

CASE NO.:
Appeal (civil) 176 of 1997

PETITIONER:
Sankar Ram and Co.

RESPONDENT:
Vs.
Kasi Naicker and others

DATE OF JUDGMENT: 30/07/2003

BENCH:
Shivaraj V. Patil &[D.M. Dharmadhikari.

JUDGMENT:

J U D G M E N T

Shivaraj V. Patil, J.

"Whether protection provided in the proviso to Section 55 of the Provincial Insolvency Act, 1920 is available to a bonafide transferee for valuable consideration after the presentation of any insolvency petition but before the date of passing of the order for adjudication without notice of the presentation of the insolvency petition by or against the debtor", is the short question that arises for consideration and decision in this appeal.

The appellant filed petition under Section 55 of the Provincial Insolvency Act, 1920 (for short 'the Act') for recovery of Rs.25,155.40 with interest from the Bank (respondent No. 2) on the ground that it had paid the said amount on 24.8.1978 for purchase of shares belonging to the insolvent Kasi Naicker (respondent No. 1). Said Kasi Naicker had filed a petition to declare him as insolvent in I.P. No. 7/76 in 1976, which was dismissed on 25.10.1977 by the Subordinate Court, Tuticorin. He filed appeal in C.M.A. No. 116/77 before the District Court challenging the order of dismissal, which was allowed on 17.10.1978. The appellant purchased 249 shares of Rajapalayam Mills belonging to the debtor Kasi Naicker by depositing the amount to get the shares released in its favour with the consent of the debtor. When the bank neither released the share certificates nor returned the money deposited by it, the appellant filed IA No. 6/79 in I.P. No. 7/76 under Section 55 of the Act for declaration that 249 shares of Rajapalayam Mills belong to it or in the alternative to return the money with interest paid by it. The said petition was allowed by order dated 19.10.1984 directing the bank to pay sum of Rs.25,155.40 with interest at 9% per annum from 24.8.1978 to the appellant. Kasi Naicker filed C.M.A. No. 40/84 aggrieved by the said order made in IA6/79 in I.P. 7/76 in the court of District Judge Tirunelveli. The appeal was allowed holding that the order of adjudication dates back to the date of filing of the petition and, therefore, any transaction by the insolvent thereafter would not bind the receiver and the appellant was not entitled to any relief. The

appellant approached the High Court by filing revision petition in C.R.P. 6/92 in the High Court challenging the order passed by the learned District Judge. The High Court dismissed the revision petition. Hence the appellant has filed this appeal.

In the trial court contentions were raised opposing IA No. 6/79. It was contended that the petition itself was not maintainable; that the amount was not paid by the appellant and the benefit of Section 55 of the Act was not available to it.

Rejecting the contentions relief was granted to the appellant. The learned District Judge in the appeal set forth following three points for determination: -

"1. Whether the amount Rs.25,155.40 remitted by insolvent on 24.8.78

with the bank of Thanjavur belongs to Srinivas Naicker, proprietor of Krishna Stores or belongs to the Petitioner Shankar Ram and Co.

2. Whether the Insolvency Court has got jurisdiction to decide this claim.

3. Whether the petitioner Shankar Ram & Co. is not entitled to file this petition under Section 55 of the Provincial Insolvency Act."

The learned District Judge recorded finding on points (1) and (2) in favour of the appellant but held against the appellant on point No. (3). It may be mentioned here that against the order passed by the learned District Judge no revision was filed by Kasi Naicker or others. It was only the appellant, which filed the revision before the High Court calling in question the validity of the order passed by the District Judge in holding that the protection given in Section 55 of the Act was not available to it. As is evident from the order passed by the High Court in revision only point No. (3) was considered and decided. Thus the findings on point Nos. (1) and (2) have attained finality. This being the position it is unnecessary for us to consider the other aspects but to answer the question set out in the beginning.

It is concluded that the amount was paid by the appellant to the bank and not by Kasi Naicker for purchase of shares. It is a matter of record that the appellant purchased the shares belonging to Kasi Naicker from the bank on payment of money before passing the order of adjudication, declaring Kasi Naicker insolvent on 17.10.1978 in C.M.A. No. 116/77. It is also found that the appellant had no notice of the presentation of insolvency petition by the debtor Kasi Naicker on the date when it purchased the shares. As already noticed above the trial court had allowed the claim of the appellant but the District Court in appeal took a view that although the order of adjudication was passed on 17.10.1978 it related back to the date of filing the insolvency petition in IP 7/76 in 1976 in view of Section 28(7) of the Act and as such the purchase of shares made by the appellant is not protected under Section 55 of the Act. The answer to the question depends upon the proper construction

and interpretation of provisions of Sections 28 and 55 of the Act. Sections 28 and 55 read: -

"28. Effect of an order of adjudication
&\200\223 (1) On the making of an order of adjudication the insolvent shall aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors.

(2) On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided, and shall become divisible among the creditors, and thereafter, except as provided by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable under this Act shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the leave of the Court and on such terms as the Court may impose.

(3) For the purposes of sub-section (2), all goods being at the date of the presentation of the petition on which the order is made, in the possession, order or disposition of the insolvent in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof, shall be deemed to be the property of the insolvent.

(4). All property which is acquired by or devolves on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver, and the provisions of sub-section (2) shall apply in respect thereof.

(5). The property of the insolvent for the purposes of this section shall not include any property (not being books of account) which is exempted by the Code of Civil Procedure, 1908, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree.

(6). Nothing in this section shall affect the power of any secured creditor to realize or otherwise deal with his security, in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

(7). An order of adjudication shall relate back to, and take effect from the date of the presentation of the petition on which it is made."

