

(2001) 12 PAT CK 0024

In the Patna High Court

Case No : Appeal from Original Order No"s. 269 and 272 of 1994

Suresh Prasad and Others

APPELLANT

Vs

Ram Jee Prasad and Another

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Provincial Insolvency Act, 1920 — Section 28, 52, 56

Citation : (2002) 1 BLJR 9

Hon'ble Judges : Ashok Kumar Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Kumar Verma, J.—Both these Misc. Appeals arise out of the same order dated 26-5-1994, passed by the Additional District Judge II, Bettiah in Insolvency Case No. 2 of 1970 where by the learned Additional District Judge had dismissed the petitions of the appellants for clarification of the order dated 12-3-1992 in respect of the land in the case and to release the properties from the insolvency case. Therefore, both these appeals are disposed of by this common judgment.

2. The appellants Chhedi Lal Sikaria and Govind Kumar @ Govind Kumar Sikaria of Misc. Appeal No. 272 of 1994 had filed petition praying therein to clarify the order dated 12-3-1992 in respect of the land in the case and to direct the Receiver not to interfere with the title and possession of the petitioners over the land. According to them, on 12-3-1992, the Receiver was directed to realise the property of the insolvent and the holding in which the Receiver had put his lock had been locked by the tenant of the petitioner and it is the duty of the Receiver to realise the property of the insolvent debtor for which he was to make inquiry that the property belonged to the insolvent judgment debtor. The two holdings one bearing No. 362 situated in Ujjain Tola Bettiah and another holding bearing No. 29 situated in Mohalla Lal Bazar belonged to these petitioners as petitioner Chhedi Lal Sikaria along with seven others had purchased the property in Court

in auction sale in the year 1966. The Receiver did not make any inquiry and it is necessary that the operation of the order dated 12-3-1992 should be recalled in respect of who two holdings.

3. According to the order dated 12-3-1992, passed by the learned Additional District Judge, on 2-7-1990 the Receiver Sri Mohan Prasad, Advocate was directed to take steps to divide the property amongst the creditors and the Receiver had to take steps to realise movable and immovable properties. The order dated 2-7-1990 shows that by the order dated 8-1-1987 of the learned Additional District Judge, Sri Mohan Prasad, Advocate had been appointed Receiver and he was directed to take steps to divide the property amongst the creditors in accordance with law and for that objective he had to take steps for realisation of the movable and immovable properties and from such realised property remuneration had also to be paid. By the order dated 8-1-1987, the learned Additional District Judge had appointed Sri Mohan Prasad, Advocate as Receiver.

4. It is clear from the above facts that the appellants had filed the petitions which had been dismissed by the impugned order for directing the Receiver not to do the act which he had to do in compliance of the orders dated 2-7-1990 and 12-3-1992 passed by the learned Additional District Judge. Admittedly, the Receiver was appointed by the order dated 8-1-1987 and the learned Additional District Judge by his order dated 2-7-1990 had directed him to take steps to divide the property amongst the creditors in accordance with law and for that objective to take all steps for realisation of the movable and immovable properties.

5. A rejoinder had been filed to the petition filed by Chhedi Lal Sikaria and others by the petitioner Ram Jee Prasad of the insolvency case. According to it, the order dated 12-3-1992 by itself is not a new order and it is only a clarification and the order dated 2-7-1990 has become final and binding on the parties as it had not been challenged by any appropriate proceedings. In garb of clarification, Chhedi Lal Sikaria and others had sought adjudication of the facts that their properties which they had purchased in auction sale on the basis of money decree against the insolvent after presentation of the insolvency petition should be excluded from the properties of the insolvent which cannot be done in view of Section 28(7) of the Insolvency Act, which says that the adjudication will relate back to the date of filing of the insolvency petition.

6. It is relevant to mention here Section 28(7) of the Insolvency Act which is "An Order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made." The Insolvency Case No. 2 of 1966/12 of 1976 which had been filed on 18-1-1966 was admitted on 10-2-1966.

