

their favour, the defendants-respondents can have no complaint against our decision that the question in issue must be decided by Muhammadan Law as the issues were so widely framed by the Lower Appellate Court that they had every opportunity to tender all the possible evidence in their favour.

For the above reasons we accept the appeal and decree the plaintiff's case with costs in all the Courts.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Chevis and Mr. Justice Abdul Raof.

RAM SARUP (DEFENDANT) — *Appellant,*

versus

JAGAT RAM (PLAINTIFF) — *Respondent.*

Civil Appeal No. 2112 of 1917.

Indian Companies Act, VII of 1913, section 231—Provincial Insolvency Act, III of 1907, section 37—transfer by a Bank of a customer's pro-notes to one of its creditors within three months of going into liquidation—whether the maker of the pro-notes can, when sued by the transferee, object to the transfer to the plaintiff as a fraudulent preference by the Bank in favour of one of its creditors.

The defendant had dealings with the Industrial Bank of Ludhiana and in 1913 executed two promissory-notes in their favour. The Bank got into financial difficulties and sold these two pro-notes to the present plaintiff, a creditor of theirs, in part payment of his claim. The Bank went into liquidation within three months of the transfer of the pro-notes. Plaintiff now sued defendant for principal and interest due on the pro-notes. It was urged for defendant that the transfer of the pro-notes to plaintiff was invalid as a fraudulent preference by the Bank in favour of one of its creditors.

Held, that a disposition of a Company's property cannot be impeached on the ground of fraudulent preference except on behalf of the general body of the creditors.

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Willmott v. London Celluloid Company (1), and *Lindlay on Companies*, 6th edition, Volume II, page 90, followed.

Also *Mohanadas Thakurdas v. Tikamlas Hotchand* (2).

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And that consequently the defendant could not invoke the aid of section 231 of the Companies Act to impeach the transfer of his pro-notes to plaintiff; section 37 of the Insolvency Act, referred to.

First appeal from the decree of Lala Munshi Ram, Senior Subordinate Judge, 1st Class, Ludhiana, dated the 18th June 1917, decreeing the claim.

MANOHAR LAL, for Appellant.

TEK CHAND, for Respondent.

The judgment of the Court was delivered by—

ORRIS, J.—The defendant in this case *Lala Bir Bhan* had dealings with the Industrial Bank of Ludhiana and executed two promissory-notes in their favour, one for Rs. 3,055, dated the 28th August 1913, and one for Rs. 2,964-9-5, dated the 17th September 1913. In these pro-notes he promised to pay to the Industrial Bank or their order at their office at Ludhiana. The first pro-note provided for interest at the rate of Rs. 9 per cent. and the second one for interest at the rate of 8½ per cent. per annum.

It appears that the Bank was in financial difficulties and had several creditors, one of whom was the present plaintiff, *Lala Jagat Ram*, and in part payment of his claim the Bank through their Managing Director sold both the pro-notes to him. The plaintiff now sues the defendant, claiming the principal sums due under the pro-notes and interest at the rates given in them. The Bank was made a *pro forma* defendant, but the name of the Bank was afterwards struck off at the request of the plaintiff. The Lower Court has decreed the principal amount due and interest at the contracted rates up to the date of institution of the suit and interest at 6 per cent. per annum from the date of institution till the date of judgment. The defendant appeals, pleading that the suit should be dismissed, and

(1) (18-6) 31 Ch. D. 425 and 34 Ch. D. 147. (2) (1918) 37 Indian Cases 250.

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the plaintiff has put in cross objections asking for interest at the contracted rates till the date of realisation. Several grounds of appeal have been given up in this Court, Mr. Manohar Lal admitting that he cannot support the pleas that the defendant made payment towards the pro-notes, that the rate of interest agreed upon was only 0-8-0 per cent. per month or that the Managing Director had no power to transfer the pro-notes to the plaintiff. In fact the only point that has been argued is that as the Bank went into liquidation within three months of the transfer of the pro-notes, the transfer in favour of the plaintiff should be regarded as a transfer made with a view to giving the plaintiff preference over the other creditors of the Bank and that the transaction is therefore invalid and should be disregarded by the Court. Section 231 of the Indian Companies Act lays down that any transfer which would, if made by an individual, be deemed in his insolvency a fraudulent preference, shall, if made by a Company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors and be invalid accordingly. The aforesaid section also provides that—

“for the purposes of this section the presentation of a petition for winding-up in the case of a winding-up by or subject to the supervision of the Court, and a resolution for winding-up in the case of a voluntary winding-up shall be deemed to correspond with the act of insolvency in the case of an individual.”

Turning to section 37 of the Insolvency Act we read that—

“every transfer of property made by a person unable to pay his debts as they become due from his own money in favour of any creditor with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within 3 months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.”

On the strength of these sections Mr. Manohar Lal argues that the transfer was made in favour of the plaintiff with a view to giving him a preference over the other creditors of the Bank and should be regarded as of no effect. The two sections above-quoted must, in our opinion, be read together and when interpreting what is meant by the words in section 231 “be invalid accordingly”

we think we must be guided by what seems to us the clear object of section 37 of the Insolvency Act. In section 37 the words are "be deemed fraudulent and void as against the receiver." The object of this section seems clearly to be to protect the interests of the whole body of creditors over whom an undue preference has been given in favour of other creditors. Accordingly it has been held in *Willmott v. London Celluloid Company* (1) that a disposition of a Company's property cannot be impeached on the ground of fraudulent preference except on behalf of the general body of the creditors. See also Lindlay on Companies, 6th Edition, Volume II, page 90. The same view has been held in *Mohan Das Thakur Das v. Tikam Das Hotchand* (2).

Mr. Manohar Lal himself admits that one creditor alone could not impeach the transfers on the ground of undue preference. It seems clear to us that if one creditor alone could not invoke the aid of section 231 of the Companies Act to impeach the transaction, *a fortiori* a person, who is not a creditor of the Bank but only a debtor, cannot do so. This is the only point which has been argued before us, and the appeal accordingly must fail.

As regards the cross-objections, we can see no reason why interest should not be allowed up to the date of realisation. We decline, however, to enhance the rate beyond that of 6 *per cent.* per annum which is the usual rate of interest allowed by the Courts in such cases.

The appeal is dismissed with costs. The cross-objections are so far accepted that the sum decreed will bear interest at 6 *per cent.* per annum from the date of institution of the suit till realisation.

Appeal dismissed.

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(1) (1886) 31 Ch. D. 425 and 34 Ch. D. 147.

(2) (1916) 37 Indian Cases 250.