

(1890) 10 MAD CK 0020
In the Madras High Court

Subbarayalu

APPELLANT

Vs

Rowlandson and Others

RESPONDENT

Date of Decision : 28-10-1890

Acts Referred:

Stamp Act, 1899 — Section 26

Citation : (1891) ILR (Mad) 133

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

Muttusami Ayyar, J.—This is an appeal from an order made on the 4th August last in Insolvent Case No. 136 of 1884 in regard to the appellant's claim to dividend and the directions given to the Official Assignee on his application. One Shunmuga Mudaly of Conjeeveram, an insolvent debtor at Madras, filed his petition and schedule on 1st September 1884, and in the latter the appellant was entered as creditor No. 3 for Rs. 1,300, and commission due under a bond, dated the 19th March 1883. By this document the insolvent agreed to repay Rs. 1,300 which he borrowed, before the end of 1885, and, in the meantime, to pay commission thereon at 10 per cent, per mensem. There is no dispute as to the appellant's claim to be admitted to dividend on Rs. 1,300, the principal debt, and on Rs. 2,262 commission due at 10 per cent, per mensem up to 1st September 1884, the date on which the insolvent filed his petition and schedule. But the appellant contended in his affidavits, dated 2nd May 1889 and 11th April 1890, that he was entitled to dividend also on the commission which he claimed from date of the filing of the schedule until date of payment. The main question for decision was whether this contention was tenable. He alleged, further, that for the purpose of satisfying his claim in full, (i) that an arrangement made with respondents Nos. 3 and 4, two of the insolvent's debtors, in the nature of a composition, ought to be set aside, and that the Official Assignee should be directed to make further collections from the insolvent's debtors, (ii) that two sums of Rs. 1,200 and Rs. 3,000 ought to be treated in addition to Rs. 12,000 as part of the insolvent's estate, (iii) that the costs allowed to the attorneys of the

Official Assignee in connection with the arrangement made with respondents Nos. 3 and 4 should not be debited to that estate, and (iv) that an inquiry ought to be made as to the extent to which the claims of creditors Nos. 1, 12, 17, 20 and 21 had been satisfied out of Court by the sale of mortgaged property and the residue actually due to them ascertained and admitted to dividend.

2. The Official Assignee resisted the appellant's claim and urged that the bond of 19th March 1883 being engrossed on a stamp of 7 1/2 rupees value, the appellant was not entitled to recover under it more than Rs. 1,500.

3. By the order dated the 4th August last, the learned Chief Justice disallowed the appellant's claim to subsequent commission and directed that dividend be paid to him only on Rs. 1,300 and on Rs. 2,262, commission due to him up to 1st September 1884, and on Rs. 855-9-0, the taxed costs of his motion. As regards the Official Assignee's contention that no more than Rs. 1,500 was recoverable by the appellant, the learned Chief Justice reserved to the former the right to raise the question if the insolvent preferred an appeal from his order. As to the sum of Rs. 1,000 paid to the Official Assignee by Mr. Laing under an order of the Full Bench, dated the 21st January 1890, it was directed that the amount be not distributed until further orders. Hence this appeal.

4. [His Lordship here stated the effect of various orders made in this insolvency which are not necessary to be explained for the purposes of this report, and proceeded as follows]:

5. The first contention in appeal is that the appellant is entitled to dividend, not only on Rs. 3,562, but also on the subsequent commission; but the general rule in bankruptcy is that interest ceases at the date of the bankruptcy, and there shall be no proof for interest subsequent to that date. Lord Justice James refers to the rule as well established in *re Savin* L.R. 7 Ch. App. 760 which was decided in 1872, and held, in that case, that even a secured creditor, who sought to prove his claim for a deficiency was bound to apply the sale-proceeds of his security in payment of principal and interest up to the date of bankruptcy and up to that date only. There is hardly any room for doubt that the same rule is applicable under the Insolvency Act in India, and Section 40 of 11 and 12 Vic, Cap. 21, places the claims which a creditor in insolvency may prove on the same footing with claims provable in bankruptcy. It must be remembered, however, that the rule must be applied subject to the limitation mentioned by Lord Justice Cotton, viz., that there can be no proof in bankruptcy for interest accruing due after the filing of the petition unless the estate is more than sufficient to pay the creditors in full; *ex parte Bath* in *re Phillips* L.R. 22 Ch. D. 450 decided in 1882.

