

(1977) 08 MAD CK 0017
In the Madras High Court

Bandi Chalapathy Rao and Another

APPELLANT

Vs

The Official Assignee
The Official Assignee of Madras
Vs Bandi Chalapathy Rao and Goel Roadways

RESPONDENT

Date of Decision : 17-08-1977

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 7

Citation : (1978) 1 MLJ 316

Hon'ble Judges : Ramaprasada Rao, J

Bench : Division Bench

Judgement

Ramaprasada Rao, J.—When these two appeals were taken up, Mr. Sivaramakrishnaiah appearing for the appellant in O.S.A. No. 50 of 1973 as also Mr. Dolia in O.S.A. No. 75 of 1975 have raised a preliminary objection that the Judge sitting in insolvency ought not to have enquired into the Judge's summons taken out by the Official Assignee u/s 7 of the Presidency Towns Insolvency Act and given a judgment on the merits. Their contention is that this is a case in which the appellant in each of these appeals did not admit the liability as set out in the report of the Official Assignee and as claimed by him in the Judge's summons and at all material times there was a contest by the appellants regarding their liability to the claim made by the Official Assignee. Mr. Sivaramakrishnaiah arguing on the preliminary objection would say that the proviso to Section 7 of the Act having been introduced with a distinct purpose has a meaning and a significance to serve. He would invite our attention to the history of Sections 7 and 36 of the Presidency Towns Insolvency Act and would contend that the Parliament was prompted to amend Section 36, Clauses 4 and 5 and introduce the proviso to Section 7 of the main Act only with the definite purpose and objective to avoid a summary investigation of claims by the Insolvency Court without going through the process available under the common law. He would in the main rely upon the Full Bench decision of our Court and would say that the Insolvency Court not having adopted or followed the ratio in that decision the ultimate conclusions rendered by the said Court cannot be

taken to be an enforceable judgment and, therefore, this appeal has to be allowed on that ground after upholding the preliminary objection. The Official Assignee on the other hand would say that such an objection was taken at the trial stage before the insolvency Judge and the said objection was negated and overruled and it was only thereafter that the parties entered upon the Judge's summons and went into a trial on the triable issues arising therein and that the parties willingly let in oral and documentary evidence in support of their respective contentions and that in the circumstances therefore it is not still open to the appellants to raise once over the objections that the Judge's summons is not investigable by the insolvency Court. One other point that was also stressed before us was that it was in the discretion of the insolvency Judge after a *prima facie* examination of the material touching upon the Judge's summons to decide whether he should take up the cause and investigate it and ultimately decide it or direct the Official Assignee to file an independent suit under the provisions of the common law. In the instant case the insolvency Court having exercised such a discretion and the parties having by necessary implication surrendered to it and waived their objections after their preliminary objection was overruled cannot, in this Court as an appellate Court, reopen the question and canvass once again the position that the Judge's summons is not maintainable.

2. No doubt, it is true that Section 7 of the Presidency Towns Insolvency Act, here in after referred to as the Act as it stood without the proviso added to it in 1927 gave plenary powers to the Court to decide on all questions whatsoever whether of law or of fact which may arise in any case of insolvency coming within the cognizance of the said Court. There was also the ancillary powers to the insolvency Court under the said provision to decide any question if in its opinion it was necessary or expedient to do so for doing complete justice or making a complete distribution of the property in any such case. The latter portion of Section 7 therefore reflects the discretionary power in the Court to decide such matters. Expediency, necessity or obligation to render complete justice for the purpose of making equitable distribution of the insolvent's property are all matters which the insolvency Court can look into for purpose of considering whether the question before it has to be decided by it or such questions have to be relegated to a civil Court for a fuller adjudication of the subject-matter. If once the Insolvency Court decides that the matter could be dealt with by it—may be on the ground of expediency or necessity, may be also on the ground that it was to entertain and decide upon it so as to render justice, all such incidents reflecting upon the exercise of jurisdiction by the Court are pointers to the fact that the Court exercised its discretion one way or the other. It is not obligatory for a Court to look into a Judge's summons filed by the Official Assignee and brought before it, in other cases to adjudicate upon it. It may reject it as well on the ground that in its opinion it is neither expedient nor necessary to decide such matter in summary way. But, there may be cases also wherein the Court in the exercise of its discretion as a well-instructed institution take up such matters on file for decision and ultimately decide it for itself. If after the exercise of such