7. Suresh Prasad and Dilip Kumar the appellants of Misc. Appeal No. 269 of 1994 had filed petition praying therein to release the priorities from the insolvency case. According to them, Late Brijesh Lal Sikaria of Mohalla Lal Bazar, Bettiah

had filed Money Suit No. 2 of 1963 against the applicant which had been decreed with costs and after the decree, the decree-holder had filed Execution Case, No. 334 of 1965 for recovery of decial amount with costs. In the Execution Case, the properties mentioned in the petition were sold and auctioned on 9-2-1967 to Baleshwar Singh and possession over the land was delivered to him. The said Baleshwar Singh sold the land by two registered sale-deeds dated 20-9-1986 to these appellants of M.A. No. 269 of 1994 for a consideration of Rs. 30,000/- and had delivered the possession to them. After purchase, these petitioners (appellants) had constructed a pacca godown over the land purchased in the same of Suresh Prasad and a residential house over the land purchased in the name of Dilip Kumar and they are living in the said house with their family and they are using the godown for storing the articles of their business. Further according to them processes of the insolvency case were kept secret and it were not served on others by bringing the peon in collusion by the applicant,

8. An objection had been filed on behalf of Ramjee Prasad insolvent and applicant of insolvency case to the petition filed by Suresh Prasad and others. According to the objection, the appellants are not entitled to claim exclusion of the properties in view of the decision against their precedorsor-in-interest. No title has passed on the basis of the alleged sale deed and the alleged sale is a farzi transaction. Baleshwar Prasad Singh and the appellants are men of Brijesh Lal Sikaria. In the insolvency petition the properties had been valued at Rs. 9,000/- and it is incorrect that Baleshwar Singh was bona fide purchaser for a price of Rs. 7,000/- at Court auction sale. The auction sale was collusive and fraudulent to usurp the properties the insolvent. All the creditors were duly served with notice of the proceedings and the executing Court was also duly informed and Brijesh Lal Sikaria had appeared in to insolvency case on 24-3-1966 much before the alleged sale and had filed rejoinder to the petition of insolvent to stay the sale and had contested it. The alleged auction sale is subsequent to the institution of the insolvency case.

9. Admittedly, the Insolvency Case No. 2 of 1966/12 of 1976 had been admitted on 10-2-1966. It appears from the record that in the said insolvency case on 24-3- 1966 vakalatnama had been filed on behalf of decree-holder Brijesh Lal. This clearly shows that knowledge of the insolvency case on 24-3-1966 itself. The appellants Suresh Prasad and Dilip Kumar have specifically stated in their petition that in the execution case, the properties mentioned in the petition were sold in auction on 9-2-1967 to Baleshwar Sinph. Therefore, admittedly, the properties were auction, sold after the admission of the insolvency case which was admitted on 10-2-1966. The insolvency case had been filed on 18-1-1966. According to Section 56(1) of the Provincial Insolvency Act." The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a Receiver for the property of the insolvent, and such property shall thereupon vest in such Receiver.

10. The learned Additional District Judge has mentioned in the impugned order

that the Court executing the decree had the notice of the pendency of the insolvency proceeding in a competent Court before the date on which the property was sold in execution. According to Section 52 of the Provincial Insolvency Act. Where execution of a decree has issued against any property of a debtor which is salable in execution and before the sale thereof notice is given to the Court executing the decree that an insolvency petition by or against the debtor has been admitted, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the Receiver, but the costs of the suit in which the decree was made and of the execution shall be a first charge on the property so delivered, and the Receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge. According to certified copy of Ext. II of Execution Case No. 334 of 1965 which is order-sheets of different dates of Execution Case No. 334 of 1965 (Babu Brijesh Lal and Ors. Decree-holder v. Ram Jee Prasad Judgment debtor), on 16-7-1966 a petition had been filed by the judgment, debtor that he had filed insolvency case and so he may be granted time to bring stay order. This clearly shows that the executing the Court had knowledge of the insolvency case. Admittedly, the property was auction sold on 9-2-1967 to Baleshwar Singh.

11. It was submitted by the learned lawyer for the appellants that the judgment debtor Ram Jee Prasad had filed a petition for stay of execution case which had been rejected. In the facts and circumstances, it is of no help to the Appellants. It was also submitted by the learned lawyer for the Appellant that the appellants had no knowledge of the insolvency case before 1992. In view of the above facts and circumstances, the contention of the learned lawyer for the appellants is not tenable.

12. In the facts and circumstances, there is no merit in these two Miscellaneous Appeals. Both these appeals are accordingly dismissed.