

**Chandanben and anr. Vs. the Receivers Appointed by the Baroda Court and anr.**

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**Court :** Gujarat

**Decided On :** May-01-1973

**Reported in :** AIR1974Guj163

**Judge :** J.M. Sheth, J.

**Acts :** [Provincial Insolvency Act, 1920](#) - Sections 4, 28, 53 and 54

**Appeal No. :** Civil Revn. Appln. No. 352 of 1973

**Appellant :** Chandanben and anr.

**Respondent :** The Receivers Appointed by the Baroda Court and anr.

**Advocate for Def. :** A.J. Patel, Adv.

**Advocate for Pet/Ap. :** S.B. Majmudar, Adv.

**Judgement :**

ORDER

1. This is a revision -petition filed 'by the petitioners-defend ants against the order - passed by the learned Third Joint Civil Judge, Senior Division, Baroda, dated 29th December, 1972 in Special Civil Suit No. 16C of 1971 deciding issue No. 6 as a preliminary issue.

2. The receivers - opponents filed Special Civil Suit No. 166 of 1971 in the Civil Court at Baroda for recovery of Rs. 15,500/-, the price of the goods supplied by the insolvents' partnership firm to the present petitioners.

3. Manharlal Nathalal and Kantilal Nathalal were the partners of the said firm. Petitioners are sisters of the said insolvents. Insolvency proceeding was filed against 'them. It was Insolvency Proceeding No. 4 of 1970. That Insolvency Petition was filed on 29th April 1970 by the creditors of the insolvents. The aforesaid two partners, of the said firm were adjudged insolvent on 18th July, 1970. Present opponents were appointed receivers by the Insolvency Court in the said insolvency petition. The said receivers filed the aforesaid civil suit for recovery of debt due by the petitioners to the insolvents. As said earlier, dues consisted of the price of the goods supplied by the insolvents to the petitioners. That suit was filed by the receivers with the permission of the Insolvency Court. In that suit averment was made by the receivers that fictitious entries were made by the insolvents to show that payment was made by the petitioners. Havala entries were posted indicating that the price of the goods was paid by the petitioners and so credit entry was made in their accounts and corresponding debit entry was made in the accounts of the insolvents themselves it was averred by the receivers that this, was a fictitious entry made to defraud. The receivers, therefore, filed the present suit for recovery of the debt due by the petitioners to the insolvents' estate which vested in the receivers.

4. A contention was raised amongst several contentions by the petitioners that the present suit was not maintainable on the ground that the Civil Court has no jurisdiction to bear such a suit. It was the Insolvency Court which could hear the suit. That contention of theirs was negated by the learned trial Judge.

5. Mr. S. B. Majmudar, appearing for the petitioners, has urged that in the plaint, a clear averment was made that this act of making fictitious entries by the insolvents in their account books was an act of insolvency. Such a suit, submitted Mr. Majmudar was not maintainable in the Civil-Court it was the which had exclusive jurisdiction to hear such a suit. He has invited my attention to Sections 3, 4, 5, 6, 7, 28, 53, 54 55 and 56 of the [Provincial Insolvency Act, 1920](#) (which will be here in

after referred to as 'the Act'), and he has relied upon several decisions- in support of his argument that it was the Insolvency Court which had exclusive jurisdiction to decide the question arising under Section 53 of the Act. He has also invited my attention to some decisions wherein it is stated that even if it is a decretal debt, it could be the subject matter of scrutiny by the Insolvency Court, if the receiver appointed under the insolvency proceeding, challenges the genuineness of that debt.

6. Mr. A. J. Patel, appearing for the opponents has urged that the wording of Section 4 of the Act itself indicated that the jurisdiction of the ordinary -Civil Court was not barred. It was the discretionary power that was granted to the Insolvency Court under Section 4 of the Act. He has further contended that evidently, the present case would not fall within the purview of Section 53 or 54 of the Act.

7. Section 53 o. f the Act deals with 'avoidance of voluntary transfer'. It reads:

'Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent on a petition presented within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court.'

