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In Re: Velayudham Chettiar

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Court : Chennai

Decided On : Feb-24-1958

Reported in : AIR1959Mad394; (1958)2MLJ178

Judge : Subrahmanyam, J.

Acts : Provincial Insolvency Act, 1920 - Sections 28(7) and 34

Appeal No. : Civil Revn. Petn. No. 240 of 1958

Appellant : In Re: Velayudham Chettiar

Advocate for Pet/Ap. : K.V. Srinivasa Iyer, Adv.

Disposition : Petition dismissed

Judgement :

1. In I. P. No. 1 of 1953, a petition by a creditor, one Muthuswamy Goundan was adjudged insolvent. He owed a debt to another creditor on a promissory note which he had executed on 15-8-1950. The creditor to whom the debt on that promissory note was due tendered proof of his claim. Another creditor, who is the petitioner in this Civil Revision Petition objected to proof of the claim being received. The petitioner contended before the Official Receiver Madurai, in whom the properties of the insolvent had vested, that the debt was not true and, secondly, that the debt was barred by time. On the first point, the Official Receiver held that the debt was true. On the question relating to limitation, the relevant facts were these.

The promissory note was executed on 15-8-1950. The petition to adjudge the debtor insolvent was presented on 5-1-1953. The adjudication was on 15-1-1954. Proof was tendered in 1956. The debtor had executed a sale deed in 1952. There was a reference to a promissory note in that sale deed. The creditor contended that the promissory note referred to in the sale deed was the promissory note which was the basis of the claim. The petitioner contended, on the other hand, that the promissory note was not this particular promissory note. The Official Receiver held that the promissory note referred to in the sale deed was the promissory note on foot of which the claim was laid and that the sale deed contained thus an acknowledgment of liability which, under Section 19 of the Limitation Act, saved the claim from being barred. In that view, the Official Receiver admitted the claim made on foot of the note. The petitioner preferred an appeal to the Subordinate Judge, Dindigul. The Subordinate Judge upheld the findings of the Official Receiver on both the points and dismissed the appeal.

Against the order of the Subordinate Judge, the petitioner preferred an appeal to the District Judge, Madurai. The District Judge agreed with the Subordinate Judge that the claim on the note was true. On the question of limitation, the learned District Judge held that it was not necessary to consider whether the debt referred to in the sale deed of 1952 was the debt due on this particular promissory note. He held that, even independently of that plea as to acknowledgment of liability, the claim could be proved with the recovery because a suit on the promissory note was not barred on the date of the presentation of the insolvency petition and that any debt whose recovery was not barred by limitation on the date of the presentation of the petition could be proved in the insolvency of the debtor. That finding of the learned District Judge on the question of limitation is challenged in this civil revision petition which is coming up for admission.

2. Section 34(2) of the Provincial Insolvency Act enacts that

"all debts...... to which the debtor is subject when he is adjudged an insolvent .... shall be deemed to be debts provable under this Act."

That section gives rise immediately to the question when is the debtor adjudged an insolvent? Is it on the date of the order of adjudication, or is it on the date of the

presentation of the petition? Learned Counsel for the petitioner answers that question by saying that, for the purpose of Section 34(2) of the Provincial Insolvency Act, the debtor is adjudged insolvent only on the date of the order of adjudication. The learned District Judge held, on the other hand, that, for the purpose of Section 34(2), adjudication takes effect from the date of the presentation of the petition.

For that proposition, the learned Judge called in aid Section 28(7) of the Provincial Insolvency Act, which enacts that "an order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made." With reference to that proposition, the argument of the learned counsel for the petitioner is that Section 28(7) should be limited to vesting of property in the Official Receiver and should not be extended to proof of claims in the insolvency. Let us examine that argument, on principle. Let us see whether it would be right as a matter of principle, to hold that a debt, whose recovery is not barred by limitation on the date of the presentation of the petition, but which gets barred under the Limitation Act, before the date of the order of adjudication, is not provable in the insolvency of the debtor.

Let us take a ease of an adjudication on a petition presented by a creditor, say A; let us suppose that the debt is in time under the Limitation Act on the date of the presentation of the petition and that the debtor, say, D, in the counter statement filed in creditor's petition denies the genuineness of the debt and denies further the act of insolvency alleged. Let us suppose that the court enquires into the matter and decides that the debtor's objection to the genuineness of the debt is frivolous, that the debt is true and that further the act of insolvency has been proved. The count sees no reason why the debtor should not be adjudged and consequently adjudicates the debtor insolvent.

