Lakhmiram Kevalram Bhatt Vs Punamchand Pitamber

Court: Bombay High Court

Date of Decision: Aug. 9, 1920

Acts Referred: Presidency Towns Insolvency Act, 1909 â€" Section 45

Citation: AIR 1921 Bom 128 : (1920) 22 BOMLR 1173

Hon'ble Judges: Norman Macleod, J; Fawcett, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Norman Macleod, Kt., C.J.
The appellant in this appeal is an insolvent who has filed his petition under the Presidency Towns Insolvency

Act, in Bombay on the 27th November 1914. As far as this Court is concerned, the insolvent proceedings came to an end on "the 1st of October

1918, when the insolvent got his discharge. One of the opposing creditors mentioned in the schedule, the respondent in this case, has obtained a

decree for Rs. 2834-4-0 in the Court of Sirohi State, in respect of the debt for costs in Bombay High Court Suit No. 58I of 1911. In the

insolvency proceedings it had been alleged that the insolvent had succeeded as the heir of his brother to certain property in the Sirohi State, but he

was able to prove that he was separate from his brother and that his brother"s widow had adopted the insolvent"s sou. It would appear that the

respondent still hopes to be able to attach that property. The appellant then took out a rule in this Court calling upon the respondent to show cause

why he should not be restrained from proceeding in the suit filed by him against the insolvent in Sirohi State and from executing the decree passed

in the said suit.

2. The rule was discharged on the 7th of October 1919 by Mr. Justice Kajiji. The learned Judge in the course of his judgment says:-

It is contended on behalf of the insolvent that u/s 45 of the Presidency Towns Insolvency Act the discharge amounted to a release and therefore

there was no debt and no cause of action for the suit in Sirohi State. In my opinion Section 45 of the Act only applies when a creditor seeks to

recover property of the insolvent which is in British Territory or in Foreign country or State if such foreign Country or State will recognise the

Official Assignee of Bombay and hand over the property belonging to the insolvent in order that it may be applied for the benefit of all the creditors

and he may not be allowed to keep it. But in this case the Sirchi State has refused to recognise the Official Assignee and has refused to band over

the property as appears from paragraph 6 of the opposing creditor''s affidavit of 23rd September 1919. 1 therefore hold that there is nothing in the

Insolvency Act under these circumstances to prevent a decree-holder from riling a suit in a foreign Court and recovering his money from the

property of the insolvent.

3. The opposing creditor undertook not to arrest the insolvent personally and to give notice to the other creditors mentioned in the schedule of any

property and money received in execution of the decree in order to enable them to claim rateable distribution. No doubt the point for argument

before the learned Judge was whether the order of discharge is a complete release or not from the debts mentioned in the schedule. Such an order

no doubt would be recognised by all Courts in the British Empire, but certainly there would be no obligation on Courts outside British India to

recognise the order of discharge as a complete release from debts mentioned in the order. The real question is whether this Court has got

jurisdiction to restrain a party from proceeding in an action in a foreign country and if it has, on what principle it will act in considering the question.

This matter is discussed in Vanichand Rajpal Vs. Lakhmichand Maneckchand, by Mr. Justice Pratt:-

There is no doubt as to the jurisdiction of this Court to restrain a party within its jurisdiction from prosecuting a suit in a foreign Court, The principle

on which this jurisdiction is exercised is set forth in the judgment of Lord Cranworth in the case of Carron Iron Co. v. Muelaren. It is that ''the

Court acts in personam and will not suffer any one within its reach to do what is contrary to its notions of equity, merely because the act to be done

may be, in point of locality, beyond its jurisdiction.

4. Therefore if we think that the action of the opposing creditor in filing the suit in the Sirohi State on the judgment of the Bombay High Court is

contrary to our notions of equity, we should certainly restrain him from proceeding with that action. Of course that will not prevent him from

continuing the action in the Sirohi State; but if he came within the jurisdiction of this Court, proceedings might be taken against him for contempt.

Now on the particular facts of this case, there is nothing as far as I can see which offends our notions of equity in the opposing creditor continuing

his proceedings in the Sirohi State against the insolvent, who had filed his petition to get rid of the obligation to pay the costs decreed against him in

the suit I have referred to. He had no assets to hand over to the Official Assignee and as far as his obligations in British India were concerned, the

order of discharge freed him from the liability to pay those costs. But if he has assets in the Sirohi State, there is no reason why the opposing

creditor should not be at liberty to take proceedings in that State in order that he may recover his debt from any property he may discover situate

in that State. Generally speaking, it would certainly be contrary to all ideas of equity that a party trading and incurring debts in Bombay, and having

property in foreign territory, which the Official Assignee could not get hold of, should be able to completely get rid of all his liabilities , as regards

his creditors inside British India, and then proceed to enjoy his property outside British India, free from all those liabilities. This case, in my opinion,

does not come within any of the three classes of cases which were referred to in Carron Iron & Go. v. Maclarenm in which it would be considered

that a party Within the jurisdiction should be restrained from taking proceedings outside the jurisdiction of the Court. I, therefore, think the appeal

fails and it will be dismissed with costs.