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**(1937) 09 PAT CK 0016**

**In the Patna High Court**

Khemkarandas Jokhram and Another

APPELLANT

Vs

Chouthmal Bhagirath and Others

RESPONDENT

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**Date of Decision :** 22-09-1937

**Acts Referred:**

Provincial Insolvency Act, 1920 — Section 37, 50

**Citation :** AIR 1938 Patna 225

**Hon'ble Judges :** Wort, J;Manohar Lall, J

**Bench :** Full Bench

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## **Judgement**

Wort, J.—Creditors Nos. 2 and 3. namely, Khemkarandas Jokhram and Gouridut Ganesh Lal, made an application to the District Judge in certain insolvency-proceedings that the debt of Chouthmal Bhagirath (creditor No. 1) should be expunged or reduced. This application purported to be u/s 50, Provincial Insolvency Act. The learned Judge in the Court below has dismissed the application not on its merits but on the ground that they had opportunities from time to time to question the debt of creditor No. 1 and that therefore they had now lost their aright. The learned Judge goes so far as to say:

I consider therefore that the petitions are merely vexatious, being a belated attempt to destroy the effect of the High Court order.

2. There have been a number of orders passed by this Court in the insolvency proceedings but only one of those need I make any reference to. The matter did come before the Court, which consisted of Adami, J., and myself, on 24th April 1930, but nothing arises from that judgment. But at a later stage it came before the learned Chief Justice and Mohamad Noor, J. I refer to that judgment for the reason that a statement by Mohamad Noor, J., delivering the judgment of the Court, has been relied upon by Dr. Mitter appearing on behalf of the appellants for certain contentions to which I shall more particularly refer.

3. The argument in this appeal proceeded on the consideration of the events which had happened during the course of these proceedings and the question

whether delay in making the application u/s 50, Provincial Insolvency Act was an obstacle to the application made by Dr. Mitter's clients. Speaking for myself, I was not aware of an order which was made on 14th June 1927, or to put it perhaps more accurately, it was not present to my mind in the earlier part of the argument although Dr. Mitter in the opening had given us that date as the date on which the adjudication was annulled. The moment we find that fact to exist, the questions which have been argued before us in my judgment do not arise.

4. Reference was made in the course of the argument to the well-known decision of the English Courts in *In re Tait; Ex Parte Harper* (1882) 21 Ch D 537 which was relied upon by reason of the statement of the Master of the Rolls in that case to the effect that even after proof had been made and accepted an annulment under the equivalent provisions of the Bankruptcy Act could be made. But the real question that we have to decide is--what is the effect of the annulment under order of 14th June 1927. The statement in the judgment of 5th November 1932, which was relied upon by Dr. Mitter in this connexion was this:

Therefore in my opinion in spite of the annulment of adjudication, the insolvency proceeding continues and it is still open to the receiver to proceed to realize the assets vested in him.

5. I am of the opinion that we must read that statement by Mohamad Noor, J., as meaning that the insolvency proceedings continue for the purpose of Section 37, Insolvency Act. Section 37 of the Act provides:

Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore done by the Court or receiver, shall be valid; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the Court may, by order in writing, declare.

6. The District Judge in this case has made an order u/s 37 and it was referred to by the learned Judge in the judgment to which I have just referred. That learned Judge made the observation that the District Judge had made the order and there was no appeal against it and therefore it must be deemed to stand; and as I understand the judgment of Mohamad Noor, J. the whole matter which was pending before him was determined on that footing. The question therefore arises in this case, assuming for the purpose of argument that there are merits in the case of the petitioner, whether we could expunge or reduce the debt of creditor No. 1 under or by reason of the provisions of Section 50, Provincial Insolvency Act.

7. I think it is perfectly clear and indeed it is obvious that Section 50 is one of those sections which govern the procedure of the administration of the debtor's assets in an insolvency. Section 50 speaks of the receiver considering that a debt has been improperly entered in the schedule. If we look back to Section 33 of the Act we shall see that it is the duty of the Court in certain circumstances to

prepare a schedule of debts and in a sense therefore Section 50 gives a right to the receiver under Sub-section (1), notice being given to the creditors, to ask the Court to expunge an objectionable debt. But I would repeat that Section 50 is the procedure during the insolvency and it seems to me quite clear therefore that when the insolvency has come to an end by annulment the procedure provided by the Act in an insolvency can no longer apply, and it is on that short ground that I decide this appeal.

