
(1962) 04 BOM CK 0002

In the Bombay High Court

Case No : Civil Revision Application No's. 241 and 288 of 1961

Bajirao Bhawanrao

APPELLANT

Vs

Bansilal Ganeshlal and Another

RESPONDENT

Date of Decision : 10-04-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22

Evidence Act, 1872 — Section 41

Provincial Insolvency Act, 1920 — Section 24, 28, 33, 4, 50

Citation : AIR 1963 Bom 212 : (1963) 65 BOMLR 39 : (1963) ILR (Bom) 173

Hon'ble Judges : N.L. Abhyankar, J

Bench : Single Bench

Advocate : S.N. Kherdekar, for the Appellant; V.R. Manohar, for the Respondent

Judgement

1. The order in Civil Revision Application No. 288 of 1961 will also dispose of Civil Revision Application No. 241 of 1961. In both these cases the applicant is the same person, namely, one Bajirao son of Bhawanrao, the petitioning creditor. Opponent No. 1 Bansilal in Civil Revision Application No. 288 of 1961 is a transferee in respect of purchase of land on 5-9-1955 and Opponent No. 1 Damodar in Civil Revision Application No. 241 of 1961 is a transferee in respect of a house purchased on 5-9-1955.

2. Opponent No. 2 Rajaram Punjaji is an agriculturist of Bori. It seems he had executed three promissory notes as follows:- Promissory note dated 15-9-54 for Rs. 2150/-; Promissory note dated 17-10-54 for Rs. 900/-; and Promissory note dated 3-6-55 for Rs. 180/-. All these promissory notes were in favour of the applicant Bajirao. Bajirao filed an application u/s 9(1) of the Provincial Insolvency Act against Opponent No. 2 Rajaram for adjudging him as an insolvent. The acts of insolvency which were made as basis for the application were the two transfers dated 5-9-55, one in respect of survey Nos. 38/1 and 72/2 for Rs. 2000/- in favour of Bansilal, and another, sale of a house for Rs. 200/- in favour of Damodar. The application was presented on 7th April, 1956. The debtor

Rajaram resisted this application. One of the grounds on which the application was resisted by Rajaram was that the three promissory notes were without consideration and that the applicant Bajirao was not entitled to make the application as he was not the creditor. Rajaram also contended that the sales effected by him did not constitute acts of insolvency. The learned Judge of the Insolvency Court by his order dated 24-7-57 granted the application of the creditor Bajirao and adjudged Rajaram as an insolvent. In paragraph 7 of that order the Insolvency Court held that the debtor had failed to prove that the promissory notes were without consideration. It appears that this order was not challenged and the adjudication of Rajaram as an insolvent became final. Thereafter Bajirao filed an application for annulment of the two transfers dated 5-9-55 u/s 53 of the Provincial Insolvency Act. Actually two separate applications were filed, one against Bansilal and the other against Damodar. Identical defences were raised by the two transferees Bansilal and Damodar in resisting these applications u/s 53 of the Provincial Insolvency Act.

3. One of the contentions raised was that the creditor Bajirao had not proved his debt and therefore he was not entitled to make an application u/s 53. At the end of paragraph 11 of the written statement filed by Bansilal it was alleged as follows: -

"This non-applicant submits that the applicant had fraudulently taken advantage of the bogus promissory notes obtained by him from non-applicant No. 2 and thereby seems to have got him adjudged insolvent. The non-applicant No. 2 was not at all indebted to the applicant so as to enable the applicant to have him declared insolvent."

4. On the contentions raised between the parties the Insolvency Court framed among other issues the following two issues:-

Issue No. 3.

Whether the application is untenable as having been filed before the proof of his debts?

Issue No. 7.

Whether the order of adjudication can be challenged by the opponent on the ground that the petitioner is not a creditor of the insolvent?

