

Mohammad Sharif Vs. Radha Mohan

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Court : Allahabad

Decided On : Dec-21-1918

Reported in : 57Ind.Cas.760

Judge : Piggott and ;Walsh, JJ.

Appellant : Mohammad Sharif

Respondent : Radha Mohan

Judgement :

1. This is an appeal from the order of the District Judge in an insolvency matter, dated the 8th March 1918.
2. One Batuk Prasad obtained a decree for Rs. 6,449.3.9 against the debtors who were subsequently adjudicated insolvents. This decree was obtained in the Court of the Subordinate Judge of Banares on the 27th June 1912. The debtors had obtained a decree in the Court of the Subordinate Judge of Jaunpur in Suit No. 92 of 1914. The decree was attached by Batuk Prasad in 1914. On the 7th of August 1914 a petition was filed in insolvency against the judgment debtors. On the 4th March 1915 an interim Receiver was appointed. On the 11th May 1915 the money due under the decree was deposited in the Court of Jaunpur to the credit of the attaching decree-bolder, who on the 19th May 1915 applied to that Court for payment out to him, without giving notice to the Receiver. On the 7th of July the creditor obtained an order for payment and on the 10th July 1915, Rs. 1,984 1

were raid cut to him leaving Rs. 2,699.0 11 of the amount attached unrealized. A turner sum of Rs. 16910 0 was paid out to him in respect of a decree in a Suit No. 250 of 1912 in the Court of Munsif of Jaunpur City, making a total of Rs. 2.097 14 1 realized in all. On the 3rd of September 1915 the debtors were adjudicated insolvents, and on some date in November 1917 Batuk Prasad assigned his rights to Mohammad Sharif, the present appellant. Batuk Prasad tendered a proof of his claim against the estate, founded upon his decree, on the 20th November 1915 without any account or any affidavit in sup-port. He alleged that he had transferred his decree to the appellant. The actual date of this transfer is not clear upon the evidence before us. It is possible that an agreement to transfer had been entered into, and that it was subsequently completed by a formal transfer. But this point is not material, as the fact of the assignment is not denied and nothing turns upon it. It was in any ease subsequent to the realization already mentioned, and to the adjudication. On the 6th February 1918 the appellant served a petition upon the Official Receiver claiming to prove for the balance of the decretal amount, and supported it by an affidavit, which appears to be the only matter which was before the District Judge at the hearing in March, by way of evidence, except so far as other facts alleged before him were treated by both parties as common ground, and not disputed. The procedure adopted seems to have been irregular and informal, and somewhat slovenly. The creditor's duty on receiving notice from the Receiver of the rejection of his proof, if he ever received such notice, was to appeal to the Judge against such rejection. However, the Receiver seems to have filed two lists, List I purporting to be a schedule of creditors who claimed to prove and list II a list of creditors amongst whom the Receiver asked for an order sanctioning the distribution of a seven per cent. dividend. Together with these lists he also filed a report asking for sanction of the claims in list I, for sanction of the distribution proposed in list II, and for disposal of the application of Mohammad Sharif, whose claim he had rejected. For the grounds on which he had rejected the claim he referred to a note made on list I, objecting that Batuk Prasad had filed neither affidavit nor account, that he had transferred his decree to the appellant, that he, the Receiver, was ignorant of the amount which had been realized and that certain creditors raised the question that there were other co- judgment debtors with the insolvents. The bearing of this allegation upon the liability of the

insolvents, or their estates, for the amount of the decree against them and the availability of their decree which had been attached is not apparent, and the point was either not pressed upon the learned Judge, or failed to impress him.

3. In this informal manner, the proof of the appellant came before the District Judge for adjudication. The claims in list I and the distribution proposed by list II were sanctioned. Upon the claims of Mohammad Sharif the following order was made: 'Whatever they may have received in satisfaction of their decree against the insolvents should be paid to the Receiver, on doing this the applicant may be allowed to rank for rateable distribution along with other creditors of the insolvent.'

4. Against this order Mohammad Sharif appeals to this Court. In our opinion, the order directing payment of the amount realized cannot be supported. It is covered by the express language of Section 34(1) of the Provincial Insolvency Act, and also by a two Judge Bench decision of this Court reported as *Sri Chand v. Murari Lal* 16 Ind. Cas. 183 : 10 A.L.J. 252 : 34 A. 628.. So far as the claim for the admission of a proof for the amount unrealized is concerned, we think that the order of the Judge amounts to a finding that this is established as a matter of fact, and that the objections raised by the Receiver were not well founded. There is nothing before us to suggest either that this decision was wrong or that the Receiver did not have ample opportunity to prove any matter which was relevant to support his rejection of the proof. He was responsible for bringing the matter before the Court on grounds which he was no doubt right in thinking required investigation, but there is nothing before us to show that if we remanded the matter for further hearing by the learned Judge any other conclusion would be reached. This part of the order must stand.

5. It was stated before us that the appellant had again applied to the execution Court in June 1918 without notice to the Receiver for payment to him of the balance mentioned above, and that either the money had been paid out to him, or that he had obtained an order for payment. We have no materials before us to enable us to adjudicate upon this matter. It is clear, however, that Section 34(1) has no application to monies realized after adjudication, and the decision in *Dambar Singh v. Mohammad Munavar Ali* 43 Ind. Cas. 129 : 15 A.L.J. 877 : 40 A.

86 would appear to be applicable. In any case the order would not bind the Receiver unless he were made a party to the proceeding, and would not be binding on the Insolvency Court. It is open to the Receiver to take such steps as he may be advised in the Insolvency Court or elsewhere, for the recovery of this sum, if it has been realized, as being part of the insolvents' estate. We only mention the matter for the purpose of making it clear that the appellant before us cannot be allowed to recover any part of his claim twice over, and his proof as an unsecured creditor for the balance unrealized after giving credit for the sum of Rs. 2,097-14-1 above mentioned can only be allowed to the extent to which he either fails to receive, or is ordered to refund, any sum of money which he has applied to have paid to him by way of realization of his decree, since the adjudication, when the controversy between him and the Receiver as to the proper destination of this money has been determined.

6. Our order is that this appeal be allowed with costs, that the appellant be allowed to retain as against the insolvents' estate the sum of Rs. 2,097-14-1 realized by Batuk Prasad and that his proof for the balance of his decree be admitted after giving credit for such portion of the balance as he may otherwise receive and be allowed, either by the Receiver or by the order of a competent Court, to retain. Each party must pay his own costs in the Court below, and the Receiver will be allowed his costs, and the costs we order him to pay to the appellant, out of the insolvents' estate.