8. For the view which I have expressed as to the continuation of the insolvency after the annulment there is ample authority of the various High Courts of India.

9. In *Moturi Veerayya v. P.V. Sreenivasa Rao* A.I.R.1935. Mad 826 the Full Bench of the Madras High Court held that the insolvency does not continue; it continues only for the purposes of Section 37.

10. A Full Bench of the Rangoon High Court in *Annamalay Chettiar v. R.K. Bannerjee* A.I.R.1936. Rang 284 has gone still further in saying that it continues merely for the purpose of Section 37, but the distribution by the receiver of the assets of the debtor after the annulment, and when an order has been made u/s 37, must be in accordance with civil law and not in accordance with the Insolvency Act.

11. Dr. Mitter, as I have already stated, placed reliance on the statement of Mohamad Noor, J. as to the continuation of the insolvency proceedings. My answer to that argument would be that in the first place the observation of the learned Judge, I think, must be read in the sense that it continues for the purpose Section 37 and if the learned Judge intended to say otherwise then. with great respect to the learned Judge, it was mere obiter and quite unnecessary for the purpose of judgment as the only question that had to be determined was as regards, the debt which was owned by the Bengal Nagpur Railway to the debtor, which has been purchased by one of the creditors and an order had been made u/s 37 of the Act.

12. Therefore, the order of the Court and the matter which they were dealing was the question of whether the receiver should collect the proceeds of this debt. If I had come, to any other conclusion with, regard to the matter, I should have felt it my duty to refer this case to a Full Bench, for the purpose of deciding the question whether in a sense other than what I understand the learned Judge to mean, the insolvency did continue after the annulment had been made. It seems to me quite clearly that it is otherwise.

13. For those reasons and perhaps for the reason that there has been very very considerable delay in making this application, I would hold that the learned Judge, although for different reasons from those he expressed, was right and this appeal therefore fails and must be dismissed with costs. Miscellaneous Appeal No. 175 of 1936 is not pressed and is dismissed.

Manohar Lall, J.

14. I agree. The facts necessary for the disposal of this appeal lie in a very narrow compass. The debtor was adjudicated an insolvent on 8th November 1927, and, owing to his failure to comply with the conditions of applying for a discharge within a certain time, the order of adjudication was annulled on 14th June 1928. But in the meantime notice was issued to the creditors to prove their debts by 14th January 1928, when a schedule was ordered to be prepared. Some of the creditors did prove their debts, and the case was adjourned till the 4th February for framing a schedule. On 17th August 1929, a draft schedule was prepared and<sup>1</sup> approved, all the creditors were parties to that proceeding including the appellants and respondent 1. I should have added that on 1st August 1928, at the instance of the petitioning creditor, i.e. creditor No. 1 the Court proceeded to make an order u/s 37 vesting the properties of the insolvent in the receiver directing him to distribute the same among the creditors.

15. In pursuance of this order, which was affirmed by the High Court on two occasions, the receiver has realised the assets which were going to be distributed among the creditors when the appellants raised the contention on 16th May 1936, that they should be allowed under, Section 50 of the Act to proceed to show that the respondent 1 who was admitted to be a creditor up to the date of that application is not a genuine creditor and therefore his name should be expunged. The respondent objects that after the adjudication has been annulled it is not open to the Court to take action u/s 50. Now I would have no difficulty in deciding this case upon those facts were it not for certain observations made by a Bench of this Court when deciding this matter at an earlier stage of the proceedings. I am referring to the order passed on 5th November 1932, which is to be found at pp. 17 to 21 of the paper-book. While deciding that case the learned Judges observed that:

In spite of the annulment of adjudication the insolvency proceeding continues and it is still open to the receiver to proceed to realise the assets vested in him.