In the instant case, there is no question of avoidance of any such voluntary transfer.

8. Similarly, Section 54 of the Act deals with 'avoidance of -preference in certain cases'. It reads:

'54 (1) Every transfer of property, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver, and shall be annulled by the Court.

(2) ..... .. .'

A plain reading of this section indicates that it deals with avoidance of -preference in certain cases. In the instant case, there is no question of any fraudulent preference given by the insolvents to the, creditors. What is under challenge is that the insolvents have made fictitious entries in the account books to show that no dues remained from the present Petitioners to them. It is a suit filed by the receivers in whom the insolvents' estate vested in view of the provisions of Section 28 of the Act for recovery of the estate of the insolvents which would be distributable amongst the creditors.

9. It is true that even if the case of Sections did not fall within the purview 53 and 54 of the Act. Insolvency Court can decide the question that would fall within the purview of Section 4 of the Act. Section 4 of the Act reads:

'(1) Subject to the Provisions of this Act, the Court shall have full power to decide all questions whether of title or y. or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making, a complete distribution of property in any such case.

(2) Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force, every such decision shall be final and binding for all purposes as between, on the one hand, the debtor and the debtor's estate and, or, the other hand, all claimants against him or it and all persons claiming through or under them or any of them.

(3) Where the Court does not deem it expedient or necessary to decide -any question of the nature referred to in subsection (1) but has reason to believe that the debtor has a saleable Interest in any property, the Court may without further inquiry sell such interest in such manner and subject to such conditions -as it may think fit.'

Sub-section (3) of Section 4 of the Act clearly indicates that it is not obligatory upon the Court to decide any question referred to in sub-section (1). That by itself is indicative of the position that it is the discretionary power vested in the Insolvency Court. No doubt, if the Insolvency Court chooses to decide it, that decision has been given finality. That position is quite evident from the provisions of sub-section (2) of Section 4 of the Act. But none of the provisions of the Act indicates that even in cases which do not fall within the purview of Section 53 or 54 of the Act, and the question merely falls within the purview of Section 4 of the Act, it is the Insolvency Court only which has got the exclusive jurisdiction and the jurisdiction of the ordinary Civil Court is barred. There is no such express Provision barring the jurisdiction of the ordinary Civil Court, It cannot also be said that by any necessary implication' the jurisdiction of ordinary Civil Court is barred.

10. It is significant to note that the word 'creditor' has been defined in Section 2(1)(a) of the Act as under:

' 2(1) In this Act, unless there is anything repugnant in. the subject or context,

(a) 'creditor' includes a decree-holder. 'debt' includes a judgment-debt and 'debtor' includes a judgment-debtor.'

11. This conclusion of mine is supported by the decision of a Full Bench of the Bombay High Court in *Padamshi Premchand v. Laxman Vishnu Deshpande* AIR 1949 Bom 129. It is observed by the Full Bench:

'Under Section 4 the insolvency Court has jurisdiction to decide questions of title affecting strangers in cases which are not covered by Section 53.

Nominal and fictitious transfers do not fall under Section 53. Such transfers void at the inception and are not voidable. Where, therefore, the receiver alleges that certain transfers made by the insolvent beyond two years prior to the date of the insolvency petition were nominal and fictitious, the Insolvency Court has jurisdiction under Section 4 to decide whether the transactions were nominal and fictitious.

If they are found to be real transactions although voluntary, they would then fall within the ambit of Section 53 but having been entered into beyond the period mentioned in Section 53 cannot be, avoided by the receiver.'

At page 131, in Para 9, it is in terms stated:

'.....Section 4 merely confers power upon the Court to decide questions of title affecting strangers. It is left to the discretion of the Court whether it should be done or not.'

