

FIRM MUKAND LAL VEER KUMAR & ANR.

v.

SRI PURUSHOTTAM SINGH & ORS.

January 31, 1968

[J. C. SHAH AND V. RAMASWAMI, JJ.]

Provincial Insolvency Act (5 of 1920), s. 9(1)(c)—Transfer of property by Deed—Alleged act of insolvency—Three months period starts whether from execution or registration—Whether firm can be adjudicated insolvent—Partners when can be adjudicated insolvent.

M a partner of a firm executed a deed of gift in October, 1957 of a property, which was not partnership property. The deed of gifts was registered in March 1958. In April, May, 1958 and January 1959, petitions were filed alleging that the firm and its two partners had committed acts of insolvency and therefore, they should be declared insolvents. The lower courts adjudicated the firm and the partners insolvent. The High Court, in revision, confirmed the adjudication of insolvency with regard to the firm and M, but set aside with regard to the other partner. In appeal to this Court it was contended that (i) the starting point of the three months' period prescribed under s. 9(1)(c) of the Provincial Insolvency Act should be the date of execution of the deed of gift and not the date of registration; (ii) no order of adjudication could be made against a firm but it could only be made against the partners individually; and (iii) the firm should not have been declared insolvent merely because of the deed of gift executed by M.

HELD : (i) Section 49 of the Indian Registration Act implies that a document by reason of its execution alone cannot have the effect of transferring the property. The deed of gift executed by M, could not be considered to be an act of insolvency unless a valid transfer of property was made by that document and such a valid transfer could be said to have been made only when the document was registered. [866 D-F]

Lakshmi Chand v. Kesho Ram, I.L.R. 16 Lah. 735, *Sarvathada Iswarayya v. Kuruba Subbanna*, I.L.R. 58 Mad. 166 and *District Board Bijnor v. Muhammad Abdul Salam*, I.L.R. 1947 All. 624, approved.

U On Maung v. Maung Shwe Hpaung, A.I.R. 1937 Rangoon 446, disapproved.

(ii) An order of adjudication could be made against the firm in the present case if the proper conditions were satisfied. Section 79(2)(c) of the Act provides for rules to be made by the High Court as to the procedure to be followed when the debtor is a firm. This section, therefore, assumes that an adjudication order can be made under the Act against the firm in the firm's name. [867 G-H]

Ex parte Blain (1879) 12 Ch. D. 522, referred to.

(iii) In order to support an adjudication against a firm there must be proof that each of the partners has committed some act of insolvency. If, however, a joint act of insolvency is relied upon it must be shown to be the act of all the partners. An order for adjudication can also be made against a firm if there was an act of insolvency by an agent of the firm which was such as must necessarily be imputed to the firm. The explanation to s. 6 of the Act does not lay down that an act of insolvency of

A the agent shall be attributed to the principal but that it may be treated as the Act of the principal. [868 E, F]

The order of the lower court, so far it adjudicated the registered firm as insolvent, must be set aside. The property of which M made gift was not a partnership property and there was no collective act of insolvency alleged on behalf of all the partners of the firm.

B *Re : Mohamad Hasam & Co.* 24 Bom. L.R. 861 and *Gopal Naidu v. Mohanlal Kanyalal*, I.L.R. Mad. 189, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1167 to 1169 of 1965.

C Appeals by special leave from the judgment and order dated November 1, 1961 of the Allahabad High Court in Civil Revision Nos. 310 to 312 of 1960.

A. K. Sen and *J. P. Goyal*, for the appellants (in all the appeals).

B. C. Misra, *M. V. Goswami* and *R. H. Dhebar*, for respondents Nos. 1 and 2 (in C.As. Nos. 1167 and 1168 of 1965).

D *S. S. Shukla*, for respondent No. 3 (in C.As. Nos. 1167 and 1168 of 1965) and respondent No. 2 (in C.A. No. 1169 of 1965).

