(2014) 11 RAJ CK 0093

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 757/1998

Jeetmal Jasraj APPELLANT

Vs

Nirmal Chand Soni RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Evidence Act, 1872 — Section 91
Transfer of Property Act, 1882 — Section 130

Citation : (2014) 11 RAJ CK 0093

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : V.L. Mathur, Advocate for the Appellant; M.M. Ranjan, Senior Advocate and Daulat Sharma, Advocate for the Respondent

Judgement

Alok Sharma, J.—This is an appeal under Section 75 of the Indian Solvency Act, 1920 (hereinafter ''the Act of 1920'') against the order dated 7-2-1998 passed by the Additional District Judge No. 1 Jaipur City, Jaipur dismissing a claim before the Insolvency Court for Rs. 57,324.70 and interest thereon against the insolvent debtor one Bhag Chand Soni, since deceased and now represented through his Legal Representative (hereinafter ''the insolvent debtor'').

2. The facts of the case are that proceedings under the provisions of the Act of 1920 were taken against the insolvent debtor Seth Bhag Chand Soni proprietor of M/s. Suharmal Gambhirmal by one Mst. Manorama Devi. Therein, following an order of adjudication by the Insolvency Court one Chhuttan Lal Shrimal Advocate was appointed as Receiver on the estate of insolvent debtor Seth Bhag Chand Soni. On 10-5-1963 one M/s. Jeetmal Jasraj through its proprietor Mangi Lal filed a claim for an outstanding debt of Rs. 57,324.70 and sought its recovery along with interest from the estate of the insolvent in the hands of the Receiver. During the pendency of the application Mangi Lal expired. It appears that the successors of applicant Mangi Lal were approached by representatives Sudarsan Soni, son of the insolvent deceased Seth Bhag Chand Soni seeking assignment of the debt in

issue to Sudershan Soni HUF. A deed of assignment dated 3-12-1989 came to be executed by the legal representatives of Mangi Lal erstwhile proprietor of M/s. Jeetmal Jasraj assigning the debt outstanding to Sudershan Soni HUF for Rs. 18,000/-. It was duly notarized. A letter to the same effect was addressed by the assignors to the Receiver Chhuttan Lal Shrimal Advocate and also sent to the Insolvency Court. The relevant part of the deed of assignment dated 3-12-1989 reads thus:

"1. That assignors as owners of the debt of Rs. 57,324.70 (Rs. Fifty seven thousand three hundred twenty four and seventy paise only) principal and interest due from Seth Bhagchandji Soni of Ajmer who was the sole proprietor of M/s. Suharmal Gambhirmal of Ajmer and its various branches in different names at different places including the branch of M/s. Moolchand Nemichan of Jodhpur and whose estate vests in Receiver appointed by the Insolvency Court of Additional District Judge No. 1 Jaipur, in insolvency case No. 6 of 1962 do hereby assign and transfer absolutely to the assignee all the aforesaid debt due and owing to the assignor and all the benefits, rights, interest to the Assignors claim filed with the Receiver to the estate of Seth Bhagchandji Soni, sole proprietor of M/s. Suharmal Gambhirmal of Ajmer and its various branches at different names and all benefits and advantage thereof inclusive of interest past and future, in consideration of Rs. 18,000/- (Rs. Eighteen Thousand only) paid by the assignee to the assignors."

(Underlining mine)

3. But then the executants of the deed of assignment, the appellants herein had second thoughts. Vide a telegram dated 13-12-1989 they state to have informed the Receiver that the deed of assignment dated 3-12-1989 was fraudulently got executed by the representatives of Sudarshan Soni HUF and even though the consideration recorded in the deed of assignment was Rs. 18,000/-, the whole of the outstanding debt inclusive of due interest thereon was to be paid to the assignor appellants--which was not paid. The deed of assignment was thus stated to be unenforceable for reason both of misrepresentation, fraud and failure of consideration. A telegram was also sent to the Insolvency court allegedly on 13-12-1989. Letters were also subsequently addressed on 1-6-1990 and thereafter on 3-12-1990 to the Receiver praying that the deed of assignment dated 3-12-1989 be overlooked on ground of it being vitiated by fraud and for reasons of consideration therefor having failed.

4. An application to the same effect then came to be filed before the Insolvency Court praying therein that the deed of assignment dated 3-12-1989 be overlooked and whole of the outstanding debt i.e. Rs. 57,324.70 along with interest thereon as pending, be recovered from the estate of Seth Bhag Chand Soni proprietor of M/s. Suharmal Gambhirmal and be paid to the appellants/ applicants. No reply to the application was filed either by the assignee Sudarshan Soni HUF or other party impleaded therein.

5. On the matter coming up before the Insolvency Court, the applicant relied upon the evidence of Gopi Vallabh, Badri Prasad and Laxmi Narayan, all legal representatives and three of the five successors of Mangi Lal proprietor of M/s. Jeetmal Jasraj. The said witnesses testified to the assertions in their application before the Insolvency Court and reiterated that the deed of assignment dated 3-12-1989 was fraudulently obtained by Hajari Lal and R.K. Jain, the representatives of the assignee Sudarshan Soni HUF on misrepresentation that consideration of Rs. 18,000/-, indicated therein as paid, was only a sham and in fact the whole of the outstanding amount 57,324.70 along interest due would be paid. And that thereafter no amount was at all paid rendering the entire transaction null and void. On behalf of non applicant assignee Sudarshan Soni HUF, one Suresh Chand Patni was examined as witness. He stated that the deed of assignment having been executed by Sudarshan Soni on 3-12-1989, consideration thereunder had evidently passed as recorded therein, subsequent retraction therefrom based on mere ipse dixit of three of the five executants and even others was of no avail. It was submitted that the deed of assignment dated 3-12-1989 was duly executed and notarised. It was also accompanied by a letter of even date to the Receiver recording the aforesaid fact of execution of the deed of assignment.

