

(1924) 08 MAD CK 0071
In the Madras High Court

K.M.K.R.K.R. Ramanathan Chettiar by his Agent Rama Iyer	APPELLANT
Vs	
P.L.V.V.R. Subramania Chettiar and Another	RESPONDENT

Date of Decision : 27-08-1924

Acts Referred:

Provincial Insolvency Act, 1920 — Section 51(1)

Citation : 85 Ind. Cas. 216

Hon'ble Judges : Wallace, J;Madhavan Nari, J

Bench : Division Bench

Judgement

1. The facts of this case are not disputed. In execution of a decree against, the respondent, his properties were brought to sale on the 27th of June 1922 and his auction-purchaser deposited 25 per cent, of the sale-proceeds in the District Munsif's Court at Tiruppur. On the 1st of July 1922, an insolvency petition was filed against the 2nd respondent and the Official Receiver was appointed interim Receiver on the 4th of July 1922. The balance of the purchase-money was deposited on the 11th of July 1922 and the 2nd respondent was adjudicated an insolvent on the 15th of September 1922. In the meanwhile the sale-proceeds of the 2nd respondent's properties were forwarded, to the Official Receiver, by the District Muesli. On the 26th of July 1922 an application was filed before the District Judge of Coimbatore by the creditor who attached the properties and brought them to sale, for the re-transfer to the District Munsif's Court of Tiruppur of the sale-proceeds to be dealt with by him according to law. The petitioning creditor who applied under the Insolvency Law for the adjudication of the debtor as an insolvent and for the appointment of the interim Receiver resisted this application and the District Judge rejected it. This appeal is by the creditor against the order of the District Judge refusing to re-transfer to the District Munsif's Court of Tiruppur the sale-proceeds of the 2nd respondent's properties now in the possession of the Interim Receiver.

2. The principle of law to be applied to the decision of this appeal is embodied in Section 51 Clause (1) of the Provincial Insolvency Act which runs as follow:

"Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the Receiver except in respect of assets realised in the course of the execution, "by sale or otherwise before the date of the admission of the petition." It has been argued by Mr. Krishnaswami Iyer that, according to this section, irrespective of the time of realisation, assets realised, in the course, of execution by a sale which has been held before the date of the admission of the in solvency petition are preserved for the benefit of the execution creditor, or, in other words, if the sale, by means of which the assets are realised, is held before the date of the admission of the petition, then the assets even if they be realised after the date of the admission of the petition, enure to the advantage, of the execution creditor. Shortly stated this argument makes the "date of the admission of the petition qualify the "sale" and not "assets realised" in the section. The records in the case do not show the date of the admission of the petition; but for the purposes of this appeal, the date may be taken to be some time between the 1st and 4th of July; in any event, it cannot have been later than the 4th of July when the interim Receiver was appointed, since the execution sale in this case was held on the 27th of June 1922, (i.e.,) anterior to the 4th of July, it follows from the argument just stated that the appellant-creditor is entitled to all the assets, as against the interim Receiver. We cannot" accept this argument. It seems to us that "the policy and the object of the Statute is to secure the even distribution of a debtor's estate among his creditors, and to prevent the more active creditors from, getting an undue advantage over those who may be less active" *Bower v. Hett* (1895) 2 Q.B. 51: 72 L.T. 659. This object, will obviously be frustrated if we accept the construction put upon the section, by the learned Vakil for the appellant,. We think that the words "date of the admission of the petition" occurring in this section qualify "assets realised" so that only, assets realised before the date of the admission of the petition will enure to the benefit of the execution creditor. The question then arising for consideration is, were assets realised in the course of execution before the date of the admission of the petition in this case? The, words "assets realised in the course of execution" have been interpreted in many decisions in cases which arose u/s 295 of the old C.P.C., corresponding to Section 73 of the present Code. We think these may be usefully referred to for elucidating the meaning of the words "assets realised" occurring in this section. In *Hafez Mahomed Ali Khan v. Damodar Pramanick* 9 Ind. Dec. 161, it was held that, when property is sold in execution of a decree, the sale-proceeds: may be said; to, be assets realised only when the balance of the purchase-money is paid and not when 25 per cent, is deposited in Court. In *Ramanathan Chettiar v. Subramania Sastrial* 26 M. 179 occur the following observations by Sir Arnold White, C.J., "It seems to me that the word "assets" in Section 205, C.P.C., means the proceeds of the sale of the property which is sold in execution, of the decree. As far as the present case is concerned I am of opinion that the assets were realised "when the whole of the proceeds were, paid into Court." Though there is no doubt a change in the corresponding provision of Section 73 of the present Code in that it substitutes the word, "receipt" for the

word "realised" in Section 295, still so far as the, question before us is concerned, the decisions u/s 73 are also helpful in arriving at a conclusion, as to the meaning of the term "assets realised." In *Arimuthu Chetty v. Vyapuri Pondaram* 8 Ind. Cas. 852, where the purchaser made the deposit on the 17th of September 1909, and the balance of the purchase money, yeas, paid into Court on the 29th of September 1909, it was stated by Abdur Rahim, J.: "it must be taken having regard to the decision in *Ramanathan Chettiar v. Subramania Sastrial* 26 M. 179, that the assets were realised only on the 29th, of September 1909, within the meaning of Section 295 of the, old Code. There is no doubt a change in the corresponding provision, of Section 73 of the present Code. But so far as the question, before, me is concerned, the change in the language, is immaterial. The purchase money becomes the asset of the judgment-debtor only when the, balance is received and not when the deposit is, made." To the same effect is also the decision in the *Maharaja of Burdwan v. Apurba be Krishna Roy* 10 Ind. Cas. 527. Having, regard to these decisions, we must hold that in this case the appellant is not entitled to claim either the balance of the purchase-money or the initial deposit of 25 per cent. as these cannot be considered to be "assets realised," in the course of the execution by sale before the date of the admission of the insolvency petition within the meaning of Section 51 of the Provincial Insolvency Act." It, follows therefore that the appellants petition for a re-transfer of the sale-proceeds to the District Munsifs Court of Tiruppur was rightly rejected by the District Judge.

3. We dismiss this Civil Miscellaneous Appeal with costs.

In Civil Miscellaneous Appeal No. 23 of 1923.

4. Following the decision in Civil Miscellaneous Appeal No. 22 of 1923, this Civil, Miscellaneous Appeal is also dismissed. No costs.