
(1999) 08 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 56/84

LRs of Dwarka Nath

APPELLANT

Vs

Receiver, Tehsildar, Revenue, Sriganganagar and Another

RESPONDENT

Date of Decision : 27-08-1999

Acts Referred:

Provincial Insolvency Act, 1920 — Section 44, 59

Citation : AIR 2000 Raj 195 : (2000) 1 WLC 751

Hon'ble Judges : V.S. Kokje, J

Bench : Single Bench

Advocate : R.K. Singhal, for the Appellant; S.N. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Kokje, J.—One Dwarka Nath had applied for being declared insolvent u/s 28(2) of the Provincial Insolvency Act (hereinafter to be referred as "the Insolvency Act") on 5-7-71. The learned District Judge declared him insolvent on 17-8-72. The learned District Judge had also appointed Tehsildar, Sriganganagar as receiver of the insolvent property u/s 56 of the Insolvency Act. The receiver took possession of the property of the insolvent including two shops No. 48 and 49 Ravindra Path, Sriganganagar which were allotted by Municipal Council, Sriganganagar to the insolvent. On 3-3-80 the receiver auctioned the rights of occupancy of the disputed shops on rental basis and the highest bid of one Rishi Kumar at Rs. 325/- per month of rent over and above the rent payable to the Municipal Council was accepted. On 8-4-82 the shops were put in possession of Rishi Kumar after a regular rent deed was executed. Thereafter the rent was enhanced by Rs. 750/- per month with the consent of Dwarka Nath and permission of the Court.

2. On 13-9-82 Dwarka Nath was discharged and the receiver was directed to vacate the shops and hand over the possession thereof to the discharged insolvent i.e. Dwarka Nath, Rishi Kumar filed objections on the ground that he was inducted in the shop as a tenant and as the disputed shops were situated in

Sriganganagar where Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (hereinafter to be referred as "the Rajasthan Premises Act") was in force and therefore he could not be evicted without having recourse to the provisions of that Act. According to Rishi Kumar only symbolic possession of the shop could be given to Dwarka Nath and physical possession could not have been directed to be given. Dwarka Nath contended that the shops were given on rent only for a limited period by the receiver and he was entitled to be put back in possession on his being discharged from insolvency and after the period for which the lease was given was over. On 12-12-83 Addl. District Judge, Sriganganagar held that in the circumstances of the case only symbolic possession could have been given and physical possession could not have been given to the discharged insolvent. Against this order the present appeal has been filed by Shri Dwarka Nath, the discharged Insolvent. He died during the pendency of the appeal and Smt. Shanti Devi was brought on record as his legal representative. She also died and Shri Rajan Verma was brought on record as her legal representative.

3. It was contended on behalf of the appellant that there was no privity of contract between the insolvent Dwarka Nath and Rishi Kumar and there was no relationship of tenancy between them. It was contended that whatever the receiver did was done after obtaining specific orders from the Court and therefore the lease, if any, was executed for limited period during the pendency of the proceedings under the orders of the Court by the receiver. It was therefore contended that any such lease would come to an end as soon as the insolvent was discharged and lease period was over. It was further contended that the appellant was entitled to physical possession and not a symbolic possession because the lease was originally granted to Rishi Kumar for a fixed term of one year and after expiry of that period from 1-4-80 to 30-9-81, thereafter from 1-10-81 to 31-3-82 and the last lease was granted for the period from 1-4-82 to 30-9-82. It was contended that all the four leases were thus granted to the lessee in compliance with the orders of the Court and the receiver only acted as an agent of the Court. It was therefore contended that after the lease expired on 30-9-82 Rishi Kumar had no right to be on the premises because he had acquired the rights of occupancy up to 30-9-82 only. In the circumstances of the case it was directed that protection of the Rajasthan Premises Act was not available to Rishi Kumar. It was further contended that Rishi Kumar had entered into the transaction with open eyes for a period of one year initially and every time the period of his occupancy was extended, it was for a fixed period under the permission of the Court. He cannot therefore claim to be entitled to something which the Court had not permitted the receiver to give to him. It was further contended that the premises belonged to the Municipal Council, Sriganganagar and therefore by virtue of Section 2 (2) of the Rajasthan Premises Act, the provisions of the Act did not apply to such property and for that reason also Rishi Kumar could not have claimed protection under the Act. It was also contended that in the order of discharge passed by the District Court on 13-9-82 it was specifically directed that vacant possession of the shops be handed over to

Dwarka Nath after the period of lease was over and therefore the same Court could not have taken directed symbolic possession only to be given of the shops.

4. On the other hand the learned counsel for the respondents submitted that In view of the clear provisions of the Insolvency Act, on the appointment of the receiver the property vested in him and he could deal with it as a full owner during the period of his appointment. It was submitted that whatever the receiver did was binding on the discharged insolvent also and the directions of the Court could only be advisory. It was contended that there was no need for the receiver to have taken permission of the Court in executing the lease in favour of Rishi Kumar. It was further contended that any observations in the order of discharge would not be binding on Rishi Kumar, firstly, as he was not a party to that order and secondly, as it was not within the scope of the order to consider the rights of third parties created during the period of insolvency. It was further contended that Sub-section (2) of Section 2 of the Rajasthan Premises Act was applicable to Municipal properties only and was not applicable to a suit between a tenant of the Municipal Council and his sub-tenant.

