment does not establish a debt. That rule is founded upon

> this principle that, under whatever circumstances a judgment may have been obtained against the bankrupt, yet no act of his-collusion, compromise improperly entered into, or anything else-ought to prejudice the rights of the other creditors, (2) [1875] 10 Ch. A.C. 373.
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> (1) [1885] 16 Q.B.D. 315.

because the assets ought to be distributed in the bankruptcy only amongst the honest bona fide creditors of the bankrupt."

Lindley, L.J., said at pp. 328, 329:

> "Bankruptcy proceedings are not like ordinary proceedings; they are a very serious matter, not only to the debtor himself, but to all his other creditors; and, before the machinery of the Court of Bankruptcy is put in motion, it appears to me that it is, not only the right, but the duty of the Court to see at whose instance it is asked to act. By the express language of sub-s. 3, of s. 7 the Court is enabled to look into a judgment debt;"
>
> "It means, I think, that, although the judgment debtor could not go behind the judgment, the Court of Bankruptcy will now allow itself to be put in motion at the instance of a person who is not a real creditor. The Court will not allow bankruptcy proceedings to be had recourse to for the purpose of enforcing debts which are fictitious, and not real, even although they are in the form of judgment debts."

In re Fraser, Ex parte Central Bank of London(1) Lord Esher, M.R. said at p. 635:

> "As a matter of law the judgment, therefore stands as a good judgment against John Fraser and it cannot be questioned by him in any Court, except the Court of Bankruptcy. But, when it is sought to obtain a receiving order against him in respect of the judgment debt, the Court of Bankruptcy has to exercise its discretion, and for the exercise of that discretion one rule of conduct is to be found in s. 7 of the Bankruptcy Act, 1883, which provides, by sub-s. 3, that 'if the Court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that is able to (1) [1892] 2 Q.B.D. 633.

pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition'."

In In re Van Laun, Ex parte Chatterton(1) Cozens Hardy M.R. said at p. 30 what Bigham J., had said in In re Van Laun. Ex parte Pattullo : (2) "The trustee's right and duty when examining a proof for the purpose of admitting or rejecting it is to require some satisfactory evidence that the debt on which the proof is founded is a real debt. No judgment recovered against the bankrupt, no covenant

given by or account stated with him, can deprive the trustee of this right. He is entitled to go behind such forms to get at the truth, and the estopped to which the bankrupt may have subjected himself will not prevail against him."

The principles of these cases have been applied by the courts in this country. Reference may be made to Narasimha Sastri v. Official Assignee, MadraS(3).

Reference may also be made to Sadhu Ram v. Kishori Lal(4) in which it was held in view of s. 4(2) of the Insolvency Act that the decree founded on a debt held fictitious by an Insolvency Court could not be executed. Bhide J said:

> "In the present instance the finding of the Insolvency Court had, I think, the effect of rendering the decree inoperative, as it was tantamount to a declaration that the decree was non-existent and the finding was binding on the decree-holder as well as the judgment- debtor."

In view of our opinion that an Insolvency Court can go behind a decree and probe into the genuineness of the debt on which it is founded, it is not necessary to consider the contention as to whether the Insolvency Court is a Civil Court or not for the purpose of s. 11 of the Act. (1) [1907] 2 K.B. 23.

(3) A.I.R. 1930 Madras 751.

(2) [1907] 1 K.B. 155,162.

(4) A.I.R. 1938 Lah, 148.

We therefore hold that the head of department had the power to decide, under s. 4 of the Act, whether the alleged defaulter was a defaulter or not, that no Civil Court can consider this matter in view of s. 11 of the Act and that the Insolvency Court is however not precluded from enquiring into the question whether the alleged debtor was really a debtor and liable to "/pay sums said to be payable by him. The Insolvency Court has found that the respondent had not executed the surety bond and that therefore he could not be liable to make good any payment under it. The order of the Court below in dismissing the insolvency petition is, therefore, correct.

We accordingly dismiss this appeal with costs, though for different reasons.

Appeal dismissed.

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