

(1895) 06 CAL CK 0002
In the Calcutta High Court

Kastur Chand Rai Bahadur

APPELLANT

Vs

Dhanpat Singh Bahadur

RESPONDENT

Date of Decision : 29-06-1895

Acts Referred:

Citation : (1896) ILR (Cal) 26

Hon'ble Judges : R. Couch, J;Morris, J;Hobhouse, J;Davey, J

Bench : Full Bench

Judgement

Hobhouse, J.—The respondent in this case is or was a banker carrying on business in Calcutta and other places, and the appellant is a creditor who seeks a declaration of insolvency against him. The act of insolvency relied on in the petition is that on the 7th and 8th February 1893, the respondent's principal gomashta, Punna Lal, and other gonwuhtas and servants, departed and were absent from his place of business in Shama Bye's Lane with intent to defeat the respondent's creditors. Two defences are raised by the respondent : one being that no such act was committed by Punna Lal, and the other that Punna Lal's act is not the act of the respondent on which he can be adjudged an insolvent.

2. The appellant's petition was presented on the 16th February 1893, and was supported by affidavits on which the Judge in Insolvency, Mr. Justice Trevelyan, made an adjudication and a vesting order. The respondent immediately moved to set that order aside, and a great body of evidence was adduced by both parties. Except on minor and irrelevant points there was very little contradiction in the evidence, and the two Courts below, though they have drawn different inferences, are in agreement on every material point of pure) fact.

3. The respondent's principal office, or koti, was, as his residence Was, at Azimgunge:, near Moorshedabad. He had divers other kotis, the largest in point of business being in Calcutta. It was managed by Punna as head gomashta. The house in which it was conducted appears to have consisted of: first, a ground floor, on which were the durwans; secondly, a first floor, where was the guddi or office in which the gomashta sat to transact business, the cash-room, and

another small room; and, thirdly, a second or top floor in some of the rooms of which Punna slept, took his meals, and performed his puja. When the respondent visited Calcutta, he also, if alone, used the top storey; but, if his family were with him, he used some other house.

4. Late in the night of the 6th February, Punna decided that he must stop payment. Between one and two in the morning of the 7th he telegraphed to the head gomashtha at Azimgunge: "Business stopped; no payment to-day. Wire other kotis yourself." On the 8th a like telegram was sent to the same quarter, enquiring where the Huzoor (i.e., the "Master") was. In fact the respondent, was then in Ajmere, and was making his way to Calcutta. He had been on a pilgrimage to Palitana, almost at the other extremity of India, whence he was recalled by telegrams from Punna, which began as early as the 27th January, and which gave an alarming account of his Calcutta affairs. He did not arrive in Calcutta till the 11th February.

5. After the 6th the banking business in Calcutta was stopped. But under the Indian Statute that is not act of insolvency; the act alleged is that Punna departed from the place of business on the 7th and 8th February, with intent to defeat, or delay, creditors. There is no doubt that he locked up the cash-room; that he left the guddi empty, though it was open; and that he betook himself to his own living rooms in the top storey. There is however no evidence that he prevented creditors from getting to him if they wished it. The strongest evidence in that direction is given by two creditors : Cuverji and Premjee. Cuverji went up to the guddi twice on the 7th. It was empty, and the durwans told him that "We cannot make payments now, therefore you cannot see the Babus." On the 8th he was met on the ground floor with a like intimation. Premjee went to the house on the 7th and was going upstairs, when the durwan said : "Do not go upstairs, there is no one upstairs." On the 8th he went up to the guddi, which he found empty. Neither of these witnesses appears to have made any attempt to see Punna in his own rooms. Mr. Justice Trevelyan remarks on this evidence: "I doubt very much whether there was anything amounting to a stoppage of persons going up. "He" (Premjee) may have been discouraged and did not go up in consequence of what was said to him, but there was not forcible stopping." On the other hand, two of the appellant's witnesses, Narain Das and Kandarpa, and three of the respondent's witnesses, Nobin Chunder, Radha Roman Shaha, and Kedar Nath Mozoornadar, all five being creditors or acting for creditors, saw Punna in his own rooms on the top storey at different times on the two critical days. Their Lordships agree with the High Court in thinking that, contrary to the opinion of Mr. Justice Trevelyan, it is impossible to hold that under these circumstances Punna departed from the place of business at all.

6. Even had there been more evidence of departure than there is, it is not shown how it could defeat, or delay, creditors. They were injured by the fact that the respondent did not supply Punna with funds to pay them; but Counsel were unable to explain in what way any one of them was debarred from pursuing, any

process available to him by the fact that Punna kept his own rooms instead of sitting in the guddi. It is the view of the High Court that nobody was or could be so debarred; and their Lordships agree with it.

7. That would be enough to dispose of the appeal. But there is another question which also goes to the root of the case, viz., the question whether the conduct of the agent can result in an act of insolvency by the principal. On that question also the High Court has differed from the first Court. The effect of the High Court's decision is to disturb views of the law which have prevailed in Calcutta for some years. And as the point has been raised again in this appeal, their Lordships think it their duty to pronounce an opinion on it.