B. C. Misra and *R. Mahalingier*, for respondent No. 1(ii) to (v) (in C.A. No. 1169 of 1965).

E The Judgment of the Court was delivered by

Ramaswami, J. These appeals are brought, by special leave, from the judgment of the Allahabad High Court dated November 1, 1961 in three Civil Revision Applications nos. 310 to 312 of 1960.

F Appellant no. 1 is a registered firm of which appellant no. 2, Mukund Lal and respondent no. 7, Ram Surat Misra are the only two partners. The firm carried on 'Arhat' (Commission Agency) business. Three petitions under the Provincial Insolvency Act (Act V of 1920), hereinafter called the 'Act', were made against the firm and its two partners under s. 7 of the Act. Purushottam Singh, respondent no. 1 and Sat Narain Singh, respondent no. 2
G filed the first petition (Petition no. 9 of 1958) on April 28, 1958. The second petition was filed by Smt. Tara Devi, respondent no. 3 and Shyam Das, respondent no. 4 on May 30, 1958 which was registered as Petition no. 19 of 1958. The third petition was filed by Jivenda Mal on January 20, 1959 which was registered as Petition no. 2 of 1959. In petition no. 9 of 1958, a sum of Rs. 15,760/- was claimed; in petition no. 19 of 1958, a sum of Rs. 14,545/- was claimed and in petition no. 2 of 1959 a sum of Rs. 3,884/- was claimed but other creditors also filed their claims
H to the extent of Rs. 96,000/-. In all these petitions it was alleged

that the firm and its two partners had committed acts of insolvency and therefore they should be declared insolvents. The firm and its partners contested the petitions and asserted that they had already paid a sum of Rs. 3,50,000/- to other creditors and they were in a position to pay all the creditors and had not committed any acts of insolvency. All the three insolvency petitions were consolidated together and were heard by the Insolvency Judge, Varanasi who by his judgment dated August 8, 1959 adjudicated the firm and its two partners as insolvents. Thereafter the firm and its two partners filed three appeals under s. 75 of the Act but all these appeals were dismissed by the Additional District Judge, Varanasi by his judgment dated February 28, 1960. Thereafter the firm and its two partners took the matter in revision to the Allahabad High Court which partly allowed the revision applications and set aside the order of the lower courts adjudging Ram Surat Misra, respondent no. 7, one of the partners of the firm as insolvent. The rest of the order declaring the firm and its other partner, Mukand Lal as insolvent was confirmed.

The main question to be considered in these appeals is whether the deed of gift executed by Mukand Lal in favour of his son, Veer Kumar on October 31, 1957 and registered on March 11, 1958 could be treated as an Act of insolvency committed within three months of the presentation of the petition.

Section 6(b) of the Act states :

"6. A debtor commits an act of insolvency in each of the following cases, namely :—

.....

(b) if, in India or elsewhere, he makes any transfer of his property or of any part thereof with intent to defeat or delay his creditors;"

Section 9(1)(c) states :

"9. (1) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

.....

(c) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition :

Provided that where the said period of three months referred to in clause (c) expires on a day when the Court is closed, the insolvency petition may be presented on the day on which the Court re-opens."

Section 122 of the Transfer of Property Act (Act 4 of 1882) is to the following effect :

A "Gift is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

B Such acceptance must be made during the life-time of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void."

Section 123 of the Transfer of Property Act states :

C "For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

D Such delivery may be made in the same way as goods sold may be delivered."

Section 47 of the Indian Registration Act, 1908 (Act 16 of 1908) is to the following effect :

E "A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."

Section 49 of the Indian Registration Act states as follows :

F "No document required by section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall—

(a) affect any immoveable property comprised therein, or

(b) confer any power to adopt, or

G (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered :

H Provided that an unregistered document affecting immoveable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral

transaction not required to be effected by registered instrument."

