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K.S.A. Kuchelanarayanan Chettiar Vs. S.P. Sheik Abdul Kader and Co. and ors.

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Court : Chennai

Decided On : Jul-05-1963

Reported in : AIR1964Mad106

Judge : Kunhamed Kutti, J.

Acts : Provincial Insolvency Act, 1920 - Sections 7, 9 and 9(1); Partnership Act, 1932 - Sections 49

Appeal No. : Civil Revn. Petn. No. 1994 of 1960

Appellant : K.S.A. Kuchelanarayanan Chettiar

Respondent : S.P. Sheik Abdul Kader and Co. and ors.

Advocate for Def. : N.K. Ramaswami, Adv.

Advocate for Pet/Ap. : R. Gopalaswami Iyengar, Adv.

Disposition : Petition dismissed

Judgement :

Kunhamed Kutti, J.

1. The first respondent in I.P.No. 2 of 1959 who was adjudged insolvent by the learned Sub-ordinate Judge and whose appeal against the order of adjudication has been dismissed by the District Judge, is the revision petitioner. 'He and the respondents were carrying on partnership business under the name of Messrs. S. P. Shaik Abdul Kader and Co., as per art agreement Ex. A-6 dated 19-11-1950. Under this agreement, She respondents agreed to advance a sum of Rs. 20,000, to carry on the business and the petitioner undertook to manage the business with a nominee of the respondents who would be in charge of cash and accounts. There was another agreement in 1953 (Ex. A-7) superseding the first agreement. In all the respondents advanced more than Rs. 20,000, towards the partnership business, and the petitioner had executed a mortgage for Rs. 15,000 over the premises in which the business was carried on. There was a settlement of accounts on 14-2-1957, when it was found that after giving credit to the sum of Rs. 15,000, the petitioner was still due in a sum of Rs. 1447-2-0. But, at the scrutiny of accounts on 14-1958, it was found that the petitioner owed a sum of Rs. 16,204-7-6 to the respondents. This was acknowledged by the petitioner as a debt due by ' him by signing the pass book. While so, on 20-1-1959, he sold a!! his properties for a sum of Rs. 47,000, as per Ex. A-5 to one Chidambara Chettiar and Andukondan Chettiar. It is the case of the respondents that the properties were really worth Rs. 80,000, and that the sale was effected by the

petitioner to defeat and delay his creditors. I. P. No. 2 of 1959 was filed on these allegations.

2. The petition was opposed by the petitioner contending inter alia that the sum acknowledged by him in Ex. A-2 could not be said to be a liquidated sum, as it was due from one partner to other partners and the partnership had gone on till the end of 1958, without any final settlement of accounts. He also disputed his liability for interest amount included in Ex. A-2 and further claimed that the respondents had not credited the value of 2500 logs of wood sold to them at Rs. 15 a log. His plea, therefore, was that the correct amount due from him has to be ascertained after settling all the aforesaid accounts, that he sold the properties bona fide for a proper and adequate price, and that the respondents, having received from the vendees, the usufructury mortgage amount, were precluded from filing the insolvency petition. All the aforesaid contentions were gone into by the courts below and both the courts have overruled the said contentions.

3. The point again stressed before me is that there is no liquidated sum, and the petitioner and the respondents being partners, it was not open to the respondents to have applied for the petitioner's adjudication as an insolvent.

4. Section 9 of the Provincial Insolvency Act. under which the application had been made, declares that to sustain a petition for adjudication, the debt should be a liquidated sum payable either immediately, or at some certain future time. No doubt, the parties were carrying on partnership business; but for the advances made by the respondents they used to take documents from the petitioner as though he was a debtor in respect of the amounts. Pursuant to this practice the petitioner, executed a mortgage and signed Ex. B-2. In the circumstances of this case, therefore, the sum found due under the document by which the petitioner had held himself liable cannot be said to be an unliquidated sum. The case in Ratnasami Naidu v. Subba Reddiar : AIR1943Mad766 relied on for the petitioner was one where entries in the accounts were open to serious dispute and the account was subject to counter-claims and an enquiry was necessary to ascertain which items and which counter-claims were true. Horwill J. held that an account of this nature cannot be said to be simple, and that it is only when the account is of simple nature, that it can form the basis of insolvency proceedings. He also held, that a claim on an account is not a claim for a liquidated sum.