At page 130 in Para 6, the observations made are:

'In this particular case the Receiver challenged these three deeds of transfer on the ground that they were nominal, and fictitious transactions and that they were not intended to transfer the real interest of the insolvent in the properties. Therefore, on the allegation of the Receiver no title passed under these deeds of transfer to the transferee. These transactions were not voidable but they were void. These transactions were not valid in their inception and at no time did they transfer any title to the transferee. In our opinion, transactions which are challenged on the ground of their and being fictitious or nominal do not fall within the ambit of Section 53, then Section 4 is wide enough to confer upon the Insolvency Court jurisdiction to decide whether these transactions were in fact nominal or fictitious.'

It is thus evident that this to the Insolvency Court under Section 4 is called for by any of the provisions of the Act is a discretionary power.

12. In *Dinanath Shaligram, Marvadi v. Maroti Totaram Shimpi* : AIR1959 Bom10 , Mudholkar, J., has observed:

'What Section 4 purports to do is to confer power on the Insolvency Court to decide certain questions and where a question is decided by it then under subsection (2) of Section 4 its decision shall be final and binding and can no longer be challenged in any other proceeding. It does not confer exclusive jurisdiction on the Court to deal with such questions. Hence, a suit by the creditors for a declaration that the property purchased by them in execution of a decree

against the insolvent is not liable to attachment and sale in insolvency proceedings pending against him will not be barred if the question raised in the suit has not been decided by the Insolvency Court.'

13. A Division Bench of the Calcutta High Court in *Shree Shree Radhakrishna Thakur v. The Official Receiver* : AIR1932 Cal642 , has observed:

'The words of Section 4 of the Indian Provincial Insolvency Act are, if at all, wider than those of Section 105, clause (1) of the English Bankruptcy Act, 1914. The word 'title' is expressly mentioned in Section 4.

The expression 'subject to the provisions of the Act' also appears in the corresponding sections of the Bankruptcy Acts of 1869, 1883 and 19-14; and, notwithstanding this, it has never been held that the power to decide questions of title is to be regarded as being restricted

The legislature has invested the insolvency courts with extensive powers under Section 4, and it would be anomalous to hold that such Courts have no power to investigate questions of title, which a stranger may raise when possession is to be given to a purchaser from an official receiver.

The words of Section 4 are very wide and they confer on insolvency Courts full power to deal with all questions of title as between the official receiver or official assignee and a stranger with reference to property, which is claimed, on the one hand, as being the insolvent's and on the other as the stranger's property.

It does not follow from anything that has been said in the section that the Court has exclusive jurisdiction to deal with all questions of title that may possibly be. But are not, actually raised by a stranger, such exclusive jurisdiction being confined to matters, decision whereof is called for by any of the provisions of the Act. But, if a stranger raises a question of title for its decision, or submits to an investigation by it of a claim of title preferred against him, the decision when made is binding on him'.

14. In *Sevadappa Gounder v. K. V. Narayanaswami Ayyar*, AIR 1940 Mad 564. King J., has observed:

'Civil Court has jurisdiction to deal with the subject-matter of Section 4. The existence of Insolvency proceeding does not take away the jurisdiction of the ordinary Civil Court.'

15. Mr. Majmudar has leaned heavily on the decision of Oudh High Court in *Shahzada Begum v. Gokulchand Rai*, AIR 1927 Oudh 357. It is observed therein:

'Insolvency Court has exclusive jurisdiction to determine questions as to annulment of transfers not made in good faith and for valuable consideration and to decide questions of title for determination of the dispute under Sections 53 and 4, and therefore the Jurisdiction of other Courts is impliedly barred.'

It is significant to note the following observations made therein at page 357:

'...It is clear that the receiver had a right to go to the Insolvency Court to ask the Insolvency Court to annul the transfer under the provisions of Section 53, Act 5 of 1920, if he could satisfy the Insolvency Court that -the transfer was not a transfer to a purchaser in good faith and for valuable consideration. The Insolvency Court had exclusive jurisdiction to grant that relief and towards the granting of that relief the Insolvency Court had further jurisdiction under the provisions of Section 4 of the same Act to decide questions of title and other questions necessary for the determination of the dispute. When the Insolvency Court had exclusive jurisdiction to determine those questions under Sections 4 and 53 we can only hold that the jurisdiction of other Courts is impliedly ousted.'

