

(1925) 11 AHC CK 0027
In the Allahabad High Court

Muhammad Ibrahim

APPELLANT

Vs

Ram Chandra (Vendee) and another (Receiver)

RESPONDENT

Date of Decision : 24-11-1925

Acts Referred:

Provincial Insolvency Act, 1920 — Section 38
Provincial Insolvency Act, 1920 — Section 38
Provincial Insolvency Act, 1920 — Section 38

Citation : AIR 1926 All 289

Hon'ble Judges : Sulaiman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sulaiman, J.—This is an appeal against the Receiver from an order refusing to annul the appellant's adjudication. Muhammad Ibrahim was adjudged insolvent on 24th April 1919 and his property vested in the Official Receiver. On 13th February 1922 the Receiver entered into a contract for sale of a certain house with Ram Chandra for a sum of Rs. 3,000 and received Rs. 500 as earnest money. When he proceeded to sell this property, an objection was filed by the insolvent's wife claiming this house as her own property. Protracted proceedings followed and ultimately on 29th January 1924 the High Court decided against the wife Rashida Khatun. A subsequent application for review also proved infructuous. On 3rd July 1924 the insolvent filed an application purporting to be u/s 38, Insolvency Act, setting forth a composition scheme. In this he stated that he was able to procure money from his relations and would pay up all the debts that were entered in the schedule. It appears that his son made payments out of Court to various creditors and obtained receipts from them. Among these creditors was one Rura Mal. His receipt bears the date 4th September 1924. Under this receipt Rura Mal no doubt admitted that he had received the amount due under his decree and promissory note and that not a single shell remained due. On 13th September 1924 Rura Mal filed an application in the Court stating that he had received repayment of his debts from the insolvent's son Abdul Hai,

and that he had no objection to the insolvent's application being granted. It appears that the debts of other creditors were also paid or discharged. On 30th September 1924 a statement was made by the insolvent's vakil that his application u/s 38 should be treated as an application u/s 35 and that the annulment of the insolvent's adjudication should be ordered inasmuch as all the debts had been paid in full. Notice of this application was ordered to be issued. The report of the Receiver was in favour of the insolvent, but Rura Mal came forward and claimed interest on his debt and also certain expenses which he had incurred in connexion with the appeal in the High Court. The Receiver, however, asked for Rs. 399 as his remuneration and expenses, On 7th December 1924 the learned District Judge came to the conclusion that all the debts had not been discharged inasmuch as interest due to Rura Mal had not been paid. He accordingly declined to order the annulment of the insolvent's adjudication. Subsequently the insolvent informed the Court that the house should not be sold for Rs. 3,000 as other persons were prepared to offer Rs. 5,000 and Rs. 6,000 and prayed that the sale be stayed. The District Judge forwarded the application to the Receiver to take steps, but it reached him too late as the sale deed in favour of Ram Chandra had been registered half an hour earlier. On this the learned Judge refused to set aside the same.

2. The insolvent appeals from both the orders dated 9th December 1924 and the last order dated 19th January 1925, and has obtained the leave of the High Court to appeal.

3. The first point to consider in F.A.F.O. No. 37 is as to whether he was entitled to an annulment. Section 35, Act 5 of 1920 requires that where in the opinion of Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent have been in full, the Court shall, on the application of the debtor, or of any other person interested, by order in writing, annul the adjudication. This is not a case where it can be said that the debtor ought not to have been adjudged insolvent. The contention of the insolvent is that the debts of the insolvent have been paid in full, inasmuch as, although some amount of interest might have been outstanding, Rura Mal had given a complete and full discharge of his debts. We agree that the receipt and the application purported to give a full discharge of the debt but even an unconditional release by a creditor cannot amount to a payment in full of the debt within the meaning of Section 35. This was the view clearly expressed in the English case *In re Keet* (1905) 2K B 666 which has been followed by Indian High Courts: vide *In re Subali Jan Mahomed* AIR 1914 Bom 188 and *Brij Kessoor Lal v. Official Assignee of Madras* AIR 1920 Mad 219. It is therefore clear that the mere release of the balance of the debt due to Rura Mal did not amount to a full payment so as to entitle the insolvent to an annulment. It has been argued on behalf of the appellant that Rura Mal would not have been entitled to any interest on his debt subsequent to adjudication and that such subsequent interest is not included within the expression "the debts of the insolvent" contained in Section 35. u/s 48, Sub-clause 2 of the Act the right of a

creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled is not prejudiced after all the debts proved have been paid in full. In Section 61, Sub-clause 6 it is provided that where there is any surplus after payment of the foregoing debts it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of 6 per centum per annum on all debts entered in the schedule. It is noteworthy that Section 38 does not use the words "proved debts or debts entered in the schedule". It must therefore be taken that before Section 35 can be availed of, all the debts of the insolvent must be discharged in full. Subsequent interest, though it cannot be taken into account at the time of the first distribution of the dividends, has to be paid out of the assets, if sufficient, and is therefore a part of the debt. It is clear therefore that there was a sum of money due to Rura Mal which might have been released but was certainly not paid, though the principal sum and interest up to the date of adjudication had been paid. First Appeal from Order No. 37 of 1925, therefore, fails and is accordingly dismissed but without costs as no one appears for the respondents

4. The sale which is sought to be set aside took place in pursuance of a previous contract of sale dated the 13th of February 1922. While the insolvency proceedings were pending the property vested in the Receiver and he had full power to dispose of it. The execution of the sale was delayed owing to proceedings taken by the insolvent's relations. It may be that some two years afterwards the value of the property had risen, higher and some persons came forward to make higher offers. This however did not justify the Receiver to go back upon his original contract for sale. No stay order was passed by the District Judge and the sale took place at a time when there was no prohibition against it. When the order of annulment has been upheld we are unable to hold that the sale should be set aside. This appeal also fails and is dismissed with costs including in this Court fees on the higher scale.