

(1941) 01 CAL CK 0031

In the Calcutta High Court

Case No : Civil Revision Case No. 1021 of 1940

Jogesh Prosad Choudhury and Others

APPELLANT

Vs

Saligram Lachmi Narayn and Others

RESPONDENT

Date of Decision : 29-01-1941

Acts Referred:

Citation : (1941) 01 CAL CK 0031

Judgement

Mukherjea, J.—This Rule is directed against an order of the Additional Subordinate Judge, 1st Court, Alipore, dated the 14th of June, 1940, made in Money Execution Case No. 40 of 1939. The facts, so far as are necessary for our present purposes, may be shortly stated as follows:-- The Firm, Saligram Lachmi Narayn, who are the Opposite Party No. 1 in this Rule, obtained a decree in the Original Side of this Court, on the 31st of August, 1939, against the judgment-debtors Hazarilal, Beharilal and Sardarilal, as kartas or managing members of a joint Hindu family, carrying on a business under the name and style of Hazarilal Sohanlal, at Nos. 29 and 31, Ashutosh Mukherjee Road. The decree was made on consent and the decretal amount was payable in certain instalments. Soon after the decree was drawn up and filed, the decree-holder got it transferred to the Alipore Court for execution and started proceedings in the Court of the First Additional Subordinate Judge, 24-Parganas, which was numbered as Money Execution Case No. 40 of 1939. On the 20th of December, 1939, the goods of the judgment-debtors lying at premises No. 29, Ashutosh Mukherjee Road were attached. Within a few days after that, the judgment-debtors filed an application for adjudication as insolvents before the District Judge of 24-Parganas, and on the very same day the Official Receiver of the Alipore Court was appointed to take charge of the assets of the judgment-debtors' business. The attachment levied on the goods of the judgment-debtors by Opposite Party No. 1 was then withdrawn, and the Official Receiver took possession of these attached goods and put them up to sale. In this way he realised a sum of Rs. 3,600 only. On the 29th of April, 1940, the application for insolvency was dismissed, and immediately on the day following the Opposite Party No. 1 attached the said sum of Rs. 3,600

which was lying in the hands of the Official Receiver. The Official Receiver reported to the Executing Court that out of the sale proceeds, a sum of Rs. 3,229 was only available for payment to the decree-holders, and thereupon on the 21st of May, 1940, the District Judge signed a cheque for the said sum of Rs. 3,229 and handed it over to the Receiver for being forwarded to the Subordinate Judge for payment to the decree-holder. The cheque was actually received by the Subordinate Judge on the 23rd day of May, 1940.

2. In the meantime Jogesh Chandra Choudhury and others, who are the Petitioners before us, recovered two decrees in the Court of the Small Causes at Sealdah, one against the firm of Hazarilal Sohanlal for a sum of Rs. 800 and odd, and the other against Hazarilal personally for a sum of Rs. 539. These decrees were transferred to the Court of the First Additional Subordinate Judge, 24-Parganas, where Money Execution Case No. 40 of 1939, started by the Opposite Party No. 1, was pending. On the 23rd of May, 1940, the very day on which the Subordinate Judge received the cheque for Rs. 3,229 from the Official Receiver, they presented two applications for execution of the two decrees and prayed for rateable distribution of the money which had been attached by the Opposite Party No. 1. On the 1st of June, 1940, they made two other applications for amendment of the prayer-clause in the execution petitions and inserted a prayer in each of them for attachment of the identical sum which had been already attached by Opposite Party No. 1. The learned Judge by his order, dated the 14th of June, 1940, rejected both the prayers of the Petitioners, and it is against this order that the present Rule has been obtained.

3. Mr. Choudhury, who appears in support of the Rule, has not attacked that part of the judgment of the Subordinate Judge which dismissed his clients' claim for attachment of the money lying with the Official Receiver. He has confined his objections to the other part of the judgment which deals with and rejects the prayer for rateable distribution under sec. 73 of the Code of Civil Procedure. Mr. Choudhury's contention is that the Court below was in error in refusing the Petitioners' prayer for distribution of assets on the ground that the applications for execution were made by them after and not before the receipt of such assets. Two grounds have been put forward in support of this argument. It is said, in the first place, that the applications for execution, which were presented by the Petitioners on the same day when the cheque for Rs. 3,229 was received by the Court, were presented before and not after the cheque was received, and that the Subordinate Judge had no materials before him to hold otherwise. The second ground is that even if the applications were made after the cheque had been received by the Subordinate Judge, yet the receipt of the cheque would not amount to receipt of assets within the meaning of sec. 73 of the Code of Civil Procedure, and that the Court could not be said to have held or received the assets till the cheque was actually cashed and converted into money.