jurisdiction-may be a discretionary jurisdiction, the Court calls upon the parties before it which in an insolvency Court will invariably be the Official Assignee on the one side, and the debtor or the insolvent on the other, then it is for the aggrieved party, namely the insolvent's debtor to take such necessary steps to see that the further progress of hearing of the subject-matter by the insolvency Court is stemmed by taking up the matter further in appeal. Section 8 of the Act provides for appeals in insolvency. It is not in dispute before us that any order made by an insolvency Court on a preliminary objection taken by the aggrieved party before it regarding the exercise of its discretionary jurisdiction u/s 7 is appealable. In fact, in O.S.A. No. 50 of 1973, Gokulakrishnan, J., in Application No. 391 of 1972 passed the following order:

This is an application for deciding the issue regarding jurisdiction of this Court u/s 7 of the Presidency Towns Insolvency Act as a preliminary issue. I do not consider it proper to dismiss the application filed by the Official Assignee as not being maintainable u/s 7 of the Act. The matter can as well be considered in the main petition and a comprehensive order may be passed. Time and unnecessary proceedings can be saved if this application is dismissed at this stage relegating the consideration of the issue in the main petition. In that view, this application is dismissed.

3. Mr. Dolia would also represent before us that it was about this time that he wanted to raise additional grounds and wanted that his preliminary objection should also be noted by the insolvency Judge. But, it is common ground that the parties never interdicted the further progress of the hearing of the Judge's summons by challenging the order of .Gokulakrishnan, J., in any manner known to law. In this view, therefore, the parties had waived their objection after having been notified that their objection is not sustainable, and not only this; the parties had participated in the enquiry, filed documents, let in oral evidence and ultimately took the decision of the learned Judge. In such circumstances we are afraid that it is not open to the appellants before us to raise once again the preliminary objection about the maintainability of the Judge's summons and expediency of the hearing of such Judge's summons by the insolvency Court. It is too late in the day to do so.

4. We however entirely agree with Official Assignee Vs. E. Narasimha Mudaliar, , is an authority for the proposition that "no money claim in which any difficult questions arise should be dealt with by way of motion, nor should large claims; only simple cases capable of easy and speedy proof should be so dealt with". We respectfully adopt the observations of Beasley, J., who spoke for the Full Bench in the main. In fact, this was the opinion of the Full Bench also as is seen from the observations of Sir Murrav Courts Trotter, C.J., who said: "I have had the advantage in this case of perusing the judgment about to be delivered by Beasley, J. It sums up the results arrived at after a long discussion between him, Odgers, J., and myself and it may be taken to be judgment of the Court" (the *Italics* is ours). The Full Bench therefore, laid an embargo as to investigation on

claims which are complicated and not simple. Of course, the learned Judge whose judgment is challenged before us has characterised the claim before him as a simple money claim, but, have not adverted to the merits. Therefore, we refrain from making any observation on the content of the claim. But, suffice it however, to say that the Judge's summons can only be in matters when the Official Assignee or other persons authorised in law take out an application u/s 7 requesting the insolvency Court to adjudicate upon summary claims, claims which are not difficult and claims which could be adjudicated summarily. But, once a claim which was brought up to the Court has suffered a trial, and in that trial the parties who are aggrieved at such a trial did participate and saw through the end of the same, they cannot be allowed to approbate and reprobate and thereafter complain that such a trial was neither expedient nor necessary and ought not to have been undertaken.

5. In our view, it is not necessary to consider the import of the Full Bench decision reported in *Mrs. N. Lakshmi Vs. The Official Assignee of Madras*, That was a case which revolved upon the interpretation of Section 36 of the Act and the adding up of the proviso to Section 7 of the Act. The majority of the Judges, nay, all the Judges were of the view that it is not necessary that there should be an application u/s 36 made by the Official Assignee or the person authorised so as to argue whether the subject-matter would come u/s 36 or not. Having said this the learned Judges did not go into the question whether the ratio in *Official Assignee Vs. E. Narasimha Mudaliar*, is correct or not. We are not inclined at this stage to go into the further question as was attempted by Mr. Dolia whether the subject-matter in this case would squarely come u/s 36 or not. This is again because the appellants when they were asked to act and called upon to speak failed to do so and did not even prefer an appeal against the order of the insolvency Court which called upon them to proceed with the trial on the foot that it had the discretion to enquire into the subject-matter u/s 7 of the Act.

