

Molhar Singh Vs. Raghunath

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Court : Allahabad

Decided On : Feb-21-1972

Reported in : AIR1972All483

Judge : Satish Chandra and ;Gopi Nath, JJ.

Acts : [Provincial Insolvency Act, 1920](#) - Sections 17; Code of Civil Procedure (CPC) - Order 22; [Succession Act, 1925](#) - Sections 306(1)

Appeal No. : F.A.F.O. No. 282 of 1970

Appellant : Molhar Singh

Respondent : Raghunath

Advocate for Pet/Ap. : B.D. Tripathi, Adv.

Judgement :

Satish Chandra, J.

1. A learned single Judge of this Court has referred the following question of law for the opinion of the Division Bench:

'On a correct interpretation of Section 17 of the [Provincial Insolvency Act, 1920](#) where a debtor dies before he has been adjudicated insolvent, can the proceedings of insolvency on an application of the creditor under Section 9 of the

said Act continue on substitution of the heirs and legal representatives of the deceased debtor and the latter be adjudged insolvent?'

2. Raghunath the respondent made an application under the Provincial Insolvency Act for the adjudication of Sagar as an insolvent. He alleged that a debt of more than Rs. 500 was due to him and that Sagar had committed several acts of insolvency. During the pendency of the proceedings Sagar died and his name was deleted from the array of the parties and his son Molhar Singh was substituted. He opposed the petition. He denied the debt and alleged that his father's thumb mark had been obtained on a blank paper. Various other pleas were also taken.

3. The learned Judge repelled the various pleas raised in defence and allowed the application and adjudged Sagar as an insolvent. He directed that the estate of the insolvent shall vest in the Official Receiver and that an application for discharge may be moved within a year.

4. Aggrieved against the order Molhar Singh came to this Court in appeal. At the hearing of the appeal the learned Judge felt doubtful whether the proceedings were maintainable after the death of Sagar. He felt that if the debtor dies before adjudication the proceedings abate because the question of adjudication of a person as an insolvent was a matter personal to him and the right to sue did not survive the death of the debtor. The learned Judge felt doubtful about the applicability of the Division Bench decision of this Court in *Piarey Lal v. Salamat Ullah* : AIR1937 All435 and the correctness of the decision in *Ramathai Anni v. K. Kanni-appa Mudaliar* AIR 1928 Mad 480. He formulated the question of law mentioned above and referred it for decision by a Division Bench.

5. With respect, the question has not been properly formulated. The real point for decision is whether the insolvency proceedings abate on the death of a debtor before his adjudication as an insolvent. If they abate, no question of substitution of his heirs would arise and hence there will be no question in the present case of the heirs, and legal representatives being adjudged insolvent. If there is no abatement, the adjudication of the heir as an insolvent is not in issue because the Court below has adjudicated the deceased alone, and no party in appeal wants the heir to be so adjudged. In our opinion the question of law that arises in this case is:

'Whether insolvency proceedings abate on the death of the debtor prior to his adjudication as an insolvent.'

The aim and purpose of the [Provincial Insolvency Act, 1920](#) like other similar Bankruptcy Laws, is to realise the assets of the debtor and distribute them amongst his creditors. The aim is to afford protection to the debtor and to provide a general benefit to the creditors. After the institution of an insolvency petition proceedings in all other courts are liable to be stayed by virtue of Section 29. After the commencement of the insolvency proceedings the debtor, if under arrest is liable to be released and cannot be arrested in pursuance of any proceedings elsewhere.

6. Section 7 provides for the presentation of an insolvency petition either by a creditor or by a debtor. Section 9 lays down the conditions on which the creditor may present the petition and Section 10 provides the conditions on which the debtor may apply. Section 13 deals with the contents of the petition. Under Section 14 a petition cannot be withdrawn without the leave of the Court. Section 16 provides :--

'Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor.'

This shows that insolvency proceedings are not personal to the petitioning creditor. Even if after institution he takes no interest the court has the power to bring any other creditor on record in place of the petitioning creditor. Section 17 lays down:

'If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued so far as may be necessary for the realisation and distribution of the property of the debtor.'