In the instant case, as said earlier by us we are not concerned with any question of annulment of transfer which could be annulled by the Insolvency Court in view of the provisions of Section 53 of the Act.

16. Mr. Majmudar has also invited my attention to the decision of the Supreme Court in *The State of West Bengal v. The Indian Iron and Steel Co. Ltd.*, AIR 1970 SC 1298. It is observed therein at page 1302:

'If the provisions of the Act form a precise self-contained code, as we hold them to be the assessee cannot be permitted to challenge the levy on the ground that the levy imposed on him is excessive. It must be remembered that the levy under the

Act is imposed by a special law which law also provides its own remedies for correcting the errors that may be committed by the assessing authority. Where a liability not existing previously is created by a statute which statute at the same time provides a special or Particular remedy for correcting any mistake that may occur in its enforcement the aggrieved party must adopt the form of remedy given by the statute and no other.'

In the instant case we are not concerned with any such position. In the instant case, the receivers filed a suit for recovery of the dues from the insolvents as the insolvents' estate vested in the receivers. Under Section 59(d) of the Act. the receivers are entitled to institute, defend or continue any suit or other legal proceeding relating to the property of the insolvents by the leave of the Court, ,and that has been exactly done by the receivers in the instant case.

17. Mr. Majmudar has also invited my attention to the decision of the Supreme Court in State of Punjab v. Rattan Singh : [1964]5SCR1098 . The ratio of that decision is that, it is well settled that the Insolvency Court can, both at the time of hearing the petition for adjudication of a Person as an insolvent and subsequently at the stage of the proof of debts reopen the transaction on the basis of which the creditor had secured the judgment of a Court against the debtor. This is based on the principle that it is for the Insolvency Court to determine at the time of the hearing of the petition for Insolvency whether the alleged debtor does own the debts mentioned by the creditor in the petition and whether, if he owes them what is the extent of those debts. A debtor is not to be adjudged an insolvent unless he owes the debts equal to or more than a certain amount and has also committed an act of insolvency. It is the duty of the Insolvency Court therefore to determine itself the alleged debts owed by the debtor irrespective of whether those debts are based on a contract or under a decree of Court. At the stage of the Proof of the debts, the debts to be proved by the creditor are scrutinised by the Official Receiver or by the Court, in order to determine the amount of all the debts which the insolvent owes as his total assets will be utilised for the payment of his total debts and if any debt is wrongly included in his total debts that will adversely affect the interests of the creditors other than the judgment-creditor in respect of that Particular debt as they were not parties to the suit in which the judgment debt was

decreed. That decree is not binding on them and it is right that they be in a position to question the correctness of the judgment debt. It is on their behalf that the Insolvency Court or the Official Receiver is to scrutinise the proof of debts to be proved and can even demand proof of the debts on which the judgment debt has been decreed. The decree is binding only on the parties. The debtor sought to be adjudged is bound by it and so is the creditor. But this binding effect of the decree is only to be respected by the Insolvency Court in circumstances where nothing is reasonably alleged against the correctness of the judgment -debt. The Insolvency Court has the jurisdiction to reopen such debts and will do so ordinarily when such judgments have been obtained by fraud, collusion or in circumstances indicating that there might have been miscarriage of justice. On similar grounds it must be held that the determination of the amount of the debt and the liability of the defaulter to pay it could be open for scrutiny by the Insolvency Court in the aforesaid circumstances in spite of the provisions of Section 11 of the Act.

18. In my opinion, that decision cannot be pressed into service in support of the submission made by Mr. Majmudar.

19. It is not necessary for me to cite other decisions relied upon by Mr. Majmudar, as they -are not quite relevant for deciding the question in issue.

20. The result is that the trial Court has rightly come to the conclusion that the ordinary Civil Court has got jurisdiction to decide such a suit and under Section 4 of the Act there is no exclusive jurisdiction given to the Insolvency Court to decide such a suit. The revision petition, therefore, fails.

21. Revision petition is dismissed with costs. Rule is discharged.

22. Revision dismissed.