6. Primarily for the reason that the parties have actively participated in the enquiry before the insolvency Court and as the judgment in question is not challenged as one rendered without jurisdiction, and as the decision is the resultant of the discretionary jurisdiction of the insolvency Court, we are unable to uphold the preliminary objection. The appeal will be therefore, set for further arguments on merits.

The Judgment of the Court was delivered by

Ramaprasada Rao, J.

7. We have already dealt with in our judgment rendered on 26th July, 1977, the preliminary objection raised by the appellants that the Court exercising jurisdiction u/s 7 of the Presidency Towns Insolvency Act, 1909, could not in such proceedings enquire into the subject-matter in controversy and held that the insolvency Court did have the jurisdiction, and even otherwise, as the parties before it participated in the enquiry and the decision is the resultant of the

discretionary jurisdiction of the insolvency Court, it is too late in the day to harp upon the preliminary objection. In these circumstances, the preliminary objection raised by Mr. Sivaramakrishniah and Mr. Dolia was not sustained by us.

8. We shall, therefore, proceed to deal with the merits in each of these cases. O.S.A. No. 50 of 1973 is against the order of Gokulakrishnan, J., passed in Application No. 54 of 1972. The learned judge after an elaborate enquiry upheld the contention of the Official Assignee that the carrier is bound to account for the value of the goods entrusted to him for carriage. In the result, the learned Judge directed the appellant before us and the carrier to pay to the Official Assignee a sum of Rs. 29,474 with interest thereon at the rate of 6 per cent, per annum from 6th July, 1973 till date of payment. O.S.A. No. 73 of 1975 is against the order of Mohan, J., in Application No. 513 of 1971. There again, the learned Judge after due enquiry into the merits of the case accepted the Official Assignee's case and directed the carrier who is the appellant before us in this appeal to furnish a detailed statement of all the goods in their possession which they have not delivered to the parties at the respective places of destination and to hand over the same to the Official Assignee or pay their value as set out in the schedule to his order. The learned Official Assignee says that the value of such goods as per the schedule as above amounts to Rs. 1,19,398-88. Incidentally, the question whether the appellants as carriers were entitled to set-off was argued before both the trial Judges, but it did not gain favour with them. The appellants having been denied that right to set-off the amounts due to them towards hire charges from the company in insolvency and having accepted the judgment on merits rendered by the learned Judges as above, canvassed the only point about their entitlement to a set-off as against the decree awarded by both the learned Judges. In O.S.A. No. 50 of 1973, the Official Assignee himself concedes that after the necessary investigations the amounts due and payable by the quondam company in insolvency to the appellant is Rs. 31,684 and that a sum of Rs. 1,47,502 is due by the Company to the carrier in O.S.A. No. 75 of 1975. In the above context of merits in both these appeals, and after the disposal of the question on the preliminary point raised by the learned Counsel for the appellants in our order, dated 26th July, 1977, these matters have been set down once again for hearing on the question whether the appellants are entitled to a set-off as against the claim of the Official Assignee towards which he has secured a money decree from the trial Court in both the applications.

9. Before we proceed with the consideration of the relative contentions of parties, it is convenient to refer to the prayer of the Official Assignee in the Judges Summons which he took u/s 7 of the Presidency Towns Insolvency Act, 1909 (here in after referred to as the Act). The residuary power in the insolvency Court to decide all questions of priorities and all other questions whatsoever, whether of law or of fact which may arise in any case of insolvency coming within the cognisance of the Court or which the Court may deem expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case is provided for expressly in the

