Mathuresh Chakravarty Vs. S.R. Mills Co. Ltd. and anr.

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SooperKanoon Citation : sooperkanoon.com/873136

Court : Kolkata

Decided On : Jul-19-1934

Reported in : AIR1935Cal150,155Ind.Cas.77

Appellant : Mathuresh Chakravarty

Respondent : S.R. Mills Co. Ltd. and anr.

Judgement :

1. This is an appeal by a debtor against whom insolvency proceedings are pending in the Court of the District Judge of Hooghly. The facts necessary to be stated for the purpose of this appeal are quite simple. The debtor was a surety against whom a certain money decree was being executed in the Misc. Ex. Case No, 101 of 1930 of the 2nd Subordinate Judge's Court, Hooghly. In the course of the said execution proceedings certain properties of the debtor were attached. Long after the attachment a petitioning creditor, namely, Pramatha Nath Chatterjee, started proceedings in insolvency as against the debtor alleging that the latter was indebted to him for a certain amount. The petitioning creditor, after his application was registered, filed a petition praying for restraining the decree-holders Sovaram Ramprasad Mills Ltd. from selling the properties of the debtor in the said execution case until the disposal of the Insolvency proceedings and for the appointment of a Receiver. The learned Judge appointed an interim Receiver and also issued an order staying the sale. Thereafter certain proceedings followed but with them we are not concerned in the present appeal.

2. The result of those proceedings was that it was ordered by this Court that the said Sovaram Ramprasad Mills Ltd. could not be brought in the schedule of creditors because they were alleging that there was collusion between the debtor and the petitioning creditor and also because no order of adjudication had yet been passed but that they would be entitled to show that the insolvency application should not be granted, or in other words that the acts of insolvency alleged in the petition of the petitioning creditor have not been established. Thereafter an application appears to have been made by the said Sovaram Ramprasad Mills Ltd. to the learned District Judge before whom the insolvency proceedings are pending that the Receiver might be directed to sell the property for satisfying the costs of the suit and of the execution under Section 52, Provincial Insolvency Act. Upon this petition the learned District Judge has made this order which is complained of in this appeal. The order in effect was that the Receiver should sell the properties involved in the execution proceedings which had been stayed by the previous order of the learned District Judge to which reference has already been made and should deposit the sale proceeds in Court. It appears therefore that the interim Receiver was appointed by the Insolvency Court long after the attachment order had been issued from the Court in which the execution proceedings were taking place and the order complained of in the appeal was made by the insolvency Court upon the view that Section 52, Provincial Insolvency Act, would entitle the Court to make such an order. On reading Section 52, Provincial Insolvency Act, it seems to us to be perfectly clear that an application under that section has got to be made to this Court which was executing the decree and it is that Court which on such an application being made, can direct the property to be delivered to the Receiver in order that a sale may be held. The learned District Judge had no jurisdiction to make the order for sale under the provisions of the said section. The order complained of, in the appeal therefore must necessarily be set aside.

3. The question then is, what direction should be given by us in order that the respondents who are executing the decree may proceed to realize their costs of the suit and of the execution. We have considered the matter carefully and we think that there are two alternatives either of which may be adopted. One of these alternatives is for the learned District Judge to direct the Receiver to make a

proper application to the executing Court in order to obtain the necessary order under Section 52, Provincial Insolvency Act; and the other alternative is for the said respondents to apply to the executing Court for the sale of his properties under attachment in order that their dues may be realized. In case it be necessary for the said respondents to adopt that course it will be necessary for the learned District Judge to vacate the stay order which he had already made because so long as that order stands it will not be open to the said respondents to make any application to the executing Court for the sale of his properties attached. We therefore direct that on receipt of the record from this Court the learned District Judge will either direct the Receiver to apply to the executing Court for an order under Section 52 for the sale of the properties or he will vacate the interim order of stay which he made at the time when the application was made by the petitioning creditor for restraining the respondents from selling the properties, so that the said respondents may have an opportunity to apply to the executing Court for the sale of the properties attached. We make no order as to costs of this appeal.