

(1916) 01 CAL CK 0045
In the Calcutta High Court

Ketokey Churan Banerjee and Another	APPELLANT
Vs	
Sreemutty Sarat Kumari Dabee	RESPONDENT

Date of Decision : 24-01-1916

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 25

Citation : 37 Ind. Cas. 71

Hon'ble Judges : Lancelot Sanderson, C.J.; John Woodroffe, J.; Asutosh Mookerjee, J

Bench : Full Bench

Judgement

Lancelot Sanderson, C.J.—In this case the adjudication in insolvency was made on the 2nd of February 1912, upon the petition of Sarat Kumari Dabee. An application for the cancellation of the adjudication was made in March 1912, based, as I understand, on the ground that there was no debt due to Sarat Kumari Dabee, and this application for the cancellation of the adjudication was dismissed, and, therefore, the adjudication in insolvency stood. And, the first point taken by the learned Counsel appearing for Sarat Kumari Dabee was that inasmuch as the adjudication had been made upon her petition, it was not now open to the insolvents to question her right to claim in the insolvency as a creditor. I do not think that is a sound point, for the reason that if we look at the Sections of the Second Schedule to the Presidency. Towns Insolvency Act, Sections 25, 26 and 27, it is clear, to my mind, that after the adjudication of insolvency the Official Assignee is to examine every proof and the grounds of the debt and in writing to admit or reject it in whole or in part, or require further evidence in support of it and, if he rejects a proof, he shall state in writing to the creditor the grounds of the rejection. In my opinion, it must be open to the Official Assignee after the insolvency to examine the claim of the petitioning creditor and if he finds that in fact there is no debt due to the petitioning creditor, he surely must say so and strike out his or her name from the list of creditors. For this reason I do not think that the first point taken by learned Counsel is a good one.

2. The second point which the learned Counsel for Sarat Kumari Dabee argued was that the learned Judge's judgment ought to be supported on the merits of the case. Now, it appears that the claim of the alleged creditor in the first instance was stated to be Rs. 8,000 and then subsequently it was increased to Rs. 15,641, and that appears to be the balance of an account which appears in the hatchitta which is set out in the paper-hook No. 2, and we have been informed that there are entries in the firm's books, which correspond with the entries in the hatchitta. Now, the first entry in the account, page 1, is a sum of Rs. 2,487-8-6, which on the face of it appears to be due by the firm to Sarat Kumari Dabee. It is, however, admitted by the learned Counsel who appears for her that that money was advanced by her husband Surendra Nath Bannerjee, and was not her money at all. The second item which appears in that account is a sum of Rs. 14,498-136: that appears to have been originally a debt due from the firm to Nogendra Nath Bannerjee, brother-in-law of the lady. That item was transferred from the account of Nogendra Nath Bannerjee in January 1909 to the account of the lady, and it is not suggested that any consideration passed for that transaction, and it is now admitted that that really was money advanced by Nogendra Nath, and the lady in respect of that item was not in fact a creditor of the firm. Now, with regard to the rest of the items, when we once get it admitted that of these two items, the first represents a debt due to her husband and the second, a debt due to her brother-in law, it makes the Court particularly careful to require proof of the remainder of the items. The lady has not been called as a witness. She has not come forward to say that she advanced those moneys. Her husband has not been called as a witness to say that the money was his wife's, and, the result is that I am led to think that this account is not an account of the lady at all; it is partly an account of her husband and partly an account of her brother-in-law. In addition to the reasons which have been given by the Official Assignee in the judgment, I think the statement of these facts is sufficient for the judgment at which I have arrived, and this is that this lady is not a creditor of the firm at all, and that her name ought to be struck cut of the list of creditors. This, as I understand, does not prevent the persons who have really advanced the moneys to the firm from coming forward and substantiating their claims against the firm. It is right that the persons who really advanced the moneys should come forward and prove their claims to the Court. As between them and the firm and other creditors in the case different questions may arise than what would arise between the lady and the firm and other creditors of the firm.

3. There is only one other point which has been urged by the learned Counsel and that is that inasmuch as the lady, if she was in the position of a benamdar, could sue for the money, she is entitled to claim as a creditor in the insolvency.

