
(1955) 03 MAD CK 0041
In the Madras High Court
Case No : O.S.A. No. 25 of 1954

V.V. Iyer Proprietor of Ensign Engineering Corporation, Madras	APPELLANT
Vs	
The Official Assignee of Madras	RESPONDENT

Date of Decision : 11-03-1955

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 56

Citation : (1955) 03 MAD CK 0041

Hon'ble Judges : Rajamannar, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : N. Panchapakesa Ayyar, for the Appellant; V. Thyagarajan and M. Chockalingam, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This is an appeal against the judgment of Ramaswami Goundar J. allowing an application taken out by the Official Assignee in I. P. No. 39 of 1951 to declare the payment of Rs. 9600 by the insolvent, M.S. Subramaniam, to the appellant as void against the Official Assignee under S. 56 of the Presidency Towns Insolvency Act and to direct him to pay that amount to the Official Assignee. The insolvent and his brother, since deceased, one M. S. Venkataraman, were carrying on business under the name and style of Well was man and Co., in Madras. On a creditor's petition dated 30th April 1951, M. S. Subramaniam was adjudged insolvent on 30th July 1951. It is common ground that the insolvent paid to the appellant in all a sum of Rs. 9,600, the payments which went to make this sum being made on three days, 26th February 1951, 2nd March 1951 and 3rd April 1951. The only question is whether the payment of these sums amounted to fraudulent preference. The learned Judge was inclined to hold that there was no genuine liability of the insolvent to the appellant. But even assuming that there was liability, the payments were in fraudulent preference. The learned Judge therefore directed the appellant to pay to the Official Assignee the said sum of Rs. 9600 with interest at six per cent per

annum from the date of the order. Learned Counsel for the appellant at the outset contended that having regard to the pleadings it was not permissible to the learned Judge to go into the question whether any amount was actually due by the insolvent to the appellant. We agree with him that on this application purporting to be under S. 56 of the Presidency Towns Insolvency Act the Court is not called upon to ascertain whether the alleged payment was made to one who was not really a creditor. If that be the case of the Official Assignee and the Official Assignee wants to claim relief on behalf of the creditors on that basis, he may have his remedy by recourse to other proceedings, but an application under S. 56 of the Act is not the proper remedy. We shall, therefore, for the purpose of this appeal, assume that the appellant was a creditor of the insolvent, and that the amounts paid to the appellant were paid towards the liability of the insolvent to him.

2. The only question then is whether these payments amount to a fraudulent preference. Whether particular payment to a particular creditor in preference to other creditors amounts to fraudulent preference or not is essentially a question of fact. No. single circumstance by itself will generally be conclusive on the question.

3. It is the cumulative effect of several Circumstances that will determine this question. In the present case, we start with the admitted fact that the insolvent's schedule disclosed creditors to whom a total amount of above Rs. 38000 was due. We have also the fact that the only assets available for unsecured creditors would not exceed Rs. 400 There is the further fact that excepting the appellant no other creditor was paid any amount by the debtor at or about the time. The appellant 13 related to the insolvent. Comment was made on the degree of relationship, and it was for. tended by learned Counsel for the appellant that they were far too distantly related to justify any adverse inference being drawn from the relationship. The fact remains, however, that the appellant was a relation of the insolvent whereas other creditors presumably were not. This circumstance is not entirely without significance.

4. Something was said about the onus of proof. But in a case like this where evidence has been adduced both by the Official Assignee and by the appellant, all that the Court has to do is to draw an inference from the several facts and circumstances emerging from the evidence. This is not one of those cases where the finding would entirely depend upon the onus of proof.

5. The evidence does not disclose any compelling reason why the insolvent should have preferred the appellant to other creditors. The absence of such a competing reason itself would be proof of a fraudulent preference. The insolvent, examined by the Official Assignee, stated that the reason why he made these payments was because the appellant had demanded payment by registered letters and he thought that he should pay at once to save his reputation. This is obviously a wrong statement, for it is not pretended that the appellant sent any registered letters to the insolvent demanding payment. The appellant stated that

he had demanded payment by three letters written by him from Bombay dated 20th February 1951, 25th February 1951 and 26th March 1951- The learned Judge was not inclined to believe this assertion of the appellant. If the insolvent and the appellant were sailing together, there would be no difficulty in manufacturing any number of letters like this. The fact that these letters were addressed by the appellant to the insolvent might have been proved by entries in the appellant's dispatch registers, but they were not filed. There is no other independent evidence that these letters were actually addressed by the appellant to the insolvent. At the hearing before the learned Judge, it was also sought to be made out that the insolvent made these payments in the hope of obtaining further amounts of credit from the appellant. In our opinion this is in the nature of an afterthought, and there is nothing in the evidence to show that the appellant was ready and willing to advance further amounts.

6. One of the payments made by the insolvent to the appellant was on 2nd March 1951. The amount paid was Rs. 4000. There is evidence which we accept, which conclusively proves that on 2nd March 1951 an identical sum of Rs. 4000 was paid by P. W. 1, Krishnan to the insolvent, towards the price of three Petter engines. Ex. P. 2 is the receipt passed by the insolvent for the said amount. It is obvious that it was this amount of Rs. 4000 which was paid over by the insolvent to the appellant. Taking the above and the other material circumstances into consideration, we have no hesitation in accepting the finding of the learned Judge that the payments, assuming they were made towards a genuine liability of the insolvent were in the nature of a fraudulent preference falling within S. 56 of the Presidency Towns Insolvency Act. The appeal is dismissed with costs.