(1930) 09 BOM CK 0021

In the Bombay High Court

Case No : O.C.J. Appeal No. 20 of 1930 and Suit No. 2119 of 1928

The Official Assignee of Bombay APPELLANT

Vs

K.R.P. Shroff and Others RESPONDENT

Date of Decision : 30-09-1930

Acts Referred:

Citation : (1931) ILR (Bom) 623

Hon'ble Judges : J.W.F. Beaumont, C.J;Blackwell, J

Bench : Division Bench

Advocate : Jamshed Kanga, General and Dinshah Multa, for the Appellant; Coltman and M.C. Setalvad, for the Respondent

Final Decision : Dismissed

Judgement

Beaumont, C.J.—This is an appeal from a judgment of Mr. Justice Norman Kemp which raises a curious point as to whether a card of membership of the Bombay Native Share and Stock Brokers'' Association can be sold for the benefit of the creditors of a member on his becoming bankrupt.

2. The Plaintiff is the assignee in insolvency of one Virji Madhavji, and the Defendants are the directors of the Bombay Native Share and Stockbrokers'' Association. The insolvent was a member of the association, and held a card of membership for which he paid a subscription of Rs. 5 a year. He had been a member since 1910, although the card was only issued in the year 1917. On June 23, 1925, the insolvent was declared a defaulter by the association as he was unable to pay the debts he owed to the members of the association, and the card was forfeited by the Defendants.

3. On July 2, 1925, the insolvent was adjudicated an insolvent on an act of bankruptcy, which, we are told, was dated somewhere in June 1925, before the date when he was declared a defaulter, and, of course, the adjudication relates back to the act of bankruptcy.

4. Now, it is stated that these membership cards of the Native Stock Exchange

are of considerable value, that they can be sold, it is said, for as much as Rs. 15,000 a card. I suppose that as the card entitles the holder to go into the Stock Exchange and carry on business there, it is anticipated that it will enable him to earn large profits, though, it appears in this case, the particular gentleman did not derive any benefit from the card, since his activities on the Exchange resulted in his insolvency.

5. I do not think anything turns on the deed of association of the Native Stock Exchange. The question, I think, is governed by the rules, and that question really is whether this card of membership confers upon the insolvent any right of property which can be sold for the benefit of his creditors, or which can vest in his trustee in bankruptcy, the Official Assignee.

6. Now, the rules are by no means well drafted. They provide, amongst other things, that on the death of a member his card shall pass to his son, and if he has no issue, the card shall be sold to the person whom the widow or the executor directs, subject to certain rights given to the board of directors as to the determination of the purchaser, so that on the decease of the member his card is to some extent heritable.

7. Then Rule 18 provides:

If any of the brokers goes away from the market without paying the monies claimable by another certified broker or is unable to pay (the same), his card shall be sold and the sale proceeds thereof shall be distributed amongst his creditors.

8. Reliance is naturally placed by the Advocate General, on behalf of the Official Assignee, on that rule. But although the card can be sold it is clear under that rule that the insolvent himself cannot effect a sale or get the benefit. I think it is really a provision to the effect that though the insolvent cannot himself sell his card, it may be sold by the directors in the event of his making a default and the proceeds distributed amongst his creditors.

Rules 56, 57 and 62 deal with the case of a member making default Rule 56 provides:

If the Directors deprive any member of his rights for his having failed as a member broker of the Association to pay the amount due to any other member broker of the Association in respect of share and stock business then after such a thing is notified and after his name is published by order of the Directors as that of a defaulter that broker shall cease to derive any benefit as a member of the Association and the amount paid by him as entrance fee to the Association shall be forfeited.

9. That clause, taken by itself, seems to provide that if a member makes default in meeting his obligations to the other members his membership ceases.

Then, Rule 57 gives the directors a special power to sell:

In accordance with the practice of the Association current at the time the right appertaining to the vacancy thus created and to distribute in such manner as the Directors may deem proper the amount which may be realised from the Purchaser of the right of the member who may have been declared a defaulter as stated above, among such members of the Association who may be declared to be the creditors of that defaulter and the defaulting member shall have no right to challenge this power possessed by them.

10. Then, Rule 62 provides:

On account of his having become a defaulter his card shall be cancelled in accordance with the rules of the Association. If he fails to pay in full his creditors within a period of six months then his card shall be sold and the amount realised on the sale thereof shall be distributed among his creditors in proportion (to their claims) and if on such distribution being made any balance remains over then the same shall remain credited to the account of the fund in respect of the Hall.

11. It is not easy to say what these rules exactly, mean. I think that under Rule 62, when there is default, the card is forfeited and the directors have to sell it after six months and divide the proceeds amongst the creditors--which I think means general creditors of the defaulter any balance remaining is to be credited in resp (Sic) hall of the association. Rule 57 gives a special (Sic) the directors if they do not desire to exercise (Sic) power, under Rule 62, to sell the right of (Sic) lting member and divide the proceeds amongst the (Sic) of the association who are creditors of the default (Sic)

12. Then there another rules passed subsequently under which a member (Sic) borrow moneys on the security of the card from (Sic) association, and under which if a member has continsed to be a member for a period of not less than twenty-five years he may sell his rights on certain terms. But this insolvent has not been a member for twenty-five years, so that there is no rule whatever which entitles the insolvent in this case to sell his rights. I think what it really comes to is this. The member has got by right of membership of this association, the privilege of going to the Exchange and keeping his seat there and dealing on the Stock Exchange, and that is a privilege which most people believe to be valuable. But there is no power in the member to sell that right. If he makes default the directors of the association can cancel his membership, and they can then sell, what is really the right of nomination to the vacant seat, and they must deal with the proceeds under the rules, but the defaulting member takes no interest in such proceeds. The fund produced by the sale is one in which the defaulter never had any interest, and it seems to me impossible to say that the rules confer on the member any right of property which can vest in the Official Assignee, or confer on the Official Assignee any right to recover money from the directors.

13. The learned Advocate General referred us to a good many cases, which I do not think really apply, because they all turn on the initial proposition that there is property in which the bankrupt is interested. It is of course quite clear that a

man is not entitled to enter into a partnership transaction on terms that, his share in the business is to vest on bankruptcy in the other partners, so as to deprive his creditors of the benefit of that share. But this case has the special feature that there never was any property, as far as I can see, in the bankrupt. Therefore, I do not think those cases have any bearing on the matter.

14. In my judgment, therefore, the appeal must be dismissed with costs.

15. There are no cross-objections.

Blackwell, J.

16. I agree. I desire only to refer to Article 12 of the articles of association, which, in my opinion, has an important bearing on the question we have to determine. That article defines the right of members and their sons. It provides:

That the rights and privileges of a member during his lifetime shall be enjoyed by his sons without any payment of entrance fee or the annual subscription but otherwise shall be personal and incapable of transfer by the act of such member or by operation of law.

17. By Article 26 power is given to general meetings of the association to alter any rules that may have already been made and thereby to alter the effect of any clauses of the articles of association. None of the rules, to which we have been referred, in my opinion, in any way, alters the express provision of Article 12 that the rights and privileges shall be incapable of transfer by the act of the member. That, in itself, appears to me to indicate that every member on joining this association agrees that he shall have no power whatsoever to dispose of such rights and privileges of membership as are conferred upon him.

18. It seems to me clear, therefore, that this insolvent could never have disposed of his card prior to his insolvency, and accordingly that the Official Assignee can have no better rights in regard to it than he himself had.

19. I agree entirely with all that has been said by the learned Chief Justice on the construction of the rules, and that this appeal should be dismissed.