statute. We have, to some extent, in our earlier order referred to the scope and content of the power of the insolvency Court while dealing with such questions arising in insolvency. When the Legislature has vested the insolvency Court with a manifest jurisdiction to consider all questions in the name of expediency and convenience, then the very objective which the section serves is obvious. It is not only to afford speedy justice either to the Official Assignee as representing the body of creditors or to a creditor of the insolvent estate under certain circumstances, but the way in which it runs through the process created by a special provision in this Act reflects on the main concept, viz., that the insolvency Court is expected to render complete justice or a substantial justice while adjudicating the matters which come before it for a decision. The Official Assignee bearing this in view has sought in the Judge's summons for a relief which runs thus: "Why the respondent herein should not be directed to hand over the goods described in the schedule to the report filed hereto or in the alternative to pay its value". Even at the threshold, therefore, the Official Assignee was conscious that the status quo ante should be restored by the redelivery of the goods handed over to the carrier for transit, or if the carrier is unable to return or redeliver such goods or other wise explain their absence, the carrier should be made liable for the loss in the sense that he should reimburse the estate with all the loss attendant upon such non-delivery of the goods entrusted for carriage. It is not also in dispute in this case that the appellants in each of the appeals were the accredited carriers of this insolvent company and it is in this sense that a regular account appears in the books of account of the insolvent showing the quantum of the amount due and payable by the estate to the carrier as and towards hire charges. Obviously, this account shows a money debt. The claim in the alternative made by the Official Assignee was also for money in case the carrier was unable to return the goods in specie. With this necessary facts we shall now consider the forcible objection taken by the Official Assignee against the claim for set-off asked for by the appellants.

10. After referring to Section 47 of the Act, the main contention of the learned Official Assignee is that in the instant case it cannot be said that there have been "mutual dealings" between the insolvent and the appellants, and in the absence of such mutuality, the claim for set-off cannot be upheld. On the other hand, Mr. Sivaramakrishnaiah and Mr. Dolia, appearing for the appellants, contending contra, would say that the mutuality of dealings is inhered in the contract itself, and if once it is established that "on account" the insolvent had to pay the carrier for prior carriage of goods. then such a money claim could be set-off against the value of the goods not delivered and which were admittedly handed over to the carrier for carriage by the insolvent.

11. A contract of carriage has certain peculiar ingredients in-built in it. No doubt, for all outward purposes it is a contract for the carriage of goods which were entrusted by one party to the other. But, a contract of carriage is not an equation of a contract of bailment, nor is the carrier liable as a bailee. On the other hand, there is in-built in such contracts the element of an insurance contract, for, it

could reasonably be said that the carrier is equatable to an insurer who undertakes the carriage of the goods with all the attendant risks of such carriage. If, therefore, the carrier is not a bailee, but, for all legal purposes an insurer, then the question arises whether the entrustment of goods by the insolvent in the instant case was with the sole and only purpose of the return of the goods so entrusted and no more. The Official Assignee vehemently contends that the primary intention of this contract of carriage was that the carrier was expected to take the goods to the ultimate destination and if he fails to do it he is expected to return such goods in specie. Prima facie, this argument is attractive. But, the contract of carriage, in the instant case, provides for certain terms and conditions of carriage. One such term could be extracted for the purpose of convenience and ready reference . The carrier agrees as follows:

I hold myself responsible for the goods given to my care and am liable for all or any loss, damage and pilferage, caused in transit and upto the time of delivery and owing to exigencies of weather, break-down or accident, such as fire, explosion, etc., and will make good the loss sustained by your company and you can not only withhold my transport charges, but also take such steps as you deem fit in every way to recover the loss from me which I accept to pay; in this....

On a fair reading of this express term of the contract of carriage, it is clear that there is only a postponement of the right to recover the transport charges until the reciprocal obligation on the part of the carrier to account for the goods entrusted to him is satisfied. The contract does not even say that the transport charges are not payable if the goods are lost, but it is only to be withheld by the insolvent company until the carrier satisfactorily accounts for the goods entrusted or accounts for the loss of such goods or damage or pilferage done to it. When this is the express term of the contract, then, it is clear that the intention of the parties when they forged the contract of carriage is not only to recover the goods in specie if they are lost, but, alternatively also to recoup themselves with the value of such goods in case of such loss. It is this intention which ran through the fibre of this contract of carriage which was responsible for the Official Assignee when he sought for the alternative relief, in the Judge's Summons, as pointed out above earlier. It is also well accepted that once a litigant who is in the position of a plaintiff, and who is therefore, the dominus litis in a litigation seeks for two reliefs, one as an alternative to the other, then he cannot throw overboard such an express request made by him and in the appellate Court ask for the relief not granted to him, which as already stated, he only asked for in the alternative. We have discussed this question in detail in *Sakkubai Ammal v. Babu Reddiar alias R.B. Reddiar* (1977) 90 L.V. 110. We have said that "Alternative is an expression, which indicates a choice of the person, and if that choice is exercised by him, then he cannot afterwards blow hot and cold, and sue, for reliefs as he desires by throwing overboard the benefits which he has secured on a full trial in the trial Court". The Official Assignee therefore, cannot, in the appeal before us, ask only for restitution of the goods in specie

which was a relief which he has asked for in the alternative in the trial Court and which Court granted him the other relief of money instead of the return of the goods in specie. In the decree drafted as a result of this judgment of Mohan, J., both the alternative reliefs asked for have been granted. We are of the view however that having regard to the circumstances of this case the substantial relief asked for by the Official Assignee u/s 7 of the Act was only for the money equivalent of the goods lost, and he cannot therefore, now at the appellate stage ask for the return of the goods in specie.

