
(1964) 11 AP CK 0015

In the Andhra Pradesh High Court

Case No : A.A.O. No's. 39 of 1958 and 494 of 1960

Official Liquidator, Eluru, The Eluru Motor Transport Ltd.

APPELLANT

Vs

Vankineni Rajagopala Venkataratnam

RESPONDENT

Date of Decision : 17-11-1964

Acts Referred:

Companies Act, 1913 — Section 179, 179(1), 181(5), 231, 531

Citation : AIR 1966 AP 157 : (1966) 1 AnWR 374 : (1966) 36 CompCas 888

Hon'ble Judges : P. Chandra Reddy, C.J.;Gopal Rao Ekbote, J

Bench : Division Bench

Advocate : K. Rama Chandra Rao and K. Venkateswara Rao, in A.A.O. 39/58, G. Venkatrama Sastry and M. Suryanarayanamurty, in A.A.O. No. 494 of 1960, for the Appellant; K. Rama Chandra Rao and K. Venkateswara Rao, in A.A.O. 494/60, G. Venkatrama Sastry and M. Surayanarayanamurty, in A.A.O. No. 39/58, for the Respondent

Judgement

Chandba Reddy, C.J.—This appeal is preferred by the Official Liquidator of West Godavari against the Judgment of the District Judge of West Godavari at Eluru, dismissing the petition to set aside the sale of three buses by the Eluru Motor Transport Ltd. (hereinafter referred to as the company) to the respondent and to direct the latter to deliver them to him.

2. The company owned a number of stage carriages operating on the various routes in the State. In or about the year 1953, the financial position of the company was unsound and several of its creditors were pressing for the repayment of dues. One such creditor was the respondent, who brought O. S, 39/1953 for recovering a sum of Rs. 57,209-4-3 on the foot of a promissory note for Rs. 46,559-3-0 executed on 31-10-1951. Pending the suit, he applied for attachment before judgment of all the buses belonging to the Company. When this petition was filed, the company came to terms with the respondent and passed a resolution agreeing to sell to the respondent three buses for a consideration of Rs. 61,500 pursuant to the resolution and on the same day, the then Managing Director of the company entered into an agreement with the

respondent for the sale of these buses, the terms of which are set out here under:

"Letter of agreement entered into between the Managing Director. The Eluru Motor Transport Ltd., and Sri Vankineni Raja Gopala Venkataratnam regarding the amounts due to him from the company.

In view of the kind intervention of Janab Shaik Ahmed Saheb I. A. S., the company and Sri V. R. G. Venkataratnam having agreed to the terms suggested by him:

1. It is hereby agreed that the company should suffer a compromise decree on 2-11-1953 in the District Court. West Godavari, in O. S. No. 39 of 53 for which a compromise petition will be filed in the Court by (be Managing Director on behalf of the Company and the said V. R.G. Venkataratnam that the Company will be liable to pay a sum of Rs. 55,436-2-9 and vakil's fee on the suit amount is per rules to the said V.R.G. Vankataratnam towards the full satisfaction of suit t amount and costs and subsequent interest as well as the amounts separately due (to him on Khata and also arrears of rent upto 1-12-1953, due on his building now in the occupation of the company, and the .said V.R.G. Venkataratnam, shall take three Buses of the Company valued at Rs. 61,500 namely (1) M.D.W. 1050 (Eluru to Polavaram Express Service), (2) M.D.W. 1051 (Eluru to Polavaram Express Service), (3) M.S.C. 9448 (Eluru to Allipalli) towards the full discharge of the amounts due to him and the company and the said V.R.G. Venkataratnam shall immediately apply for the transfers of the C and G permits of the buses in his favour and hand over [he buses to him on 1-12-53 with the current fitness certificates,
2. When the buses are so handed over and the transfers are effected the said V.R.G. Venkataratnam will file a memo of full satisfaction for the decree amount in the District Court. West Godavari, in the said O. S. 39 of 53.
3. The Company and V.R.G. Venkataratnam will both apply for transfers in his name on 2-11.-53.
4. The said V.R.G. Venkataratnam should pay a sum of Rs. 6,063-13-3, minus the vakil's tee to the company towards the excess value of the buses when they are handed over to him.
5. A compromise petition shall be filed in the Court with the above terms and a consent decree to be obtained with the above terms.
6. That the amount of Rs. 53,436-2-9, due to the said V.R.G. Venkataratnam shall carry interest at 6 per cent per annum till 1-12-53 from 1-11-53 and if the buses are not handed over to him on 1-12-53 interest at 12 per cent per annum shall be payable from that dale.
7. The buses shall be handed over to the said V.R.G. Venkataratnam even though the transfer is delayed and he shall take delivery of them and run them, and He

company shall do everything and carry on the correspondence till the transfers are effected. And the Managing Director shall sign all necessary papers."