The learned Judge of the Insolvency Court created issue No. 7 as a preliminary issue and gave a finding on that issue on 7-4-59. The learned Judge found that the transferee can challenge the order of adjudication on the ground that the petitioner is not a creditor of the insolvent. In the final order dated 17th December, 1959, the learned Judge found that the debt owned to the applicant creditor is not proved to be bogus and it is also found that the transfers were liable to be annulled u/s 53 of the Provincial Insolvency Act.

5. Against these orders each of the transferees preferred appeal before the

District Judge u/s 75 of the Provincial Insolvency Act. The learned District Judge affirmed the finding of the Insolvency Court that the two transfers were liable to be annulled u/s 53, and also the finding that it was open to the appellants i. e., transferees, to contend that the adjudication order was collusive as Bajirao was not the real creditor of the insolvent. The learned Judge has also held that the transferees have proved that the insolvent did not owe any debt to the creditor. In spite of these adverse findings against the creditor, however, the appeals were dismissed by the learned Judge.

6. The transferees have not challenged the orders of the learned District Judge in appeals which have been dismissed. It is the creditor, however who has come up to this Court in revision purporting to invoke the jurisdiction of this Court under the first proviso to Section 75(1) of the Provincial Insolvency Act. The revision is filed challenging the two findings of the District Judge, (1) that it was open to the transferees to challenge the order of adjudication on the ground that Bajirao was not the real creditor, and (2) that Bajirao's debts were not genuine debts.

7. The counsel for the transferees has raised a preliminary objection to the right of the creditor to file this revision application. It is contended that the decision of the District Court on the two issues -- one of which is an affirming decision while the other is a reversing decision -- does not amount to a final order and therefore does not give a right to an aggrieved party to come up in revision against these findings. It is not contended that the applicant could file an appeal because these are not proceedings which can properly be considered as proceedings u/s 4 of the Provincial Insolvency Act. It is contended that the creditor did not challenge the decision of the insolvency Court so far as it held that the transferees could challenge the order of adjudication on the ground that the debt owing to the creditor was not a genuine debt. The creditor not having filed such an appeal, was debarred now from further challenge to the final order of the District Judge.

8. Now, it will be seen that the final order of the Insolvency Court as well as of the District Court is wholly in favour of the creditor. It has been held that the transfers are liable to be annulled. Thus, the application which was for annulment of transfers has been successfully pressed by the applicant in both the Courts below. As far as one can see, there is no provision in the Insolvency Act, so far as the procedure in the appeals is concerned, analogous to entertaining any objections by way of cross-objections at the instance of the respondent. But there is no prohibition in a respondent supporting the order in his favour by challenging the findings adverse to him, or decisions as they are called, within the meaning of Section 75(1) of the Provincial Insolvency Act. Sub-section (1) of Section 75 of the Act makes reference to two kinds of adjudications, one is held as decision and the other as an order. Mr. Manohar, the learned counsel for the opponents, has contended that the word "decision" should be interpreted as decision on an interlocutory matter or on an issue in the case, and the word "order" should be interpreted as a final judgment in the case. Assuming that Mr.

Manohar is right in so interpreting the two words ""decision"" and "order", I do not see how the opponents were precluded from canvassing the correctness of a finding adverse to them in an appeal preferred against the final order of the Insolvency Court which was in favour of the applicant. On the same principle on which an objection could be heard on behalf of the respondent under Order 41, Rule 22, Civil Procedure Code, in my opinion, there is no lack of jurisdiction, in the Court below in hearing the respondent in an appeal before it in cases arising under the Provincial Insolvency Act in support of the appeal, and including an argument challenging the correctness of the adverse finding. But so far as proceedings in the Court below are concerned, in my opinion, the applicant was fully entitled to urge before the Court that the adverse finding recorded against him by the Insolvency Court on issue No. 7 was not correct and should not be upheld.

9. As the District Court finally rejected the appeals and confirmed the operative part of the order, namely, annulment of transfers, passed by the Insolvency Court, it cannot be said that the applicant could still have a further right of appeal for challenging the adverse findings in the District Court. There being no right of second appeal even against an unsuccessful appellant, the only mode in which the order could be challenged was by way of revision application. Such jurisdiction is vested only in the High Court and can be invoked under the first proviso to Section 75 of the Provincial Insolvency Act.

