

Ram Ralaya Vs. the Official Receiver

Ram Ralaya Vs. the Official Receiver

SooperKanoon Citation : sooperkanoon.com/681861

Court : Delhi

Decided On : Nov-05-1975

Reported in : AIR1976Delhi172; ILR1976Delhi259

Judge : Avadh Behari Rohatgi, J.

Acts : [Provincial Insolvency Act, 1920](#) - Sections 9(2) and 68

Appeal No. : Civil Revision Appeal No. 76 of 1975

Appellant : Ram Ralaya

Respondent : The Official Receiver

Advocate for Pet/Ap. : B.J. Nayyar and; G.N. Aggarwal, Advs

Judgement :

Avadh Behari Rohatgi, J.

(1) This is a revision against the order of the Additional District Judge Delhi dated December 2, 1974.

(2) These are the facts. The petitioner was an employee of Oriental Radio Corporation. He was dismissed from service. He went to the Labour Court. The Labour Court refused reinstatement, but made an order for Rs. 7020 in favor of the employee against the Corporation for wages.

(3) In the meanwhile the Corporation became bankrupt. The employee approached the Official Receiver for the admission of his debt of Rs. 7020. The Official Receiver by order dated February 24, 1973 admitted the claim of the employee to the extent of Rs. 2106 but refused to admit the remainder of the claim.

(4) Against the decision of the Official Receiver, the employee preferred an appeal under s. 68 of the [Provincial Insolvency Act, 1920](#) (the Act) to the judge, Insolvents Estate. This appeal was filed on March 20, 1973.

(5) S. 68 provides that a person, aggrieved by the order of the Official Receiver can apply to the Court within a period of 21 days. When the matter came up before the Judge, the Official Receiver raised a preliminary objection. He said that the appeal filed by the employee was barred by time.

(6) On May 31, 1973, the employee made an application under ss. 5 and 12 of the Limitation Act praying for extension of time. The judge rejected this application. On the appeal he held that the section provided only for 'an application' and since the application was made after more than 21 days of the making of the order the application was barred by time.

(7) Against the order of the Insolvency Judge, the employee appealed to the district court. His appeal was dismissed on December 2, 1974 by the Additional District Judge. Now there is a revision by the employee to this Court.

(8) When the matter was first heard by me on October 24, 1975, Mr. Nayyar on behalf of the petitioner raised only one point. He argued that there was sufficient cause for extension of limitation and that the courts below were wrong in refusing to extend time. He submitted that it was a case of mistake of the counsel who advised the employee that under s. 68 an appeal had to be filed against the order dated February 24, 1973 and for that purpose a certified copy will be required. Acting on this advice, it was said, the employee made an application for certified copy. The certified copy was obtained before 21 days had passed. But the appeal was filed after the expiry of 21 days on the mistaken advice of the counsel, it was submitted. He argued that there was a clear case of mistake of the counsel and

the petitioner was entitled to the benefit of section 5, Limitation Act.

(9) This argument did not impress me. Nor did it find favor with the judges in the courts below. I, therefore, dismissed the revision on the ground that there was no sufficient cause for extension of time under s. 5, Limitation Act. I dictated the order in open court on October 24, 1975.

(10) Before I signed the order, it occurred to me that there was another and a better point in this case which the counsel had not taken. . I made my own research. I found that s. 78 in the Act provided that s. 12 of the Limitation Act applied to s. 68 and the petitioner was entitled as of right to deduct the period spent by him in obtaining the certified copy of the order. I thought that much could be said in favor of this other point.

(11) A judgment can be altered or amended or even changed completely without further formality except notice to the parties and a rehearing on the point of change should that be necessary, provided it has not been signed. (See *Surendra Singh v. State of U-P.* : 1954 CriLJ475). I, therefore, fixed the case for rehearing, I have again heard the counsel for the parties. I now proceed to decide finally. S. 68 of the Act of 1920 reads:

'68. Appeal to Court against receiver. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just; Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the act or decision complained of.'

(12) Section 78 in so far as it is material says: '78. (1) The provisions of sections 5 and 12 of the Indian Limitation Act, 1908, shall apply to appeals and applications under this Act,

(13) There are parallel provisions in the Presidency Towns Insolvency Act (III of 1909) [Sec s. 86 and 90(5) of the Act of 1909.