It was contended on behalf of the appellants that under s. 47 of the Indian Registration Act a registered document operates from the date of its execution even though it may require registration and consequently the registration of the document should be taken to date back to the date of execution by a fiction of law. It was therefore submitted that the starting point of the three months' period prescribed under s. 9(1)(c) of the Act should be the date of execution of the deed of gift and not the date of registration. We are unable to accept this argument as correct. Section 123 of the Transfer of Property Act states that for the purpose of making a gift of immoveable property the transfer must be effected by a registered instrument in the prescribed manner. Under this section therefore a gift of immoveable property is not valid unless it is effected by a registered instrument. It is true that under s. 47 of the Indian Registration Act once a document is registered the effect begins to commence from the date of execution, but if the document is not registered it can never have any legal effect as a deed of gift. Under s. 49 of the Indian Registration Act it is provided that no document required by s. 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall affect any immoveable property comprised therein unless it has been registered. The section necessarily implies that such a document by reason of its execution alone cannot have the effect of transferring the property. In the present case, therefore, the deed of gift executed by Mukand Lal in favour of Veer Kumar dated October 31, 1957 cannot be considered to be an act of insolvency unless a valid transfer of property was made by that document and such a valid transfer could be said to have been made only when the document was registered on March 11, 1958. The question in the present case is not what was the effect of the registration of the deed of gift, but when did the event take place which effectively transferred the property. We are not concerned with the point of time from which the document became operative but with the point of time at which the deed of gift became legally effective. The contrary viewpoint for which the appellant contends would ignore the circumstance that if the registration of the deed of gift was not effected within the period of three months the creditor would be deprived of his remedy of relying upon the act of transfer as constituting an act of insolvency. Such an interpretation should be avoided as it would nullify the intention of the statute.

On this question there has been divergence of opinion among the various High Courts. In *Lakhmi Chand v. Kesho Ram*(¹)

(1) I.L.R. 16 Lah. 735.

- A it was held by the Full Bench of Lahore High Court that when a petition was presented alleging that a debtor had committed an act of insolvency by a registered deed, the period of limitation prescribed by s. 9(1)(c) of the Act ran from the date of the registration of the deed and not from the date of the execution thereof. The same view was expressed by the Madras High Court
- B in *Sarvathada Iswarayya v. Kuruba Subbanna*⁽¹⁾. In that case, the execution of the sale deed was relied upon as an act of insolvency by a petitioning creditor and it was held by Madhavan Nair and Bardswell, JJ. that the three months' period prescribed by s. 9(1)(c) of the Act must be calculated from the date of the registration of the deed and not from the date of its execution.
- C The same view was also enunciated by the Allahabad High Court in *District Board, Bijnor v. Mohammad Abdul Salam*⁽²⁾. A contrary view has been taken by the Full Bench of the Rangoon High Court in *U On Maung v. Maung Shwe Hpaung*⁽³⁾. It was held that the period of three months referred to in s. 54, Provincial Insolvency Act, began to run from the date of execution of the transfer provided it had been properly registered within the specified time. But for the reasons already expressed we hold that the decisions in *Lakhmi Chand v. Kesho Ram*⁽⁴⁾, in *Sarvathada Iswarayya v. Kuruba Subbanna*⁽¹⁾, and in *District Board, Bijnor v. Mohammad Abdul Salam*⁽²⁾, correctly state the law on the point.

- E It was next argued that no order of adjudication could be made against a firm but it can only be made against the partners individually. We are unable to accept this argument as correct. It is true that according to the English law the act of bankruptcy must be a personal act and no act of bankruptcy could be committed by a firm as such, and no adjudication could be made against a firm in the firm's name.—(See *Ex parte Blain*)⁽⁵⁾. But under s. 99 of the Presidency-towns Insolvency Act (Act III of 1909) an adjudication order may be made against a firm in the firm's name and such an order operates as if it were an order made against each of the persons who at the date of the order was a partner in the firm. There is, however, no provision in the Act corresponding to s. 99 of the Presidency-towns Insolvency Act. But s. 79(2)(c) of the Act provides for rules to be made by the High Court as to the procedure to be followed when the debtor is a firm. This section therefore assumes that an adjudication order can be made under the Act against the firm in the firm's name. Rules have been made under this section by the Allahabad High Court. Reference was made on behalf of the respondents to Rule 26 which states :

(1) I.L.R. 58 Mad. 166.

