

**(1945) 10 AHC CK 0006**

**Allahabad High Court**

**Case No:** None

Samandar Lal

APPELLANT

Vs

Prakash Chand and Another

RESPONDENT

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**Date of Decision:** Oct. 22, 1945

**Citation:** AIR 1946 All 444 : (1946) 16 AWR 195

**Hon'ble Judges:** Braund, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

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### **Judgement**

Braund, J.

This is a civil revision raising a point under the Provincial Insolvency Act which is not free from difficulty. The insolvent was adjudicated on 21st September 1939 and obtained his discharge on 18th October 1940. In May 1941 an order was made by the Insolvency Judge that the insolvent's property, which, of course, remained vested in the Receiver notwithstanding his discharge, should be sold by public auction. The only property which at that time remained in the hands of the Official Receiver was a fruit garden at Saharanpur, in respect of which there was a liability to pay Government revenue. The insolvent immediately applied to the Court that this property should not be sold on the ground that, since he was an agriculturist paying less than Rs. 250 in Government revenue, the land was protected from sale by Section 17(1)(a), U.P. Debt Redemption Act (Act 13[XIII] of 1940). On 11th April 1942, the Civil Judge of Saharanpur came to the conclusion that the property was so protected and held that it was not saleable in the insolvency. The opposite view was taken on appeal by the District Judge of Saharanpur and on 18th April 1948 he made an order directing the land to be sold by the Receiver. It now comes to us in revision. The short point is to determine whether the effect of Section 60(2), Provincial Insolvency Act, is to incorporate the provisions of Section 17(1)(a), U.P. Debt Redemption Act, into insolvency, so as to prevent the Receiver, in administering the estate of an agriculturist insolvent in insolvency, from selling property which, had it

been the property of an agriculturist who had not been adjudicated insolvent, would have been protected by the Debt Redemption Act from sale "in execution of a decree to which this Act applies," i.e., to which the U.P. Debt Redemption Act applies.

2. Section 60(2), Provincial Insolvency Act, is in the nature of a proviso saving from the effects of the Insolvency Act any enactments for the time being in force protecting debtors from the execution against their immovable property of decrees to which the Act applies. It reads:

(2) Nothing in this Act shall be deemed to affect any provisions of any enactment for the time being in force prohibiting or restricting the execution of decrees or orders against Immovable property; and any such provisions shall be deemed to apply to the enforcement of an order of adjudication made under this Act as if it were such a decree or order.

3. We think it clear on the face of the sub-section that it does make applicable to insolvency under the Provincial Insolvency Act all those provisions of any other Act for the time being in force - and that, of course, would include any Act passed after the date of the Insolvency Act - which prohibit or restrict the execution of decrees or orders against immovable property, and that that would prima facie include an Act, protective of debtors from the execution of decrees of the general character of the U.P. Debt Redemption Act. We have the assistance of the view of a learned Judge of the Lahore High Court, in reference to a particular Act of his Province, that in general there is no reason why, in view of Sub-section (2) [of Section 60], Provincial Insolvency Act, legislation of the particular character referred to in it should not take effect against a Receiver in insolvency : *Ram Rattan v. Fazal Haq* ('39) AIR 1939 Lah. 346. We respectfully agree. The actual decision in that case does not, however, help us further than that, since it had reference to the Punjab Alienation of Land Act, and not, of course, to the U.P. Debt Redemption Act. But it appears to us that there are conditions to be carefully observed in applying a restrictive enactment u/s 60(2), Provincial Insolvency Act, against the Receiver in the insolvency. First, the restrictive enactment must only be applied in the insolvency to the same extent that it could operate in favour of the judgment-debtor outside the insolvency; and, secondly, it must always be a condition precedent to its application in insolvency at all that it can be so applied without departing from its substantial purpose. If it can be so applied, then, to the extent that it would operate outside the insolvency, it should be applied in the insolvency. But if, on its construction, we find that it cannot rationally be applied to an insolvency at all, then it cannot be applied at all, since it obviously cannot be supposed that Section 60(2), Provincial Insolvency Act, has attempted to make applicable to an insolvency something that is intrinsically inapplicable. Reverting to Section 60(2), Provincial Insolvency Act, itself, we think that its concluding sentence affords the answer to the question before us. It reads: ...and any such provisions shall be deemed to apply to the enforcement of an order of adjudication made under this Act as if it were such a decree or order.