10. Now, it is difficult for me so to interpret the provisions of Section 75(1) of the Provincial Insolvency Act as to hold that the person against whom an adverse finding has been given (and which adverse finding may be used against him in subsequent proceedings in insolvency) should be left without a remedy and that the remedy provided in the first proviso to Sub-section (1) of Section 75 is not available. If the revisional jurisdiction of this Court can be invoked in a given case, then, in my opinion, it can be validly invoked by a person in the position of the present applicant against whom two adverse findings have been recorded in the proceedings u/s 53 of the Provincial Insolvency Act for annulment of transfers. I therefore overrule the preliminary objection and hold that the applicant has a right to invoke the jurisdiction of this Court as a revisional Court in exercise of its powers under the first proviso to Section 75(1) of the Provincial Insolvency Act.

11. The next question is whether the Courts below were right in holding that the transferees have a right to challenge the adjudication of the insolvent on the ground that the insolvent debtor was not really indebted to the petitioning creditor, i.e., the applicant. The further question whether the insolvent was in fact indebted to the applicant is a question which would arise if it is held that the transferees have a right to challenge the adjudication on that ground. On this latter question the two Courts below have come to contrary conclusions. But their jurisdiction to give a finding on this question will depend on whether or not the transferees have a right in proceedings for annulment of their transfers to

challenge the order of adjudication itself.

12. The learned Judge of the Insolvency Court decided this matter as a preliminary issue. The learned Judge noticed the decision of the Nagpur High Court in AIR 1947 161 (Nagpur) and held that the order of adjudication is conclusive only as regards status but not as regards grounds on which the order is based. He observed that the finding that the transfer dated 5-9-55 has been held to be an act of insolvency on the part of the insolvent is not binding on the present opponents i.e., transferees though the ultimate order of adjudication operates as a decision in rem. He held that the reason on which the ultimate decision is based does not operate as a judgment in rem. A reference was made to a decision of this Court in Pratap singh v. Damodaran 1957 NLJ 523, and in view of that decision the learned Judge came to the conclusion that the transferee was not a party to the adjudication proceedings and is at liberty to challenge the adjudication order on the ground that the petitioning creditor was not at all a creditor of the insolvent at the time of presentation of the petition for adjudication.

13. When the matter came before the District Court, reference was made to some other decisions including a decision of the Nagpur High Court reported in AIR 1940 393 (Nagpur). The learned District Judge felt that there was direct authority for the proposition that the transferee can be allowed to raise a contention that the debt of petitioning creditor is bogus. He also made a reference to the Full Bench decision of the Nagpur High Court in AIR 1947 161 (Nagpur) and the decision of this Court in 1957 NLJ 523.

14. It is the correctness of this decision of the two Courts below on the first issue that is challenged before me in these petitions. It is contended that the decision in AIR 1947 161 (Nagpur) has not been correctly interpreted and that in allowing the transferees to challenge the order of adjudication on the ground that the petitioning creditor was not a creditor, of the insolvent, the Courts below have totally ignored both the scheme of the Provincial Insolvency Act and the effect of Section 41 of the Indian Evidence Act. In my opinion, this contention is well founded. In the first place, it must be remembered that the contention is raised in the proceeding u/s 53 of the Provincial Insolvency Act in which certain transfers are sought to be annulled. The application is no doubt made by the petitioning creditor and the application is resisted by the transferees. Thus the ambit of these proceedings as provided by Section 53 of the Provincial Insolvency Act must be confined to the issues which can be properly raised in such context. So far as the pleas raised by the contesting transferees are concerned, it is not the case of the transferees that the applicant was not entitled to make the application for annulment u/s 53 of the Provincial Insolvency Act because his debts were not genuine. So far as the right of the applicant as a creditor to make an application u/s 53 was concerned, the only challenge was that the applicant had not proved his debts, meaning that he had not been included in the schedule of creditors u/s 33 of the Act. We have already seen the

exact averment of the transferees when they challenged the adjudication of the insolvent itself. That challenge is based on the ground that the applicant had fraudulently obtained bogus promissory notes and was not entitled to make an application for adjudging the debtor as an insolvent and there fore the adjudication itself was invalid.