(2) I.L.R. 1947 All. 624.

(3) A.I.R. 1937 Rangoon 446.

(4) I.L.R. 16 Lah. 735.

(5) (1879) 12 Ch. D. 522.

"26. An adjudication order made against a firm shall operate as if it were an adjudication order made against each of the persons who at the date of the order is a partner in that firm."

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It is manifest that an order of adjudication could be made against the firm in the present case if the proper conditions were satisfied. We therefore reject the argument of the appellants on this aspect of the case.

B

It was further contended on behalf of the appellants that there is no finding of any of the courts to the effect that the firm committed any act of insolvency. The allegation of the respondents was that appellant no. 2 transferred to his son, Veer Kumar his personal house property by way of a gift deed dated October 31, 1957 and this was done by him with the intent to defeat or delay his creditors. It was pointed out that Ram Surat Misra was adjudged not to be insolvent by the High Court on the ground that there was no allegation against him of any act of insolvency. It was therefore contended that the firm should not have been declared insolvent merely because of the deed of gift executed by appellant no. 2, Mukand Lal. In our opinion, this argument is well-founded and must be accepted as correct. We think that in order to support an adjudication against a firm there must be proof that each of the partners has committed some act of insolvency. If, however, a joint act of insolvency is relied upon it must be shown to be the act of all the partners. An order for adjudication can also be made against a firm if there was an act of insolvency by an agent of the firm which was such as must necessarily be imputed to the firm. The Explanation to s. 6 of the Act says "for the purpose of this section the act of the agent may be the act of the principal". The Explanation does not lay down that an act of insolvency of the agent shall be attributed to the principal but that it may be treated as the act of the principal. Section 2(a) of the Indian Partnership Act (Act IX of 1932) defines 'an act of a firm' to mean "any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm". The effect of this section read with the Explanation to s. 6 of the Act appears to be that the question whether an act of insolvency of one or more partners can be regarded as an act of all the partners is a question of fact to be determined on the facts and circumstances of each particular case. For instance, In *Re Mahomed Hasham & Co.*⁽¹⁾ one of the partners in a firm consisting of two partners departed from the usual place of business with intent to delay and defeat the creditors of the firm. It was held by the Bombay

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(1) 24 Bom. L.R. 861.

- A High Court that an adjudication order could not be made against the firm in such a case unless the other partner had also departed with like intent. Similarly, in *Gopal Naidu v. Mohanlal Kanyalal*⁽¹⁾ it was held by the Madras High Court that it is a question of fact whether the act of one partner in closing the business of the firm and thus committing an act of insolvency so far as he is concerned was imputable to another partner so as to entitle the creditors of the firm to get the other also adjudicated an insolvent. In the circumstances of that particular case it was held that the mere fact of closing the firm by one partner without more evidence to show that the other either expressly or impliedly authorized the same was insufficient to lead to such imputation. In the present case, the property of which Mukand Lal made a gift to Veer Kumar was not partnership property and there was no collective act of insolvency alleged on behalf of all the partners of the firm. In the circumstances of the present case it cannot also be held that the act of insolvency committed by Mukand Lal should be attributed to Ram Surat Misra. The High Court has, in fact, allowed the appeal of Ram Surat Misra and set aside the order of the lower courts declaring him as insolvent. We are consequently of opinion that the order of the lower courts, so far as it adjudicates the registered firm as insolvent, should be set aside, but the rest of the order of the lower courts declaring Mukand Lal as insolvent will stand.
- D
- E Subject to this modification these appeals are dismissed. There will be no order as to costs of this Court.

Y.P.

Appeals dismissed.

(1) I. L. R. 49 Mad. 189.