

(1971) 07 DEL CK 0010

In the Delhi High Court

Case No : C.A. No. 128 of 1970 in C.P. No. 77-D of 1966

Official Liquidator, Victor Chit Fund P. Ltd.

APPELLANT

Vs

Kanhiya Lal and Others

RESPONDENT

Date of Decision : 22-07-1971

Acts Referred:

Citation : (1972) 42 CompCas 396

Hon'ble Judges : Prakash Narain, J

Bench : Single Bench

Advocate : P.T. Gajwani, for the Appellant; B.D. Batra, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Narain, J.—This was an application under Sections 531, 531A, read with Section 468 of the Companies Act, 1956, moved by the official liquidator of M/s. Victor Chit Fund (P.) Ltd., for quashing a decree dated October 8, 1969, passed by the Commercial Sub-Judge, Delhi, in favor of one Kanhiya Lal against V.S. Chellappa and C.L. Devanathan (respondents Nos. 2 and 4 herein) in Suit No. 5502 of 1967 brought by the said Kanhiya Lal against respondents Nos. 2, 3 and 4 herein. In that suit a decree for Rs. 1,600 was passed along with costs amounting to Rs. 340. According to the petitioner in this court, Chellappa became a subscriber of chit No, 24 LTB and 23 LTB for Rs. 1,500 each. In accordance with the chit agreement, Chellappa had to pay a monthly subscription of Rs. 50. On May 22, 1964, and July 29, 1964, Chellappa executed pronotes for the sum of Rs. 1,500 each in favor of Messrs. Victor Chit Fund (Pvt.) Ltd. These pronotes had two sureties, namely, N.K. Narayanan, respondent No. 3, and L.C. Devanathan, respondent No. 4. Chellappa is alleged to have won the aforesaid chit and drew a sum of Rs. 1,800 from the said company in the aggregate in both the chits for which he had agreed to pay Rs. 3,000 to the company by Installments of Rs. 50 per month in respect of each chit. Chellappa paid only Rs. 1,620 leaving a balance of Rs. 1,380. On July 10, 1966, Hazari Lal Aggarwal, respondent No. 5, is alleged to have assigned the two pronotes

executed by Chellappa in favor of the company to Kanhiya Lal, respondent No. 1. The company itself was ordered to be wound up by an order of the High Court dated March 31, 1967. It was alleged that Kanhiya Lal was the son-in-law of Hazari Lal Aggarwal and the assignment of the two pronotes was fraudulent and inasmuch as the assignment was made within six months from the date on which the application for winding up of the company was moved, viz., 9th September, 1966, the transaction of assignment and the consequent decree obtained on the basis of that had to be set aside as fraudulent preference, the execution of the decree had to be stayed and respondent No. 1 is to be directed to return the pronotes to the official liquidator as property of the company in liquidation. I heard Mr. P.T. Gajwani, official liquidator, the petitioner, and the counsel for the respondents and dismissed the petition on May 3, 1971, with a direction that the reasons would be recorded later. I now record those reasons.

2. The case put forward by the official liquidator had been contested by all the respondents. On the pleadings of the parties the following issues had been framed on September 28, 1970 :

1. Whether the assignment of the two pronotes was for consideration, is valid and legal ?
2. Whether ex-parte decree passed against respondents Nos. 2 and 4 for Rs. 1,600 with interest is liable to be set aside on the ground that the same has been obtained by fraud ?
3. Whether the petition is maintainable against respondent No. 3 ?
4. Whether the petition is liable to be dismissed on the ground that it does not set out any particulars of the fraud ?
5. Relief ?

Issue No. 1.: The burden of proving this issue was on Kanhiya Lal, respondent No. 1. Appearing as R 1 W 1 he had deposed that he had deposited approximately Rs. 2,100 or Rs. 2,200 with the company on an interest of 9 per cent per annum. In spite of demand the money in deposit was not returned and in lieu thereof the company proposed to assign some pronotes to him which had been executed in favor of the company. Accordingly two pronotes executed by Chellappa were assigned in his favor for Rs. 690 each. He also deposed that he got it confirmed from Chellappa, that he owed money to the company and so agreed to this assignment. Chellappa is claimed to have made endorsements on these pronotes acknowledging the debt. As Chellappa did not pay the monies due on the pronotes to him, he filed a suit and obtained a decree in his favor. He admitted that Hazari Lal Aggarwal was his father-in-law but did not know whether he was the managing director of the company. According to Kanhiya Lal he used to meet Mr. M.P. Singh Ahluwalia for refund of his deposit and not his father-in-law and the assignment was also made by M.P. Singh Ahluwalia. For the balance of his amount he claimed that he had a pronote executed by one