4. Speaking for myself, I do not think that is so; she is not in the position of a trustee or Executor, to which reference was made by learned Counsel, and in the absence of evidence as to her real position it must be assumed that the lady was simply a conduit pipe for the money being advanced, and in all probability she knew nothing of the money being advanced, and her name was taken merely as

a blind for the real transaction that had taken place, and I do not think that this last contention is a good one.

5. For these reasons I think this appeal should be allowed and the order of the Official Assignee should be restored with costs both of this Court and the Court below, and the name of Sarat Kumari Dabee should be removed from the list of creditors.

John Woodroffe, J.

6. I agree.

Asutosh Mookerjee, J.

7. I agree that the order of Mr. Justice Chaudhuri cannot be supported. The appeal has been preferred by three persons who were adjudicated insolvents on the 2nd February 1912 at the instance of the respondent. An endeavour was made to have the adjudication annulled, but as the conditions imposed by the Court were not fulfilled, the attempt proved infructuous. The appeal to Chaudhuri, J., was preferred u/s 86 of the Presidency Towns Insolvency Act against a decision by the Official Assignee that the respondent is not a creditor of the insolvents as she asserts, but a benamdar for her husband's brother who is alleged to have been a partner of the insolvents. The present appeal has been preferred u/s 8, clause (1894) 2 Q.B. 805; 1 Manson 373; 64 L.J. Q.B. 71; 71 L.T. 12, from the order of Chaudhuri, J., who reversed the decision of the Official Assignee.

8. The preliminary objection taken on behalf of the respondent to the competency of this appeal has been overruled on the principle that any person who makes an application to a Court for a decision or any person who is brought before the Court to submit to a decision, is, if the decision goes against him, thereby a "a person aggrieved by that decision" within the meaning of that expression in Section 86 [Official Receiver, *Exparte, Reed, Brown & Co., In re* (1887) 19 Q.B. D. 174; 4 Morrell 225; 56 L.J. Q.B. 417; 56 L.T. 876; 35 W. R. 660, and *Lamb, In re, Board of Trade, In re* (1894) 2 Q.B. 805; 1 Manson 373; 64 L.J. Q.B. 71; 71 L.T. 12].

9. As regards the merits the decision of Chaudhuri, J., has been sought to be supported on three grounds:---First, that it is not now open to the appellants to assert that the respondent is not their creditor, inasmuch as an order for adjudication has already been made at her instance on the basis that she was a creditor; secondly, that even if it be found, as was held by the Official Assignee, that she was not a real creditor but a benamdar of her husband's brother, who at one time was a partner of the firm of the insolvents, she was entitled to rank as a creditor in these proceedings; and thirdly, that the evidence establishes that she was not a benamdar of her husband's brother as alleged by the insolvents.

10. As regards the first point, I am of opinion that the provisions of the Insolvency Act taken together indicate with reasonable certainty that it cannot

possibly be supported. If the contention of the respondent were to prevail, the result would follow that when an adjudication order has been made at the instance of a person claiming to be a creditor whose debt exceeded the statutory amount, it would not be open to the Official Assignee, on the investigation to be held thereafter, to find that the amount due to the petitioning creditor was smaller than that mentioned in Section 12 (1887) 19 Q.B. D. 174; 4 Morrell 225; 56 L.J. Q.B. 417; 56 L.T. 876; 35 W. R. 660, (a). But Sections 12 and 13, read with the provisions contained in the Second Schedule for investigation and proof of the claim of a creditor, make it obvious that this was not intended by the Legislature. I hold, accordingly, that the Official Assignee was competent to come to the conclusion he did, namely, that nothing was due to the respondent as a creditor of the insolvents.