8. Mr. Justice Trevelyan considers it to be a settled principle that a person who leaves a gomashta in charge of a business can by that gomashta commit an act of insolvency. He refers to the case of *In re Hurruckchund Golicha* ILR Cal. 605 which is said to be the earliest reported case upon the point, though not the earliest decision, and to have been since taken as correctly expounding the law. In that case the trader, residing at Azimgunge, carried on business in Calcutta by a gomashta, who absconded. Mr. Justice Broughton, the Judge sitting in Insolvency, expressed his opinion thus: --

The first question is, whether a trader who trades by a gomashta can be adjudicated an insolvent, if the gomashta commits an act of insolvency. If he cannot, there must be numerous cases in which native traders in this city cannot be adjudicated insolvents at all, for nothing is more common than for a trader living in the mofussil, and scarcely ever visiting Calcutta, to leave an extensive business in the hands of his gomashta, who has the fullest authority, and who carries on the whole business on his behalf.... It requires indeed no departure from the literal meaning of the words, to hold that when a trader has established a business through a gomashta, he departs from the place of his business, if his gomashta departs, and if he does not come himself or send some one else to carry on his business.

9. The abstract principle of law thus decided is, that the act of a gomashta may be taken as the act of his principal within the meaning of the Statute. And the learned Judge thought that the facts of *Hurruck's* case ILR Cal. 605 fell within the principle. But it is obvious that the application of the principle must depend upon the position and authority of the gomashta; and as Mr. Justice Trevelyan points out, great care must be taken in applying it.

10. The view of the High Court, which is stated by Mr. Justice Pigot, is that *Hurruck's* case ILR Cal. 605 was wrongly decided; and that, this being the first occasion on which it has been challenged in appeal, it ought to be formally overruled. They lay down in broad terms "that a man cannot commit any act of bankruptcy by an act of his agent, which he has not authorized, and of which act he had no cognizance." Of course in a sense every act of an agent must have the authority of the principal in order to affect him. But the meaning of the learned

Judges evidently is that for the act in question the agent must have specific authority, and that the authority cannot flow out of his general position, as Mr. Justice Broughton thought it might.

11. So understood, their Lordships cannot assent to the principle laid down by the High Court. The position of a gomashtha differs in different cases. In some cases he may be little more, or no more, than an ordinary manager. In others he may represent the business so entirely that the beneficial owners have no practical control over it and are quite unknown to the customers. Mr. Justice Pigot states the possible position of a gomashtha with even more force than does Mr. Justice Broughton. He says: "It often happens that a large business-is carried on for years by a munib gomashtha or by a succession of them, in the name of principals who never are seen, or personally known, in connection, with the business at all; sometimes in the name of family firms the members, of which are constantly fluctuating from generation to generation, and of which, firms it is or may be difficult to determine who are, at any given time, actually members." He has himself known a case in which a family owned a business for more than a century, the owners being counted by scores, and many of their kotis being managed by gomashtas whose office passed from father to son, as though it were hereditary. Yet even in such a case as that he thinks that the principle of Hurruck's case ILR Cal. 605 would not be applicable.

12. Their Lordships think otherwise. They cannot hold that the creditor of firms exclusively managed by gomashtas have no remedy by way of insolvency, whatever the gomashtha may do; though he may make fraudulent, conveyances, promote fraudulent executions, or, as in Hurruck's case ILR Cal. 605, levant, "leaving the creditors to find him or his master if they could." And yet that consequence must follow if the principle laid down by the High Court in this case be the true one.

13. It may be desirable that, as Mr. Justice PIGOT suggests, the Legislature" should intervene. Their Lordships express no opinion on that subject. But in the meantime the Statute should be interpreted with reference to the facts-of Indian life. And it is a question in each case whether the gomashtha occupies such a position that the owner must stand or fall by his acts, so that his fraud or his flight shall by imputation be the fraud or the flight of the owner or multitude of owners, for the purpose of bringing their case within the Statute of Insolvency. Their Lordships agree with the Judges who have held that the Statute admits of application to such cases, and that to exclude it may lead to injustice and confusion in many cases.

14. They are by no means prepared to say that Hurruck's case ILR Cal. 605 was wrongly decided; though the position of the gomashtha there is not, stated so fully as they would think desirable if the case were before them for decision. On the other band they have no hesitation in agreeing with the High Court that Punna did not occupy such a position as to make the respondent liable to be declared insolvent on the ground of his personal conduct. The respondent

appears to have been an active and responsible owner.. His residence and head koti at Azimgunge were well known. He occasionally came to Calcutta, and to the koti. When difficulties arose, Punna applied to him to meet them; and when payment was suspended, Punna openly, by himself or by his servants, told the creditors that his principal was coming, and that they must wait for his action. Under such circumstances, even if Punna himself had committed the acts alleged by the appellant, it would, in their Lordships' opinion, be wrong to hold that his acts were those of the respondent.

15. The result is that the appeal ought to be dismissed. And their Lordships will humbly advise Her Majesty accordingly. The appellant must pay the costs of this appeal.