4. So far as the first point is concerned, the Subordinate Judge has held definitely in his judgment that the applications were made by the Petitioners on

the 23rd day of May, 1940, after the money was received by the Court, and for this finding, he relied upon the relief-clause in the Petitioners' applications. Mr. Choudhury has argued before us that the prayer clause in these applications for execution, which he has set out in paragraph 7 of the petition, does not refer to the cheque at all, and it contained only a prayer for rateable distribution of the money that was attached in Money Execution Case No. 40 of 1939. The petitions, however, are not placed before us, and it is difficult for us, sitting in revision, to interfere with a finding of fact arrived at by the Subordinate Judge. If the prayer clause was exactly the same as is set out in paragraph 7 of the present petition, it may not necessarily be concluded that the applications for execution were made after the receipt of the cheque. But at the same time it was the same Subordinate Judge who received the cheque and before whom the applications for execution were presented, and we are not prepared to disagree with the statement which he has made in his judgment regarding the point of time at which these applications were filed.

5. The other point of Mr. Choudhury raises a question of some nicety, and the question is whether at the time when the Official Receiver handed over the cheque for Rs. 3,229 to the Subordinate Judge, the latter could be said to have received and held assets which were distributable under sec. 73 of the Code of Civil Procedure. If the question is answered in the affirmative, the contention of Mr. Choudhury must necessarily fail. The expression "assets held by the Court" obviously implies the idea of assets realised or converted into cash, for, unless the property has been converted into some form which renders it available for immediate distribution, the Court cannot be said to have received or held such assets. I am not aware of any reported case either under the present sec. 73 of the CPC or Under sec. 295 of the old Code, where it has been suggested that the expression "assets" could refer to anything else than money, and the reason I think is that sec. 73 is applicable only when the decrees are for money and the assets upon which the Court can operate under that section must necessarily be money also. The policy underlying this section seems to me to be that when a creditor had been diligent enough in realising assets for payment of his debts, the law would recognise and reward his diligence. But so long as the assets have not been realised, the other creditors are entitled to come in and participate in the distribution of the same. Nothing short of actual realisation of the money can give rise to any rights of priority. If, therefore, the assets are brought before the Court in such a shape that the Court can forthwith make payment in favour of the creditor, through whose efforts they were so brought, no claim for distribution by other creditors could be entertained after the assets are so received. In the present case, what the Court received was not cash money but a cheque. We agree with Mr. Choudhury that the cheque may not be legal tender, and ordinarily, if a cheque is drawn upon a Bank, one cannot say that it amounts to payment, unless the cheque is actually cashed and the money received. The facts in this case are, however, somewhat different. The property attached here was a sum of money lying with, the Official Receiver of the 24-Parganas, and the

attachment was presumably made under the provisions of Or. 21, r. 52 of the Code of Civil Procedure. The proper procedure in such a case is for the attaching Court to call upon the Official Receiver with whom the money is lying to pay it to the Executing Court. We find from the order-sheet in Money Execution Case No. 40 of 1939 that on the 15th of May, 1940, after the Official Receiver had reported to the Subordinate Judge that the sum of Rs. 3,229 was available for the decree-holder, the Subordinate Judge passed an order directing that the Official Receiver should be written to send the said amount to that Court for payment to the decree-holder. On the 23rd of May, 1940, the order recorded by the Subordinate Judge stands as follows:

Received the report of the Official Receiver of the 24 Parganas. A cheque for Rs. 3229/-, being Cheque No. 012791, dated 21st May, 1940, drawn on the Alipore treasury by the District Judge for payment to the decree holder, in this case has been forwarded by the Official Receiver. The decree-holder also prays for endorsing the cheque for payment to the decree-holder to his authorised pleader Babu Sovamoy Bannerji, Put up on 24th May, 1940, for orders.

6. From this it will appear that the sum of Rs. 3,229 which represented the sale proceeds of the attached goods of the judgment-debtors was lying in the Alipore Treasury to the credit of the District Judge. By drawing and signing the cheque referred to in the above order, the District Judge wanted that this money should be transferred to the credit of the Subordinate Judge. The cheque was delivered over to the Subordinate Judge and accepted by him on the 23rd of May, 1940, and the only form of payment which the decree-holders desired was that the cheque should be endorsed over to them. There is no question here of the solvency of the drawer, and even if the cheque was subsequently dishonoured, the decree-holder would have other remedies on a separate cause of action. The Subordinate Judge was, therefore, quite competent to pay over the money to the decree-holders, the very moment that he received the cheque on the 23rd of May, 1940. In these circumstances we hold that the Court had really received and held assets on the 23rd of May, 1940, when the cheque was actually delivered over to the Court and accepted by it. It is not necessary for us to express any opinion on the general proposition as to whether in all circumstances a cheque would amount to an asset within the meaning of sec. 73 of the Code.

7. In this view of the case we think that the decision of the learned Subordinate Judge is right, and it would not be necessary for us to discuss the other point raised by Mr. Kar as to whether sec. 73 of the Code was at all attracted to the facts of this case, as the judgment-debtors in the two decrees were not the same. The result therefore is that the Rule is discharged, but we make no order as to costs.

Biswas, J.

I agree.