Let us suppose further that a suit on the debt on foot of which the creditor obtained the order of adjudication would have been barred by limitation on the date of the order of adjudication. Would it be in accordance with the principles of insolvency law to hold that the debt on the basis of which the petitioning creditor obtained the order of adjudication could not be proved in the insolvency? Learned counsel for

the petitioner does not answer the question in the negative. It is obvious that the time-consuming processes and procedures through which the petition has to pass before an adjudication can be made cannot be allowed to cause the petitioning creditor prejudice in the matter of proving his debt in the insolvency. It may be contended however, that the petitioning creditor occupies a unique position in the insolvency and though in his case proof of the debt in the insolvency might be permitted though recovery of the debt by suit on the date of adjudication was barred by limitation, yet no such benefit should be extended to any other creditor. I am unable to see any reason why the debt due to another creditor, say B, should be differentiated on that matter from the debt due to the petitioning creditor. If A was for any reason negligent in the conduct of the petition, B could have intervened under Section 16 of the Provincial Insolvency Act and could have had himself impleaded as the petitioning creditor.

If B thus becomes eo nomine a party to the insolvency petition the principle which enables A's debt to be proved in the insolvency would enable B's debt too to be proved in the insolvency, notwithstanding that, on the date of the order of adjudication, a suit to recover B's debt would have been barred under the Limitation Act, But if A was prosecuting the petition diligently, there would be no need for B to got himself impleaded eo nomine. The fact that in such case, he stood by, wishing to prove his debt in the insolvency, being sure of an order of adjudication, cannot affect his rights in relation to the debtor, B could of course file a suit for the recovery of his debt after the date of the presentation of the petition and before his debt got barred under the Limitation Act. In standing by, without filing a suit, B was taking a risk, because if there was no adjudication B would have to sue for his debt under the ordinary law and his suit would be held to be barred by time.

But if B was certain that the debtor had committed an act of insolvency and that there was bound to be an order adjudging him an insolvent, there was no reason why he should spend time and money instituting 3 suit of his own instead of waiting for the inevitable order of adjudication and proving his debt in the insolvency. Thus, on principle I hold that the order of the learned District Judge is correct and that a debt which is in time under the Limitation Act on the date of the

presentation of the petition, could be proved in the insolvency of the debtor, notwithstanding that a suit to recover the debt was barred on the date of the order of adjudication. I hold that, for the purposes of Section 34(2) of the Provincial Insolvency Act, adjudication takes effect from the date of the presentation of the petition.

3. The view expressed above has the direct support of authority as well. In Sivasubramania v. Theethiappa Pillai, ILR 47 Mad 120 : (AIR 1924 Mad 163) a Division Bench of this court following ex parte Lancaster Banking Corporation; in re Westby, 1879-10 Ch. D. 776 held that, in bankruptey, a debt did not become barred by lapse of time if it was not barred at the commencement of the bankruptcy. The question came again for consideration before a Division Bench of this court in Subramania Iyer v. Meenakshisundaram Chettiar, 1937-1 Mad LJ 637: (AIR 1937 Mad 577). In that ruling, Varadachariar J. doubted the correctness of the proposition which had been accepted without question in ILR 47 Mad 120: (AIR 1924 Mad 163), and indeed said expressly.

"Having heard the point fully argued, we think it right to say that if the matter were res integra, we should have hesitated to come to the conclusion reached or suggested in the cases above referred to."

That expression of doubt is the reason why I have ventured, with great respect, to state the principle behind the rule that a debt, whose recovery is not barred by limitation on the date of the presentation of the petition, is provable in insolvency notwithstanding that a suit to recover it would be barred on the date of adjudication. But, after expressing his doubt, the learned Judge added :

"In a matter where certainty and uniformity of practice is more important than theoretical unassailability, we do not feel justified in dissenting from the view which has been expressed or assumed in the several cases above referred to, in several provinces."

It follows that, even if I shared his doubts, I would not have ventured to adopt a course different from what so eminent a Judge as he adopted.

4. As throwing further doubt on the validity of the proposition stated in ILR 47 Mad 120: (AIR 1924 Mad 103), learned counsel for the petitioner relies on Sambayya v. P. Subbayya 1937-2 Mad LJ 703 : (AIR 193S Mad 19). That case dealt with limitation under the Limitation Act with reference to a suit instituted in the ordinary courts and not with proof of a debt in the insolvency of the debtor. The question in that case turned on the construction of Section 78(2) of the Provincial Insolvency Act. The learned Judges refrained from saying anything which might cast doubts on the soundness of the proposition accepted in Sivasubramania v. Theethiappa, 47 Mad 120 and not differed from in 1937-1 Mad LJ 637: (AIR 1937 Mad 977). The learned Judges indeed cited with approval the following observations of Channel J. in re Benzon; Bower v. Chetwynd 1914-2 Ch. 68.

"Ex parte Ross shows that in the bankruptcy a debt does not become barred by lapse of time if it was not so barred at the commencement of the bankruptcy, and of this, there can be no doubt, but this is only in the bankruptcy."

The order sought to be revised is correct. The petition is dismissed.

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