

(1950) 10 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 54 of 2005

Gurbux Singh Inder Singh

APPELLANT

Vs

Brij Lal Chiranji Lal and Others

RESPONDENT

Date of Decision : 31-10-1950

Acts Referred:

Provincial Insolvency Act, 1920 — Section 44

Citation : (1950) 10 P&H CK 0014

Hon'ble Judges : Teja Singh, C.J

Bench : Single Bench

Advocate : Puran Chand, for the Appellant; P.L. Handa, for the Respondent

Judgement

Teja Singh, C.J.—This revision petition arises out of execution proceedings. A decree for Rs. 551/12/- was passed against Gurbakash Singh in favour of Raunaq Ram. In execution proceedings the judgment debtor came forward with the objection that since he had obtained an order of discharge in insolvency proceedings and the decree-holder's debt was provable under those proceedings, the decree passed against him was a nullity and accordingly it could not be executed. The trial Sub-Judge overruled the objections, and the judgment-debtor's appeal to the District Judge also failed. He has now come to this Court on the revision side.

2. It is stressed by the Petitioner's counsel that by virtue of Section 44, Insolvency Act, when an insolvent has once obtained a discharge order all the debts provable against him in those proceedings are wiped off with the result that no liability against him for those debts remains. He further contends that the liability regarding the debts having been wiped off altogether by Section 44, the decree passed against the Petitioner in contravention of the provisions of Section 44 must be entirely ignored. In my opinion, the argument suffers from a fallacy. It is no doubt correct that the provisions of Section 44, Insolvency Act are mandatory and when a discharge order is made all debts provable under the insolvency proceedings in a way cease to exist, but this does not make the

decree against the Petitioner altogether void. It appears from the judgment of the Sub-Judge who passed the decree that the Petitioner pleaded that he had been discharged and accordingly no decree against him could be passed in respect of the debt in suit but the trial Sub-Judge did not accept his contention and passed the decree notwithstanding the discharge order. Now it is well recognised that when the Court has jurisdiction to decide a matter it has jurisdiction to decide it wrongly or rightly. I am prepared to concede that the decision of the Sub-Judge in that case was contrary to the provisions of Section 44 and was erroneous but the remedy for the Petitioner was to have it set aside by way of appeal and he could not ask the executing Court to treat the decree as if it did not exist at all. There are any number of authorities on this point; but it is sufficient for purposes of this petition to refer to *Mahant Har Kishan Das Vs. Satgur Prasad*, AIR 1938 PC 98 where it was held that:

In execution proceedings the question as to whether the view of the Court which passed the decree is right or wrong is no longer open.

The Petitioner's counsel relied upon a Single Bench decision of the Lahore High Court, *Molar v. Co-operative Societies of Sambhalka* AIR 1941 Lah. 314 : 198 I.C. 627. In that case the debtor had obtained an order of discharge in insolvency proceedings but later on the liquidator of the Co-operative Societies of which he was a member made him liable for the amount that he owed to the Society. When the liquidator applied to a civil Court for execution of his award he was met with the objection that the debt having been discharged the liability in respect of the debt had come to an end. The learned Judge of the High Court held that the liability arising from a provable debt disappears when the order of discharge is made and the protection given by Section 44, Provincial Insolvency Act is not taken away merely because the liability takes the form of a decree. It may here be mentioned that the words of Section 44, Provincial Insolvency Act on which that decision was based are word for word the same as the words of Section 44 of the Act by which we are governed. I am, however, of the view, and this I say with great respect, that the dictum of the learned Judge is not sound and I am not prepared to follow it. While disposing of the arguments of the Respondent's counsel that it is not open to an executing Court to go behind a decree except when it is void because of want of jurisdiction, this is what the learned Judge observed:

Counsel for the Respondent urges that an executing Court cannot go behind a decree except in the matter of jurisdiction and in this connection relies on *Chatra Serampore Co-operative Credit Society Ltd. Vs. Bijay Krishna De and Others*, S.A. Nathan v. S.R. Samson 9 Rang. 480 : AIR 1931 Rang. 252 F.B. and *Anjuman Imdad Bahami Qarza v. Imam Din* AIR 1939 Lah. 275 : 183 I.C. 632. The principle enunciated in these judgments is no doubt correct but in my view they are not in point in the present case, inasmuch as here as stated above the liability had disappeared by the force of law and what does not exist cannot be executed.

3. I venture to think that this was not right way of looking at the question. No doubt when an insolvent obtains an order of discharge his liability in respect of the debts provable in the insolvency proceedings ceases to exist but it was not that liability that was executed. On the other band what was sought to be executed was the award of the liquidator and that award, until it was set aside by a competent Court, very much existed. Similarly in the present case it is the decree passed in favour of the Respondents that is to be executed and even though the Court was wrong in passing the decree and it may be urged that it should not have been passed, since the Petitioner did not get it set aside by a higher Court or even by the same Court on review, it existed and the executing Court was bound to execute it. In addition it may be pointed out that the view taken in Molar's case AIR 1941 Lah. 314 : 198 I.C. 627 was contrary to the one taken by Anr. learned Judge (Dalip Singh J.) of the same High Court in Anjuman Imdad Qarza Bahmi of Chak 127 v. Abdul Ghani AIR 1940 Lah. 280 : 189 I.C. 370. The facts of that case were quite analogous to those of Molar's AIR 1941 Lah. 314 : 198 I.C. 627 and it was held therein that the executing Court can only question the decree of a Court on the ground of lack of inherent jurisdiction and cannot question it on the ground of illegal exercise of jurisdiction or a material irregularity in the exercise of jurisdiction and that the award given by the liquidator of the Co-operative Societies could be executed, even though the debtor had been declared insolvent and had obtained a discharge order.

4. The result is that the petition fails and is dismissed with costs.