6. The principle on which the general rule rests is stated by Lord Justice James in the case first mentioned in these terms, "the theory in bankruptcy is to stop all things at the date of the bankruptcy and to divide the wreck of the man's property as it stood at that time." Directly the insolvent files his petition and a vesting order is made, he is divested of all his property; and he ceases to be sui

juris for the purpose of satisfying his obligations, and the Insolvent; Court intervenes as a Court of Equity to do equal justice to all his creditors by enforcing an equable distribution of his property in discharge of his obligations as they stood at the date of the petition and the vesting order. I take the general rule then to rest on this foundation, viz., that the contracts of the insolvent stop at the date of the vesting order as a matter of legal right and the Insolvent Court becomes seized of jurisdiction to deal with his property towards their satisfaction through the Official Assignee as a Court of Equity and according to equitable rules of distribution. The exception to the rule mentioned above pre-supposes that there is a surplus left after all the debts as they stood at the date of the petition are satisfied and rests on the basis that when such is the case, a claim for subsequent interest may be permitted to be proved. But it must be remembered, that even in the contingency indicated the Insolvent Court deals with such claim as a Court of Equity; and according to rules of equitable compensation for deferred payment, but not according to the letter of the original contract which it stopped at the date of the vesting order, and placed under its protection as a Court of Equity.

7. How do the facts of this case stand in relation to the foregoing principles? Looking to the rate of commission, viz., 10 per cent, per mensem on Rs. 1,300, it amounts to Rs. 1,560 per annum on a loan of Rs. 1,300. It certainly savours of a gambling transaction, as suggested for the Official Assignee. Looking again to the substance of the transaction, it is clear that the so-called commission is in the nature of interest on the money lent, and the rate was fixed so high, on the appellant's own showing, because the insolvent was expected to realize large profits from the izara of a forest which he was to obtain. It is clear then, that when insolvency supervened, the basis on which the agreement to pay commission rested failed, and its further enforcement would go beyond the original intention of the parties. Moreover, the commission already allowed to the appellant is Rs. 2,262, whereas the amount lent is Rs. 1,300 only. Nor is it shown why the appellant's claim to subsequent commission is entitled to any preference over similar claims to subsequent interest on the part of other creditors; and why it should be admitted to dividend which is to be declared with reference to scheduled debts. The conclusion I come to is that the appellant is not entitled to insist on his claim to subsequent commission either as an incident of the original contract or in the special circumstances of this case, as a matter of equitable compensation for deferred payment.

8. [His Lordship next proceeded to deal with the objections taken to the directions as to what ought to be treated as the estate of the insolvent.]

9. It only remains for me to notice the objection taken by the Official Assignee that the appellant is not entitled to claim more than Rs. 1,500 under the bond of the 19th March 1883. It was argued by his counsel that the document bore a stamp of 7 1/2 rupees value, and that, u/s 26 of the General Stamp Act, no more than Rs. 1,500 are recoverable. That section applies to cases in which the

subject-matter of an instrument chargeable with an ad valorem duty is incapable of valuation at the date of execution; whereas the bond in dispute was for Rs. 1,300 repayable before the end of 1885 with a commission of 10 percent, per mensem. Moreover, Mr. Justice kernal recorded a judgment in 1887 recognizing the appellant's claim as against the Official Assignee to the extent of Rs. 3,562, and at that time the objection nifty urged was not taken. It is too late to take the stamp objection after decree. When these difficulties were pointed out at the hearing, the respondent's counsel did not press the objection.

10. The result is that the order appealed against should be confirmed with the direction that the matter referred to in paragraph 14 of the appellant's affidavit of 2nd May 1889 be inquired into.

11. The appeal having substantially failed, it is dismissed with costs.

Best, J.

12. This is an appeal from the order of the learned Chief Justice, in re Conjevaram Shunmuga Mudaly, an insolvent.

13. The appellant is T. Subbarayalu Chetti, creditor No. 3 in the schedule. The debt claimed by appellant is due under a document, dated 19th March 1883. It is styled an "agreement of commission," and is, when translated, as follows:-"I have this day received from you Rs. 1,300 in ready money; as I have received these Rs. 1,300, and as the commission on the above mentioned sum of Rs. 1,300 amounts to Rs. 130 per month commission being at the rate of Rs. 10 per month per Rs. 100; therefore I bind myself to pay without fail this monthly commission of Rs. 130 month by month commencing from this day till the year 1885 next, either to you, or to those who may obtain your order. I shall pay the above mentioned sum of Rs. 1,300 at the end of the year 1885 and receive back this document."