This provision vests a discretion in the Court to direct the continuation of the proceedings in spite of the death of the debtor. The placing of the section at the

beginning of the act indicates an intention that it was to apply generally at all stages even at the very initial stage of the insolvency proceedings, namely, at the presentation of the petition. Subsequent sections provide the procedure that the Court will follow after institution of the petition. Section 18 says that the procedure laid down in the Code of Civil Procedure, 1908, with respect to the admission of the petitions, shall, so far as it is applicable, be followed in the case of insolvency petition. Thus, the Court has power to reject an insolvency petition on grounds enumerated in the Code of Civil Procedure. Section 19 provides that where an insolvency petition is admitted, the Court shall make an order fixing a date for hearing the petition. Section 24 laid down the procedure at the hearing. Section 27 provides that if the Court does not dismiss the petition, it shall make an order of adjudication, and shall specify in such order the period within which the debtor shall apply for his discharge. The effect of making such an order of adjudication is that under Section 28 the property of the insolvent shall vest in the Court or in a receiver appointed by it. The subsequent provisions of the Act provide for the administration of the estate by the receiver.

7. Section 17 of the Act comes into operation immediately on the presentation of the petition. It applies to the 'proceedings in the matter'. This phrase is a general one and embraces all kinds of proceedings. It would also include proceedings for the adjudication of the debtor as an insolvent. This again points to an intention that proceedings prior to the adjudication as an insolvent were also contemplated to be within the purview of Section 17 and even for such proceedings the Court could make an order that they may not continue. This section provides for the continuance of the proceedings 'so far as may be necessary for the realisation and distribution of the property of the debtor'. This is the object for which the proceedings have to be continued. For realisation and distribution of the property of the debtor a vesting order is necessary. Without such an order a receiver cannot sell the properties or realise and distribute them. For making a vesting order the existence of an order of adjudication is a condition precedent. It will thus be seen that Section 17 visualises the passing of an order of adjudication even after the death of the debtor in order to effect realisation and distribution of the property of the debtor.

8. The language of Section 17 suggests that the existence of an order of adjudication is immaterial to its operation. Under it the proceedings shall continue in spite of the death of the debtor. A discretion has been given to the Insolvency Court to order otherwise. If the intention was that the proceedings will continue only if an adjudication order has been passed prior to the debtor's death, a suitable restrictive clause would have been enacted.

9. In view of Section 5 of the Provincial Insolvency Act the procedure given in the Code of Civil Procedure applies to insolvency proceedings. When a party dies his heirs and legal representatives can be substituted under Order 22 of the Code of Civil Procedure. Now, if the right to sue does not survive the proceedings abate. The question whether the right to sue survives or not is answered by Section 17 of the Act and in view of this provision it cannot be said that on the death of the debtor the right to sue does not survive.

10. Section 306(I) Succession Act gives an indication what causes of actions do or do not survive the deceased. Under it all demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injury not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.

11. Insolvency proceedings are special proceedings within the meaning of its provision. Right to defend them survives the death of the debtor. The principle underlying this section is applicable to a debtor dying intestate. The maxim *actio personalis moritur cum persona* stands statutorily modified in this country. In our opinion this maxim has no application to insolvency proceedings seeking adjudication as an insolvent of a debtor, because the cause of action therefor is the commission of an act of insolvency and its effect on the property and estate of the debtor. It is not solely personal to the man.

12. In several decisions, namely, *Narain Singh v. Gurbakhsh Singh*, AIR 1928 Lah 119 (1); *Attar Chand v. Mian Mohd. Mobin*, AIR 1932 Lah 121 (1) and *Asa Nand v.*

Kishan Singh, AIR 1933 Lah 997 it has been held by the Lahore High Court that the matter of adjudication of a person as an insolvent was purely personal to the insolvent and that the right to sue does not survive on the death of the debtor. The matter was not discussed fully and no reasons have been mentioned in these decisions. A bench of our Court in 1937 All 435 expressed its disagreement from these Lahore cases. It was observed:

