

Sm. Mirinalini Dassi Vs. Harihar De (Receiver) and ors.

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SooperKanoon Citation : sooperkanoon.com/867521

Court : Kolkata

Decided On : Mar-10-1932

Reported in : AIR1933Cal76

Appellant : Sm. Mirinalini Dassi

Respondent : Harihar De (Receiver) and ors.

Judgement :

Rankin, C.J.

1. In this case it appears that one Sarat Kumar Roy presented his own petition for adjudication in insolvency on 25th September. 1929, and that on that date the usual order was made to admit the petition. On 4th December a certain creditor who appears to have been No. 1 in the list of creditors filed by the debtor asked the Court to appoint an interim receiver. The Court did on that day appoint an interim receiver and notice of the application was given to the debtor. On 3rd January 1930, the same creditor applied to the Court for an order upon the receiver directing him to serve notice on the tenant at Calcutta for paying rent of the house to him' and for certain other matters. It may here be explained that there was a certain house at Chandernagore which the insolvent's wife claimed as her own she having purchased it with her own money. There was also a house in Calcutta which was the occupation of a tenant with reference to which, as I understand there was a claim by the wife under a deed of gift from insolvent. But from the beginning the position was that these two houses were claimed by the

wife. Now the creditor's application that the receiver should be directed to serve notice on the tenant was entirely a harmless application.

2. I should have thought that the receiver under his ordinary powers would give notice of any claim-if he thought there was any claim-to the tenant and after that if the tenant paid any rent to the wife he would be under a liability when the receiver established that the properties belonged to the insolvent to pay the rent over again. The Court made an order directing notice to be served upon the tenant not to pay rent to any other person excepting the receiver. The tenant was not obliged to obey that order at all; merely he was under the risk that if he paid to a wrong person he would have to pay twice. That being so there was nothing wrong with that order even considering the fact that the wife had not been a party. The order was merely for giving a notice to the tenant such as the receiver might perfectly well issue without any order from the Court. Then the matter proceeded and the creditor asked the Court for attachment of the house of the petitioner for insolvency purchased in the benami of his wife. What this proceeding was supported to be I confess I did not at first understand, but it has been explained to us that it was supported to have been made under Section 21, Provincial Insolvency Act. If so I can only say that it was an abuse of the section. That is a section which gives powers to the Court which it may exercise at the time of admitting the petition and at any other time. It may, for instance, order the debtor to give security for his appearance if he is expected to abscond; that might be a reasonable thing to do. In the same way it may order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor excepting such things as are exempted from execution by the Civil Procedure Code; and the proviso is to the effect that an order under Clause (2) is not to be made unless the Court is satisfied that the debtor with intent to defeat or delay his creditors or to avoid any process of the Court has absconded or has failed to disclose or has concealed, destroyed' or removed any documents likely to be of use to his creditors or any part of his property. To apply that provision to the case of an immovable property where the Court knows that the property is claimed by the wife and that the petitioner and his wife are both saying that the property does not belong to the insolvent on the mere ground that the insolvent has not declared it as an asset is of course a thoroughly unjust and

absurd procedure.

3. These summary powers are intended to prevent the debtor from making away with what is his property; documents and books of account which might be used against his property that he might run away with and take away out of the reach of the creditors. Merely because there is a dispute between the creditors and the insolvent as to whether certain property belongs to the insolvent or his wife to pass an order to attach a house under Section 21 is an unreasonable proceeding. Property in the possession of the wife and claimed by the wife having been attached the wife had only to appear before the learned Judge and she was entitled to an order cancelling that attachment as a matter of right. The phrase 'property in the possession or under the control of the debtor' was never intended to apply to a house claimed by the wife because the debtor and his wife are living together. Now this order having been made, the wife on 29th January 1930 did apply in substance to have these proceedings cancelled. As regards the Calcutta house, apparently by some confusion it was thought that the order of 3rd January 1930, amounted in some way to an attachment of the rent. In any case the lady applied and she was treated as a person making a claim. It appears that she prayed for an inquiry of her claim petition by the receiver and though her property had been attached in her absence and she wanted the receiver to inquire and find out after all it was her property she was ordered to deposit certain costs before the receiver would begin the inquiry.

4. Then the claimant filed her sale-deed and the receiver appears to have made a report on or about 10th June. On 24th June the lady applied for an order directing the receiver not to take delivery of possession or realize rent of the premises mentioned in the petition. The receiver was directed by the learned Judge on the 27th to proceed to Calcutta and realize the outstanding arrears of rent and apply a portion towards necessary repairs. All this was done before there was any adjudication as to whether this property belonged to the insolvent or not. The tenant was ordered to pay the whole of the arrears by a certain time. What obligation the tenant was under to obey that order I do not know. However it appears now that the tenant has paid a certain amount of rent to the receiver and that amount is now in Court and the tenant is apparently continuing to pay his rent

into Court. Lastly the claimant asked that the investigation of the claim matter by the receiver be stayed and the matter be dealt with by the Court on evidence. By an order of 2nd August, the learned Judge declared that the receiver was already in possession of the property and the receiver was directed to continue his inquiry into the question of ownership. From that order the wife appeals to us. In my judgment the proper order is to put the matter back into the position from which it never ought to have been changed in the absence of a proper adjudication as to whether the property belongs to the insolvent's estate or not. I propose to set aside the order of attachment of 13th January 1930; I propose to declare that the lady was in possession of the Chandernagore house and by her tenant of the Calcutta house at the time of the insolvency; and I propose to declare further that unless and until a creditor or the receiver at his own risk as to costs brings a proper motion before the learned Judge or a proper suit for a declaration that these two houses do not belong to the lady but belong to the insolvent, the possession which she originally had is not to be disturbed.

5. As the tenant of the Calcutta property is paying his rent into Court that arrangement for the present need not be interfered with; but unless within six weeks from today a proper motion against the lady is filed before the learned Judge or other proper proceedings to make a claim on behalf of the estate against the lady are instituted, then at the end of six weeks the lady is to be entitled to receive the rent out of Court subject to any right that the receiver may have to bring a motion to recover the money from her upon establishment of title of the insolvent. This appeal must succeed with costs against the creditor No. 1; hearing fee three gold mohurs.

C.C. Ghose, J.

6. I agree.