

(1920) 08 CAL CK 0005
In the Calcutta High Court

Behari Lal Sikdar and Others

APPELLANT

Vs

Harsuk Dass Chhakinal and Others

RESPONDENT

Date of Decision : 31-08-1920

Acts Referred:

Provincial Insolvency Act, 1920 — Section 24, 28, 38

Citation : 61 Ind. Cas. 904

Hon'ble Judges : Teunon, J;Newbould, J

Bench : Division Bench

Judgement

Teunon, J.—This appeal is directed against an order made by the District. Judge of the 24 Pargunnas in the exercise of his insolvency jurisdiction.

2. It, appears that on the 13th of March 1919, on the petition of certain creditors, the four appellants (tarrying on business in co-partnership were adjudicated insolvents. On appeal to this Court the order of the District Judge was affirmed on the 25th July of the same year. Meanwhile the Receiver appointed under the provisions-of Section 18 of the Acts had taken steps to ascertain and realise the property of the insolvents. Certain sales effected by him notwithstanding the objections of the insolvents were confirmed by the Court on the 22nd September 1918.

3. Then followed on the 30th of January 1920 a petition by the insolvents submitting a proposal for a composition. To this proposal they appended a list, showing the names of 27 creditors (one apparently being mentioned twice over) and the sums (excluding interest) due to each aggregating Rs. 1,93,500. The proposal was that relative of the insolvents, one Madan Mohun Saha, on taking a mortgage by conditional sale of all the insolvents' properties, should pay to the creditors eight annas in the rupee in full satisfaction of their claims. It was stated that the majority of the creditors had agreed to the proposal. On the 1st of March a meeting of creditors to consider the proposal was held. At this meeting were present the four insolvents, their relative, Madan Mohun Saha (by Pleader), the Receiver, five only of the 27 creditors named in the petition, and a Pleader for

Messrs, Morgan & Co. who had proved their claim against the insolvents to the satisfaction of the Receiver. The Receiver who had submitted two reports, dated 9th February and 1st March, and the above six creditors opposed the scheme, and by his order of the 6th March the Judge refused to approve of the same. No appeal has been preferred against that order.

4. On the 13th of March the Receiver sold certain properties belonging to the insolvents, situated at Bhanga, for a sum of some Rs. 10,000. This sale was approved by the District Judge on the 12th April.

5. Up to this time, no schedule of creditors had been framed under the provisions of Section 21 of the Act. This delay may have been due in part to the obstructive attitude of the insolvents, but it is clear that effective steps for the preparation of the required schedule should have been taken long before the 30th of January 1920, and of the difficulties that have arisen many are clearly to be attributed to the delay in this essential particular.

6. After the District Judge's order refusing approval to the proposed composition on the 23rd of March, the insolvents represented to the Court that of their creditors all, but five named in the petition, had received from Madan Mohun Saha half their respective dues in full satisfaction of their claims. They prayed that the remaining five creditors should be called upon to prove their claims and should thereafter be paid in full out of the monies (about Rs. 80,000) then in the hands of the Receiver. On such payment they further prayed that the insolvency proceedings should be closed and they, the insolvents, discharged. They disputed the claim of Morgan & Co. On the next following day, the 24th of March, Madan Mohun similarly represented that 21 creditors (named in the petition) had accepted payments from him in full satisfaction of their claims. He prayed that he should be substituted in their place as a creditor of the insolvents, and that the debt due to him should be taken either as the full amount originally due to the said "21 creditors or as the sum he had actually paid. Thereafter on various dates ranging from the 25th March to 15th April, 15 of the aforesaid 21 creditors presented to the Court petitions, in which they stated that on or about the 13th of February they had been induced by the false and fraudulent misrepresentations of the insolvents to accept from them half of the principal sums due to them and that the sums so received were in fact the assets of the insolvents' estate, they prayed, that on payment by them into Court of the said sums they should be permitted to prove their claims.

7. These applications came on for hearing before the District Judge on the 12th and 15th April. He was of opinion that they raised the following questions, viz.-

- (1) whether the 21 creditors were entitled to be heard,
- (2) whether the 21 creditors were induced by fraud and misrepresentation to accept in full satisfaction the sums paid to them,
- (3) whether fraud or no fraud, the Court should recognize the said acceptance,

- (4) whether Madan Mohun was entitled to be substituted in place of the 21,
- (5) whether the money deposited by the 21 is to be treated as the assets of the insolvents, returned to Madan Mohun or otherwise disposed of,
- (6) whether Madan Mohun made any payment out of his own money to the 21 creditors, if so, what amount,
- (7) whether the Receiver should now declare a dividend; if so, who should participate.

8. He heard the 21 creditors or such of them as appeared and thereafter, finding that questions 2 and 4--6 would involve the taking of evidence, proceeded, by the judgment delivered on the 17th April, to decide only the third question.

9. He held that the 15 creditors who had deposited or had requested permission to deposit in Court the money received by them were entitled to prove their claims on the footing that no such payments had been received, that the remaining six creditors who had not made such deposit or petition were not entitled to prove, and that Madan Mohun was similarly not entitled to prove.

10. The insolvents appeal against this order. They contend that the 21-creditors who, as the insolvents allege, had received money from Madan in full satisfaction should, u/s 63 of the Indian Contract Act, be regarded as no longer creditors, that Madan should have been recognized as a creditor in their place and that the five creditors named in the insolvent petition of the 23rd March should be paid in full. They continue to deny the claim of Morgan and Co.

11. Thus the position taken up by Madan (who, though he appeared before the District Judge, has not appealed) and by the insolvents is in effect that the sums paid by him to the 15 or 21 creditors are loans to the insolvents. In view of the provisions of Sections 28 and 38 of the Act, it must, we think,, be held that these transactions cannot be recognized in insolvency proceedings and that the 15 petitioning creditors are entitled to prove their claims as they stood on the date of adjudication. We may refer in this connection to *Savin, In re* (1872) 7 Ch. App. 760 : 42 L.J. Bk. 14 : 27 L.T. 466 : 20 W.B. 1027 and to *Subbarayalu v. Rowlandson* 14 M. 133 : 5 Ind. Dec. (N.S.) 94 and *Rowlandton v. Champion* 17 M. 21 6 Ind. Dec. (N.S.) 14.

12. The remaining six creditors, who are said to have received money from Madan, have not appealed against the order debarring them from proof. We, therefore, do not interfere with that order.

13. We, therefore, dismiss this appeal, but we must request the District Judge to proceed without further delay to frame the scheme of creditors and debts referred by Section 24 of the Act. We may further observe (see Section 24, and cf. also Section 26 and Section 52) that the framing of the schedule is the duty of the Court, not of the Receiver.

14. Though a report from the Receiver may in some cases assist the Court, it in

for the Court to decide on each claim on evidence, and in case of contest after hearing necessary parties (vide Sections 24 and 26). We must further point out that in proceedings taken on notice to the insolvents, Madan Mohan, the creditors and the Receiver, the District Judge should now determine whether the monies paid to the 15 petitioning creditors were the monies of the insolvents claimable by the Receiver or the monies of Madan.

15. In this appeal the insolvents and the creditor respondents will each and all pay their own costs. The Receiver will have the costs out of the estate, Pleader's fee 2 gold mohurs.

16. Let this order and the papers go down at once.

17. The connected Rule No. 300-M of 1920 is discharged.

Newbould, J.

18. I agree.