11. As regards the second point, I am of opinion that the term "creditor" in the Presidency Towns Insolvency Act does not include a benamdar of the creditor. The respondent has argued that as it has been ruled by the Judicial Committee [Gopeekrist Gosain v. Gungapersaud Gosain 6 M.I.A. 53 : 4 W. R. (P. C.) 46 : 1 Sar. P.C.J. 493 : 19 E. R. 20] that a benamdar for the real creditor can maintain a suit for recovery of the money, he is equally competent to pose as a creditor in insolvency proceedings. I am clearly of opinion that we should not accept this contention. The ordinary meaning of the term "creditor" is that he is a person to whom a debt is payable. No doubt, it is open to a benamdar to maintain a suit on a money-bond in his own name, although the money may have been advanced really by some one else and by the application of the doctrine of estoppel, the act of the benamdar, when a suit is so instituted, may conclude the real creditor; but this does not justify the contention that the term "creditor," as used in the Presidency Towns Insolvency Act, includes the benamdar of a creditor. A benamdar is merely a name-lender, a mask for the real owner, and is, undoubtedly, not in the position of a trustee; the view cannot consequently be maintained that, although the money is established to be not really payable to the person who pretends to be a creditor of the insolvent, yet such person should be allowed to rank as a creditor in insolvency proceedings, merely because the transaction took place in his name.

12. As regards the third point, there is no room for reasonable doubt that the respondent is not a creditor of the insolvents. Our attention has been drawn to the circumstance that an account was opened in the name of the respondent as early as the 18th March 1906, and that, so far as the evidence goes, a sum of Rs. 2, 487-8-6 was advanced by her to the partnership concern. It has not been maintained, however, that this was her own money, for it has been conceded on her behalf that the money really belonged to her husband, Surendra Nath Bannerjee.

13. Another sum of Rs. 14,233-13-6, it is plain from the accounts placed before us, originally constituted a debt payable by the partnership concern to Nogendra Nath Bannerjee. On the 10th January 1909, this sum was transferred to the

account of the respondent. There is no reasonable doubt that this was a mere paper transfer and in no sense a real transaction; indeed, the attorney for the respondent admitted before the Official Assignee that no consideration passed as between Nogendra Nath Bannerjee and his sister-in-law, the present respondent, Mr. Bose fully appreciated" the effect of such admission, which, until satisfactorily explained awayt furnished cogent evidence against the re spondent [Slatterie v. Pooley (1840) 6 M. & W. 664 : 1 H. & W. 18 : 10 L.J. Ex. 8 : 4 Jur. 1038 : 151 E.R. 579, 55 R. R. 760, and Chandra Kunwar v. Chaudhri Narpal Singh 34 I.A. 27 : 29 A. 184 : 11 C.W.N. 321 : 9 Bom. L.R. 267 : 2 M.L.T. 109 : 17 M. L.J. 103 : 5 C. L.J. 115 : 4 A. L.J. 102.]: he was consequently constrained to present her case before us on the basis that this transfer was a benami transaction, and that in respect of this sum, which ultimately found its way into the account of the respondent, she was a benamdar for her brother-in-law. He argued, however, that in the absence of evidence to show the source of the subsequent advances to the partnership firm, the inference should be drawn that they were the moneys of the respondent in the sense that they were the moneys of her husband. In my opinion this inference cannot legitimately be drawn in favour of the respondent. The essence of the matter is that her account opens; with two sums, Rs. 2,457-8-6 and Rs. 14,233-13-6 respectively; in respect of one of these sums, the lady was a benamdar of her husband, while in respect of the other, she was a benamdar of her brother-in-law True it is that there is no evidence of the source of the subsequent advances, but in the absence of tangible proof, we cannot assume that those sums belonged rather to her husband than to her brother-in-law. There is a further significant admission by Nogendra Nath Bannerjee that he and his brother Surendra Nath Bannerjee are joint, and this account may lend some support to a possible theory that both the brothers used the name of the respondent as their benamdar. But whatever the real state of affairs may be, One cardinal fact is established beyond controversy, namely, that the respondent is not a creditor of the insolvents. How much of the sum which stands in her name is her husband's money and how much thereof is her brother-in-law's money, we do not know; but if she be not a creditor of the insolvents, as I hold she is not, the conclusion is irresistible that her name must be removed from the category of the creditors of the insolvents in these proceedings. This, it may be added, will not debar either Nogendra or Surendra from taking such steps as they may be advised to adopt for the establishment of their claims, if any, as against the insolvents.