
(1945) 02 AHC CK 0034
In the Allahabad High Court

Allahabad Bank, Ltd.

APPELLANT

Vs

Maharaj Kishore Khanna and Others

RESPONDENT

Date of Decision : 09-02-1945

Acts Referred:

Uttar Pradesh Encumbered Estates Act, 1934 — Section 4

Citation : AIR 1945 All 371 : (1945) 15 AWR 95

Hon'ble Judges : Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Verma, J.—This is a somewhat unusual case. The essential facts can, however, be stated briefly. It appears that the respondent before us, Mr. Maharaj Kishore Khanna, was possessed of considerable immovable property over which he created a number of simple mortgages in favour of the Allahabad Bank, the Benares Bank, and some other person or persons. The Benares Bank brought Suit No. 117 of 1929 in the Court of the Civil Judge at Benares for sale on foot of their mortgage and impleaded the mortgagor as well as the other mortgagees as defendants. During the pendency of this suit an application was filed by the Benares Bank - in which the other mortgagees joined or which, at any rate, was supported the other mortgagees - praying that a Receiver be appointed of the landed property belonging to Mr. Khanna. This application was granted by the Civil Judge on 6th January 1932. A preliminary decree for sale was passed on 25th May 1933. There was an appeal to this Court against this decree by the Allahabad Bank on the question of priority. That appeal was decided on 25th April 1938, and the judgment of this Court is reported in Allahabad Bank Ltd. Vs. Benaras Bank Ltd. and Others, . In the meantime, on 6th March 1936, Mr. Khanna had applied u/s 4, U.P. Encumbered Estates Act of 1934. It is stated that Mr. Khanna had been adjudicated an insolvent by the Calcutta High Court on 25th September 1929, and that the application u/s 4, U.P. Encumbered Estates Act, was filed by Mr. Khanna with the consent of the Official Assignee at Calcutta. The proceedings prescribed by the U.P. Encumbered Estates Act were taken in

due course and ultimately, on 21st March 1940, the Special Judge passed the decrees prescribed by Section 14 of the Act and sent those decrees to the Collector u/s 19 of the Act. It has been stated before us that the order sending the decrees to the Collector u/s 19 was passed on 21st March 1940. Some time before that date Mr. Khanna had filed an application in the Court of the Civil Judge in Suit No. 117 of 1929, praying that the Receiver appointed by the order of that Court dated 6th January 1932, be removed and that Mr. Khanna be put in possession of the properties which were in the possession of the Receiver. The learned Civil Judge granted this application by an order dated 28th March 1940, and directed the Receiver to submit his accounts by 15th May 1940, and to hand over the charge of the estate to the judgment-debtor by that date "subject to any orders which the Collector may pass in execution proceedings." The present appeal by the Allahabad Bank is against this order.

2. The appellant, after filing the present appeal in this Court, applied that the operation of the order passed by the learned Civil Judge on 28th March 1940, be stayed, that the Receiver be directed to continue in possession of the properties and that the respondent be restrained from taking possession thereof. Upon this application, an ad interim stay order was passed by this Court on 6th May 1940, and the Receiver was directed to continue in possession until the application was finally disposed of. The matter came up for final hearing on 28th November 1940, before Mulla J. It is stated before us that some time before 20th November 1940, an application had been made by the Allahabad Bank to the Collector praying that he might appoint a Receiver under the provisions of the U.P. Encumbered Estates Act and that the Collector had expressed the opinion that, in view of the stay order passed by this Court on 6th March 1940, it was not open to him to entertain the application. The order passed by Mulla J. on 20th November 1940, was as follows:

Learned counsel for the parties are agreed in this case that the temporary order of stay passed by this Court upon an application made on behalf of the opposite parties should be modified to this extent that the Collector should be given freedom to consider and decide the application for appointing a Receiver made on behalf of the applicants. I therefore modify the stay order accordingly and direct that the Collector shall proceed to consider the application made on behalf of the present applicants before him for the appointment of a Receiver.

