

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Kustoor Chand Rai Bahadur v. Rai Dhunput
Singh Bahadur, from the High Court of
Judicature at Fort William in Bengal;
delivered 29th June 1895.*

Present :

LORD HOBHOUSE.

LORD MORRIS.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Respondent in this case is or was a banker carrying on business in Calcutta and other places, and the Appellant is a creditor who seeks a declaration of insolvency against him. The act of insolvency relied on in the petition is that on the 7th and 8th February 1893 the Respondent's principal *gomashta* Panna Lal, and other *gomashtas* and servants, departed and were absent from his place of business in Shama Bye's Lane with intent to defeat the Respondent's creditors. Two defences are raised by the Respondent, one being that no such act was committed by Panna Lal, and the other that Panna Lal's act is not the act of the Respondent on which he can be adjudged an insolvent.

The Appellant's petition was presented on the 16th February 1893, and was supported by affidavits on which the Judge in Insolvency, Mr. Justice Trevelyan, made an adjudication and a vesting order. The Respondent immediately moved to set that order aside, and a great body

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of evidence was adduced by both parties. Except on minor and irrelevant points there was very little contradiction in the evidence, and the two Courts below, though they have drawn different inferences, are in agreement on every material point of pure fact.

The Respondent's principal office, or *koti*, was, as his residence was, at Azimgunge near Moorshedabad. He had divers other *kotis*, the largest in point of business being in Calcutta. It was managed by Panna as head *gomashta*. The house in which it was conducted appears to have consisted of:—first, a ground-floor on which were the *durwans*; secondly, a first floor, where was the *guddi* or office in which the *gomashta* sat to transact business, the cash-room, and another small room; and thirdly, a second or top floor in some of the rooms of which Panna slept, took his meals, and performed his *puja*. When the Respondent visited Calcutta, he also, if alone, used the top story; but, if his family were with him, he used some other house.

Late in the night of the 6th February, Panna decided that he must stop payment. Between one and two in the morning of the 7th he telegraphed to the head *gomashta* at Azimgunge:—"Business stopped; no payment to-day. Wire other *kotis* yourself." On the 8th a like telegram was sent to the same quarter, enquiring where the *Huzoor* (*i.e.* the "Master") was. In fact the Respondent was then in Ajmere, and was making his way to Calcutta. He had been on a pilgrimage to Palitana, almost at the other extremity of India, whence he was re-called by telegrams from Panna, which began as early as the 27th January, and which gave an alarming account of his Calcutta affairs. He did not arrive in Calcutta till the 11th February.

After the 6th the banking business in Calcutta was stopped. But under the Indian

Statute that is not an act of insolvency; the act alleged is that Panna departed from the place of business on the 7th and 8th February, with intent to defeat or delay creditors. There is no doubt that he locked up the cash-room; that he left the *guddi* empty, though it was open; and that he betook himself to his own living rooms in the top story. There is however no evidence that he prevented creditors from getting to him if they wished it. The strongest evidence in that direction is given by two creditors, Cuverji and Premjee. Cuverji (Rec. p. 31) went up to the *guddi* twice on the 7th. It was empty, and the *durwoans* told him that "We cannot make payments now, therefore you cannot see the Babus." On the 8th he was met on the ground floor with a like intimation. Premjee (Rec. p. 42) went to the house on the 7th and was going upstairs, when the *durwoan* said:—"Do not go upstairs, there is no one upstairs." On the 8th he went up to the *guddi*, which he found empty. Neither of these witnesses appears to have made any attempt to see Panna in his own rooms. Mr. Justice Trevelyan (Rec. p. 167) remarks on this evidence:—"I doubt very much whether there was anything amounting to a stoppage of persons going up. He" (Premjee) "may have been discouraged and did not go up in consequence of what was said to him, but there was not forcible stopping." On the other hand two of the Appellant's witnesses Narain Das (Rec. p. 35) and Kandarpa (Rec. p. 49), and three of the Respondent's witnesses, Nobin Chunder (Rec. p. 145), Radha Roman Shaha (Rec. p. 102), and Kedar Nath Mozoomdar (Rec. p. 104), all five being creditors or acting for creditors, saw Panna in his own rooms on the top story at different times on the two critical days. Their Lordships agree with the High

Court in thinking that, contrary to the opinion of Mr. Justice Trevelyan, it is impossible to hold that under these circumstances Panna departed from the place of business at all.

Even had there been more evidence of departure than there is, it is not shown how it could defeat or delay creditors. They were injured by the fact that the Respondent did not supply Panna with funds to pay them; but Counsel were unable to explain in what way any one of them was debarred from pursuing any process available to him by the fact that Panna kept his own rooms instead of sitting in the *guddi*. It is the view of the High Court that nobody was or could be so debarred; and their Lordships agree with it.

That would be enough to dispose of the appeal. But there is another question which also goes to the root of the case; viz., the question whether the conduct of the agent can result in an act of insolvency by the principal. On that question also the High Court has differed from the First Court. The effect of the High Court's decision is to disturb views of the law which have prevailed in Calcutta for some years. And as the point has been raised again in this appeal, their Lordships think it their duty to pronounce an opinion on it.