3. Embodying the terms of this agreement, a memo of compromise was filed before the District Court and a decree was passed in terms thereof under Order 23 Rule 3 of the Code of Civil Procedure. It may be mentioned that even before the compromise was incorporated in a decree, the respondent was put in possession of three buses, viz., M.D.W. 1050, M.D.W. 1051 and M.S.C. 9448. In accordance with the terms of the compromise, the respondent paid the company Rs. 6,063-13-3, deducting the amount due to him.

4. A few days thereafter, the company went into liquidation on a petition filed on the Original Side of the High Court being O.P. 442/1953. Subsequently, these liquidation proceedings were transferred to the District Court, West Godavari, and numbered as O.P. 67/1954 and the Official Liquidator of the District was appointed the liquidator. Sometime later, the Liquidator called upon the respondent to show as to how and under what title he came into possession of the buses. The respondent sent his explanation. Thereupon the liquidator thought that the transfer of the buses to the respondent amounted to a fraudulent preference and that consequently, the respondent could not get the buses. Conformably to this view, he required the respondent to deliver the buses to him. When the respondent declined to give effect to this demand, he brought the action giving rise to this appeal.

5. The District Judge dismissed the petition on the ground that the transaction in question did not constitute a fraudulent preference, that the provision of law on which reliance was placed, viz., Section 531 of the Indian Companies Act (1 of 1956) was inapplicable to case as the sale was effected in pursuance of a decree passed by the Court embodying the terms of the compromise, and that in his opinion Section 531 governed only transfers inter vivos. It is this conclusion of the learned Judge that is canvassed before us.

6. The primary question that calls for an answer is whether the sale of the buses to the respondent was fraudulent preference. The further question whether Section 531 of the Indian Companies Act was attracted to this case would arise only if we take the view that it was a fraudulent preference.

7. It is not disputed that if in fact the claim involved in O. S. 39/1053 was a genuine one and the resolution was passed by the Directors to sell the three buses to the respondent for the sum mentioned therein, the transaction cannot be impeached. It is now well recognised and the proposition is not contested that if a debtor prefers one creditor to another on account of pressure that is put upon him, the payment cannot be regarded as fraudulent preference. It is the dominant motive that impels a debtor to make a transfer of some property of his in favour of one of the creditors that decides the issue whether the transfer amounts to fraudulent preference or not. The onus is upon the person who impugns a transaction as being as a fraudulent preference to make it out and not

for the alienee to disprove that it is a fraudulent preference.

8. It is for this reason that the argument WHS advanced that the company did not owe so much as Rs. 57,000 on the date when the suit was instituted. But the learned counsel is unable to tell us as to what amount was due to the respondent. He contents himself with saying that it was a matter for the Liquidator to decide as and when a claim is preferred before him. We cannot assent to this contention for the reason that if the whole of the amount was due and in addition to it the sum of Rs. 6000 and odd was paid for the sale, and if the transfer was the result of pressure arising out of the suit O. S. 39/1953 and the application for attachment before judgment of the buses belonging to the company the transfer cannot be attacked as falling within Section 531 of the Indian Companies Act (1 of 1956), which corresponds to Section 231 of the Indian Companies Act (VII of 1913).

9. The controversy, therefore, is whether the promissory note for Rs. 46,559-3-0 executed by the Managing Director of the Company on 31-10-1951 was not fully supported by consideration.

10. In support of the contention of the learned counsel that these promissory notes were based on fictitious entries in the account books of the respondent, reliance is placed on the sworn statement of the respondent dated 17-12-1949 before the Income Tax Officer, Eluru. The respondent deposed therein inter alia that He credit of Rs. 60,000 as having been lent on a promote on 14-4-1948 and the recital that he lent a sum of Rs.60,000 on 26-1-1948 were not true and that he did not actually lend the sum of Rs. 60,000 to the company and the entries in his account books in this regard were not real. We do not think that the testimony of the respondent in this regard advances the case of the appellant in any way. That evidence does not have any reference to the promissory note on which O. S. No. 39/1953 was founded. It is to be seen that it is in relation to a promissory note dated 26-1-1948 for about Rs. 80,000 that this statement was made. So, this statement cannot have any relation to the suit claim. Admittedly large sums of money were due to the respondent under the promissory notes forming the basis of the suit, whereas according to the statement all the entries were unreal. Moreover, the suit promissory note was in renewal of an earlier one which was executed not on 26-1-1948 but on some other date. Obviously, those entries are unrelated to the claim which was on the foot of a different promissory note. At any rate, there is nothing to connect that statement with the promissory note on which the suit was based.

11. The learned counsel then called our attention to a counter-affidavit filed by the then Managing Director in I. A. No. 758/1953 for attachment before judgment of the buses. It was alleged there that an amount of Rs. 58,000 by way of principal and interest on a promote executed in his favour was not in fact due to the respondent, that the transactions giving rise to this suit were bogus ones entered into in collusion between the respondent and the then Managing Director of the company, Mr. M.J. Papa Saheb, who is a very close friend of the

respondent. The counter does not mention the amount due by the company to the respondent.

