

(1964) 10 KL CK 0007
In the High Court Of Kerala
Case No : C. R. P. No. 1 of 1964

Narayana Shenoi

APPELLANT

Vs

Official Receiver, Alleppey and Others

RESPONDENT

Date of Decision : 26-10-1964

Acts Referred:

Provincial Insolvency Act, 1920 — Section 49, 61(6), 64(6), 70

Citation : (1965) KLJ 247

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : N. Venkitarama Iyer, for the Appellant; S. Narayanan Potti, N.K. Varkey and N. Dharmadan for 3rd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

C.A. Vaidialingam, J.—In this revision Mr. N. Venkitarama Iyer, learned counsel for the 2nd insolvent who is the petitioner, challenges the order of the learned District Judge, Alleppey holding that the decree-holder-respondent is entitled to the interest provided for u/s 64 (6) of the Travancore-Cochin Insolvency Act, 1955, T. C. Act II of 1956, which may have to be referred to as the Act. It may be stated that the T. C. Insolvency Act, 1955 was amended by the Travancore-Cochin Insolvency (Amendment) Act, 1957--Kerala Act 18 of 1957 after the formation of the Kerala State. By section 2 of the Amending Act, the words "Travancore-Cochin" occurring in the parent Act--Act II/1956 has been omitted and there is a further provision that the said Act will apply to the whole State of Kerala. Therefore, the Act with which we are now concerned namely, Insolvency Act of 1955--T. C, Act II of 1956 applies to the entire State of Kerala.

2. The defence that was taken by the insolvents to the claim made by the decree-holder u/s 64 (6) of the Act was that that provision will apply only when there is either by contract or agreement or by a decree of court provision made for payment of future interest. In this case, according to the debtors the right of the decree-holder to get interest has been limited to a particular period namely from

1105 Makaram till the date of the High Court judgment and future interest also has been limited by the specific terms of the decree passed by the Travancore High Court, namely, either a period of 3 years or the recovery of the amount whichever occurs earlier. Therefore, according to the petitioner, the contention was; that inasmuch as in this case there is no recurring right recognised in the decree-holder to claim future interest for ever section 64 (6) of the Act cannot be invoked.

3. The further contention that was raised by the petitioner was that by recognising the claim of the decree-holder to get interest u/s 64 (6) the insolvency court will be practically adding to the rights of the decree-holder and altering in effect the decree passed by the High Court. A further objection was also taken that the award of interest u/s 64 (6) will amount to a payment of interest on interest because the creditor when he proved his debt has already included in the said debt the amount which represents the interest also awarded by the Travancore High Court.

4. These objections raised by the debtor were very strenuously opposed by the decree-holder on the ground that section 64 (6) of the Act is a special provision enabling a creditor when there is a surplus left after payment of debts to get interest at six per cent if fund; are available from the date of adjudication. The fact that the decree-holder has not been awarded a right to recover future interest for a period beyond 3 years from the date of the High Court Judgment in A. S. 648/1103 is absolutely immaterial when considering the claim of the creditor u/s 64 (6) of the Act.

5. It may be that when a creditor has to prove both for principal and interest claimed by him his right for interest may be controlled to some extent by the provisions made in the statute namely section 49 of the Act. But when once a debt has been proved and the court has framed a schedule of creditors it is no answer for the petitioners to urge that the said debt shown in the schedule and proved in insolvency is not entitled to share in the award of interest u/s 64 (6) of the Act.

6. It was also urged that in this case there is no question of any award of interest on interest being claimed by the decree-holder and what is asked for by the decree-holder is only to work out his right on the basis of the decree of the Travancore High Court in A. S. 648/1103 read with the provisions of the Act. Therefore the creditor urged that he is entitled to ask the court especially when it is proved in this case that there is surplus amount to distribute the interest at six per cent from the date of adjudication u/s 64 (6) of the Act.

7. The learned Subordinate Judge has no doubt, over-ruled all the contentions raised by the decree holder and has accepted the claim made by the debtor on the basis that the creditor in insolvency is not entitled to have larger rights than those given to him by virtue of the decree of the Travancore High Court in A. S. 648 of 1103. There is also a discussion in the Judgment of the learned

Subordinate Judge regarding the scope of section 49 of the Act. Frankly I find it difficult to appreciate as to how exactly that provision comes into the picture because section 49 deals with the creditor proving his claim for interest in the manner and under the circumstances provided therein till the date of adjudication. That provision has nothing to do with the award of interest or any claim for interest after the date of adjudication.

