
(1933) 11 PAT CK 0013
In the Patna High Court

Sheopartap Gulzarilal Firm

APPELLANT

Vs

Murlidhar Ganpatram Firm

RESPONDENT

Date of Decision : 16-11-1933

Acts Referred:

Contract Act, 1872 — Section 63

Citation : AIR 1934 Patna 144

Hon'ble Judges : Wort, J;Fazl Ali, J

Bench : Full Bench

Judgement

Wort, J.—This is an appeal from a decision of the learned District Judge on a petition by a creditor under the Provincial Insolvency Act. The learned Judge has decided that there was a fraudulent preference which constituted an act of insolvency. He has come to the conclusion that the petition of the creditor must be disallowed on the ground that the debt of the debtor does not amount to Rs. 500. The case of the creditor was that there was a debt owing to him by the debtor of a sum of Rs. 814. As to Rs. 300 thereof he had accepted a promissory-note signed by one Karam Ali and that the balance of upwards of Rs. 300 remained owing. The learned Judge has come to the conclusion however that the story set up by the debtor is true, namely that for the debt of Rs. 800, the creditor had agreed to accept Rs. 400, Rs. 300 of which were settled by the transfer of this promissory note.

2. At one stage of the hearing before us it was suggested that as there was no consideration for the remission of half the debt the contract would not be enforceable by the debtor and therefore the creditor could treat his debt as standing at Rs. 800, the original amount. This question was not considered in the Court below, and having regard to certain authorities in India a somewhat difficult question arises as to whether consideration is necessary for the remission of a part or whole of the contract u/s 63, Contract Act. This does not seem an appropriate case in which to decide this point having regard to what I have said, namely that it was not considered by the learned Judge in the Court

below and it Was not raised in this Court by the learned Advocates who appeared for the respective parties. The case therefore rests on the question of fact, whether the debtor established the contract between him and his creditor.

3. Incidentally I might mention that the question of whether there was an act of insolvency, which it is alleged by Mr. Mazumdar on behalf of the debtor was not established, has not been, in my judgment, adequately dealt with by the learned Judge in the Court below; and, although he has said that there was a fraudulent preference, he has not come to a conclusion on the question of whether the debtor could pay his creditors or not. The matter therefore rests, as I have said, on the question of fact, whether the agreement between the parties has been proved. The learned Judge has disbelieved the creditor on what appears to me to be an inadequate ground, namely that an entry was made in the creditor's book on a date prior to the actual date of payment.

4. On the other hand the debtor gave oral evidence of the agreement and produced his books which, if believed, would show that not only he had settled with this creditor at 8 annas in the rupee but that he had settled with other creditors also. It was in those circumstances that the learned Judge accepted the story advanced by the debtor. The criticism raised by the learned advocate on behalf of the creditor as to this story is that there was no corroboratory evidence of the agreement and nothing in writing for instance. But that criticism seems to me to be met by the fact that there was no evidence of the kind to which reference is made to that part of the agreement which was admitted by the creditor himself, namely the acceptance of the promissory note of Rs. 300.

5. Now although the case is not, to my mind, entirely satisfactory, still there does not seem to be any substantial reason why the decision of the learned District Judge on the question of fact should be disturbed. In these circumstances therefore the appeal must be dismissed with costs.

Fazl Ali, J.

6. I agree.