Subhash Agarwal assigned in his favor and realized the money of that pronote also by filing a suit. In cross-examination of this witness the official liquidator did not challenge that Kanhiya Lal had a deposit in the company or that his deposit was to the extent of the amount deposited by him. Hazari Lal Agarwal was also produced as R1 W2 and he had deposed that the work of the company was being looked after by M.P. Singh Ahluwalia and all assignments of pronotes was also done by him. He further deposed that he resigned his directorship in the company in July, 1966, and moved the petition for winding up of the company. The books of the company produced by M.P. Sharma, AW1, corroborated the transaction in favor of Kanhiya Lal. M.P. Singh Ahluwalia appearing as AW2 deposed that he was the managing director of the company till March 21, 1967, and admitted that he assigned the promotes-in favor of Kanhiya Lal in consideration of the amount due to him from the company. Mr. M.P. Singh Ahluwalia had appeared as a witness for the official liquidator. Chellappa appearing as AW3 also admitted having acknowledged the debt due on these pronotes but denied that he knew Kanhiya Lal. He, however, admitted that Kanhiya Lal obtained a decree against him and realised the amount due under the decree by attachment of his salary. It is worth noting that it was Chellappa who gave information to the official liquidator about the assignments of the pronotes but the information was given after a decree had been passed against him and it is obvious that he moved the official liquidator to have the assignments set aside in order to avoid the decree passed against him.

3. From a discussion of the above evidence it is obvious that the deposit of Kanhiya Lal is not challenged nor is the consideration for the assignment of the pronotes. I, Therefore, decide issue No. 1 in favor of Kanhiya Lal, respondent No. 1.

Issue No. 2 : No allegations of fraud have been made nor any particulars of it given by the petitioner. All that has been alleged is that Kanhiya Lal was a son-in-law of Hazari Lal Agarwal, a director of the company, and thus the assignment of the pronotes in favor of the son-in-law amounts to fraudulent preference. A distinction has to be drawn between fraudulent preference and preference simpliciter. There is no evidence on record that any preference was given to Kanhiya Lal in the matter of assignment of pronotes. M.P. Singh Ahluwalia is the person who assigned the pronotes and there was no connection between him and Kanhiya Lal. That Ahluwalia and Hazari Lal Agarwal were at variance is also established on record. In these circumstances it cannot be said that Ahluwalia showed any undue preference to the son-in-law of the other director with whom he was not on very cordial terms. Section 531 of the Companies Act comes into play only if a fraudulent preference has been shown in any transaction. Section 531A comes into play only if the transaction was not done in good faith and for valuable consideration. Further, such a transaction must be one which is not made in the ordinary course of the company's business. I have already held that the assignment of pronotes in favor of Kanhiya Lal was for valid consideration and the type of business that the company was conducting was such in which

assignment of pronotes would be in the normal course of business. Chellappa seems to be the prime-mover instigating the present petition. The circumstances in which he moved the official liquidator have already been noticed by me. His testimony in court does not inspire confidence. I, Therefore, hold that no fraud was practiced in Kanhiya Lal obtaining a decree against Chellappa and another. The official liquidator's reliance on the decision in *Gorakhpur Electric Supply Co. Ltd. v. Nariman & Co.*, [1917] 17 Com Cas. 07 (All.) is misplaced. Indeed, the Bench of the Allahabad High Court while deciding this case held that there was no provision in the Indian Companies Act that after an application for winding up is made, any payment or realisation becomes automatically void.

4. Similarly, the decision of the Allahabad High Court in *Official Liquidators Electric Supply Co. Ltd. Vs. Siemens (India) Ltd.*, also does not help the petitioner. That was a case in which payment was made to the company after the winding up petition had been filed. It was held that preferring some creditors over the other was no doubt undesirable, but where the business of the company is continued in good faith, either because it is hoped that it may not be necessary eventually to wind up the company or because in the interests of all concerned, it is better that the company should, on being wound up, be transferred as a going concern, it is necessary for the company to enter into various transactions and it would be impossible for it to do so if it was not able to make any transfers. Observation was made by the learned single judge that payment to one creditor in preference to the other was violation of some rule but, respectfully, it must be said that the mere payment to one creditor in preference to the other would not amount to fraudulent preference. I am fortified in coming to this conclusion by a Bench decision of the Andhra Pradesh High Court in *Official Liquidator, Eluru, The Eluru Motor Transport Ltd. Vs. Vankineni Rajagopala Venkataratnam, . P. Chandra Reddy C. J.*, speaking for the court, observed 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 favor 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 impugned a transaction as being a fraudulent preference to make it out and not for the alienee to disprove that it is a fraudulent preference.

5. The principles applicable to insolvency proceedings would be attracted in company proceedings also but, in order to set aside a transaction as a fraudulent preference, fraud must be clearly alleged, proved and established. I do not find anything of the kind in the present case. Issue No. 2 is also accordingly decided against the petitioner.

Issue No. 3. No relief whatsoever has been claimed against M.K. Narayanan, the third respondent. Indeed, though Kanhiya Lal filed a suit against him also, he was given up in the Court of the Commercial Sub-Judge, Delhi. The petition against the third respondent must, Therefore, fail.

Issue No. 4. While discussing issue No. 2, I have already observed that no particulars of fraud have been given in the petition. It is a cardinal principle of pleadings that wherever fraud is pleaded, full particulars must be set out in the pleadings themselves. This principle has statutory recognition in the provisions of Order 6, Rule 4 of the Code of Civil Procedure. As the petition is lacking in material particulars about allegations of fraud and mere general allegations cannot suffice, it has to be held that the petition must fail on the ground that it does not set out any particulars of the alleged fraud.

Issue No. 5 : The result is that the petition is dismissed, but there will be no orders as to costs.