8. Ultimately the learned Subordinate Judge accepting the case of the debtor has come to the conclusion that section 64 (6) of the Act will not entitle creditors like the respondent in this case to claim the award of six per cent interest on the debts proved by them in insolvency. Ultimately the claim made by the creditor on that basis was rejected.

9. The creditor challenged this order of the learned Subordinate Judge by taking the matter in appeal before the learned District Judge, Alleppey in A. S. 297/63. The learned Subordinate Judge is of the view that the contentions of the debtor to the claim made by the creditor for awarding him interest u/s 64 (6) of the Act have to be sustained. On the other hand, the learned District Judge is of the view that the said provision is a special provision and having due regard to the scheme of the Act the creditor is entitled when there is surplus available to claim award of interest u/s 64 (6) of the Act. In consequence the appeal filed by the creditor was allowed by the learned District Judge.

10. Mr. N. Venkitarama Iyer laid considerable emphasis on the fact that in this case the Travancore High Court has prescribed the maximum period of which the creditor is entitled to claim future interest; and according to the learned counsel section 64 (6) of the Act will come into play only when there is a recurring liability on the part of the debtor to pay interest, which liability is put a stop to because of the intervention of the insolvency proceedings. It is the contention of the learned counsel that to such creditors who cannot recover interest, though they are entitled to either under the contract or under the decree because of the intervention of insolvency proceedings the Legislature has so to say, provided some solace u/s 64 (6) of the Act. That is, I understood the learned counsel to urge that section 64 (6) of the Act can apply only when there is a recurring liability to pay interest fixed either under a contract or by agreement of parties or by decree of court.

11. When there is no interest payable at all or when the period during which interest is so payable is restricted according to the learned counsel, section 64(6) will not come into play. The learned counsel again urged that the creditor when proving his debt has already calculated interest that is recoverable from his client. That is, a part of the debt that has been proved by the creditor represents interest. Therefore the award of interest u/s 64 (6) will according to the learned counsel amount to granting interest on interest which has already been included in the debt.

12. Again the further contention that the creditor's claim if accepted will amount

to giving the go-by to the clear directions contained in the judgment of the Travancore High Court has again been reiterated by the learned counsel.

13. The learned counsel has no doubt adopted in part of his arguments the reasoning contained in the judgment reported in *Pat Ram v Mt. Sukhdei* (A. I. R. 1947 Oud 202), and on the basis of that decision has urged that to cases like the one in hand section 64 (6) has no application at all.

14. On the other hand, Mr. N. K. Varkey, learned counsel for the creditor second respondent has taken me through the several sections of the Act in question in support of his contention that the scheme of the Act will clearly show that when once the debt which also includes interest under the provisions of Section 49 of the Act and that amount has been shown in the schedule that the court has framed and it is bound to frame under the Act the creditor whose debt has been included in that schedule is entitled to claim further interest from the date of adjudication if there is surplus u/s 64 (6) of the Act.

15. That there is surplus in this case, the learned counsel pointed out, is beyond controversy and Section 64 (6) is the only provision which according to the learned counsel deals with the award of interest from the date of adjudication. The learned counsel pointed out that the main responsibility for allowing these proceedings to drag on for such along time rests on the shoulders of the debtor in this case because his sons instituted suits challenging the decree obtained by the creditor as against the debtors and that act naturally led to further action being taken by the insolvency court in discharge of its duties.

16. The learned counsel also placed reliance in this case on section 70 of the Act wherein the right of the insolvent to the surplus that may be available in the manner indicated therein will also clearly show that this claim for getting that surplus will arise only when the other provisions of the statute have been complied with. Therefore, according to the learned counsel for the creditor there is no question of any attempt at giving the go by to the decree of the trial court nor can it be stated in this case that by recognising the right of the decree-holder to get interest u/s 64 (6) there is any award of interest as urged by the learned counsel for the petitioner. In fact, the learned counsel urged that his client has made a claim strictly in accordance with the provisions of the decree of the Travancore High Court in A. S. 648/1103 and has also worked out his rights in accordance with the clear provisions contained in the Act.

17. In this connection, the learned counsel placed reliance upon a Division Bench Judgment of the Allahabad High Court reported in *Baseshwar Dayal and Another Vs. Mst. Bhagwati Devi and Others*, wherein the learned Judges dealing with the corresponding provision contained in the Provincial Insolvency Act--Central Act 5 of 1920 namely section 61 (6) have held that irrespective of the fact whether interest is payable or not under a decree, contract or agreement the creditor is entitled to have the benefit of section 61 (6) of the Central Act referred to above.