16. With very great respect to the learned Judges, if they meant that the insolvency proceedings continued in full force, I think that their observation was incorrect in law and it would be necessary to refer the case to a Pull Bench. But I think what the learned Judges did in fact lay down was that notwithstanding the annulment of adjudication, the powers of the Court which are vested in it u/s 37 will continue; that is to say, that the receiver will proceed to realize the particular sum which was in question, and whether this particular sum can be distributed by the receiver or not was not decided by that order. But by a subsequent order of 25th November 1935, the learned Judges had given this direction:

We direct that the learned District Judge should proceed to realise the amount of Rs. S750 from the respondents, the creditors Nos. 2 and 3 (appellants before us) and distribute it rateably among the creditors.

17. It is unnecessary to consider in this case whether this direction is valid in law because that is not the subject of the proceedings under investigation before us.

It is contended by Dr. Mitter that after this observation by the learned Judges, on two occasions mentioned above in the presence of all parties, it is not open to the respondent to object that the appellants cannot proceed u/s 50, Insolvency Act. In my opinion this argument is wholly untenable. Section 50, Provincial Insolvency Act, will come into operation only if the insolvency proceedings are continuing in the real sense and not in a limited sense as in this case. A mere persual of the second clause of the section shows that that must be so because in it I find clear reference that the debtor has a right to apply to expunge an entry or reduce the amount of a debt or a composition or scheme. Now, if the adjudication had been annulled, it is obvious that the debtor can have no right whatsoever to make any application u/s 50(2), Insolvency Act.

18. For this reason alone, it is clear to my mind that Section 50 can have no application after the adjudication was annulled. It is enough to refer to two decisions. One is the decision of Rangoon Full Bench in *Annamalay Chettiar v. R.K. Bannerjee* A.I.R.1936. Rang 284 and the other Full Bench decision of the Madras High Court in *Moturi Veerayya v. P.V. Sreenivasa Rao* A.I.R.1935. Mad 826. Although these decisions differ from each other upon the rights which can be imposed upon the receiver for the purposes of distributing the assets of the debtor, they are agreed upon this that Section 37, Insolvency Act was only enacted in order to protect the debtor and the creditors for a limited purpose.

19. I adopt respectfully the passage in the Rangoon decision *Annamalay Chettiar v. R.K. Bannerjee* A.I.R.1936. Rang 284 at p. 267:

Now, why was it that Section 37 was enacted? It seems to me that it was enacted to achieve a plain and simple object. By reason of the insolvency proceedings to which the debtor had been subjected there might be in the hands of the receiver in insolvency assets belonging to the estate of the debtor. When the order of adjudication is annulled the debtor becomes a free man, and when the insolvency case comes to an end the title of the receiver to retain possession of the estate of the debtor in his hands as against the insolvent falls with it; the result being that when the order of annulment is made the debtor becomes forthwith entitled to obtain possession of his estate in the hands of thereceiver. In such circumstances it might well happen that the ex-insolvent who had been deprived of his property during the course of the insolvency proceedings would be anxious to make up for lost time, and might be disposed to squander the assets which would come once more into his hands without regard to the interests of his creditors generally. It appears to me that the sole object and intention of the Legislature in enacting Section 87 was to put a brake upon the ex-insolvent's activities by giving the Court a discretion, if it thought fit to do so, not to hand back to the debtor his property unconditionally or at once, but either to do so after imposing a condition upon him in a proper case which would give the creditors an opportunity to make good their claims in the ordinary course of law against the debtor, or to vest the debtor's estate in some person appointed by it presumably for a reasonable period, so that if the creditors thereafter acted

with reasonable diligence they would be able by attachment or otherwise to liquidate any decrees that they might obtain against the debtor out of the assets in the hands of the appointee.

20. In the case before me the High Court has ordered that the particular debt should be realized by proceedings u/s 37 and therefore the powers of the Court are limited to that extent only. It follows in my opinion that Section 50 has no manner of application in this case and the appellants have no right whatsoever to challenge the amount of the debt due to the respondent which had been duly or may be even wrongly admitted up to the stage of the order u/s 37.

21. I therefore agree that the appeal must be dismissed with costs. Appeal No. 175 is not pressed and it is dismissed.