(1983) 04 AHC CK 0058

In the Allahabad High Court

Case No : F.A.F.O. No. 406 of 1977

Gyan Chand APPELLANT

Vs

Official Receiver and Another RESPONDENT

Date of Decision : 01-04-1983

Acts Referred:
Provincial Insolvency Act, 1920 — Section 4, 53, 6, 9

Citation : (1983) 04 AHC CK 0058

Hon'ble Judges : N.N. Mithal, J

Bench : Single Bench

Advocate : A.P. Tewari, for the Appellant;

Final Decision : Dismissed

Judgement

N.N. Mithal, J.—This appeal is directed against the order of the Insolvency Judge, Muzaffarnagar, allowing the Official Receiver''s petition dated 16-11-1975 u/s 4 read with Section 53 of the Provincial Insolvency Act annulling the sale deed dated 11-7-1972 executed by Sanu, the insolvent, in favour of one Gyan. The appeal has been preferred by the transferee under the aforesaid sale deed and the only point that has been urged before me was that the application u/s 53 of the Insolvency Act was barred by time.

2. Sri. Bhattacharya, learned Counsel appearing for the Appellant, submitted that the order of adjudication in the cage was passed on 22-3-1975 by which Sanu was adjudged an insolvent on a creditor''s petition. The transfer having taken place on 11-7-1972, the same was more than two years prior to the date of adjudging the debtor as insolvent. According to him, Section 53 prescribes a limitation of only two years and since the transfer was not within two years of the date of adjudication of the debtor as insolvent, the application was barred. This argument, however, has very little to commend itself. Bereft of unnecessary words, Section 53, as is relevant for the purposes of this appeal, would read as under;

Any transfer of property...shall, if the transferor is adjudged insolvent on a petition presented within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court.

3. The portion which I have left out contained certain exceptions to this general rule and the case of the Appellant is that apart from the question of limitation, his case falls under one of the categories of exceptions provided in this Section. This matter, however, may be left to be dealt at a latter stage.

4. The Section, as quoted by me above, if read in its natural sense, would mean that all those transfers which had been made within two years from the date of that particular petition on which the debtor has been declared an insolvent were liable to be annulled on being moved by the Official Receiver in this behalf. It would not be correct to interpret this Section as meaning that the transfer complained of must have taken place within two years from the date of the order of adjudication. The reading of this Section shows that it is the date of the petition for insolvency on which the debtor has been adjudged an insolvent which is material and must lie within two years of the date of the impugned transfer. It has, however, nothing to do with the actual date of adjudging the debtor as insolvent.

5. Sri. Bhattacharya then urged that u/s 9, a creditor can only make a petition for adjudging the debtor an insolvent if the transfer had taken place within three months of the date of the petition. According to him, if this was the position, how can a transfer made much earlier than that, though within two years, could be annulled by the Court u/s 53. The argument, however, completely ignores the other provision of Section 9. In order to maintain a petition against a debtor for adjudging him an insolvent, the creditor must satisfy three conditions namely:

(1) that the total amount due to the creditor making the petition was more than Rs. 500/-.

(2) that the amount due is a sum certain and is either payable immediately or at some certain future time and lastly

(3) that the act of insolvency has been committed within three months before the presentation of the petition.

6. We are not concerned with the first two conditions and we will confine the discussion to the third ground alone. "Act of insolvency" has been defined in Section 6 of the Act, Sub-clauses (a), (b), (c) and (e) whereof deal with transfer of the debtor''s properties under various circumstances while Sub-clauses (d), (g) and (h) refer to other acts which may be termed as acts of insolvency such as where the debtor departs out the jurisdiction of the Court or departs from his dwelling house or usual place of business, secludes himself so as to deprive his creditors of the means of communicating with him or where he gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts or where in a decree for payment of money he has been