15. Now, the Courts below have sought jurisdiction to entertain such a plea on behalf of the transferee on the interpretation of the decision of the Full Bench in AIR 1947 161 (Nagpur) and the decision of this Court in 1957 NLJ 523. It is difficult to see how the conclusion to which the two Courts below have arrived, follows as a result of any principle accepted in these two cases. In the Full Bench case before the Nagpur High Court the question that fell for decision was whether an act of insolvency, which was a transfer and on the basis of which an order of adjudication was passed, could still be attacked by the transferee himself in proceedings u/s 53 of the Provincial Insolvency Act on the ground that the transferee was not a party to the proceedings for adjudication of the debtor as an insolvent. As the report shows, there was a sharp division of opinion between the minority view and the majority view. The minority opinion pronounced by Mr. Justice Bose (as he then was) proceeded on the footing that the ratio of the decision of the Privy Council in *Mahomed Siddique Yousuf v. Official Assignee of Calcutta* would still be applicable in deciding the question under the Provincial Insolvency Act. That learned Judge in delivering his opinion has observed as follows:-

"In my opinion the heart of the matter is this The order operates in rem and as such binds the transferee just as it binds all other men, and because this is an insolvency, it binds, not only as regards the fact of insolvency but also as regards the act on which the order is based. In this particular case the two are so intimately connected that the one cannot be dissociated from the other.

Now I am aware that in some cases a judgment in rem is conclusive only as regards the legal character which it establishes or takes away and that the reasons on which the order is based can be challenged in other proceedings, but the rule is not invariable and I am not aware of any rule which permits such a challenge in the course of the same proceedings. If a given conclusion is based on a given fact and is of such a nature " that the conclusion cannot stand if the fact is removed, and if overriding considerations render it imperative that the conclusion should stand notwithstanding its apparent hardship to those who were not parties to the order, then I am of opinion that at any rate in the course of the same proceedings neither the conclusion nor the fact can be challenged."

16. The learned Judge then quoted from a passage in Halsbury's Laws of England, page 421, to the following effect:

"The difficulty arises in the application of the rule, in determining in each case what was the point decided and what was matter incidentally cognisable, and the opinion of Judges seems to have undergone some fluctuations. But in order that

a judgment in rem may conclude strangers as to any finding of that besides the status or title which it establishes, it is necessary that the finding should be essential to the judgment itself."

The learned Judge then further observed :-

"I cannot see how the very basis of the order of adjudication can be challenged in the insolvency proceedings which can only continue on the assumption that there is an insolvency and that therefore the foundation on which it rests is good. I say nothing about a right of challenge in other matters where the question of insolvency is not relevant. But in the course of the same proceedings I fail to see how there can be any challenge except by way of appeal.""

17. The other two learned Judges, Mr. Justice Pollock and Mr. Justice Sen, however, took a contrary view, but even in their opinion the conclusiveness of the order of adjudication so far as status of the debtor adjudged as insolvent is concerned there is no difference of opinion. Mr. Justice Pollock at page 92 of the report (ILR Nag) : (at p. 163 of AIR) observed as follows:-

"The order of adjudication, under that Section (Section 41 of the Evidence Act), is conclusive proof that any legal character which it confers or takes away accrued or ceased as stated in the order. It does not, however, appear to me that the order is conclusive proof of anything more than that the insolvent has been so adjudged. It seems to me that a judgment in rem is conclusive only as regards status but not as regards the grounds on which the order is based....."

Mr. Justice Sen at page 123 (of ILR Nag) : (at p. 175 of AIR) in his opinion also has taken the same view as follows :-

"The order of adjudication under the section is conclusive proof that any legal character which it confers or takes away accrued or ceased as stated in the order. The order is conclusive only as regards the status but not as regards the grounds on which the order is based

I am of opinion that u/s 41 of the Indian Evidence Act the order of adjudication in an insolvency case is admissible to prove the legal character of the debtor as an insolvent, but is inadmissible as against third parties to prove that the act on which the order was passed was an act of insolvency."