12. Reliance was also placed by the learned counsel for the appellant to substantiate his case upon the written statement of the same person on similar line.

13. We do not think that either the counter affidavit or the written statement filed by the Managing Director of the Company can be treated as legal evidence without anything more. Even otherwise, it cannot be ported that they are entitled to much weight.

14. In this context, it is worthy of remark that the liquidator in his order Ex. A. 10 holding that the transaction constituted a fraudulent preference, specifically said that the claimant admittedly was a creditor of the company. Again he has not alleged in the petition giving rise to this appeal that the promissory note, on the foot of which the suit was brought, was not hilly supported by consideration. We may in this context refer to a statement in the judgment that it was admitted that a large amount was due to the respondent. Moreover, the very person, who filed his counter-affidavit and the written statement and who alleged that the promissory note executed by the then Managing Director was not fully supported by consideration and that it was the result of a collusion between the payee and the executant of the document who was a good friend of the respondent, entered into an agreement with the respondent on 1-11-1953 for the sale of these buses. Surely, if that promissory note came into existence in the manner mentioned above, the succeeding Managing Director and the other Directors of the company would not have agreed to sell the buses mainly for discharging the debt sued on. Nor would the share-holder have passed the resolution referred to above. All these are indications that the sum claimed by the respondent in the suit was really due to him, that the charge of collusion between the respondent and the Managing Director at the relevant time was an unfounded one and that in the events that happened the company had no option but to sell the buses to the respondent.

15. It is not out of place to mention here that in the discharge of debts to other persons who are parties in C. M. As. 40 and 41 of 1958, the three buses being No. S. M. D. W. 480, 587 and 509 were sold for Rs. 50,000 and though these sales were challenged by the official liquidator in similar proceedings, he had compromised with the transferees on their agreeing to pay an additional sum of about Rs. 6000. We are mentioning this only to show that in the predicament in which the company found itself at the relevant time, persons in charge of the management thought that it is profitable to discharge the debts by allotting some of the buses to the creditors.

16. Be that as it may, we are not satisfied that I the transaction in question was a fraudulent preference. At any rate, the appellant had not succeeded in discharging the onus that lay on him, viz., that the company did not owe as

much as Rs. 57,000 to the respondent, It is also noteworthy of remark that the challenge to this transaction was not that the money claimed was not due and payable to the respondent, but that it amounted to fraudulent preference. In these circumstances, we are not out to the necessity of deciding whether the sale comes within the purview of Section 531 of the Indian Companies Act (I of 1956).

17. There remains the point that the order of the liquidator dated 25-1-1956 has become final and it is, therefore, not open to the respondent to attack it in collateral proceedings like the present one. This argument is built on Section 183(5) of the Indian Companies Act (VII of (1913) which corresponds to Section 460 of the Companies Act (1 of 1956). It may be mentioned here that this case is governed by the provisions of the Companies Act of 1913 as all the transactions took place before the coming into effect of the 1956 Act. Even otherwise, it makes no difference for the reason that Section 183 is in pari materia with Section 460 of the 1956 Act. That section omitting the unnecessary portions reads as follows;

"183 (1) Subject to the provisions of this Act the official liquidator of a Company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the Committee of inspection.

5. If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances."

18. We have now to turn to Section 179 of the Act of 1913 (analogous to Section 457 of the Act of 1956). That section, in so far as it is of immediate relevancy, recites:

"179. The Official Liquidator shall have power, with the sanction of the Court, to do the following things:

* * * * *

(i) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets."

19. We have not set out the other clauses of that section as it is not the case of the appellant that the order of the Official Liquidator comes within the scope of any of them.

20. Could it be posited that it is within the power of the Official Liquidator to

declare a particular transaction as a fraudulent preference. Prima facie, he does not have that power, as it is the function of the Court under the section. Even otherwise, no reliance could be placed by the appellant on the order of the Official Liquidator, as admittedly, this was not done by him with the sanction of the Court.

21. Assuming such finality could be attached to the order of the official liquidator, we are unconcerned with it as we are only concerned in this enquiry with the correctness of the order of the District Judge refusing to set aside the sales as being of the nature of fraudulent preference and direct the respondent to deliver the buses to the appellant. It is he that invoked the jurisdiction u/s 531 of the Act to have the sale set aside. For these reasons, the order of the liquidator is of no avail to the appellant. We cannot, therefore, give effect to this argument either.

22. It follows that the order under appeal should be confirmed and the appeal dismissed with costs. C. M. A. No. 494 OF 1960. (23) Consequent upon our judgment in C. M. A. No. 39/1958 upholding the right of the appellant in this C. M. A. (494/1960) to these buses, we have to hold that the appellant herein is entitled to withdraw the amount of Rs. 5000 which he offered as security. There is tin opposition to this appeal in view of our decision in C. M. A. 39/1958. Consequently, this appeal is allowed. But there will be no order us to costs.