(1938) 10 AHC CK 0010

In the Allahabad High Court

Mahange Lal APPELLANT

Vs

Firm Suraj Prasad Chandu Lal RESPONDENT

Date of Decision : 19-10-1938

Acts Referred:

Citation : AIR 1939 All 114

Hon'ble Judges : Mulla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mulla, J.—This is an appeal u/s 75, Provincial Insolvency Act. The appellant here is the insolvent named Mahange Lal. He made a petition for insolvency on 20th May 1933 and was adjudicated an insolvent on 26th February 1934. It appears that at the date of the insolvency petition a simple money decree, which had been obtained against him by the respondent Firm, was being executed and certain groves belonging to him had been attached and 22nd May 1933 had been fixed by the execution Court for the sale. In order to stop that sale, the appellant made an application to the Insolvency Court along with his insolvency petition. The Court passed an order upon that application on 22nd May staying the sale; but before the order could be communicated to the Civil Court Amin, the sale had taken place. At that sale the groves were purchased by the respondent decree-holder. The sale was confirmed in due course, and sometime after its confirmation the respondent applied for mutation in his favour in respect of the groves which had been purchased at the auction sale in the circumstances mentioned above. That application was dismissed by the Revenue Court on 5th October 1936 on the ground that the sale was a nullity. In the meantime, the appellant was discharged on 26th July 1935.

2. The only condition imposed by the Court in the order of discharge was that certain decrees standing in favour of the insolvent were to be realized by the Official Receiver. On 2nd November 1937 the respondent applied to the Insolvency Court praying that the Official Receiver be directed to sell the groves

in question as the assets of the insolvent. The appellant objected on two grounds, firstly, that the Court had no jurisdiction left after his discharge to direct that his assets should be sold and, secondly, that the respondent''s debt was one of the proved debts, and after securing his discharge the insolvent was not liable to pay any one of those debts. Both these grounds have been repelled by the learned District Judge of Shahjahanpur, who has passed an order directing the Official Receiver to proceed to sell the groves in question. Hence the present appeal. The learned Counsel for the appellant has based his argument on Section 44, Provincial Insolvency Act, which runs as follows:

Section 44(1). - An order of discharge shall not release the insolvent from-

(a) any debt due to the Crown;

(b) any debt or liability incurred by means of any fraud or fraudulent broach of trust to which he was a party;

(c) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party; or

(d) any liability under an order for maintenance made u/s 488, Criminal P.C. 1898.

(2) Save as provided by Sub-section (1), an order of discharge shall release the insolvent from all debts provable under this Act.

3. The argument is that the release of the insolvent from all debts provable under the Act means that his assets can no longer be distributed amongst his creditors. It is further contended that the effect of the order of the Revenue Court in the mutation proceeding was to revest the groves in the appellant, and as that revesting took place subsequent to the date of his discharge, that property could not be seized and sold by the Official Receiver. Both these arguments are fallacious. The logical effect of the first argument, if accepted, would be that as soon as an insolvent is discharged, all the property in the hands of the Official Receiver at that date is revested in him. This is obviously untenable. In order to have the benefits of the Insolvency Act, the insolvent has to place all his assets at the disposal of the Court at the very beginning of the proceeding and those assets vest in the Official Receiver with effect from the date of the insolvency petition. The discharge of the insolvent cannot possibly mean the divesting of the Official Receiver. It cannot be argued with any force that the Insolvency Court becomes functus officio as soon as the insolvent is discharged, for it is not necessary for the Court to wait until all the assets of the insolvent have been realized and distributed amongst the creditors in order to discharge the insolvent. The proceeding in insolvency can undoubtedly go on in respect of the property in the hands of the Official Receiver in spite of the order of discharge. With regard to the second argument, it is though to say that the order of the Revenue Court in a mutation proceeding could not possibly have the effect of divesting the Official Receiver or the auction-purchaser and revesting

the property in the appellant. If the original sale was a good and valid sale, the property passed to the auction-purchaser, that is the respondent in this case, and the appellant can have no concern with. it. If the sale was a nullity, the property which, had vested in the Official Receiver continued to remain with him and ho is undoubtedly entitled to sell it. In any case, I fail to nee how the appellant has any grievance at all. The result therefore is that I see no reason to interfere with the order passed by the Court below, and dismiss this appeal with costs.