

PETITIONER:
TUKARAM RAMCHANDRA MANE (DEAD) BY L.R.RS

Vs.

RESPONDENT:
RAJARAM BAPU LAKULE (DEAD) BY L.RS.

DATE OF JUDGMENT: 16/04/1998

BENCH:
K. VENKATASWAMI, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T

K. Venkataswami J.

A short question that arises for consideration in this appeal is that what is the meaning to be ascribed to the words "all acts theretofore, done, by the court or receiver, shall be valid;" occurring in Section 37(1) of the Provincial Insolvency Act, 1920 (hereinafter called the Act). Brief facts are given as hereunder.

The deceased respondent Rajaram Bapu Lakule (hereinafter called the debtor) was the original owner of a suit property, namely C.T.S. No. 926 Peth Baug, Sangli, Bombay. By a deed of mortgage by conditional sale dated 22.1.1962 (Ex.41), he transferred the suit property in favour of the appellant (hereinafter called the creditor) for a sum of Rs. 7,500. The condition was that on the amount of Rs. 7,500/- if repaid within five years of the execution of the document, the property was to be reconveyed to the debtor. On 8.1.63 within one year from the date of conditional sale, the debtor executed another document (Ex.42) a regular sale deed after receiving an additional amount of Rs. 500/-. On 9.4.63 Insolvency Application 7/64 for being adjudicated as an insolvent. By proceedings of the court dated 8.1.65, the debtor was adjudicated as an insolvent and an official receiver was appointed in respect of the properties belonging to the insolvent / debtor including the suit property. In the year 1965, the receiver moved the Insolvency Court for a declaration that the sale deed namely, ex.42 dated 8.1.63 in favour of the creditor (appellant) was a sham and nominal transaction and as such it was null and void. After taking evidence, the Insolvency Court held that the said sale deed (Ex.42) was a sham transaction and that it was the result of the collusion between the debtor and the creditor. It was also found by the Insolvency Court that possession of the suit property was never taken over by the creditor. Against that order of the Insolvency Court, an appeal was filed being M.C.A. 50/68 and the same was dismissed by the Extra Assistant Judge, Sangli. By an order dated 26.6.1971, the Insolvency Court passed an order of annulment.

Thereafter the debtor filed a Civil Suit 62/76 for

redemption of the mortgage Ex.41. This suit for redemption was on the footing that the sale deed Ex.42 was a sham and bogus document and it was never acted upon. Simultaneously the debtor moved the authority under the Maharashtra Debt Relief Act, 1975 for a declaration that the debt which was the subject matter of the mortgage stood extinguished as the mortgagor being a debtor within the meaning of the said Act. The appellant contested the said application contending that in view of the order of annulment and in the light of Section 37(1) of the Act, Ex.42 (sale deed) in his favour stood revived and therefore, there was no relationship of debtor and creditor to move the application under the Debt Relief Act. The authorised officer on a consideration of the documents overruled 14.480 held that in view of the declaration regarding Ex.42 (sale deed) by the Insolvency Court and by the Appellate Court that the sale was void, the earlier document viz. conditional sale Ex.41 stood revived and the debtor's relationship existed. On that basis allowed the application under the Debt Relief Act. The result was that the debt stood wiped out.

Aggrieved by the order of the authorised officer under the Debt Relief Act, the appellant moved the Bombay High Court by filing W.P. 3438/80.

It was contended on behalf of the appellant before the High Court that the authorised officer was not right in holding that even after the order of annulment, the declaration made by the Insolvency Court holding Ex.42 (sale deed) as null and void, holds the field. In other words, it was the case of the appellant that the effect of the order of annulment was to wipe out altogether the insolvency and its effect including the adjudication made on Ex.42 by the courts and the saving clause in the first part of Section 37(1) shall not keep the order passed by the Insolvency Court, affirmed by the appellant Court, declaring Ex.42 (sale deed) as null and void in force any longer. According to the cause of the appellant, the words "all acts theretofore" occurring in Section orders passed by the court declaring Ex.42 (sale deed) as sham and nominal. In support of that judgements from some High Courts were placed before the Bombay High Court.

