

(1945) 01 CAL CK 0014
In the Calcutta High Court

Birendra Mohan Maitra and Another

APPELLANT

Vs

Rajshahi Co-operative Town Bank Ltd. and Others

RESPONDENT

Date of Decision : 23-01-1945

Acts Referred:

Provincial Insolvency Act, 1920 — Section 51, 52

Citation : AIR 1945 Cal 400

Hon'ble Judges : Ellis, J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

B.K. Mukherjea, J.—It seems to us that the view taken by the learned District Judge is perfectly sound, and this appeal should be dismissed. It appears from the record that a creditor of the appellant Birendra Mohan Maitra presented an application for adjudicating him insolvent in the Court of the District Judge at Rajshahi on 14th December 1938. On 16th December 1938, an interim receiver was appointed, but the subsequent orders show that the receiver was not allowed to take possession of the properties of the debtor, but he was directed only to make an inventory of certain properties. On 15th July 1939, the application for insolvency was dismissed by the District Judge. Against that an appeal was taken to this Court by the creditor. This appeal was allowed and the case was sent back and eventually the appellant was adjudicated insolvent on 21st April 1942. During these proceedings, it appears that the respondent bank in execution of a decree obtained against the appellant and a co-debtor of his put up to sale certain properties belonging to the appellant, and they were purchased by different people. The sale took place on 30th May 1941. In the present proceeding, the position taken up by the insolvent, and later on by the receiver, is that the sale is void against the receiver u/s 52, Provincial Insolvency Act (5 of 1920), inasmuch as the sale took place at a time when the application for insolvency was already admitted and the executing Court was apprised of this fact. This contention, in our opinion, has justly been repelled by the Courts below. As appears from the language of the section itself, it is necessary that two conditions must be satisfied before the executing Court can make an order for

delivery of the attached property to the receiver in insolvency. The first is that notice is given to the executing Court of the admission of a petition of insolvency by or against the judgment-debtor. In the second place there should be an application before the executing Court for delivery of such property to the receiver.

2. There is some divergence of opinion on the point as to whether an application by the receiver--either interim or otherwise,--is necessary before an executing Court can be asked to deliver over the attached property to him. In *Mahendrakumar Baishya Shaha Vs. Deeneshchandra Ray Chaudhuri*, , it was held that such application was unnecessary, whereas a contrary opinion was expressed in *Mathuresh Chakravarty Vs. S.R. Mills Co. Ltd. and Another*, . Whichever of the two views may be accepted as correct, it is perfectly true that Section 52, Provincial Insolvency Act, would have no application to a case where no receiver has actually been appointed. This was the view taken in *Jogendra Nath Kundu and Another Vs. Jogneswar Mandal and Others*, and in *Nagendra Lal Pal Choudhury and Others Vs. Hemanta Kumar Mukherjee and Others*, and, in our opinion, this is right view to take.

3. In the case before us, it appears clear from the facts appearing on the record that no receiver--either interim or otherwise--was in existence at the date when the sale of the judgment-debtor's properties took place. The learned advocate appearing on behalf of the appellant lays stress on the fact that an interim receiver was appointed by the District Judge on 16th December 1938, but that appointment must have necessarily ceased as soon as the application for adjudication itself was dismissed, and we have nothing on the record to show that a fresh appointment was made during the pendency of the appeal in this Court. In these circumstances, we are clearly of opinion that Section 52, Provincial Insolvency Act, has got no application to the facts of the present case. The receiver can certainly seek his remedy u/s 51, Provincial Insolvency Act, if he succeeds in proving that the purchasers are not bona fide purchasers for value without notice. This right of the receiver has been expressly safeguarded in the judgment of the learned District Judge. The result is that we dismiss this appeal. We make no order as to costs of this appeal in this Court.

Ellis, J.

4. I agree.