18. Thus, so far as the effect of the order of adjudication is concerned, it cannot be seriously disputed in view of the decisions of the Court and the provisions of Section 41 of the Indian Evidence Act that no one is entitled to challenge the order of adjudication except by way of an appeal under the Insolvency Act. Once an order of adjudication has come to stay beyond challenge, then in subsequent proceedings in the insolvency it is not open to any other person to challenge the order of adjudication. What the transferees are doing in the present case is precisely this, and I fail to see how the transferees can be held entitled to make such a challenge to the order of adjudication. In the instant case, the challenge to the order of adjudication is based on the ground that the petitioning creditor

did not really have any debt genuinely owed by the insolvent debtor. As the debt itself was not genuine, the petitioning creditor had no right to make an application for adjudging the debtor as an insolvent, and therefore, the declaration as to insolvency itself was bad. In my opinion, such a challenge is precluded under the scheme of the Act. When an application is made by a petitioning creditor, the creditor has to show that the debtor owes a debt to him and that he is unable to pay that debt. Such an enquiry is contemplated u/s 24 of the Provincial Insolvency Act. But once an enquiry is made and the Insolvency Court comes to a finding that the debtor has committed an act of insolvency and is liable to be adjudged an insolvent because he is unable to pay the debts, the status of the debtor comes to be determined as an insolvent. The mere fact that that status is determined as a result of an application by a petitioning creditor will not give any right at a subsequent stage, in the insolvency proceedings to any other person, whether he is a transferee or other creditor, to challenge the adjudication order on the ground that the creditor who made the application did not in fact have any claim against the debtor. If such a challenge is permissible at subsequent stages of the same insolvency proceedings, it will lead to a breakdown of the scheme of the Insolvency Act itself. Can it be the intention that an order of adjudication or the order regarding the vesting of property and its administration or acts of the receiver in insolvency should always remain indecisive and subject to challenge to the very basis, namely, the order of adjudication of the insolvent? If it is accepted that the challenge is not to the order of adjudication but to the genuineness of the liability of the petitioning creditor, I fail to see what purpose is sought to be achieved by making such a challenge except to take the bottom out of the very order of adjudication itself. The transferees in the instant case could not have any other purpose except to demolish the order of adjudication by showing that the petitioning creditor in fact did not have any enforceable claim against the debtor. The transferees as such could not have any right to challenge the right of the petitioning creditor to make an application for adjudicating the debtor as an insolvent. It is contended that only a creditor of the insolvent could file an application u/s 53 of the Insolvency Act. Such a creditor may be the petitioning creditor himself. Therefore, the transferees have a right to show that the applicant before the Court, who was a petitioning creditor, did not really have the locus standi as a creditor, and therefore, the application u/s 53 itself was not tenable. It is not necessary to decide whether such a contention is open to the transferees because such a contention has not been, raised.

19. The contention that has been raised by the transferees in this case in resisting the application for annulment is that the adjudication order itself is bad, and therefore the petitioning creditor could not make an application. In my opinion, such a challenge to the adjudication order is prohibited by virtue of Section 41 of the Indian Evidence Act and the finality that is given to the order of adjudication which is passed at a prior stage of the insolvency proceedings. One can do no better than quote the observations of the Privy Council in *Mahomed*

Siddique Yousuf v. Official Assignee of Calcutta as to why such a view ought to be taken. The Judicial Committee observed as follows:-

"..... 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."