Mr. Justice Trevelyan considers it to be a settled principle that a person who leaves a *gomashta* in charge of a business can by that *gomashta* commit an act of insolvency. He refers to the case of *Hurruck Chund Golicha* (I.L.R. 5 Cal. 605) which is said to be the earliest reported case upon the point, though not the earliest decision, and to have been since taken as correctly expounding the law. In that case the trader, residing at Azimgunge, carried on business in Calcutta by a *gomashta* who absconded. Mr. Justice Broughton, the Judge

sitting in Insolvency, expressed his opinion thus:—

“ The first question is, whether a trader who trades by a
 “ gomashta can be adjudicated an insolvent, if the gomashta
 “ commits an act of insolvency. If he cannot, there must be
 “ numerous cases in which native traders in this city cannot
 “ be adjudicated insolvent at all, for nothing is more common
 “ than for a trader living in the mofussil, and scarcely ever
 “ visiting Calcutta, to leave an extensive business in the hands
 “ of his gomashta, who has the fullest authority, and who
 “ carries on the whole business on his behalf.
 “ It requires indeed no departure from the literal meaning of
 “ the words, to hold that when a trader has established a
 “ business through a gomashta, he departs from the place of
 “ his business, if his gomashta departs, and if he does not
 “ come himself or send some one else to carry on the business.”

The abstract principle of law thus decided is, that the act of a *gomashta* may be taken as the act of his principal within the meaning of the Statute. And the learned Judge thought that the facts of *Hurruck's* case fell within the principle. But it is obvious that the application of the principle must depend upon the position and authority of the *gomashta*; and as Mr. Justice Trevelyan points out, great care must be taken in applying it (Rec. p. 164).

The view of the High Court, which is stated by Mr. Justice Pigot, is that *Hurruck's* case was wrongly decided; and that, this being the first occasion on which it has been challenged in appeal, it ought to be formally overruled (Rec. p. 192). They lay down in broad terms (Rec. pp. 187-8) “ that a man cannot commit
 “ any act of bankruptcy by an act of his
 “ agent, which he has not authorized, and of
 “ which act he had no cognizance.” Of course in a sense every act of an agent must have the authority of the principal in order to affect him. But the meaning of the learned Judges evidently is that for the act in question the agent must have specific authority, and that the authority cannot flow out of his general position, as Mr. Justice Broughton thought it might.

So understood, their Lordships cannot assent to the principle laid down by the High Court. The position of a *gomashta* differs in different cases. In some cases he may be little more, or no more, than an ordinary manager. In others he may represent the business so entirely that the beneficial owners have no practical control over it and are quite unknown to the customers. Mr. Justice Pigot states the possible position of a *gomashta* with even more force than does Mr. Justice Broughton. He says:—"It often happens that a large business " is carried on for years by a *moonib* gomastah " or by a succession of them, in the name of " principals who never are seen or personally " known in connection with the business at all ; " sometimes in the name of family firms the " members of which are constantly fluctuating " from generation to generation, and of which " firms it is or may be difficult to determine " who are, at any given time, actually members." He has himself known a case in which a family owned a business for more than a century, the owners being counted by scores, and many of their *hotis* being managed by *gomashtas* whose office passed from father to son, as though it were hereditary. Yet even in such a case as that he thinks that the principle of *Hurruck's* case would not be applicable.

Their Lordships think otherwise. They cannot hold that the creditors of firms exclusively managed by *gomashtas* have no remedy by way of insolvency, whatever the *gomashta* may do; though he may make fraudulent conveyances, promote fraudulent executions, or, as in *Hurruck's* case, "levant, leaving the creditors " to find him or his master if they could" (Rec. p. 189). And yet that consequence must follow if the principle laid down by the High Court in this case be the true one.

It may be desirable that, as Mr. Justice Pigot suggests, the legislature should intervene. Their Lordships express no opinion on that subject. But in the meantime the Statute should be interpreted with reference to the facts of Indian life. And it is a question in each case whether the *gomashta* occupies such a position that the owner must stand or fall by his acts, so that his fraud or his flight shall by imputation be the fraud or the flight of the owner or multitude of owners, for the purpose of bringing their case within the Statute of Insolvency. Their Lordships agree with the Judges who have held that the Statute admits of application to such cases, and that to exclude it may lead to injustice and confusion in many cases.

They are by no means prepared to say that *Hurruck's* case was wrongly decided; though the position of the *gomashta* there is not stated so fully as they would think desirable if the case were before them for decision. On the other hand they have no hesitation in agreeing with the High Court that Panna did not occupy such a position as to make the Respondent liable to be declared insolvent on the ground of his personal conduct. The Respondent appears to have been an active and responsible owner. His residence and head *koti* at Azimgunge were well known. He occasionally came to Calcutta, and to the *koti*. When difficulties arose, Panna applied to him to meet them; and when payment was suspended, Panna openly, by himself or by his servants, told the creditors that his principal was coming, and that they must wait for his action. Under such circumstances, even if Panna himself had committed the acts alleged by the Appellant, it would in their Lordships' opinion be wrong to hold that his acts were those of the Respondent.

The result is that the appeal ought to be dismissed. And their Lordships will humbly advise Her Majesty accordingly. The Appellant must pay the costs of this appeal.