18. Mr. N. K. Varkey pointed out that in this case the reasoning of the learned

District Judge is absolutely correct and that order does not require any interference at the hands of this Court.

19. Section 2 (1) (b) of the Act defines the expression "creditor" as including a decree-holder, a "debt" as including a judgment-debt, and a "debtor" including a judgment-debtor. Pausing here for a minute the respondent satisfies as a decree-holder satisfies the definition of the expression "creditor" and the debt in question which was proved in insolvency proceedings being a judgment-debt satisfies the definition of the expression "debt". Similarly the petitioner and the third respondent also judgment-debtors as the expression "debtor" is defined in the manner referred to above.

Section 4 is a very comprehensive provision giving jurisdiction to the insolvency court to decide all questions arising for consideration. Some of the other provisions which deal with the right of creditor or debtor to file an application and the manner in which those applications are to be filed as well as the circumstances under which they are to be made need not detain this court.

The further provision that has to be considered is section 27 of the Act which provides for the court making an order for adjudication and also specifying the period within which the debtor shall apply for his discharge.

Section 28 deals with the effect of an order of adjudication. The points to be noted in this provision are that it specifically states that the property of an insolvent shall vest in the court or in a receiver. It also places an embargo upon the creditors from taking any action against the property or person of the insolvent nor can they institute any suit for recovery of debt which can be proved in the insolvency court. Sub-section (6) exempts secured creditors from the limitations imposed in the earlier part of the section. Sub-section (7) provides that the order of adjudication shall relate back to, and take effect from the date of the presentation of the petition on which it is made.

Section 30 provides for the court giving directions regarding stay of proceedings that have been initiated as against a debtor.

Section 34 is in my view a fairly important section which deals with the schedule of creditors. Under sub-section (1) it is provided that the creditors of the insolvent are to tender proof of their respective debts by placing the necessary evidence before the court; and the court by an order to that effect accepting proof of the amount that has been claimed by the creditors; and the court framing a schedule of such persons and debts.

It must be stated that when section 64 (6) provides for payment of interest on all debts entered in the schedule, the Legislature has certainly in mind the schedule that has been framed u/s 34 (1) of the Act. It may also be stated that power is given u/s 84(1) of the Act to the Official Receiver in the circumstances mentioned therein to frame a schedule of credits and debts. That schedule is practically more or less the same as the schedule that is framed by the court u/s

34(1). Sub-section (2) provides for the pasting in the court house of a copy of the schedule framed by the court and sub-section (3) gives rights to the creditors to have their debts proved and entered in the schedule at any time before an order of discharge is passed.

Section 35 deals with debts provable under the Act and it will be seen that under sub-section (2) thereof provable debts are liabilities of the judgment which in my view, will include not only the principal but also the interest that he is entitled to get up to the date of adjudication.

Section 42 provides for the debtor applying for discharge.

Section 49 is again a special provision dealing with a creditor proving for interest and a perusal of that provision will clearly show that it is only for the purpose of declaring dividend and even in the case where interest is not reserved or agreed for, it is open to the creditor to prove for interest in the manner provided therein. But under sub-section (2) of Section 49, it will be seen that though normally he can prove only for a rate not exceeding six per cent per annum it is made specifically without prejudice to the right of the creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled provided all the debts have been paid in full. One other point to be noted regarding section 49 is that it has nothing to do with the claims for interest after the date of the adjudication because that provision deals with a claim for interest and proof of the same till the date of adjudication.

Section 51 gives jurisdiction to the court to alter the schedule that has been framed under sub-section (1) of Section 34 under certain circumstances.

Section 58 deals with the appointment of a receiver by the court and the receiver taking charge of the property of the insolvent.

Then we come to the material provision which arises for consideration in this case, namely Section 64. The group of sections beginning from section 64 to 71 deal with the distribution of the property of an insolvent. Sub-section (1) provides for distribution of the property of the insolvent of debts due to the Government or to any local authority or salary or wages, etc, in the manner provided under clauses (a) and (b) of sub-section (1); Sub-section (2) is only a consequential provision when the full amount referred to in clauses (a) and (b) cannot be paid. Sub-section (3) provides for retaining on hand the necessary expenses for the administration of the insolvent's estate and it also provides that the debts mentioned in sub-section (1) are to be discharged immediately so far as the property of the insolvent is concerned. It is not necessary to consider sub-section (4). Sub-sections (5) and (6) of section 64 are fairly important. Sub-section (5) empowers the court subject to the provisions of the Act to pay all debts entered in the schedule rateably according to the amounts of such debts respectively and without any preference. The expression "all debts entered in the schedule" occurring in sub-section (5) of Section 64 are all debts proved in insolvency provided u/s 34 of the Act and they have no different connotation

whatsoever.

