(1976) 02 MAD CK 0008

In the Madras High Court

Bherumal Hotchand APPELLANT

Vs

P.V. Gandhi and Others RESPONDENT

Date of Decision : 09-02-1976

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 56, 9(c)

Citation : (1976) 89 LW 656 : (1976) 2 MLJ 441

Hon'ble Judges : K. Veeraswami, C.J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—The appellant herein it a guarantor and transferee of the stock-in-trade and business of the insolvent Messrs.

Gitanjali, a firm of partnership. The firm was dealing in textiles and it ran into debts. It had an overdraft account with the Bank of India. The

eventual balance found due to the bank from the insolvent as on 7th August 1971, was found to be Rs. 1 lakh. The firm also had other debti, its

total liabilities approximately amounting to Rs. 3,38,015. On 7th August, loathe insolvent transferred its entire assets consisting of the stock in-

trade and the business in textiles to the appellant for a consideration of Rs. 1,12,000. Out of this consideration, the appellant retained with himself a

sum of Rs, 1 lakh for payment to the Bank of India and the balance of Rs. 12,000 he paid to the firm, which the managing director of the firm

utilised for his own personal purposes. One P.V. Gandhi, one of the respondents before us filed a petition on 16th August, 1971, for adjudicating

the firm as insolvent u/s 9 (b) and (d). Actually it was adjudicated as an insolvent on 1st December, 1971, but this was in effect done u/s 9(c), the

Court holding that the transfer was a fraudulent preference and should be deemed u/s 56 to be fraudulent and void as, against the Official

Assignee.

2. The only question before us is whether the transfer, in the circumstances mentioned by us, could be regarded as fraudulent and as one hit by

Section 56. It seems to us that there could be no doubt that the transfer is so hit.

3. In N.L.N. Lakshman Chettiar (Died) and Others Vs. Jayarama Chettiar and Another, which was concerned with Section 53 of the Transfer of

Property Act, this Court pointed out that where a debtor has several creditors and some property, and if he trapsfers the property to one of the

creditors without any further circumstances appearing, that might be a preference, but it could not be said to be a fraudulent preference; normally, it

is not improper for a debtor to prefer his creditor among the many in order to discharge his debt by transfer of property; in order to make a

transfer a fraudulent one, there should be something more than mere preference and the facts must establish that the preference is a fraudulent one.

4. That principle might apply if Section 9(c) of the Presidency Towns Insolvency Act stood by itself, because that section merely speaks of

fraudulent preference. But Section 56 which deals with avoidance of preference in certain case lays down, when a transfer shall be regarded as a

preference and a frauduh nt preference which will be void against the Official Assignee. Any transfer, when made by a person unable to pay his

debts as they become due is with a view of giving the transferee a preference over the other creditors; such transfer, if such person is adjudged

insolvent on a petition presented within three months after the date of such transfer will be deemed fraudulent and void as against the Official

Assignee.

5. The language of the section admits of no doubt whatever. If the facts fall within the compass of the section, no discussion or speculation is called

for to find whether the transfer ii a fraudulent preference, void in its effect.

6. In the instant case, the transfer was on 7th August, 1971. The adjudication of the insolvent made on 1st December, 1971, relates back to 16th

August, 1971, the date of presentation of the petition for adjudication. The insolvent had a number of debts, one of them being due to the Bank of

India. The guarantor also was an obligee so far as the insolvent was concerned. All the facts, therefore, required for the application of Section 56,

read with Section 9(c) are satisfied. The learned Judge was, therefore, right in setting aside the transfer as fraudulent preference and void as against

the Official'' Assignee.

7. The appeal is dismissed with coats. We are informed that the appellant pursuant to the interim order of this Court has deposited with the Official

Assignee a sum of Rs. 1,57,000. The guarantor will, of course, stand on line for rateable payment before the Official Assignee on proof of his

debts to his satisfaction.