14. The debt was proved to the satisfaction of Mr. Justice kernal on the 14th February 1888, when he directed "that Rs. 1,300, principal and commission at 10 per cent, per month up to the filing of the petition be admitted to dividend by the Official Assignee out of the estate in the hands of the insolvent;" the question "whether the claimant may be entitled to further payment of commission after the date of the petition in insolvency" being left undecided on the ground that the funds then in the hands of the Official Assignee were not sufficient to discharge the additional claim, and it being "not yet ascertained whether the Official Assignee shall receive further estate of the insolvent."

15. On appeal the above order was confirmed, because "the objections against the principal sum allowed to creditor No. 3 were not pressed, and it is shown that the interest is not barred," (see judgment in Appeal Suit No. 10 of 1888).

16. The order against which the present appeal is preferred was one passed on the motion of the Official Assignee for directions of the Court as to the declaration of the dividend and as to the claim of Subbarayalu Chetti (now

appellant) and as to the disposal of the balance that should remain after distribution of the dividend. The order is that appellant should be paid Rs. 3,562 (being Rs. 1,300 plus Rs. 2,262 as interest to 1st September 1884--date of filing the petition) and a further sum of Rs. 855-9-0 as costs; it is added "that no further interest or commission be allowed;" and there is a further order "that the sum of Rs. 1,000 one thousand, paid to the said Official Assignee by Mr. Laing under an order of the Full Bench bearing date the 21st January 1890 be not distributed as dividends by the said Official Assignee pending the further orders of this Court."

17. The first point taken in this appeal is that appellant is entitled to "further commission from 2nd September 1884, and further interest on the aggregate amount up to date of payment in addition to the said sum of Rs. 3,562, and costs, viz., Rs. 855-9-0." Reference is made to the circumstance (already noticed) that the decree of kernan, J., reserved this question of further commission in consequence of the assets then in the hands of the Official Assignee not being sufficient for the payment of such further commission, whereas a further sum of Rs. 6,000 has since been added to the assets.

18. On the other hand, it has been urged on behalf of the Official Assignee that as the document under which the appellant claims is executed on a stamp of the value of Rs. 7 1/2 the maximum claimable under it is Rs. 1,500, u/s 26 of the Stamp Act.

19. It will be convenient to consider, in the first place, this objection taken on behalf of the Official Assignee. The document in question has been set out above. Though it is styled an agreement of commission, it is in fact a bond for repayment of Rs. 1,300, with interest thereon at the rate of 10 per cent, per mensem. In calculating the stamp required for a bond, it is the principal amount alone that is taken into consideration, and the stamp of the value of Rs. 7 1/2 used in this case is more than sufficient to cover a, debt of Rs. 1,300. Section 26 of the Stamp Act is not applicable, in my opinion. Moreover, even were it otherwise, it would now be too late to raise the question, as the order of kernan, j., fixing the amount due to appellant at Rs. 3,562 was upheld in Appeal No. 10 of 1888.

20. The next question is as to the validity of the appellant's claim to commission or interest subsequent to the date of filing the insolvency petition. The "proper practice" is that a creditor in an insolvent estate, whose debt bears interest "is not entitled to interest up to the day of payment, but only to the date of the judgment for administration;" see judgment of jessel, M.R. in re Summers, Boswell v. Gurney L.R. 13 Ch. D. 136. The rule, as stated by James, L.J., in re Savin L.R. 7 Ch. App. 760 is that there is to be no proof for interest subsequent to the bankruptcy. With reference to the judgments of Jessel, M.R., and Cotton, L.J., in ex parte Bath, in re Phillips L.R. 22 Ch. D. 450, it is to be observed that the words "unless there is a surplus," used by the former, and the words, "unless the estate is more than sufficient to pay the creditors in full," found in the

judgment of the latter, are mere obiter dicta, for it is seen that in that case there was no surplus, and consequently proof in respect of interest accruing due after the filing of the petition was held to be inadmissible. Moreover, as observed by jessel, M.R., in that same case, the Court of Bankruptcy is a Court of Equity and has regard to the substance of the transaction; and it is clear that there will be nothing inequitable in disallowing the appellant's claim for further interest. The agreement on which he rests his claim was entered into on the understanding that the insolvent was to obtain a lease for supplying timber to the railway, and the high rate of commission agreed to was intended to give to the appellant a share of the large profits contemplated as obtainable from the proposed business in timber. But these profits do not appear to have been realized by the insolvent, and the appellant has already been allowed a sum of Rs. 2,262 as interest for less than 18 months on the original debt of Rs. 1,300. I am of opinion that his claim to further commission should be disallowed.

21. [After dealing with the other points raised in this appeal, His Lordship concurred in dismissing the appeal with costs.]