12. If this were the main purpose of the Judge's summons, and if the judgment and the decree which followed after investigation of the Judge's summons, was mainly for the refund of the money value of the goods entrusted to the carrier, then it is not difficult for us to hold that the dealings between the insolvent company and the carrier are mutual within the meaning of Section 47 of the Act. Section 47 of the Act runs as follows:

Where there have been mutual dealings between an insolvent and a carrier proving or claiming to prove a debt under this Act, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from one party shall be set-off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively:

Provided that a person shall not be entitled under this section to claim the benefits of any set off against the property of an insolvent in any case where he had at the time of giving credit to the insolvent notice of the presentation of any insolvency petition by or against him.

We could do no better than to follow the apposite observations of a Division Bench of the Calcutta High Court in Krishna Chandra Bhoumick Vs. Pabna Dhanabhandar Co. Ltd., . After tracing the history of the section on "mutual dealings" the learned Judges said-"This statutory extension is that where there are mutual dealings between an insolvent and a creditor an account has to be taken of what is due from the one to the other in respect of such mutual dealings and the balance of the account and no more is to be paid by the one to the other. These provisions are based on manifest justice; otherwise, the receiver in insolvency would be able to recover the full amount due to the insolvent leaving the other person to take a pro rata dividend only". In a case decided by the Company Court of this Court, a similar question arose-to which one of us was a party. In that case reference was made to the decision in D. Sundaravaradan Vs. R. Narasimhachari, Official Liquidator, , where Gentle, J., observed:

It would be very harsh if the Official Assignee or the Official Liquidator of a company could demand in full, moneys due by a debtor and at the same time that person being a creditor for an equal or a larger sum, of the company must be content with a dividend dependent on the distribution which can be made from the assets.

A reference was also made to a decision of a Division Bench of the Kerala High Court in *Gokul Chit Funds and Trades Private Ltd. Vs. Thoundasseri Kochu Ouseph Vareed and Others*, . We are extracting the relevant passage in that case for a continuous appreciation of the aspect we are dealing with, which is as follows:

The "mutual dealings" referred to in (Section 47 of) the Insolvency Act may consist of several distinct or independent transactions entered into between the same parties functioning in the same right or capacity. It is not therefore necessary that the debts or claims sought to be set off against each other should have arisen out of one and the same transaction.

Having regard to the pronouncements as above, we are of the view that the appellants are entitled to claim a set off as against the counter-claim, if we can use that expression made by the Official Assignee as against them for recovery of the value of the goods entrusted to the appellants for carriage and which have been lost or are unaccounted for by them. One interesting argument, however, which the Official Assignee raised in the course of his argument, was that the contract of carriage, notwithstanding the specific clause already excerpted by us would not enable the carrier to set off the amount due by the insolvent towards hire charges. Strong reliance is placed upon two English decisions. One is *Rose v. Hart* 129 E.R. 477. A comment on this case was made by the well known author in Williams on "Bankruptcy", 18th Edition. Dealing with *Rose v. Hart* 129 E.R. 477, the author said-

The previously wide interpretation of "mutual credit" was considerably narrowed, in *Rose v. Hart* 129 E.R. 477, to mean such "credits" only as must, in their, nature terminate in "debts" as, where a debt is due from one party and credit given by him, on the other hand, for a sum of money payable at a future day, which will then become a debt; or...

The trend of the later decisions even in the United Kingdom when they were asked to interpret the expression "mutual credit" was an elaborate and wide interpretation of the same. The Courts in England thought that it was enough that the transaction which is sought to be put against a claim so as to gain a set-off is one which would most likely end in a debt. Again, the learned author has incidentally referred to the right of the Official Assignee in a given case to subject the other party who is guilty to a process under the criminal law or for tort or in the alternative for damages arising out of the breach of contract. It is this which the learned author in the above edition at page 174 refers to by quoting Lord Kenyon. The quotation runs thus:

In *Parker v. Norton*, Lord Kenyon said-I understand Buller, J., to have meant this-that if a person has his election of two remedies, and may bring either trover or any other action, the possibility of his electing to bring trover shall not prevent his proving his debt, if he will waive the tort.

