

(1915) 05 AHC CK 0030

Allahabad High Court

Case No: None

Raghubir Saran and Others

APPELLANT

Vs

Binda Prasad

RESPONDENT

Date of Decision: May 6, 1915

Citation: (1915) ILR (All) 440

Hon'ble Judges: Piggott, J; Chamier, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Chamier and Piggott, JJ.

This is an appeal by leave of the court u/s 40, Sub-section (3) of the Provincial Insolvency Act against an order of the District Judge of Meerut, allowing an application presented by the respondents for review of a previous order, whereby the appellant's half-share in a brick-kiln had been released from attachment and declared not to be available as assets for the payment of the debts of one Abdul Haq, who had been declared an insolvent. On the 27th of June, 1914, Abdul Haq applied to be declared an insolvent and named eleven creditors, among whom were the two respondents Raghubir Saran and Badr-ud-din. On August 27th, he was adjudicated an insolvent and on September 24th, the Deputy Nazir of the court was appointed receiver. The receiver attached or took possession of the brick-kiln, whereupon the appellant objected saying that the brick-kiln was his property. He explained that it had been the property of himself and his partner Abdul Haq, and that Abdul Haq had on March 26th, 1914, transferred to him his half-share in the brick-kiln for valuable consideration. Thereupon the District Judge directed that the sale of the brick-kiln which had been ordered should be postponed. The appellant had brought a suit in the Subordinate Judge's Court for a declaration of his title as owner of the brick-kiln against Ram Chandar and the insolvent. The District Judge accepted the appellant's admitted half-share in the brick-kiln as sufficient security for any loss which might result from the postponement of the sale, and thereupon

the respondents Raghubir Saran and Badr-ud-din presented a petition objecting to the acceptance of Binda Prasad's half-share as security, and alleging that the transfer of the insolvent's half-share to him was voidable and should be set aside under Sections 36 and 37 of the Insolvency Act. January 19th was fixed for hearing and ultimately the case was taken upon the 21st when the District Judge rejected the petition of Raghubir Saran and Badr-ud-din and released the whole of the brickkiln from attachment, finding that the sale by the insolvent of his half-share in the brick-kiln to Binda Prasad was valid and could not be set aside. Six days later Raghubir Saran and Badr-ud-din presented a petition to the District Judge for review of the order just mentioned. Notice was issued and the District Judge on February 10th, 1915, granted the application for re view, set aside his order of January 21st and fixed a date for the further hearing of the case noting that the parties should produce evidence regarding the good faith of the transaction which had been impugned. The District Judge ordered the re-attachment of the brick-kiln and directed the receiver to sell the bricks as soon as possible and deposit the proceeds in court. It is against this order that the present appeal was filed. On the application of the appellant the sale of the bricks was postponed pending the disposal of this appeal.

2. On behalf of the appellant it is contended that the respondents Raghubir Saran and Badr-ud-din showed no sufficient cause for a review of the order of January 21st, 1915. It was not suggested in their petition, and it is not suggested now, that they discovered any new and important matter or evidence, which was not within their knowledge or could not have been produced by them before the order of January 21st was passed. Nor was it suggested that there was any mistake or error apparent on the face of the record. When the respondent's learned pleader was asked by this Court to state the ground on which the application for review was based, he said that a review had been asked for "for other sufficient reason" within the meaning of Order XLVII, Rule 1, of the Civil Procedure Code. From the application it appears to us that the ground for review, if there was a ground at all, was that if the District Judge allowed the applicants another opportunity of producing evidence they might persuade him that the view taken by him on January 21st was erroneous. The District Judge in granting the application for review and setting aside his previous order does not say that he is satisfied that his previous order was wrong, and does not in any way indicate his reason for allowing the application beyond this that he thought that there was a case for further enquiry. It seems to us that no sufficient ground was made out for a review of the previous order. An attempt was made on behalf of the respondents to show that the question of the validity of the transfer of half of the brick-kiln was not considered by the District Judge before passing his first order; but an examination of the order shows that the District Judge did apply his mind to that very question. He refers at the beginning of his order to the application of November 19th, 1914, and says that the question is whether the transfer to Binda Prasad should be cancelled u/s 36 of the

Insolvency Act. It is therefore quite clear that the question was before the court and was decided upon such materials as were available, Under the circumstances we do not think that the application for review should have been allowed. We therefore allow the appeal and set aside the order of the District Judge, dated February 10th, 1915, with costs. It appears to us that the appeal has been over-valued. We fix the Vakil's fee in this Court at Rs. 50, fifty rupees, only.