6. On consideration of the matter, the Insolvency Court found no force in the application of the applicants and held that in view of the deed of assignment dated 3-12-1989, no claim at the instance of the assignors for the alleged outstanding debt was maintainable. The claim was obviously dismissed. Hence this appeal.

7. Mr. Vinodi Lal Mathur, learned counsel for the applicant has fundamentally reiterated the case set up before the Insolvency Court. He submitted that the deed of assignment dated 3-12-1989 was not binding as it was fraudulently obtained on misrepresentation. The whole of the outstanding amount alongwith interest was not paid to the creditor M/s. Jeetmal Jasraj, even though the deed of assignment dated 3-12-1989 indicated the consideration Rs. 18,000/-. Even that amount was not paid. Therefore no consideration at all passed between the assignee and assignor rendering the entire transaction void. Counsel submitted that the allegation of fraudulent and misrepresentation in execution of deed of assignment dated 3-12-1989, as set out in the application were not controverted by the assignees and hence tantamounted to their admissions. It was submitted that evidence in support of the application for holding the deed of assignment dated 3-12-1989 void for failure of consideration remained unshaken and therefore ought to have been relied upon. He submitted that in this view of the matter, the Insolvency Court has erred in dismissing the application filed by the applicant creditor for recovery of whole of the outstanding amount Rs. 57,324.70 along with interest thereon.

8. Mr. M.M. Ranjan, learned Senior Counsel appearing along with Mr. Daulat Sharma on behalf of the insolvent has submitted that under Section 130 of the

Transfer of Property Act, 1882 an actionable claim can be assigned even without consideration on the basis of execution of an instrument in writing by the transferor or his duly authorized agent. He submitted that thereupon all the rights and remedies of the transferor qua the assignment vest in the transferee. Counsel submitted that it was an admitted case that the deed of assignment dated 3-12-1989 was indeed executed and notarized. It recorded the fact of passing of the consideration. And it had indeed so passed. Consequently, no rights with regard to debt due remained with the assignors. It was submitted that the applicant is a businessman and it is inconceivable and contrary to normal human conduct that without payment of consideration the deed of assignment dated 3-12-1989 had been executed and notarized. He submitted that in the allegations set up in the application before the Insolvency court and sought to be buttressed by the evidence of three of the five executants was incredible of belief, foul of the preponderance of probability and contrary to rule of parole evidence. The application for recovery of Rs. 57,324.70 odd plus interest thereon before the Insolvency Court was therefore rightly dismissed as the creditors had divested themselves of any right of recovery, having made the assignment of their debt. Learned Senior Counsel submitted that there is nothing evidently perverse in the impugned order dated 7-2-1998 and the said order does not suffer from any misdirection in law. The Insolvency court has come to the only possible conclusion. The appeal therefore be dismissed.

9. Heard. Considered.

10. It is the burden of the claimant before an insolvency court to establish debt due from the insolvent. The Insolvency Court has the jurisdiction to investigate whether the debt against an insolvent in fact exists and is recoverable at the time of consideration by the Insolvency Court.

11. In the instant case the deed of assignment dated 3-12-1989 was admittedly executed and notarised as per the say of the applicant himself. But it was stated that it was non binding for reasons of fraud and failure of consideration. The only question before the Insolvency court therefore was as to whether the deed of assignment dated 3-12-1989 was null and void on account of fraud and consideration therefor having failed. From the evidence on record, there was nothing credible to establish, even on the evidence of the claimants reasonably appreciated on the test of preponderance of probability that the agreed sum of Rs. 18,000/- as consideration for assignment as recorded in the deed of assignment was not paid and received. In fact the case set up by the claimants in fact appears to have been that no matter the recitations in the deed of assignment recording consideration of Rs. 18000/- and its payment, yet the informal/oral arrangement was that the whole of the amount due and outstanding i.e. 57,324.70 plus interest aggregating to about Rs. 1,45,000/- odd would be paid for discharge of the insolvent and his estate. The case set up was, to my mind, quite absurd and amongst other things in the crosshairs of Section 91 of the Evidence Act and the rule against parole evidence. Nothing in the deed

of assignment dated 3-12-1989 or in the letter dated 13-12-1989 addressed by the claimant to the assignee and to the Receiver, at the relevant time, indicates that the sum of Rs. 18,000/- was not duly received by the creditor as consideration for the execution of the deed of assignment. Contrarily the deed of assignment dated 3-12-1989 categorically states that the consideration of Rs. 18,000/- was duly "paid" at the time of the execution of the assignment deed. There is nothing on record, except the ipse dixit of the applicant''s assertion, to establish that aside of Rs. 18,000/- admittedly paid as consideration by the assignee Sudarshan Soni HUF, further amounts were payable for the complete discharge of the insolvent debtor Bhag Chand Soni and his estate. Aside of the above, the consequences of assignment in terms of Section 130 of the Transfer of Property Act, 1882 are inexorable and the assignor stands divested to all rights in respect of assigned claim. Such a situation obtains in the present case.

12. In my considered opinion, in the facts of the case, the debt due and outstanding to the creditor M/s. Jeetmal Jasraj against Seth Bhag Chand Soni proprietor of M/s. Suharmal Gambhirmal having been duly assigned on 3-12-1989 for valuable consideration, the claim for recovery of the said debt i.e. Rs. 57,324.70 plus interest from his estate was liable to fail. In the circumstances, the learned Insolvency Court rightly dismissed the application at the instance of the appellants.

13. There is no force in this appeal and the same is dismissed.