Contending contrary, it was argued on behalf of the debtor that in view of the declaration by the Insolvency Court, declaring Ex.42 (sale deed) as null and void, being sham transaction and affirmed by the Appellate Court, the same is saved by the first part of Section 37(1) as it will come within the purview of the acts done by the court.

The Division Bench of the Bombay High Court, after referring to several judgments of different High Courts placed before it, preferred to follow a judgement of the Kerala High Court reported in Kumaran & Ors. vs. Cheriyaambadam Ayidru & Ors (AIR 1969 Kerala 211). Ultimately the Division Bench held that the view taken by the authority under the Debt Relief Act cannot be faulted and EX.42 (sale deed) was non est in the eye of law and consequently the position occupied by the parties as debtor and creditor continued till the appointed date as contemplated by the Debt Relief Act. Since all other conditions were satisfied, the authority was justified in ordering the extinguishment of the debt. On that view, the writ petition filed by the appellant was dismissed. Hence the present appeal.

Mr. V.N. Ganpule, Senior Counsel appearing for the appellants reiterated the same argument, namely that the effect of annulment on the facts of this case was to revive the validity of regular sale (Ex.42) notwithstanding the declaration of the Insolvency court and the Appellate Court

during the pendency of the insolvency proceedings. In support of his contention, he placed reliance on the following judgments :

- 1) Jethaji Peraji Firm vs. Krishnayya & ors.
- 2) Dharmasamarajayya vs. Sankamma & Ors. (AIR (30) 1943 Madras 453
- 3) S. Janabai Ammal vs. Narasimhalu Naidu & Ors (AIR 1956 Madras 341)

He fairly submitted that the judgment in Kumaran & Ors. vs. Cheriyaambadam Ayidru & Ors (AIR 1969 Kerala 211) which is directly on point is against his contention.

Mr. U.U. Lalit, learned counsel appearing for the respondents submitted that the judgment of the Kerala High Court lays down the correct law and even AIR 1930 (Madras) 278 supports his case and not the case of the appellant. Mr. Lalit also pointed out that after the annulment order was passed, the Insolvency Court did not pass any order regarding the vesting of the property in any person and in the absence of such direction, the property shall revert to the debtor to the extent of his right or interest therein as per Section 37(1) of the Act. He submits that the judicial pronouncement declaring Ex.42 (sale deed) as null and void and the outcome of collusion between the mortgagor and mortgagee is saved by the first part of Section 37(1).

The contention to the contrary that the word 'acts' will not include orders passed by the court, according to the learned counsel is contrary to a plain reading of the Section.

For a proper appreciation of the rival submission, we give below Section 37(1) of the Act :-

"37(1) Where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts theretofore, done, by the Court or receiver, shall be valid; but subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the Court may, by order in writing, declare." (Emphasis added).

A plain reading of the above Section will show that the orders passed by the court or receiver including adjudication of disputed question on title, will come within the purview of "all acts". The Kerala High Court in Kumaran & Ors. vs. Cheriyaambadam Ayidru & Ors (supra) after referring to a judgment rendered, constructing & corresponding Section of the English Bankruptcy Act, 1869 held that an order passed by the Insolvency Court or the official receiver could be an act within the meaning of Section 37 of the Act.

Following the judgement of the Kerala High Court, the Division Bench held as follows:-

"At least prima facie and upon the plain reading of said Section 37(1), we find no justification for holding that the Declaration dated 26th August, 1968 did not answer the Description of the "acts" referred to in said Section 37(1).

After all, the Court acts in a number of ways. When the Court grants any declaration, it cannot be said not to have performed some "act". A decree passed by the Court is one of the acts. An order passed by the Court is another such act. Even a mere declaration given will be another act. Point is that the expression "acts" is wide enough to take in its fold the declaration made by the Court such as the one dated 26th August, 1968. On the plain reading of the section, therefore, it is somewhat difficult to accept Mr. Apte's contention.

