

(1928) 01 CAL CK 0035

Calcutta High Court

Case No: Appeal No. 66 of 1927

Ramsahai Mull Mare

APPELLANT

Vs

Joylall

RESPONDENT

Date of Decision: Jan. 3, 1928

Final Decision: Dismissed

Judgement

Rankin, C.J.

This is an appeal from an order setting aside an adjudication in insolvency. The adjudication order itself is dated the 23rd November 1926 and the petition upon which that order was pronounced was filed on the 13th September of that year. The petitioning creditor was the firm of Lachmi Narain Ram Chunder and the act of insolvency alleged was that the debtor had suffered his one-third share in a certain property - No. 18, Machua Bazar Street--to be attached for a period of 21 days in execution of a certain award. It appears that on the 6th May of that year an award had been given by the Bengal Chamber of Commerce against the debtor for a sum of Rs. 15,250. This award was filed in this Court on the 12th May and at the time the insolvency petition was presented an attachment had been subsisting since 20th May by virtue of the provisions of the Indian Arbitration Act, namely, the provision, of sec. 15 which says that an award on a submission, on being filed shall be enforceable as if it were a decree of the Court. In that petition the petitioning creditors claimed that by reason of the attachment subsisting for more than 21 days there was an act of insolvency. The learned Judge has dealt with this application on another footing. It appears that this attachment was ultimately set aside by this Court upon a petition presented in a claim case. It appears that by consent it was accepted by the Court that the debtor had no attachable interest, he being a mere member of a Mitakshara family without any ascertainable share. It is conceded by Mr. Sarkar that that proposition is not sound in law and that there was attachable interest in this property at the time it was attached. The question on which the learned Judge proceeded was that the Court in execution having set aside the attachment on the basis that it was an attachment which never ought to have been

made, can that attachment be the basis of an act of insolvency? On that question I have not made up my mind and I desire to say nothing. But the second question seems to me to be reasonably plain and the proper way to look at the matter is this, that if an attachment in execution of an award be an act of insolvency then it is an act which can be utilised within three months by any other persons bringing an insolvency petition against the debtor. It does not matter what the petitioning creditor's debt is, so long as the petition was within three months, the act of insolvency would be a good foundation for an adjudication. When we come to look at the words of sec. 9 of the Presidency Towns Insolvency Act, we find that the words are these [they are words which have to be given a strict construction--I do not mean a narrow construction, but they are not words which are to be amplified upon any notion of convenience.] "If any of his property has been sold or attached for a period of not less than twenty-one days in execution of the decree of any Court for the payment of money." Let us test this case on the assumption that another creditor altogether is bringing a petition for an adjudication order in insolvency. He gets to know that within three months a person--not himself--has obtained an award against the alleged debtor and that there was a proceeding in which an attachment had taken place to enforce that award. Could it be said in favour of such petitioning creditor that the words. "in execution of the decree of any Court for the payment of money" had been satisfied? It seems to me quite impossible to say that. It is true enough that for the purpose of enforcing an award you may treat the award as though it were a judgment and, therefore, you may apply to it all the "provisions of Or. 21 and various other provisions. It is another thing altogether to say that something which is not a decree must be taken to be a decree with the result that a man is to commit an act of insolvency so that he is to be adjudicated upon a petition presented--it may be by some one who has no concern with the award at all. In my judgment the only way to deal with this matter is to deal with it in the same spirit as in the case to which we have been referred--In re Bankruptcy Notice (1). The words "in execution of the decree of any Court for the payment of money" cannot be extended by analogy. They must be extended, if at all by the legislature and we cannot hold that there has been an act of insolvency when the definition given by the legislature has not been complied with. It may be said that in this case the petitioning creditor's debt is in fact the same debt over again. But as I have pointed out we cannot treat an award as a decree except for the purpose of enforcing that award. It seems to me that it is a circumstance of no importance that the petitioning creditor's debt in this case is the same debt all over again. The position must be same whatever the petitioning creditor's debt is and it is not true to say that it is a mere enforcement of this award which is being sought. It is not therefore true to say of the award that it is a decree for the purpose of creating an act of insolvency. I think, therefore, that on this ground this appeal fails and must be dismissed with costs.

C.C. Ghose, J.

I agree.