(1933) 11 AHC CK 0077

In the Allahabad High Court

Firm Ghanshyam Das Hanuman Prasad APPELLANT

Vs

B. Jainarain Verman and Others RESPONDENT

Date of Decision : 30-11-1933

Acts Referred:
Provincial Insolvency Act, 1920 — Section 52

Citation : AIR 1934 All 444

Hon'ble Judges : Young, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Young, J.—This is an execution first appeal from the order of the learned Subordinate Judge of Farrukhabad. The matter came before the learned Subordinate Judge on an application of an Interim Receiver appointed under the Provincial Insolvency Act. A judgment-debtor became insolvent. He filed his petition. Previous to this however the decree-holder had a decree against the judgment-debtor and subsequent to the decree a compromise was effected whereby the judgment-debtor agreed to pay a certain sum of money by instalments. He further purported as security for payment to give a charge on certain property. It is to be noted that the words used in the petition of compromise amount to a mortgage upon the property. The Interim Receiver applied to the Court u/s 52, Provincial Insolvency Act, for the property to be delivered to him. The decree-holder objected that be was a secured creditor and therefore the Provincial Insolvency Act did not apply to his execution proceedings. He had already taken proceedings in execution to satisfy the decree on the failure of the judgment-debtor to pay the instalments under the compromise. The learned Subordinate Judge decided however that he was not a secured creditor on the ground that there was no registration either of the compromise or charge or mortgage. He ordered that the property should be delivered to the Interim Receiver and that the sale should be postponed. It is argued by Mr. Panna Lal on behalf of the decree-holder that his debt is secured. On this point there is no doubt. The charge amounts to a mortgage and is not registered and therefore u/s 17(b) land Section 49, Registration Act, the mortgage is of no effect. The debt being unsecured, the order of the Court below cannot be questioned. It has been further argued by Mr. Panna Lal that Section 52 does not apply as the word used in that section is the "receiver." He contends that an Interim Receiver is not a receiver within the meaning of the section. We are unable to agree with this contention. The material words of the section are:

where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an insolvency petition by or against the debtor has been admitted, the Court shall etc. etc.

2. The words "has been admitted" clearly, in our opinion, show that the word "receiver" used later on must include an Interim Receiver. On the admission of a petition there can be no question of a receiver until the debtor has been declared insolvent. Pending the decision of the Insolvency Court, an Interim Receiver would be appointed. We decide therefore that the word "receiver" in Section 52 includes an Interim Receiver. The appellant therefore being an ordinary unsecured creditor we dismiss the appeal with costs. A week''s time is given to Mr. Gupta to file his fee certificate. He tells us that he has received a portion of the fee by crossed cheque from his client and that the cheque is in the hands of the bank for collection. If the money is received upon this cheque Mr. Gupta is permitted to file his certificate within seven days.