Mr. Apte relied upon certain authorities in support of his contention that, upon the order of annulment, every order passed by the Court became non-existent or non est. Mr. Shah, on the other hand, relied upon quite a few authorities in support of his submission that the order of annulment had no effect upon the declaration already given by the Insolvency Court holding the particularly sale deed to be void. We will presently examine those authorities. Here, we are concerned with the interpretation of the section on the basis of its plain reading.

In this connection, Mr. Apte also relied upon the subsequent portion of said Clause (1) of Section 37. By the subsequent portion, the effect of the order of annulment is provided for. The effect is that the property which stood vested in the Court or in the Receiver till the date of the annulment would, from the date of the annulment, stand vested in such person as the Court may appoint and if the court does not make any appointment of any person for that purpose, the property, it is provided, shall revert to the debtor, no doubt, to the extent of his right and interest therein. On the basis of this provision, the counsel argued that no order was passed by the Insolvency Court appointing any person in whom the property should vest. He argued that the property must, therefore, go back to the person to whom it was to belong before the date of the adjudication.

We are afraid, the argument is not quite correct. In the instant case, the effect of the declaration

was that the property vested in the Receiver because the order of appointment of Receiver was very much there. If no order was passed by the Court directing the property to continue to vest in the Receiver or if there was no other order passed by the Court directing the property to vest in any other person, the third result contemplated by said clause (1) is that it would revert back to the debtor. The incident of vesting is not mentioned in the order because there is no order passed in that behalf. It could be, therefore, legitimately argued that it would vest in the debtor entirely. We make it clear that we are not called upon to decide this question as to whom, in given circumstances, the property would revert for certain. Point here is that it would either vest in the person appointed by the Court or it would revert back to the debtor. No position is contemplated by the said clause (1) that the property would revert back, in the case such as the present one, to the ostensible purchaser under the sale deed, Ex.42, was the mortgagee/creditor. Said clause (1) does not provide that the property would go to the mortgagee/creditor. If at all it reverts back, it would revert to the mortgagor/debtor. The argument advanced by Mr. Apte, in fact, boomerangs against his own contention."

We are in full agreement with the view taken by the Division Bench in the judgment under appeal. We would have considered the authorities cited by the learned counsel for the appellant, claiming to support his contention that the effect of annulment was to the effect that the adjudication of the Insolvency Court holding Ex.42 (sale deed) null and void, would become non est and ineffective but for the fact that in a recent judgment of this Court in Arora Enterprises Ltd & Ors. vs. Indubhushan Obhan & Ors . ((1997) 5 SCC 366) which had escaped the attention of the counsel on both sides settling the issue. This court in the said case had considered the scope of Section 37(1) and the effect of order of annulment. The facts of the case dealt with by this Court in Arora Enterprises Ltd. (supra) briefly are as follows:-

One Indubhushan alongwith his two brothers owned certain properties. The said Indubhushan was adjudicated as an insolvent on 29.7.1971. While the said Indubhushan was continuing as undischarged insolvent, one Arora Enterprises entered into an agreement on 9.5.1988 for sale of the suit property (Indubhushan's share) and paid a sum of Rs. 7,00,000/-. As the said Indubhushan failed to execute the sale pursuant to agreement, the said Arora Enterprises filed a suit (No.133/89) on the basis of the said agreement. . Pending the suit, Indubhushan on record, Arora Enterprises