After making provision for the payment of debts entered in the schedule rateably, sub-section (6) provides that where there is any surplus after payment of the "foregoing debts" that surplus is to be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per cent per annum on all debts entered in the schedule. It is rather significant to note that the very same expression "debts entered in the schedule" occurring in sub-section (5) which have to be paid rateably finds also a place in sub-section (6) of section 64 regarding the payment of interest from the date of adjudication.

Going by sub-section (6) of section 64 alone there will be absolutely no difficulty in accepting the contention of the creditor in this case that when once his debt has been entered in the schedule framed by the court u/s 34 (1) of the Act, automatically and as of right when once there is a surplus as in this case, there is a surplus, he is entitled to get the benefit of sub-section (6) of section 64.

Section 67 provides for the distribution of the final dividend.

Section 70 provides that the insolvent shall be entitled to any surplus remaining after payment in full of his creditors "with interest as provided by this Act, and of the expenses of the proceedings taken thereunder." The expression "with interest as provided by this Act" in my view, will take in not only the proof that a creditor may have made regarding his claim for interest u/s 49 of the Act but also his claim for interest as provided under sub-section (6) of section 64 from the date of adjudication. It is only after all those amounts have been paid and when there is still a surplus that the insolvent is entitled to the same.

20. The above provisions particularly indicate the scheme of the statute; the right of a creditor to establish or prove his debt which will include also claim for interest up to the date of adjudication, the framing of a schedule of such creditors and their debts, the manner in which proof of interest is to be made by a creditor, the right of a creditor to get if there is a surplus interest in respect of debts noted in the schedule from the date of adjudication as well as the right of the insolvent to get the surplus when all the claims of the creditors have been satisfied.

21. Mr. N. Venkitarama Iyer has adopted as part of his arguments the reasoning contained in *Pat Ram v Mt. Sukhdei* (A. I. R. 1947 Oud 202). The learned judge in that case no doubt was considering a claim or application made by a debtor for annulment of adjudication u/s 35, Provincial Insolvency Act--Central Act 5/1920. The learned Judge in disposing of the application one creditor having been awarded only 31/2 per cent under a decree and another creditor not having been awarded any interest at all under the decree has no doubt made observations to the effect that the provisions of the Insolvency Act cannot be availed of to enlarge the rights of a creditor. But the learned Judge refers to an observation of the Madras High Court consisting of Mr. Justice Reilly and Mr. Justice Ananthakrishna Ayyar who had to deal with section 61 (6) of Central Act 5 of

1920 which decision is reported in Venkataraju v Lekshmanaswami (A. I. R. 1931 Mad 729). The learned Judges of the Madras High Court after fairly elaborate consideration of the various provisions of the Central Act as well as the English Bankruptcy Act ultimately make an observation to the effect that the rate of interest 6 per cent mentioned in section 61 (6) is primarily to provide for those cases where the surplus does not admit payment of more than 6 per cent to any class of creditors and the learned Judges have also categorically stated that the object is not to reduce the rate of interest fixed by the contract between the parties when the assets are enough and there is a surplus.

22. Those observations, if I may say so with respect, have been misquoted by the Oudh Court in support of the learned Judges conclusion that the provisions of the Insolvency Act cannot be availed of to enlarge the rights of a creditor. On the other hand, the decision of the Madras High Court is to the contrary namely, that if there is surplus the creditor is entitled to claim interest at a rate far higher than 6 per cent that is provided in the statute. If I may say so with respect, I entirely agree with the views expressed by the learned Judges of the Madras High Court and particularly the interpretation placed by them on the analogous provision namely, section 61 (6) of the Provincial Insolvency Act--Central Act 5 of 1920. With great respect I have no hesitation to differ from the conclusion arrived at by the learned Judge of the Oudh Court in Pat Ram v Mt. Sukhdei (A.I.R. 1947 Oud 202).

23. In my view, the decision of the Allahabad High Court relied upon by Mr. N.K. Varkey, namely, Baseshwar Dayal and Another Vs. Mst. Bhagwati Devi and Others, as well as a decision of the Patna High Court reported in Prayag v Mukteshwar (ILR 26 Pat 648) are directly in point. The learned Judge in both these decisions had to consider the provisions of section 61 (6) of the Central Act corresponding to section 64(6) of the Act.