'It seems to us that it is not correct to say that the question of adjudication is a purely personal matter which had no connexion with the property of the deceased. When a creditor applies for the adjudication of his debtor, his principal aim is to realize his debts out of the assets of the deceased, which is not a matter concerning the person of the insolvent only. Similarly where a debtor applies to be adjudicated insolvent he intends to have his estate administered and debts paid up and the surplus if any restored to him and himself discharged--from all further liability. Even in such a case it cannot be said that the matter is a purely personal one of the insolvent. The general rule of the common law of Tort, *actio personalis moritur cum persona*, namely, that the personal action dies with the person, and in such a case death puts an end to the right of action, has not been applied and cannot be applied to bankruptcy proceeding. A creditor may be seriously prejudiced if it were to be held that the proceedings terminate automatically on the death of the debtor. He might have applied for the adjudication shortly before the expiry of the period of limitation for his suit expecting that he would recover his debts through the insolvency Court, and the debtor might die after the expiry of the period of limitation. If the application is to abate automatically, the creditor would be left without any remedy. Again where an adjudication order has been passed, if the right to continue the proceeding does not survive, the result would be that the heirs of the debtor would be deprived of their remedy to challenge the order by way of appeal and to take other objections which might have been open to the debtor. We do not think that there is anything in the Provincial Insolvency Act which would justify the view that the death of the debtor or insolvent brings about a complete abatement of the proceeding and there is no right surviving to the heirs of the deceased.'

13. For the appellants it was urged that the case is distinguishable because in that case the insolvent died after adjudication. As seen above we have held that the existence of an order of adjudication is not a condition precedent for the application of Section 17. The fact that in Piarey Lal's case : AIR1937 All435 (supra) the insolvent died after the adjudication is immaterial. The principles laid down in that decision equally apply to a case where the debtor died prior to the adjudication.

The decision in Piare Lal's case (supra) was followed by the Bombay High Court in Kantilal Bapubhai v. Rajni Kant Bapu-bhai. AIR 1942 Bom 159.

14. A similar question arose before the Madras High Court in AIR 1928 Mad 480. After an elaborate discussion it was held that Section 17 applies to a case of a debtor dying before the order of adjudication whether the petition was presented by a creditor or by a debtor. This decision of the Madras High Court was followed by the Calcutta High Court in Ramesh Chandra Sil v. Charu Chandra Mo-huri : AIR1930 Cal590 as well as Hyderabad and Mysore High Courts in Ramdayal v. Shankarlal AIR 1952 Hyd 80 (FB) and M. P. Basappa v. Padasale Channappagowda AIR 1954 Mys 189 respectively. The decision of Madras High Court in Kamathai Anni AIR 1928 Mad 480 (supra) was reaffirmed by it in S. A. S. Subbiah Iyer v. Official Receiver Tinnevely AIR 1933 Mad 25. The same view has been taken by the Nagpur High Court in Kishan-lal Sadasukh Marwari v. Gulam Dastagir Ghasumiya AIR 1941 Nag 238.

15. We may in passing observe that the Lahore High Court has taken a similar view in Isar Das v. Mt. Fatima Bibi, AIR 1934 Lah 468 and in Girdharilal v. Jugal Kishore, AIR 1932 Lah 264. Of course, in these decisions the Lahore High Court did not refer to its earlier decisions.

16. Learned Counsel for the appellant urged that the decisions of the Madras High Court as well as of this Court in Piare Lal's case (supra) proceeds on the analogy of English Bankruptcy Act. The provisions of English Bankruptcy Act are materially different from the provisions of the Insolvency Act and hence did not provide an apt analogy. Learned Counsel urged that under the English Bankruptcy and Insolvency Act a Court had power to pass a receiving order even before the

adjudication of the insolvent. This, in our opinion, provides no material difference because Section 20 of the Provincial Insolvency Act authorises the Insolvency Court to appoint a receiver who can take immediate possession of the debtor's property. He has all the power of a receiver appointed under the Code of Civil Procedure. Thus, even under the Provincial Insolvency Act the Court can take control and manage the property of a debtor prior to his adjudication.

17. In the result we answer the question reframed by us in the negative. Let the papers be laid before the learned Single Judge for decision of the appeal.

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