The possibility of the two remedies based on tort as well as a claim for damages

cannot co-exist. The author repeats the same principle at page 216 thus:

Generally a claim which is capable of being set off by one side will afford a "mutual credit", against which the other side could, if necessary, set off their provable claims. In other words, claims must generally be within the mutual credit clause for both debtor and creditor, or for neither; and a claim cannot both be and not be subject to the mutual credit clause. But, to this rule there seems to be one exception arising from the rule that a man shall not take advantage of his own wrong. A depository without power of sale cannot, if he wrongfully sell, treat the pawnor's right to recover damages for the breach of trust as a credit by the pawnor to him; but the pawnor might nevertheless, set off the damages to which he might be entitled for the breach of trust against a credit given to him by the depository, since, if he chooses, he may waive the tort.

The learned Official Assignee is still not satisfied with the lucid explanation given by the eminent author, Williams on "Bankruptcy", but he would refer to another decision of Lord Denning presiding in a Court of appeal in *Rolls Razor Ltd. v. Cox* (1967) 1 A.E.R. 397 : (1967) 1 Q.B.D. 522 : (1967) 2 W.L.R. 241. That was a case where the salesman was entrusted with certain machines belonging to the company which later went into liquidation. The salesman was also supplied with tap adapters which he had to return in specie in case the contract of employment is snapped for whatever reason it might be. It appeared that after the company went into liquidation, the liquidator sought for the return of the machinery still with the salesman and which were not sold and also for the return of the tap adapters. Lord Denning said that the tap adapters were never entrusted to the salesman for sale or to be turned into money, there cannot be any set-off in such circumstances. But, as regards the right of the salesman to appropriate the value of the machinery towards the salary due from the company to him, the Court of Appeal gave a right of set-off to the salesman, and in this respect, Lord Denning, did depart from the rule in *Rose v. Hart* 129 E.R.477. The reason for the departure is obvious. If the mutual dealings between the insolvent company or an insolvent and its creditor are such that the creditor could successfully claim certain amount from the estate of the insolvent, and the insolvent in turn could ask for an account of the dealings which the insolvent had with the other party prior to the insolvency, then it is but substantial justice to uphold that they are mutual dealings capable of being set off one against the other. We have already prefaced by saying that the entire objective of Section 7 of the Act which though garbed with a discretionary and a summary power, yet is expected to ensure that all the decisions which are the resultant of such investigation could render manifest and substantial justice. We have already referred to the observations of the learned Judges of the Calcutta High Court in *Krishna Chandra Bhattacharya Vs. Pabna Dhanabhandar Co. Ltd.*, We have also expressed our view that a common carrier is liable practically as an insurer of the goods. The Official Assignee had elected to have the value of the goods entrusted to the carrier and has not chosen to process the criminal law so as to book the carrier for wrongful conversion or trover. In these circumstances, we are of the view that a mutual

account has to be taken as regards the dealings of one with the other. Those dealings have been scrutinised by the trial Judge in each of these appeals. We have seen that the Official Assignee is entitled to get a sum of Rs. 29,474-27 from the appellants in O.S.A. No. 50 of 1973. Similarly, the Official Assignee is entitled to obtain an amount of Rs. 1,19,398-88 together with interest from the appellant in O.S.A. No. 75 of 1975. In the former, the Official Assignee concedes that the insolvent has to pay a sum of Rs. 31,684. In the latter appeal, a similar concession is made that a sum of Rs. 1,47,592 is payable to the carrier as and towards hire charges for contracts entered into earlier between the insolvent company and the appellant carrier. One has to be set off as against the other. We, therefore, direct the Official Assignee to give credit to the sum of Rs. 31,684 towards the amount payable to him in Application No. 34 of 1972, and similarly given credit to the sum of Rs. 1,47,502, as against the amount payable to him in the decree in Application No. 513 of 1971, and after adjusting mutually the dealings in the manner indicated, claim or pay to the appellants the balance amounts in accordance with the insolvency law. The appeals are allowed. There will be no order as to costs.