4. The first "such," we think, makes it clear that the only application by reference into insolvency of the other restrictive enactment is to be "such" as would apply outside the insolvency. It is to be to that extent and no more. That we think is the meaning of the word "such," where it first appears. And we take the meaning of the whole sentence to be that, where there exists for the time being any enactment the provisions of which prohibit or restrict the execution of decrees or orders against immovable property, the provisions of that enactment are to be applied (so far as they can be applied) in the insolvency, to the same extent that they could be applicable outside the insolvency, treating the adjudication order as the decree or order against the enforcement of which the prohibition or restriction is to be applied. It is not every decree or order against the execution of which Section 17(1)(a), U.P. Debt Redemption Act, provides a prohibition or restriction. It is only against the execution of "decrees to which this Act applies." The definition of what decrees the Act applies to is to be found in Section 2(6), and from that definition it appears that the only decrees affected are those passed "in a suit to which this Act applies." We then look for a definition of what suits the Act applies to and are informed by Section 2(17) of the Act that it applies to "any suit...relating to a loan...." It remains necessary then to ask what is a "loan" and this is to be found in Sub-section (9) of Section 2. This is a rather round, about way of arriving at the truth; but it has been necessary. In the end it is seen that the Act only applies to decrees passed in suits relating to an "advance...made before the first day of June 1940, recoverable from an agriculturist...but does not include..." certain particular types of loan.

5. Now, it is that restrictive provision, and no other, that we have to try to incorporate into the insolvency, if we can. In our view it cannot be done. The decree contemplated by Section 17(1)(a), U.P. Debt Redemption Act, must *ex hypothesi* be a decree in favour of a particular person or persons in respect of a particular loan or loans. There is no difficulty in that case in saying that the threatened execution is in respect of a particular decree involving a particular loan; and the mischief of the Act will apply according to whether the particular decree qualifies or not. But in insolvency it is wholly different. We have u/s 60(2), Provincial Insolvency Act, to try to treat the adjudication order as the decree for the purpose of seeing if Section 17(1)(a) can be applied to it. In our view, it obviously cannot. An adjudication order is made, not for the benefit of one debt, but of many, some of which may be, and others of which may not be, in respect of "loans" as defined by the U.P. Debt Redemption Act. How can it possibly be said, in relation to the U. P. Debt Redemption Act, that the adjudication order is made for the purpose of enforcing a "loan" as defined by the Act? It is not. One or more of the debts which constitute the aggregate of the debts of the insolvent may possibly be in respect of a "loan" or "loans"; but there may be many others that are not, and, in this particular case the Court below has found that in fact there were. It seems to us to follow that, if we now try to apply Section 17(1)(a), U.P. Debt Redemption Act, to this insolvency, we

shall be going far beyond applying the restriction of Section 17(1)(a). We shall in fact be applying that restriction to a case in which the decree - i.e. the adjudication order - is in respect of debts which in part at least are debts to which the U.P. Debt Redemption Act does not apply at all. That is not what Section 60(2), Provincial Insolvency Act, directs or allows. Under that section we can only apply "such" provisions as restrict or prohibit the execution of a decree to which the U.P. Debt Redemption Act applies.

6. We have considered whether there is any way in which this difficulty can be overcome, so as to make Section 17(1)(a) applicable as a practical matter to an adjudication order. As far as we can see, there is none. A sale in an insolvency cannot be restricted to a sale in execution or enforcement of any particular debt. It is a means of enforcing all the debts *pari passu*. That is of the essence of a realization in insolvency. It "enforces" debts which are not "loans" within the meaning of the U.P. Debt Redemption Act just as much as those which are. We see no way in which this difficulty can be overcome. In the result, therefore, in our judgment the provisions of Section 17(1)(a), U.P. Debt Redemption Act, cannot be applied to insolvency. It cannot have been intended by the framers of Section 60(2), Provincial Insolvency Act, to make something applicable to an insolvency which cannot as a practical matter be so applied; and, in our view, therefore, Section 17(1)(a), U.P. Debt Redemption Act, does not apply to an insolvency under the Provincial Insolvency Act at all. It may be that it was in the mind of the Legislature when passing the U.P. Debt Redemption Act that, with the assistance of Section 60(2), Provincial Insolvency Act, it should protect agriculturist debtors in an insolvency as much as in a case where there was no insolvency. But we are concerned, not with what the Legislature may have intended, but with what it has done. On these grounds we think that the District Judge was right, though his reasons are somewhat different from his. We must, therefore, dismiss this revision with costs.