Thereafter the Allahabad Bank renewed their application before the Collector. A certified copy of an order of the Collector dated 17th March 1941, has been shown to us. It appears from this certified copy of the Collector's order that he dealt with the application of the Allahabad Bank in the following manner:

It is clear that there is already a Receiver appointed by the civil Court. He will remain unless he is removed by the order in appeal of the Hon'ble High Court. Until that contingency arises there is no necessity for the appointment of another Receiver. The application is premature and is dismissed.

It appears to us that a copy of the order passed by Mulla J. on 20th November 1940, was not shown to the Collector and that he did not consequently appreciate the true nature and scope of that order. If the matter had been properly presented to him, he would not have dismissed the application on the ground that it was premature but would have considered the application for the appointment of a Receiver on its merits.

3. Our attention has next been drawn to an order of this Court passed by Mulla J. on 24th February 1942. It appears that this order was passed upon an application filed by Mr. Khanna praying that the order of 20th November 1940, be vacated and that the stay application filed by the Allahabad Bank, appellant, on 6th May 1940, be dismissed. Mulla J. dismissed this application of Mr. Khanna and, after referring to his order of 20th November 1940, stated his reason thus:

The Collector has now considered that application and has directed the Receiver previously appointed by the Court to continue in possession. It is now prayed that I should vacate the order passed by me on 20th November 1940, and should reject the application for stay made by the Allahabad Bank. I am unable to accede to that contention because the parties agreed to abide by the decision of the Collector on the application for the appointment of a Receiver made before him. I do not see how the order passed by the Collector can now be interfered with by vacating the order passed by me on 20th November 1940.

If the reference in the passage Quoted above was to the Collector's order dated 17th March 1941, to which we have referred above, the facts were evidently not correctly presented to Mulla J. It seems clear to us that a copy of the order of the Collector dated 17th March 1941, was not shown to the learned Judge. That may have been due to the fact, as has been suggested before us, that the Allahabad Bank did not appear at the hearing of that application of Mr. Khanna. If, on the other hand, there is some other order of the Collector passed after 17th March 1941, which was brought to the notice of Mulla J. on 24th February 1942, there are no materials before us from which we can find out the contents of such an order. Learned Counsel for the parties state that they do not know whether any order has been passed by the Collector after 17th March 1941. In these circumstances, it appears to us desirable to adjourn the further hearing of this appeal in order that learned Counsel for the parties might be able to make enquiries as to whether any further orders have been passed by the Collector after 17th March 1941, and to intimate to us the (result of these enquiries. If there are any such orders, certified copies should be produced when the appeal comes up for hearing next. It is hardly necessary to point out that the appellant is at liberty to file a fresh application before the Collector praying for the appointment of a receiver under the provisions of the U.P. Encumbered Estates Act-if no such application was made by him after 17th March 1941, and no orders have been passed by the Collector after that date-and to invite the attention of the Collector to the order of this Court dated 20th November 1940. We may point out that that order makes it perfectly clear that the Collector is at

liberty to entertain an application for the appointment of a receiver and to pass orders there on the merits. We direct that this appeal do stand out for four weeks. A copy of this order should be given to the appellant-as soon as possible on payment of the necessary fees.

4. Order dated 9th February 1945. - The facts are stated in detail in our order dated 28th March 1944. The appeal has come up before us on several occasions since that date. Our order dated 3rd May 1944, shows that it was stated by Dr. Katju, who appears for the appellant, that an application had been filed in the Court of the Collector on behalf of the appellant for the appointment of a Receiver under the provisions of the U.P. Encumbered Estates Act and that the application had not till then been disposed of. On 2nd February 1945, we were informed that the appellant's application for the appointment of a receiver in accordance with the provisions of the Encumbered Estates Act had been granted by an order made by the Additional Collector of Benares on 8th June 1944. A certified copy of that order was shown to us on that date and has again been laid before us to-day. The facts that an application for the appointment of a receiver had been made by the present appellant in the Court of the Collector and that it had been granted by an order made on 8th June 1944, were never denied by the respondent. We were further informed on 2nd February 1945, that the present respondent had filed an appeal in the Court of the Commissioner against the order of the Additional Collector and that the appeal had not been disposed of till then. Upon the case coming up before us to-day, it has been stated by Dr. Katju that the Commissioner has dismissed the appeal by an order dated 19th December 1944. Mr. Kedar Nath Sinha, who appears on behalf of the respondent, does not deny this fact. The Additional Collector, by his order dated 8th June 1944, mentioned above, appointed as receiver the same gentleman, viz., Krishna Behari Lal, who had been appointed by the Court of the Civil Judge by the order dated 6th January 1940. As will appear from our order of 28th March 1944, the portion of the order under appeal, by which the Court below had held that it was not necessary for the civil Court to continue the receivership, had been stayed by this Court; the result, thus, has been that the receiver appointed by the Court of the Civil Judge continued to function as the receiver appointed by that Court throughout the period between 28th March 1940, when the order appealed against was passed, and 8th June 1944, when the Additional Collector passed his order appointing the same gentleman as a receiver under the Encumbered Estates Act. Dr. Katju has, in these circumstances, stated that, in the events that have happened, it is not necessary for him to press the appeal beyond asking us to pass an order that would regularise the possession of Mr. Krishna Behari Lal over the property during the period between 15th May 1940-the date up to which the Civil Judge had directed him by the order under appeal to submit his accounts and to hand over charge of the estate to the judgment-debtor respondent-and 8th June 1944, when the order of the Additional Collector was passed. The request of the learned Counsel is that the appeal may in that sense be formally allowed.