These observations have been made in a case under the Presidency Towns Insolvency Act, where the Privy Council came to the conclusion that even the transfers which were basis of adjudication as an act of insolvency were not liable to a further challenge at the instance of the transferee when an application for annulment was made at a subsequent stage. The finding of the Insolvency Court regarding the transfers being an act of insolvency was held binding even against the transferees who were not parties at the stage of adjudication in the insolvency proceedings. Even though a Full Bench of the Nagpur High Court and another Full Bench of the Allahabad High Court have distinguished this decision of the Privy Council on the ground of difference between the provisions of the Presidency Towns Insolvency Act and the Provincial Insolvency Act, in my opinion, the ratio of the Full Bench decisions cannot be so interpreted as to open a door to anybody at subsequent stages of the proceedings to challenge the very order of adjudication of the debtor as an insolvent in the guise of throwing a challenge to the genuineness of the debt of the petitioning creditor.

20. There is another aspect of this matter which may be considered here. It is not as it that every petitioning creditor ipso facto gets right of claiming a share in the dividends that come to be distributed by administration of the receiver. Every creditor is required to prove his debt before he is included in the schedule of creditors u/s 33 of the Insolvency Act. A further-right has been given to the receiver as well as other creditors of the insolvent to challenge the inclusion of any amount of debt u/s 50 in the schedule of creditors. Thus the rights of persons who could claim to be creditors of the estate and their claim to the distribution of the dividend with other creditors are fully preserved, in Section 33 and Section 50 of the Insolvency Act. It is not therefore the law that once a petitioning creditor prima facie proves his right to present the petition for adjudication and an adjudication order follows, the adjudication has the effect of taking beyond challenge the claim of the petitioning creditor to a share in the distribution of dividends. To that extent the provisions of Sections 33 and 50 preserve the rights of competing creditors. If the transferees have any claim as creditors to the estate, then they get such an opportunity by making an application u/s 33 of the Provincial Insolvency Act. It cannot therefore be complained that the transferees who may have claim as creditors, if their transfers fail, are without a remedy of showing that the petitioning creditor himself had no claims against the estate. But it is a far cry from saying that the order of adjudication itself can be challenged by the transferees because the petitioning creditor did not have a genuine claim against the debtor. In my

opinion, such a challenge is precluded by the scheme of the Act and u/s 41 of the Evidence Act.

21. Mr. Manohar, learned counsel for the opponents invited my attention to a decision of a Special Bench of the Madras High Court in *In re, Venkataramanayya*, AIR 1931 Mad 441 : ILR 54 Mad 601. In that case a contention was raised on behalf of the creditor who had filed a petition for adjudging the debtor as an insolvent that the order of adjudication itself must be taken to have determined the legal character of the claim of the creditor of the insolvent. The contention was that in the insolvency proceedings the declaration that a person is the creditor of the insolvent confers on him a legal character. It was therefore contended that at subsequent stages of the proceedings the right of such creditor to the debt claimed by him, cannot be challenged. This contention was repelled by the Full Bench and in repelling that contention reference was also made to the previous decision in *Kanhaya Lall v. Kadhar churn*, 7 Suth W R 338 as regards Section 41 of the Indian Evidence Act. The Special Bench observed:

"Though it be necessary as a necessary step to making a declaration which will operate in rem to find a fact, that finding will not bind third parties in subsequent proceedings."

Mr. Manohar relies on this observation in the Madras case to urge that the fact found in the proceedings for adjudicating the debtor as an insolvent that the promissory notes in the instant case_ were not proved to be untrue cannot itself be a decision which can be said to be a judgment in rem. Mr. Manohar is right that such a decision is not a judgment in rem. If at any subsequent stage an occasion arises in insolvency proceedings either u/s 33 or u/s 50 that an enquiry ought to be made into the genuineness of the claim of the petitioning creditor, the fact that the adjudication order was passed on the application of the petitioning creditor, will not preclude such an enquiry. But it is difficult to accept the contention which seems to have found favour with the Court below that the transferee is entitled to challenge the very order of adjudication itself on the ground that the petitioning creditor did not really have a claim against the debtor. The question that falls for consideration in the present case is whether there was any jurisdiction in the Insolvency Court or in the appellate Court in proceedings for annulment of transfer to canvass the question of adjudication of the debtor as an insolvent. The scheme of the Insolvency Act is that once an order of adjudication, is passed, all subsequent proceedings must be carried on the footing that the order of adjudication finally determined the status of the debtor as an - insolvent, and that status cannot be challenged at all. This basic fact seems to have been lost sight of in entertaining the contention on behalf of the transferees that the adjudication order is liable to challenge.

