
(1960) 10 MP CK 0029

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 43 of 1960

Hiralal and Others

APPELLANT

Vs

Firm Shriram Surajbhan and Others

RESPONDENT

Date of Decision : 07-10-1960

Acts Referred:

Constitution of India, 1950 — Article 133(1)

Citation : AIR 1961 MP 172

Hon'ble Judges : Shiv Dayal, J;A.H. Khan, J

Bench : Division Bench

Advocate : G.P. Patankar and H.G. Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

Shiv Dayal, J.—This is a petition under Article 133(1)(c) asking us to certify that this is a fit case for appeal to the Supreme Court.

2. Firm Shriram Surajbhan (hereinafter called the creditor) made an application to the Insolvency court for adjudicating Gaya Prasad and Bansidhar (hereinafter called the debtors) as insolvents inter alia on the ground that the debtors had fraudulently transferred a house and a shop to Hiralal, Totaram and Dwarka Prasad proprietors of firm Ramchand Hiralal (hereinafer called the transferees) without consideration by executing a mortgage deed for Rs. 27,500/- and on the same day, fictitiously and without consideration by executing a deed of surrender in respect of a shop of theirs (debtors), wrongly stating that it had been constructed with the money of the transferees who were the "real owners.

3. In the insolvency proceedings the debtors appeared and filed a reply. The transferees also put in appearance and led evidence.

4. The insolvency court after recording evidence of all the parties held that actually Rs. 500/-were paid in cash at the time of the mortgage and Rs. 20,000/- were paid subsequently, although the mortgage was executed for Rs. 27,500/-. As regards the surrender deed it was held that assuming the shop was

constructed with the money of the opposing creditors it was a fraudulent preference. In the result the debtors were adjudicated insolvent.

5. The transferees came before us in appeal and contended:

(1) Since the petitioning creditor could not prove its alleged loan of Rs. 3000/- the petition should have been dismissed.

(2) The finding of the Insolvency court as to the validity of the two transactions was premature because that finding could be given only in proceedings u/s 54 of the Act.

(3) The transferees were misled in not producing the whole of their evidence under the impression that the real opportunity for them to do so would be in the annulment proceedings and it was in the interest of justice to grant them opportunity.

(4). The conclusion reached by the Insolvency court on facts regarding payment of consideration was erroneous.

6. My learned brother and I agreed in rejecting the appellants' contentions and in dismissing the appeal but we differed on the grounds on which we reached the result.

7. My learned brother considered the case under Sections 6(c) and 54 of the Provincial Insolvency Act (hereinafter called the Act) while I found that it was Sections 6(b) and 53 of the Act which applied. It was observed by my learned brother that the order of adjudication operated in rem and as such it bound the transferees just as it bound other men, "not only as regards the fact of insolvency but also as regards the transfer on which it is based". With great respect I could not agree with this observation because, in my view the scope of Section 6(b) was different from that of Section 53 of the Act. At the adjudication stage it was the act of the insolvent which was to be seen and not the intention of the transferees; the latter question was to be examined in annulment proceedings.

A debtor may transfer his property in order to delay or defeat his creditors, although the transferee may not entertain any such intention and there may not be any collusion between them. In such a case although the Insolvency court will hold that the debtor committed an act of insolvency, yet in annulment proceedings the transferee may succeed by showing that he acted in good faith and the transfer was for consideration, so that the transfer will not be annulled. My learned brother found that their Lordships' decision in *N. Subramania Iyer Vs. The Official Receiver, Quilon*, was not of any help, while I took support from it.

8. It is this difference of opinion on which Shri Patankar relies in asking us to certify this case as fit for appeal to the Supreme Court. Learned counsel relies on a Full Bench decision of the Madras High Court in *Rimmalapudi Subba Rao Vs. Noony Veeraju and Others*, where it is held:

"Any question of law affecting the rights of parties substantially would not by itself be a substantial question of law. An important or difficult, question would of course be a substantial question, but even if a question is not important or difficult, if there is room for reasonable doubt or difference of opinion on the question then it would be a substantial question of law within the meaning of Article 133 of the Constitution of India".

9. In my opinion, it was premature to consider the effect of the order of adjudication in the appeal which we heard; we were only considering whether the order of adjudication was right or wrong and in that connection we were to decide whether it was premature for the Insolvency Court to have recorded a finding as to the act of insolvency of the debtors as alleged by the creditor. The result of the dismissal of the transferees' appeal is that the debtors are held to have entered into the impugned transactions in order to delay or defeat their creditors.

What will be the effect of this finding in annulment proceedings is indeed to be seen then, not now. Since Shri Gupta, learned counsel who argued the appeal on behalf of the transferees, vehemently argued this aspect also, my learned brother made those observations which the transferees are now finding inconvenient. And, since I took a different view, I had to express my opinion also, making it quite clear that the question really did not arise at that stage.

10. Since I still hold that at the stage of adjudication neither the Insolvency court nor the appellate court is required to say what the effect of the adjudication order would be on the annulment proceedings u/s 53 of the Act, it is unnecessary for the transferees to take an appeal to the Supreme Court on that point at this stage. In my judgment a case is not fit for appeal to the Supreme Court if the question to be agitated is one which is only academic at the present stage, although it will assume importance at a subsequent stage.

11. On this ground I would dismiss this petition.

A.H. Khan, J.

12. I agree.