

In Re: Sumermull Surana

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Court : Kolkata

Decided On : Jan-27-1931

Reported in : AIR1932Cal124,140Ind.Cas.594

Appellant : In Re: Sumermull Surana

Judgement :

Panckridge, J.

1. This is an application by the firm of Sumermull Surana lately carrying on business at No. 113, Monohardas Katra, Calcutta, that the firms of Bansilal Abir Chand and Mannalal Dhanraj be restrained by injunction from proceeding with suits instituted by them in Bikanir Messrs. Mannalal Dhanraj have not appeared and as against them the applicants are entitled to the injunction claimed with costs.

2. The relevant facts concerning the suit instituted by Bansilal Abirchand are as follows:

3. According to the applicants the proprietors of the petitioning firm are two in number: Sumermull Surana and Uday Chand Rampuria. The firm were adjudicated insolvents on 18th July 1930. On 15th August 1930 the insolvents submitted a scheme of composition to their creditors which provided for payment of six annas in the rupee to the unsecured creditors and also that on the composition being approved by the Court all the estate of the insolvents should

vest in the trustees named in the scheme.

4. The insolvents had shown Bansilal. Abir Chand as unsecured creditors in their schedule, their debts being admittedly in respect of commercial transactions in Calcutta. The insolvents say that Bansilal Abirchand had full notice of the meeting held by the Official Assignee on 1st September 1930, at which the scheme was approved by the requisite majority of the creditors, Bansilal Abir Chand deny that they received notice. They were it is true not represented at the meeting but they have taken no steps to set aside the composition. On 10th September 1930 the Official Assignee applied under Section 29, Presidency Towns Insolvency Act, 1909, and the scheme of composition was approved by the Court; and the adjudication was annulled. Bansilal Abirchand's suit in Bikanir was instituted on 17th July 1930, i. e., on the day immediately preceding the date of the adjudication order. It is for Rs. 10,497-15-0, which sum admittedly represents business debts contracted by the defendants in Calcutta. The suit is not against the firm of Sumermull Surana as such but against Sumermull,. Udoychand, Sewchand, Meghraj, and Mohunlal. The plaintiffs who are domiciled in Bikanir State and subjects of H. II. the Maharaja of Bikanir say that all the defendants have proprietary interests in the firm which is a joint family business. Written statements have been -filed in that suit. It is admitted that the defendants have immovable property in Bikanir against which the plaintiffs propose to execute their decree, if they obtain one.

5. Mr. Pugh in opposing the application, argues that the Court has no jurisdiction to make the order. He refers to the Carron Iron Co. v. Maclaren [1855] 5 H.L.C. 416 where when an administration decree had been made in England the House of Lords set aside an injunction restraining a creditor's action for debt brought against the executors of the estate in the Scotch Courts. He also relies on Pennell v. Boy 3 De G.M.&G.; 126 and In re Chapman [1872] 15 Eq. 75=42 L.J. Bk. 38. In the former case the Court refused to restrain a creditor from proceeding against the real estate in Scotland of an English bankrupt for a sum of money equal to the dividend payable on the debt. In the latter case the Chief Judge in Bankruptcy, after a receiver had been appointed, refused to restrain creditors in New York who had instituted suits there against . the debtor. It appears that in refusing the

injunction the Court attached considerable weight to the fact that it would be ineffectual.

6. Mr. Pugh also maintains that what is sought here is a perpetual injunction and by reason of Section 53, Specific Relief Act, such injunctions can only be granted in suits and not in insolvency proceedings, and he says that the concluding observations of Sir Arthur Wilson delivering the judgment of the Judicial Committee in *Tituram Mukerji v. Cohen* [1905] 33 Cal. 203 at p. 192 (of 32 I.A.) support this argument, On the question of jurisdiction Mr. Bose has referred to a large number of cases. He argues that since the creditors could certainly be made defendants here even though their business may be carried on through a gomastha, and could be adjudicated here, *In re Hurruck Chand Golicha* [1881] 5 Cal. 605 and *Kostur Chand v. Dhanpat Singh* [1881] 5 Cal. 605 there is nothing to prevent them from being restrained by injunction in the manner his clients ask. I confess I do not think that cases like *La Compagnie Generale Trans-Atlantique v. Thomas Law & Co.* [1899] A.C. 431 and *New York Life Insurance Company v. Public Trustee* [1924] 2 Ch. 101 which deal with the residence of a foreign corporation are of much assistance. Having looked into the authorities I have come to the conclusion that there is nothing in principle which prevents the Court from restraining proceedings in a foreign Court where, as here, the parties sought to be restrained carry on business within the jurisdiction even if they do not reside here, and have assets within the jurisdiction which can be attached in the case of any breach of the injunction. Moreover I am disposed to think that the language of Section 90 (1), Insolvency Act, is wide enough to confer on the Court the power of granting an injunction of the character here asked for.

7. In a Bombay decision to which I shall shortly refer, although the injunction was refused, it was not suggested that there was any technical difficulty in granting it.

8. *In re Chidley* [1875] 1 Ch. D. 177 appears to me a sufficient answer to the suggestion that owing to the annulment of the adjudication the jurisdiction of the insolvency Court is exhausted; that, that Court retains jurisdiction to give effect to the scheme it has approved, is, I consider, too plain to require argument.

9. The difficulties of the applicant are in my judgment with regard to the merits. It was pointed out by Rankin, J., in *In re Mogi & Co.* A.I.R. 1926 Cal. 898 at p. 447 (of 43 G. L.J.) that adjudication order does not operate to vest the insolvent's immovable property situated in a Foreign State in the Official Assignee.

10. The petitioners admittedly own immovable property in Bikanir which will be answerable for any decree which is obtained against them there. This property never vested in the Official Assignee and it equally in my opinion has not vested in the trustees of the composition under the order approving the scheme. Mr. Bose says that if a conveyance is necessary to complete the title of the trustees he undertakes to execute one. I do not think that would mend matters, and even if it would I should not be justified in adjourning the application to give an opportunity for taking this step.

11. The creditors have taken no part in the Calcutta insolvency, much less have they approved the composition scheme; why should they be prevented from seeking the aid of the Courts of their own State for recovering their dues from property that has never been the subject-matter of the insolvency proceedings? It has not been shown that these creditors occupy a privileged position, or that other creditors, whether subjects of Bikanir State or not, did not have the opportunity of seeking the aid of the Bikanir Courts prior to the insolvency had they wished to do so.

12. The Bombay case to which I have referred, *Lachmiram Kevalram v. Poonam Chand Pitamber* A.I.R. 1921 Bom. 128 where an injunction was refused is distinguished by the fact that the creditor suing in the foreign Court undertook to give notice to the other creditors of any property he succeeded in recovering so as to enable them to claim rateable distribution. The creditors in this case are not disposed to be so accommodating, but on the other hand the point as to the vesting of the foreign immovables was not taken. If the creditors obtain a decree they may have difficulty in executing it at all in British India and possibly also against moveables elsewhere. But that stage has not arrived and I have come to the conclusion that the applicants have not been successful in establishing such circumstances as would now justify me in restraining the creditors from proceeding

with the Bikanir suit.

13. The application therefore is dismissed with costs as against Bansilal Abirchand. The costs will be as of one day's hearing.

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