(14) In this revision, we are concerned with sections 68 and 78 of the Act of 1920. Section 68 clearly provides that against the 'act or decision' of the Receiver, the aggrieved person may apply to the court and the court may confirm, reverse or modify the act or decision complained of. The proviso states that no application under this section shall be entertained after the expiry of 21 days from the date of the act or decision complained of.

(15) There was much argument before me that s. 68 does not provide for an appeal. The counsel for the receiver said that it provided only for an application. It was urged that though the title and the marginal note do speak of an appeal to court against receiver, the body of the section uses the term 'apply' and 'application'. It was argued that the marginal note and the heading should be ignored against the express provision made in the body. I was referred to *Nalinakhya v. Shyam Sunder*, : [1953]4SCR533 , and *W. I. Theatres v. Municipal Corporation, Poona*, : AIR 1959 SC586 for this proposition.

(16) The counsel for the receiver secondly submitted that there is part Vi in the Act which expressly deals with the subject of appeals. S. 75 of this part is headed as appeals and this is the only section in this part on this subject.

(17) In my opinion, the application to the court under s. 68 is not really an application. It is more akin to an appeal. It is in the nature of an appellate review. The court is given the power to reverse or modify the act or decision of the receiver. An application under s. 68 in reality amounts to an appeal to court from a decision of the receiver. (See *Hans Raj v. Rattan Chand*, Air 1967 Sc 1780, *Mai Chand v. Official Receiver*, Air 1937 Lah. 611 and *Gangadhar Revappa v. Shankar* : (1971)73BOMLR461 .

(18) There is another answer to the argument of the counsel for the receiver. It is this that s. 78 extends the provisions of sections 5 and 12 of the Limitation Act both to appeals and applications under the Act. Assuming that s. 68 merely provides for an application, by virtue of s. 78 of the Act. S. 12 of the Limitation Act is clearly attracted to such an application and a litigant is entitled to claim that the period spent in obtaining certified copy be deducted from the period of limitation prescribed for the purpose. S. 12, Limitation Act, it is true, does not provide for an

application such as is provided for in s. 68. But s. 78 expressly extends ss. 5 and 12 of the Limitation Act to appeals and applications under the Provincial Insolvency Act.

(19) Counsel for the receiver referred me to a number of rulings where it has been held that the appeal must be filed within 21 days. I have examined those rulings. They are mainly cases of sale where the litigant felt aggrieved by a wrongful act of the Receiver, Sale is an 'act'. In cases of sale, attachment or possession of the property we are concerned with the 'act' of the receiver for there may not be any decision of the receiver in writing giving reasons in such a case. The receiver may straightaway proceed to sell a property thinking it to be the property of the insolvent. In such a case a person aggrieved may complain to the court against receiver's 'act'. That of course has to be done within 21 days. Cases in which this view has been taken are numerous but they are all cases of sale. The sale of the property of the insolvent by the receiver is an 'act' of the receiver within the meaning of s. 68. (See *Mt. Husaini v. Md. Zabir Abdi*, Air 1924 Oudh 294, *Venkatachalan v. Merugesan*, Air 1931 Ran 122, *Shakar Khan v. Sarmukh Singh*, Air 1932 Lah 320, *Jai Kishan v. Chiragh Din*, Air 1935 Lah 60, *Rajagoplam v. Offl. Receiver*, Air 1958 A.P. 426 *Hans Raj v. Rattan Chand*, Air 1967 Sc 1780 and *Gangadhar Revappa v. Shanker* (1971) 78 Bom. L.R. 461.

(20) The counsel for the receiver then referred me to *Duraisami Aiyanger v. Meenakshi Aiyar*, 25 Ind Cas 610 to show that under s. 68 the period of 21 days cannot be extended under any circumstances. This ruling deals with s. 22 of the Provincial Insolvency Act 1907. It does not deal with the present Act of 1920. In the Act of 1920, the Legislature introduced a new section, namely, s. 78.