5. I have heard the learned counsel and perused the record. Section 56(1) of the Insolvency Act provides that the Court may, at the time of the order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver. Section 58 of the Act provides that where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under the Insolvency Act, Section 59 of the Insolvency Act enumerates the duties and powers of the receiver and provides that subject to the provisions of this Act, the receiver shall, with all convenient speed, realize the property of the debtor and distribute dividends among the creditors entitled thereto and for that purpose may -- (a) sell all or any part of the property of the insolvent; (b) give receipts for any money received by him. It further provides that the receiver may, by leave of the Court, carry on the business of the insolvent for the purpose of winding up, institute, defend or continue any suit or other legal proceedings relating to the property of the insolvent, employ a pleader or other agent in such proceedings, accept deferred payment towards consideration for the, sale of any property of Insolvent, mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts, refer any dispute to arbitration, and compromise all debts, claims and liabilities etc. and divide the property of the insolvent amongst the creditors.

6. Section 41 of the Act provides for discharge of the insolvent and Section 44 sets out the effect of the order of discharge. These two provisions relate to discharge from the debt only and do not throw light on the question of rights acquired by third parties during the period of insolvency on account of any act of the Receiver The first point needs to be examined is as to the effect of the order of the insolvency Court directing grant of lease for limited period. As soon as a receiver is appointed for the properties oi insolvent, by virtue of Section 56 of the

Insolvency Act, the property vests in the receiver. This vesting is subject only to the other provisions of the Insolvency Act. Section 59 of the Insolvency Act provides for the duties and powers of the receiver and gives power to the receiver to sell all or any part of the property of the insolvent without permission from the Court for the purpose of realizing the property of the debtor and for distributing dividends among the creditors. Leave of the Court is required only for doing things enumerated in Clauses (c) to (i) of Section 59 of the Insolvency Act. Giving insolvent's property on rent is not one of the things enumerated in Clauses (c) to (i) of Section 59 of the Insolvency Act and therefore no permission was required to do such a thing. In *Muthukaruppayee Achi v. Pothapular*, AIR 1949 Madras 834 learned single Judge of that Court held that the official receiver has, under the Provincial Insolvency Act, an unquestionable legal right to sell all properties of the insolvent and is not bound to go by the administrative advice tendered to him by the insolvency Court. That was a case in which while the Court ordered sale of the property of the insolvent subject to mortgage, the receiver sold it free of all encumbrances. The Court did not cancel the sale holding that the receiver had full power to sell the properties and he was not bound by the administrative advice tendered to him by the insolvency Court.

7. I agree with the aforesaid view and therefore hold that the order of the Court permitting grant of lease for a limited period of one year initially and later on till 30-9-82 will not have the effect of limiting the lease period up to 30-9-82 if by virtue of any other law the lease is not determinable on expiry of the period for which it was granted. The creation of lease for limited period by the receiver with or without permission from the Court would have the same effect as if the insolvent himself, if he had not been adjudicated insolvent, had granted the lease for limited period. In such a case the insolvent could not have been able to say that the lease would come to an end on expiry of the term mentioned in the contract. The Receiver was entitled to deal with the property in the same manner in which the insolvent could deal with it, but for the order of adjudication, because of the vesting of the property in him. He could not have been able to evict the tenant on expiry of the lease period without following the Rajasthan Premises Act, if that Act applied to the property in question as the insolvent himself would not have been able to evict the tenant on expiry of period of lease without proving a ground under the Rajasthan Premises Act, if that Act applied to the property".

8. It was also contended before me that Rajasthan Premises Act had no application to the property as it was Municipal property exempted from the application of the Act under proviso (a) to Section 2(2) of the Rajasthan Premises Act. The said provision provides that nothing in the Rajasthan Premises Act shall apply to any premises belonging to Central Govt. or the State Govt. or a local authority. Local authority is defined in the explanation to the Section to include a Municipal Board or Municipal Council. Thus it is contended that the disputed property being Municipal Property the Rajasthan Premises Act would not apply to it. It is not necessary for me to decide as to whether the

Rajasthan Act applied to the property in this case. The matter can be left open for decision In an action which the discharged insolvent may take for obtaining possession of the property from the tenant inducted by the Receiver.

9. The question to be determined in this case is as to whether the discharged insolvent is entitled to physical possession of the property back from the Receiver or any one inducted in the property by the Receiver or whether he is entitled to get only symbolic possession of the property. The nature and extent of Receiver's rights show that he could even have sold the property. In that case would the purchaser of the property be obliged to return back the possession of property to the discharged insolvent ? Obviously, the answer would be in the negative. How then the position could be different when instead of selling the property the Receiver conveys a limited right in the property ? The purchaser of such a limited right would also be entitled to retain the right conveyed by the Receiver even after discharge of the Insolvent. Thus a tenancy right created by the Receiver shall be continued and retained by the tenant even after the discharge of the insolvent. If the lease created is for a limited period and that period has expired, the tenant shall become a tenant holding over and the discharged insolvent shall be entitled to sue him for possession in the same manner in which the Receiver would have been entitled to do so if the discharge order had not been passed and Receiver had continued as such. If the lease period had expired during the continuance of receivership, the Receiver could not have directly entered into possession of the property. He would have been obliged to sue the tenant holding over for possession. In the like manner, the only course open to the discharged insolvent is to sue for possession if he wants possession back from the tenant inducted by the Receiver. It is not for an Insolvency Court to put back the discharged insolvent in possession of the property lawfully leased out by the Receiver even for a limited period. The question as to whether Rajasthan Premises Act applies to the property or not can be raised and decided only in a suit for possession brought by the discharged insolvent against the tenant. The lower Court has rightly held that the applicant was entitled to only symbolic possession and not physical possession.

10. The appeal fails for the aforesaid reasons and is therefore dismissed. No order as to costs.