24. In Prayag v Mukteshwar (I. L. R. 26 Pat 648) the learned Judges have held that when the debts due to the creditors in an insolvency proceeding are entered in the schedule the aggregate of the debt so entered consists of two parts namely, (a) principal and (b) interest. The learned Judges also state that when once such a debt has been proved by a creditor and entered in the schedule the total amount becomes debts entered in the schedule by the court and u/s 61 (6) of the Provincial Insolvency Act--Central Act 5 of 1920, the creditor is entitled to get interest at six per cent per annum on the aggregate of the debts so entered in the schedule from the date of adjudication. With great respect to the learned Judges I am in entire agreement with the interpretation placed on the analogous provision that arose for consideration by the learned Judges.

25. In Baseshwar Dayal and Another Vs. Mst. Bhagwati Devi and Others, , the learned counsel for the applicant took up the contention that u/s 61 (6) of the Provincial Insolvency Act--Central Act 5 of 1920 interest after the date of adjudication will be payable only on debts in respect of which a decree or order has been passed awarding future interest indefinitely. The learned Judges have

overruled that objection and held that section 61 (6) is intended to provide that if there is a surplus after payment of all the debts entered in the schedule all the creditors are to be treated equally and the learned Judges are of the view that such a provision is more or less in the nature of a compensation for depriving the creditors during the pendency of the court proceedings or not taking proceedings for recovery of the amount. But the further principle that is laid down by the learned Judge is that Section 61 (6) applies to all debts entered in the schedule whether there was or was no stipulation between the creditors and the debtors as regards some of the debts about payment of interest.

26. In my view, this decision effectively answers the contention of the learned counsel for the petitioner that section 64(6) of the Act will apply only in cases where there is a recurring liability to pay future interest indefinitely which liability is stopped because of the intervention of the insolvency proceedings.

27. Having due regard to the principles of the Madras, Patna and Allahabad High Courts laid down above in my view, Section 64 (6) of the Act must be held to apply to all debts which have been entered in the schedule irrespective of the fact that originally there is an agreement, contract, or a decree awarding interest. Such an agreement regarding interest may become relevant only when the creditor has to prove the interest for the purpose of getting dividend u/s 49 of the Act. I have already indicated that section 49 has nothing to do with the interest after the date of adjudication. Section 64(6) specifically deals with payment of interest when there is a surplus after the date of adjudication.

28. I have already referred to section 70 of the Act which clearly says that an insolvent is entitled to the surplus only when the creditors have been paid in full together with interest as provided under the Act and that interest is not only the interest proved u/s 49 but also the interest which is payable u/s 64 (6) of the Act.

29. Therefore, I am in entire agreement with the conclusions arrived at by the learned District Judge, Alleppey in the order under attack that in the circumstances, of this case, the creditor-second respondent is entitled to get the benefit of section 64 (6) of the Act.

30. No doubt, it appears to be a very hard case because unfortunately when those provisions are applied, the creditor will be entitled to claim six per cent interest on the debt entered in the schedule from the date of adjudication namely, 20-2-1109. It is rather regrettable that insolvency proceedings which should be very quickly disposed of, have been allowed to continue for some reason or other. On the mere circumstance that in this case, the petitioner will have to be answerable to a claim for interest u/s 64(6) for fairly a long period is no answer for negating the right of the creditor to avail himself of the benefit of that provision.

31. During the course of arguments in view of the long pendency of this insolvency proceedings and as the petitioner, if his contentions are not accepted will have to pay fairly large amount as and by way of interest u/s 64 (6) from

20-2-1109, a suggestion was made by this court to the decree-holder's counsel as to whether the decree-holder is prepared to consider the claim of the petitioner somewhat sympathetically. Mr. N.K. Varkey learned counsel for the decree-holder-respondent has quite fairly represented that in view of the suggestion made by this court, from and out of the total amount that is payable to his client as per the decision of this Court, the decree-holder is prepared to waive or give up a sum of Rs. 2,500/- which amount can be withdrawn by the judgment-debtors provided no further objections are raised either by the petitioner or by his co-judgment-debtor for a speedy withdrawal of the amounts that are found due to the decree-holder. The learned counsel has also stated that if any such objections are raised, the offer will stand withdrawn. There will be a further direction to the effect that inasmuch as these insolvency proceedings which originated in 1107 have been pending for a long time the trial court will fix up these proceedings within a period not exceeding six months. Subject to the directions and observations, C. R. P. is dismissed. Parties will bear their own costs.