

(1926) 01 BOM CK 0035

In the Bombay High Court

Case No : Appeal No. 111 of 1925 in Suit No. 1755 of 1922

Chandulal Hathichand

APPELLANT

Vs

Mulchand Ratanchand
 B.N. Lang Vs Jaswantlal
Hathichand

RESPONDENT

Date of Decision : 26-01-1926

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 17, 41, 53

Citation : (1926) ILR (Bom) 439

Hon'ble Judges : K.t., C.J.;Norman Macleod, J;Coyajee, J

Bench : Full Bench

Advocate : Kanga, General, for the Appellant; G.N. Thakor, for the Respondent

Final Decision : Allowed

Judgement

Norman Macleod, J.—On September 10,1925, an order was made in Chambers on the application of the Official Assignee, in whom had vested by virtue of an order made u/s 17 of the Presidency Towns Insolvency Act, all the estate and property of a certain insolvent Mulchand Ratanchand, that the Prothonotary should withdraw without execution the decree of the High Court in Suit No. 1755 of 1922 in favour of one Chandulal Hathibhai against the insolvent, dated June 13, 1922, which had been transmitted by this Court for execution to the Political Agent at Sadra in Mahikantha Agency on June 5, 1923.

2. The decree-holder then filed an application that this exmarte order should be vacated, and the Judge after nearing arguments directed that the order should be vacated, and that the Official Assignee should pay the applicant's costs.

3. We cannot agree with that order. The property of an insolvent, who has been adjudicated under an order of this Court u/s 17 of the Presidency Towns Insolvency Act, vests in the Official Assignee wherever it may be situated. It is an entirely different question, with which this Court is not at present concerned, whether the Official Assignee will be able to get possession of the property so

vested in him if it is situated outside British India. The fact remains that according to the law of this country in which the insolvency petition rests, all the insolvent's property belongs to the Official Assignee. But whether the property vests or not it is perfectly clear that u/s 53 of the Act this Court was entitled, and was bound, on the application of the Official Assignee, to withdraw any attachment already levied by it on the insolvent's property. The section runs thus:

Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the Official Assignee, except in respect of assets realized in the course of the execution by sale or otherwise before the date of the order of adjudication and before he had notice of the presentation of any insolvency petition by or against the debtor.

4. So that if a person is adjudicated insolvent in this Court, there can be no doubt that this Court, subject to the exception mentioned in the section, must raise any attachment issued by itself against his property on the application of the Official Assignee, and whether the property of the insolvent outside British India vests or not, this Court cannot allow any creditor of the insolvent to take advantage of attachment proceedings resting in this Court as against the Official Assignee.

5. It was conceded before the learned Judge that, as the decree was a decree of this Court, although it was transmitted for execution under an order of this Court to be executed by another Court, still that order could be withdrawn at any time by this Court on any legal or equitable ground. That was a very wise concession to make, because it contained a perfectly correct exposition of the law applicable to the case. Unfortunately, the applicant in this Court was advised to retract what was previously conceded. It is true that u/s 41 of the Code, a Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same, the circumstances attending such failure. But it cannot possibly be deduced from the provisions of that section that, once the Court which originally passed the decree has sent it for execution to another Court, it has no power to order that the decree be returned. For instance if the decree had been satisfied elsewhere and the judgment-debtor informed the Court which passed the decree and asked that execution proceedings in the Court to which the decree had been sent should be stayed and the decree returned, it is clear that the Court could make an order withdrawing its own decree from the Court to which it had been sent. In any circumstances, the Court which makes an order transferring its decree for execution to, another Court, must also have the power to bring the decree back. The points raised by counsel for the Respondent-applicant must be decided against him, and the appeal must be allowed with costs throughout. Costs to include costs of the Rule. Order of September 10 restored.