5. Mr. Kedar Nath Sinha has raised a preliminary objection to the appeal being entertained on the ground that no appeal lies against the order in question. His argument is that the CPC does not provide an appeal against an order removing a receiver. It may be noted here that this argument has been advanced to-day for the first time. But, apart from that, it appears to us that, even if the preliminary objection is entertained, this is a fit case for interference by this Court in the exercise of its revisional jurisdiction. It may be mentioned that Mr. Sinha has cited the case in (Major) Anthony Ullysseus John and Others Vs. Agra United Mills Ltd. and Another in support of his contention. Dr. Katju, on the other hand, has cited the decision of the Calcutta High Court in Sripati Dutta and Others Vs. Bibhuti Bhusan Dutta and Others, If we had found it necessary for the purposes of the case before us to give a decision on this point, we would have been inclined to say that the reasons given by the learned Judges of the Calcutta High Court in 53 Cal. 3198 were sound and that we were in agreement with the decision in that case and that we found it difficult to agree with the decision of this Court in (Major) Anthony Ullysseus John and Others Vs. Agra United Mills Ltd. and Another It maybe pointed out that there is no express provision in the CPC conferring the power on the Court to dismiss a receiver appointed by it. Such a power has, however, been held to be implicit in the power to appoint a receiver. Thus, the order dismissing the receiver must also be held to be an order passed under Rule 1 of Order 40. That being so, the (order is appealable under Order 43, Rule 1 (s). We do not, however, find it necessary to express any definite opinion on this question, for, we are clearly of the opinion that this is a case in which there is every justification for our treating this memorandum of appeal-assuming that no appeal lies-as a petition for revision. It has been contended by Dr. Katju that upon the initiation of the proceedings under the Encumbered Estates Act by the respondent's filing an application u/s 4 of that Act on 6th March 1936, and the passing of an order by the Collector u/s 6 of that Act, the Court of the Civil Judge-in view of the provisions laid down in Section 7 of the Act- ceased to have any jurisdiction to entertain the application filed by the respondent for the removal of the receiver. It appears to us that this contention is correct. It may be pointed out that the order in question is not an order dismissing a particular individual on the ground of incapacity or dishonesty or on any other similar ground and appointing another person in his place-in which case it might have been an administrative order-but is a judicial order, passed upon an application presented by a party to the suit, by which it has been held that the receivership should be terminated. In our opinion the Court below had no jurisdiction to entertain the application filed by the respondent and to pass the order in question.

6. For the reasons given above, we entertain this memorandum of appeal as an application for revision, allow it and set aside the order passed by the Court below on 28th March 1940. The possession of the receiver over the property up to 7th June 1944, shall be deemed to have been by virtue of his appointment as receiver by the Court below. He shall submit his accounts to the Court below for

the period ending 7th June 1944. Thereafter, he will submit his accounts to the Collector, for, on and from 8th June 1944, his possession is that of a receiver appointed by the Court of the Collector under the provisions of the U.P. Encumbered Estates Act. We make no order as to costs.