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In Re: J.M. Gregory

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Court : Kolkata

Decided On : Apr-07-1927

Reported in : AIR1928Cal50

Appellant : In Re: J.M. Gregory

Judgement :

Page, J.

1. On the 4th February 1915, John Marchmont Gregory was adjudicated insolvent, on his own petition, No assets were recovered by the Official Assignee in that insolvency, and on the 3rd August 1920 the insolvent obtained an unconditional discharge.

2. On the 18th February 1925 John Marchmont Gregory on his own petition was again adjudicated insolvent, and his property thereupon became vested in the Official Assignee for distribution among his creditors under Sections 17 and 52, Presidency Towns Insolvency Act (Act 3 of 1909).

3. On the 13th July 1926, as a result of the transaction into which the insolvent had entered after he had obtained his discharge from the first insolvency, and before the second adjudication, a sum of Rs. 97,670-12-0 was acquired by the insolvent, and passed into the hands of the Official Assignee as assets distributable in the second insolvency. Meanwhile, on the 30th April 1925 the order of discharge of the 3rd August 1920 was rescinded, on the ground that when applying for

discharge the insolvent had misled the Court as to the state of his affairs. Accordingly, it was ordered that the adjudication of the 4th February 1915 should be revived. On the 10th February 1927 pursuant to Section 91, Insolvency Act, an order was made that the proceedings in the two insolvencies should be consolidated. All the above orders were passed by the Registrar in Insolvency.

4. The question that arises on this petition is whether the creditors in the first insolvency are entitled to participate in the said sum of Rs. 97,670-12-0 and any other assets distributable in the second insolvency. The creditors in the second insolvency contend (1), that the order of the 30th April 1925 rescinding the order of discharge was ultra vires the Registrar in Insolvency, and is null and void; (2) that in any event, having regard to the order of discharge, the rights of the creditors in the first insolvency ought to be postponed to those of the creditors in the second insolvency.

5. In support of the first contention learned Counsel for the petitioner urged that, inasmuch as the application for an order rescinding the order of discharge was a substantive and opposed application, the Registrar in Insolvency had no jurisdiction in the matter. Now, the Registrar in Insolvency has no jurisdiction to entertain an opposed application for the discharge of an insolvent, and it was argued with plausibility that the Registrar in Insolvency ought not to be entitled to heir an opposed application for the rescission of an order of discharge, because the application, if granted, might react upon the rights of persons who in good faith had transacted business with the insolvent after the order of discharge and prior to its rescission in a manner gravely prejudicial to their interests. There is much force in this contention : but I am concerned to ascertain, not whether the Registrar in Insolvency ought to have jurisdiction, but whether he has it, and under the law as it obtains at present I am of opinion that the Registrar in Insolvency was entitled to make the order of the 30th April 1925.

6. The order o discharge of the 3rd August 1920 was passed by the Registrar in Insolvency upon the unopposed application of the insolvent. That order the Registrar had jurisdiction to make under Section 6(2), Insolvency Act, and the direction of Jenkins, G.J., dated 23th May 1915.

7. It appears to me that under Section 8(1), Insolvency Act, the Registrar in Insolvency had jurisdiction to pass the order of the 30th April 1925 rescinding the order of discharge that he himself had made, whether the application for rescission was opposed or unopposed : see Exparte Summers [1907] 2 K.B.166 . Further, under Section 6(2)(c), Insolvency Act, and General R. 5, Calcutta Insolvency Rules of 1910, in my opinion, the Registrar in Insolvency had jurisdiction also to hoar the application for rescission of the order of discharge as being an application 'that may be heard and determined in chambers.'

8. No appeal has been preferred against the order of the 30th April 1925, and upon both these grounds I am of opinion that the order of the 30th April 1925 rescinding the order of discharge of the 3rd August 1920 is a valid and effective order.

9. In these circumstances, as I apprehned the matter, the respective rights of the creditors in the two insolvencies would be the same whether or not the order consolidating the insolvencies had been made. It appears to me that, subject to any bona fide and valid disposition of the property of the insolvent that had been effected between the date of his discharge and its rescission, the said sum of Rs. 97,670-12-0 and any other assets re covered by the Official Assignee in the second insolvency would become assets distributable in the second insolvency, and that the Official Assignee as the representative of the creditors in the first insolvency is entitled to prove in the second insolvency, and to receive dividends pari passu with the creditors in the second insolvency.

10. A solution of the problem in this sense, I think, is in consonance with the ratio underlying the provisions of Section 39(1), English Bankruptcy Act, 1915, and the decision of the Court of appeal in Ex parte Pitt [1882] 20 Ch. D. 308. I can understand that the creditors in the second insolvency may feel aggrieved that the creditors in the first insolvency should receive a share of the assets recovered in the second insolvency as a result of a transaction into which the insolvent entered when he was sui juris and discharged from liability under the first insolvency; but the hardship is more apparent than real, for if persons choose to have business relations with a debtor who has obtained his discharge, but who in certain events

may again revert to a state of insolvency, such persons take the risks that are incidental to all transactions with persons under actual or potential disability (such as a minor or a woman possessing a Hindu widow's estate), and have only themselves to blame if they have miscalculated the chances of the transaction to which they have chosen to become parties.

11. An order will be passed giving effect to the view that I have expressed. The costs of both sets of creditors as of a hearing will be paid out of the assets available for distribution in the second insolvency.

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