5. The present is not a case where the claim Is made on accounts. The above case cannot therefore help the petitioner; nor is the ruling in Mahadeo Prasad v. Sheo Dass, (S) : AIR1955All352 of much help to the petitioner. In that case two persons were carrying on joint business, one of them contributing capital and the other, labour. The partner who contributed capital applied under Section 9.) of the Provincial Insolvency Act to adjudge the working partner as an insolvent alleging that certain sum would be due to him on account of profits if the accounts prepared by the working partner were examined, and that he had not paid the sum. It was held - that the relationship between the two partners in the business could not be said to be that of a creditor and a debtor. In the circumstances already pointed out by me that is not the basis in which the present petition was filed and, the courts below have found that the amount claimed by the respondents cannot be said to be an unliquidated sum. The question really has reference to the manner in which transactions were carried on by the creditor-partners and the petitioner. The advances made by them were treated, not as capital in vested in the partnership business but as advances

made as creditors. It is therefore not open to the petitioner to contend that such advances are unliquidated sums in respect of which no action could be taken by them under the Insolvency Act.

6. The next point urged is that the respondents having received a sum of Rs. 15,000, from out of the consideration of the sale deed, it is not open to them to allege the said sale deed as an act of insolvency. None of the respondents was a party to the said transactions. Indeed, they had intimated against any sale deed being executed in favour of others. But they received Rs. 15,000 from the vendees under Ex. A-5, and the question is whether, for this reason, they would be precluded from maintaining the petition when the transaction under which they received the amount is put forward as an act of insolvency. For the petitioner reliance was placed in this connection on Rukmani Ammal v. Rajagopala Aiyar, ILR 48 Mad 294 : AIR 1924 Mad 839. That case can hardly be relied on for the petitioner for the reason that the creditor there was a consenting party to the deed of arrangement by the debtor and therefore, it was held that he was estopped from filing a petition for adjudicating the debtor as an insolvent. That is not the case here. The respondents here had in fact protested against the sale in favour of third parties; but when money which was due to them under the mortgage was offered, they did not decline to receive it. This circumstance cannot be put on a par with a case where the creditor was a consenting party to the transaction. It is only where a creditor assents to or is a party or privy to or where he acquiesces in the conveyance or assignment, that he cannot rely on the conveyance or assignment as an act of bankruptcy. As I have pointed out, this is not such a case.

7. There is nothing in law to preclude a partner from presenting a petition against a co-partner in respect of a distinct debt for which an action might have been brought notwithstanding the partnership. It is only in cases where it would depend upon taking partnership accounts whether the sum was due or not or where a partner treats a debt due to him by his so-partner as mixed with the partnership accounts, he cannot present a petition in respect of such debt. In this case the partnership itself had come to an end by efflux of time In December 1958, but the terms of the partnership were peculiar. Under the first agreement (Ex. A-6) the respondents joined the business carried on by the petitioner only as partners in respect of the profits and agreed to help the business by advancing monies which apparently had to be treated as advances made by them in terms set out in the agreement. That the advances made by the respondents have to be treated as loans, Is further reiterated in the succeeding agreement (Ex. A-7). .

8. I am satisfied that, in the circumstances of this case, the concurrent view taken by the courts below! that the debt payable by the petitioner was a liquidated sum and that by executing the sale deed as per Ex. A-5 transferring his entire properties for a consideration which had been found inadequate when he had debts to be paid to the respondents is unassailable. This petition, therefore, fails and the same is dismissed with costs.

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