(21) Before the enactment of s. 78 in the new Act of 1920 there was a conflict of decisions as to whether the courts had power to admit appeals and applications under the Provincial Insolvency Act, 1907, after the expiration of the period of limitation prescribed by that Act, if sufficient cause was shown for such admission. There was also a conflict of decisions as to whether the insolvency court had power under that Act to exclude the time requisite for obtaining a copy of judgment. It was held in a large majority of cases that the Act of 1907 was a self-

contained Act and that the general provisions of the Indian Limitation Act, 1908, could not be introduced into the Act. It was accordingly held that s. 5 of the Limitation Act, 1908 which provides for the admission of appeals and applications after the period of limitation prescribed therefore and s. 12 of the same Act which provides for the exclusion of time requisite for obtaining a copy of a judgment did not apply to appeals and applications under that Act. This was the view of the Madras High Court as exemplified by *Duraisami Aiyangar v. Meenakshi Sundara Aiyar*, 25 Ind.Cas. 610.

(22) On the other hand the Allahabad High Court took a different view. It was held in some cases that the Act of 1907 was not in itself a complete code and that the general provisions of the Limitation Act applied to the Act of 1907 (*Sce. Dropdi v. Hira Lal* (1912) 34 All. 496). To put an end to this conflict it was provided by s. 78 of the [Provincial Insolvency Act, 1920](#), that the provisions of ss. 5 and 12 of the Limitation Act should apply to appeals and applications under the Act of 1920.

(23) The section applies only to applications and appeals- It does not apply to insolvency petitions which are governed by s. 9(2) of the Act. That section provides that a creditor's petition must be presented within three months after the commission of the act of insolvency, and the court has no power to admit it if it is not presented within that period. (*See Hazara Singh v. Ditta Ram*, AIR 1930 Lah (417)).

(24) There is another important consideration. If the period spent in obtaining the certified copy of the decision of the receiver is not to be excluded how is the litigant the person aggrieved to know of the decision of the receiver What is it that the receiver has decided in his case In order to decide whether he should appeal to court he must get a copy of the order. For that he has to apply for certified copy. No law requires him to wait upon the receiver and ask for an inspection of the record. The receiver may allow or may not allow and the short period of 21 days may thus be frittered away. thereforee the right thing to do is to apply for copy and obtain it. The litigant may then take legal advice and if so advised may appeal to court. He should be entitled to deduct the time spent by him in obtaining the certified copy. This appears to be reasonable and more in accordance with the

sound interpretation of ss. 68 and 78. Even in case of appeal under the Letters Patent an appellant is entitled to deduct time requisite for obtaining copy of the judgment appealed from even though under rules and orders of the High Court no copy is required to be filed with the memo of appeal. (See Punjab Cooperative Bank Ltd. v. Official Liquidators Air 1941 Lah. 257.

(25) Reading sections 68 and 78 together my conclusion is this that the official receiver is the person in whom the insolvent's property vests as owner though only for the benefit of others. If he rejects a creditor's claim the official receiver in such a matter is a party litigant. Against his act or decision, an appeal lies to the court. This is also the view of Sir D. F. Mulla in Law of Insolvency, (2nd edition) page 755 (16).

(26) Dates are important. The official receiver made his order on February 24, 1973. On March 2, 1973, the employee made an application for a certified copy. On March 9, 1973, the copy was ready. On March 12, 1973 the same was delivered to him. The appeal was actually filed under s. 68 styling it as an 'appeal' on March 20, 1973. If the appeal or application, whatever we may call it, is to be filed within 21 days. the last date of limitation was March 17, 1973. There was a delay of 3 days. But the petitioner is entitled to deduct the period spent by him in obtaining the certified copy of the decision of the receiver. He is thereforee entitled to deduct days from March 2. 1973 to March 9, 1973. If this period is excluded, the appeal is well within time.

(27) In my opinion, the petitioner was entitled as of right to the exclusion of time spent by him in obtaining the certified copy. The judges in the courts below I think were wrong in holding that the petitioner is not so entitled. In this view of the matter it is not necessary for the petitioner to invoke s. 5 as his appeal is not statute barred.

(28) For these reasons I would allow the revision petition and set aside the orders of court below. In the circumstances of the case, I will make no order as to costs.

(29) The insolvency Court will now re-admit the appeal and hear it on merits. The parties are directed to appear before the insolvency Court on December 1. 1975.