"55. Protection to bona fide transactions. â\200\223 Subject to the foregoing provisions of this Act with respect to the effect of insolvency on an execution, and with regard to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency-

(a) any payment by the insolvent to any of his creditors;

(b) any payment or delivery to the insolvent;

(c) any transfer by the insolvent for valuable consideration; or

(d) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the order of adjudication, and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor."

The object of Section 28 of the Act is to secure unrestricted right to dispose of insolvent's property after an order of adjudication is made. This Section clearly states that during the pendency of the insolvency proceedings, the creditor shall not commence any proceeding against the property of the insolvent in respect of his debt without the leave of the Insolvency Court. On making an order of adjudication, the whole of the property of the insolvent shall vest in the court or in a receiver, as the case may be, in terms of sub-section (2). An obligation is placed upon the insolvent to assist the official receiver to realize the assets. When sub-section (1) is read along with sub-section (7), the effect would be an order of adjudication relates back to the date of presentation of insolvency petition and the order of adjudication takes effect from the date of the presentation of the insolvency petition. Consequently, vesting of property under sub-section (2) also relates back to the date of presentation of the insolvency petition. Combined reading of sub-sections (1), (2) and (7) makes the position clear that the interest of the creditors is safeguarded, parties are put on notice against attempt to transfer the property after the date of presentation of the insolvency petition by the petitioners or others relating to his property and also to warn the intending purchasers or transferees that they are taking the risk of purchasing or getting the property transferred in their names during the pendency of the insolvency proceedings from the date of presentation of the petition itself and even before passing of an order of adjudication. In the absence of such provisions, by design, the claims and interests of the creditors could

be defeated by effecting transfer of properties after filing the insolvency petition and before passing an order of adjudication. Sections 28 and 55 of the Act are to be read together. Where the transfer has been made by the insolvent after presentation of the insolvency petition, the transfer cannot be held as void ab initio but its validity or otherwise depends upon a consideration of the question whether the conditions specified in Section 55 are or are not satisfied. If the view of the High court affirming the view of the district court that the protection of Section 55 was not available to the appellant even on satisfying the requirements of Section 55, the said provision, although is on the statute book, does not serve any purpose or it is redundant or superfluous.

It is a cardinal rule of construction that normally no word or provision should be considered redundant or superfluous in interpreting the provisions of a statute. In the field of interpretation of statutes, the courts always presume that the legislature inserted every part thereof with a purpose and the legislative intention is that every part of the statute should have effect. It may not be correct to say that a word or words used in a statute are either unnecessary or without any purpose to serve, unless there are compelling reasons to say so looking to the scheme of the statute and having regard to the object and purpose sought to be achieved by it. A Constitution Bench of this Court in Jaipur Zila Sahakari Bhoomi Bank Ltd. Vikas vs. Shri Ram Gopal Sharma and Ors. [JT 2002 (1) SC 182] while interpreting and considering the effect of proviso to Section 33(2)(b) of the Industrial Disputes Act, 1947 in para 13 observed â\200\223 "The proviso to Section 33(2)(b) as can be seen from its very unambiguous and clear language, is mandatory..... Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer..... The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it." Once the requirements of Section 55 of the Act are satisfied, the appellant is entitled for the protection of the said Section as a bona fide transferee. Taking a contrary view takes away the very protective umbrella specifically made available to a bona fide transferee covered by Section 55. Protection provided for bona fide transfer in Section 55 is in a way exception to Section 28(7).

Proviso to Section 55 of the Act protects bona fide transactions mentioned in clauses (a) to (d) of Section 55. As per the proviso, in order to get protection to transactions mentioned in the said Section, two conditions are to be satisfied â\200\223 (1) that any such transaction takes place before the date of the order of adjudication, and (2) that the person with whom such transaction takes place has not at the time

notice of the presentation of any insolvency petition. By implication flowing from the said proviso, any transaction that takes place after the date of the order of adjudication does not get protection of proviso to Section 55 whether or not the person with whom such transaction takes place has any notice of the insolvency petition by or against the debtor.

In the case on hand on the facts found, it is clear that the shares were transferred in favour of the appellant before the date of the order of adjudication was made on the insolvency petition filed by Kasi Naickar and the appellant had no knowledge at the time of purchasing the shares as to the presentation of the insolvency petition, the transfer of shares was for valuable consideration and such transfer was bona fide. In this view, the appellants did satisfy the requirements of proviso to Section 55 of the Act and hence they are entitled for the claim made by them. We may add that Sections 28 and 55 must be read together harmoniously. As already noticed above, these Sections are designed and intended to serve different purposes. In the proviso to Section 55 itself, there is reference to order of adjudication and the presentation of any insolvency petition. Order of adjudication and presentation of insolvency petition are two different events essentially referring to two different dates when in the same proviso, legislature consciously made a clear statement as to two different dates, they should be given effect to. If the intention of the proviso to Section 55 of the Act was not to protect even a bona fide transferee for valuable consideration without notice of presentation of insolvency petition before an order of adjudication was made, the legislature could have simply said any transaction taking place after the date of presentation of any insolvency petition by or against the debtor instead of qualifying the transaction that takes place before the date of the order of adjudication. In this situation, the said proviso which is intended to serve a definite purpose should be given full meaning and effect. It is not possible to ignore a part of the provision, namely, "any such transaction takes place before the date of the order of adjudication". It stands to the reason as well, that a bona fide transferee for valuable consideration without the knowledge of the presentation of insolvency petition on the date of transfer of property is to be protected.

In view of the facts found, discussion made and reasons recorded above, we are unable to sustain the impugned judgment of the High Court affirming the order of the district court. We answer the question set out above in the affirmative and in favour of the appellant. Hence, the appeal is allowed. The impugned judgment of the High Court affirming the order of the District Judge is set aside and that of the trial court is restored. Parties to bear their own costs.