22. Mr. Manohar also invited my attention to a decision of this Court in *Gopikabai v. "Chapsi Purshottam* AIR 1935 Bom 80 : 36 Bom L. R. 1236. What was held in that case was that even though ordinarily u/s 24 of the Provincial Insolvency Act

the Insolvency Court has power to require the proof of the creditor's right to present the petition and that the enquiry may also include the question whether between the petitioning creditor and the opponent, the amount of creditor's claim is at least Rs. 500/-. It does not follow that the Insolvency Court must decide the other question connected with it or which may incidentally arise from it and cannot refer the creditor to a regular suit if it is of opinion that complicated questions of fact and law arise therein. It was also observed that ordinarily when a creditor presents "his application and the debtor challenges it, the Insolvency Court will ask for proof from the creditor as to his right and is entitled to go into the question. I do not think that the decision in this case is of any assistance to the opponent. If anything, it reiterates the position that the Insolvency Court has to adjudicate when contest is raised as to whether or not the petitioning creditor has a subsisting claim against the debtor. But the mere fact that this is one of the question of fact to be determined in passing an order of adjudication does not lead to the inference that the order of adjudication is liable to be challenged by challenging the fact of indebtedness of the creditor.

23. The learned Judge of the District Court has referred to a decision of the Nagpur High Court reported in AIR 1940 393 (Nagpur) It would appear that the view taken in this case supports the contention of the opponent. I have found it difficult to accept this decision, especially after the pronouncements of their Lordships of the Privy Council in Mahomed Siddique Yousuf v. Official Assignee of Calcutta Moreover, the peculiar facts in AIR 1940 393 (Nagpur) were that he was the sole creditor and the Courts below had come to the conclusion that the debt claimed by the sole creditor was a non-existent debt. When attention was invited to the provisions of Sections 33 and 50 of the Insolvency Act, it was pointed out that the transferee Raje Khanderao was not a person who could come u/s 50 to apply for amendment of the schedule. He was neither a receiver nor a creditor. It was therefore held that in the case of a sole creditor, at any rate, if it could be subsequently shown that no debt was owing to such a creditor, then the order of insolvency could also be challenged by the transferee. It is possible to distinguish this decision on the facts of that case. But, apart this distinguishing feature that the debtor had only a single creditor, in my opinion, it is not possible to accept the decision as laying down the law correctly inasmuch as the order of adjudication once validly made must be treated as finally determining the status of the insolvent and binding as a judgment in rem in all subsequent stages in the same proceedings. I therefore dissent from the view which has found favour, and I have come to the conclusion that the transferee is not entitled to challenge the order of adjudication on the ground that the petitioning creditor did not have a claim against the debtor. As the Court had no jurisdiction to entertain any such contention, it follows that the District Judge could not have adjudicated on the merits of the contention i.e. whether or not the applicant's debts on the basis of the promissory notes were in fact owing by the debtor insolvent.

24. This, however, does not mean that in an appropriate proceeding u/s 33 or Section 50 of the Provincial Insolvency Act, the claim of the petitioning creditor,

who is the applicant, to be included in the schedule of creditors, cannot be investigated. Such an application has not been made and that stage has not arrived. That enquiry could not be made in an application u/s 53 of the Insolvency Act at the instance of the transferee who wanted such an enquiry to be made in order to support his contention that the adjudication order itself is bad to the limited extent to which the transferee was precluded from making such a challenge to the adjudication order. I hold that the Courts below did not have jurisdiction in the present proceedings to make any pronouncement about the genuineness or otherwise of the claim of the petitioning creditor.

25. Thus, the result is that the application for revision is allowed in both the cases and the finding on issue No. 7 by both the Courts below and the finding of the District Judge that the applicant had failed to prove the genuineness of his debt are hereby set aside. The applicant in both the cases will be entitled to his costs.

26. Revision allowed.