imprisoned in execution thereof. These sub-clauses have no reference to the transfer of any property by the insolvent. If a creditors'' petition is made on the ground that the debtor has suspended payment of his debts and a notice thereof has been given, a petition u/s 9 shall lie within 3 months of such notice. If on such a petition, the debtor is adjudged insolvent subsequently, then all the transfers made by him had in respect of his property within two years of the petition u/s 9 will come under a cloud and would be liable for annulment u/s 53 of the Act although no transfer had taken place within 3 months of the date of the petition. Similar would be the position where the grounds mentioned in Sub-clauses (d) and (h) exist. Apart from these where the debtor himself makes the petition for being declared insolvent, this by itself amounts to an act of insolvency and the creditor can take advantage of that petition and may move an application u/s 9 of the Act. Here also all the transfers made by such debtor within two years from the date of presentation of the petition would be liable to be annulled u/s 53. Therefore, the submission of the Counsel that there is any contradiction between the provisions of Section 9 and Section 53 is absolutely incorrect. The two provisions are made to deal with entirely two different matters and operate in different fields. Section 9 provides for the grounds on which a petition by a creditor can be filed while Section 53 deals with a stage when the debtor has already been adjudged an Insolvent and the property has become vested in the Official Receiver. The Official Receiver is entitled under the Act to take stock of the entire assets of the insolvent and to distribute it equitably, subject to the provision of the Act, amongst the various creditors. It is during this process that the Official Receiver can make an application u/s 4 read with Section 53 of the Act for annulling of any transfer made by the debtor which was within two years from the date of the petition on which the debtor was adjudged insolvent.

7. There can be another circumstance also. Various creditors may file petitions for declaring the same person as an insolvent on various grounds mentioned in Section 6 of the Act. The Court may reject some of the petitions as unsustainable and one particular petition may be allowed adjudging the debtor an insolvent. It is only those transfers which had been made by the debtor within two years from the date of that particular petition on which he was adjudged an insolvent which can be annulled u/s 53 although there may be some other earlier petitions by the creditors which may have been rejected by the Court.

8. A third possibility can be that the debtor himself transfers his property and within two years thereof applies for being declared an insolvent. If this petition is allowed, the creditor certainly will have a right to see that the transfer which have, been made by the debtor within two years of making the petition may be annulled by the Court.

9. In view of the above discussion, therefore, I am clear in my mind that the language of Section 53 clearly applies to the transfers which have been made within two years from the date of the petition and has no reference at all to the

date of adjudging the debtor as insolvent. Ad judgment of debtor as an insolvent is of course a precondition before a petition u/s 53 can be made, but once the debtor has been adjudged an insolvent, transfers made within two years of the date of presentation of the petition alone will be the relevant thing to consider.

10. In this case, admittedly, the transfer bad been made on 11-7-1972 and within three months thereof, a petition u/s 9 was moved on 6-9-1972. This petition was ultimately allowed by the Insolvency Judge on 22-3-1975. Therefore, although from this date of adjudging the debtor as insolvent, the transfer dated 11-7-1972 is beyond two years, yet the petition having been made within the said period, the transfer could be annulled by the Court and the bar of limitation can not be urged successfully. In my opinion, the Court below was right in holding that the application was not barred by limitation.

11. Coming now to the next question as to whether the transfer was covered by any of the exceptions provided for in Section 53. The exceptions in Section 53 may be enumerated as under:

(1) Transfer made before and in consideration of marriage, and

(2) made in favour of a purchaser or incumbrancer in good faith and for valuable consideration.

12. In the present case, we are not concerned with the first exception and reliance is placed only on the second exception. The contention is that the transfer made in the present case was in good faith and for valuable consideration. However, the Court below has come to the conclusion that the transfer in question was made in favour of one Gyan who is the brother-in-law of debtor''s son Ziley. The property sold was situate in village Pawtee while the purchaser was a compounder in Hospital at Rankhandi and is not engaged in cultivation. This purchaser Gyan belongs to village Ambheta in district Saharanpur and he admittedly lives in village Pawtee. The close relationship between the debtor and the transferee and other circumstances mentioned above coupled with the fact that the agricultural land still continued to be in possession of the debtor were taken as circumstances against the plea of good faith and also valuable consideration. Nothing could be pointed out to me which may prove that the above findings were vitiated in any manner. Under the circumstances, it must be held that the transfer was not one which came under any of the exceptions given in Section 53 of the Act.

13. In view of the above, the appeal has no merits and is dismissed with costs.