moved a chamber summons before a learned single judge of High Court, Bombay. The said chamber summons was disposed of by the learned Single Judge holding inter alia that the agreement of sale was void and unenforceable as leave of Insolvency Court was not obtained and, therefore, the suit itself was not maintainable. An appeal was filed against the learned Single Judge's said order which was also dismissed by the Division Bench on 9.7.1991. The result of the above orders was that the suit filed by Arora Enterprises stood abated against Indubhushan's (estate) legal heirs. On 30.5.1994 the insolvency of Indubhushan was annulled. Thereafter the legal representative of Indubhushan entered into a fresh agreement to sell the property with one M/s.Kamal Construction Co. Taking advantage of the order of annulment, Arora Enterprises, the original agreement holder, took out fresh chamber summons in an original suit (No.133/89) filed by it in the year 1989 praying to amend the plaint by deleting the name of Indubhushan and to add his legal heirs. It was the contention of Arora Enterprises that the order of annulment wipes out the adjudication of insolvency and the result of that was that his agreement with Indubhushan dated 9.5.98 automatically revives and binds on his estate. It was also the contention that the dismissal of earlier chamber summons declining to implead the legal heirs and the consequent abatement of the suit are of no consequence. The said application was opposed by the legal heirs as well as M/s. Kamal Construction Co. The learned Single Judge as well as the Division Bench rejecting the contention advanced on behalf of Arora Enterprises, dismissed the second chamber application. Aggrieved by that, an appeal by special leave came to be filed in this Court and this Court after noting as many as sixteen judgments of various High Courts on the scope of Section 37 of the Act held as follows:-

"10. Though the arguments addressed before us covered a wide range, we are of the view that it is unnecessary to pronounce in detail on the various aspects involved in the matter at this stage. Suffice it to say that the preponderance of judicial opinion is in favour of the view that the effect of annulling the adjudication in insolvency proceedings, is to wipe out the effect of insolvency and to vest the property retrospectively in the insolvent. The consequence of annulling an order of adjudication is to wipe out altogether the insolvency and its effect. The property will revest in the insolvent retrospectively from the date of the vesting order. We hold that the law is fairly clear to the above extent. But, this does not solve the problem arising in this case. The effect of the suit (independently) filed by the appellant and the orders passed therein have to be considered. That is a distinct and different matter, which has its own existence and legal impact, unimpaired by the annulment of the insolvency and

wiping out its effect retroactively, in law, the suit and the judicial orders passed thereon are not wiped out, or rendered void or a nullity, automatically. The order passed in the suit is not est or ineffective. In the suit laid by the appellant (Suit No. 133 of 1989) praying for declaration that the agreement between the appellant and Indubhushan dated 9.5.88 is valid and subsisting, that the property should be property partitioned and that a decree may be passed against Indubhushan- the first defendant for recovery of a sum of Rs. 7 lakhs etc.; On the demise of Indubhushan on 22.4.89, the appellant took out Chamber Summons No. 769 of 1989 in the suit (No.133 of 1989). The court rejected the chamber summons by a composite order on two different and distinct points - (1) the agreement dated 9.5.88 entered between the appellant and Indubhushan is void and unenforceable and so, the suit is not maintainable; (2) The amendments sought by the appellant to implead Defendants 1(a) to 1(d) as Respondents 1 to 4 in place of deceased Defendant 1 and to add the official assignee as a party defendant, were disallowed. The legal effect of the said order is that Suit No. 133 of 1988 stood abated against the legal heirs of the first defendant, Indubhushan and the order passed on 2.2.90 reached finality. It so happened, as a result of the judicial order passed by the court in a proceeding between the parties to this proceeding as early as 2-2-90. This order is valid until set aside or annulled, in appropriate proceedings are taken to establish its invalidity and to get it annulled by a person entitled to avoid it. The said order stands even today; it has not been set aside. So long as the said order stands, the abatement of the suit has become unassailable in these proceedings. Nearly five years thereafter, the appellant filed fresh Chamber Summons No. 1123 of 1995 in a non-existent suit. No factual plea as such was made to set aside the abatement. The plea in that regard is that by the annulment of insolvency, the abatement of the suit, if any, requires to be set aside as a

matter of law. For reasons stated earlier, the abatement of the suit (an independent proceeding), that ensued, cannot be ignored or the proceedings in the suit revived by the annulment of insolvency, as a matter of law."

The above judgment of this Court squarely applies to the facts of this case which are given in the earlier part of this judgment. Therefore, we observed earlier that the need to go into the matter elaborately does not arise view of the pronouncement in Arora Enterprises (supra) with which we are in respectful agreement.

In the result there is no merit in this appeal and the judgment under appeal is in conformity with the recent ruling of this Court in Arora Enterprises case (supra). Accordingly the appeal fails and is dismissed with no order as to costs.