
(1942) 08 MAD CK 0047
In the Madras High Court

C.R. Subramania Aiyar

APPELLANT

Vs

The Official Assignee

RESPONDENT

Date of Decision : 13-08-1942

Acts Referred:

Citation : (1943) ILR (Mad) 338 : (1942) 55 LW 615 : (1942) 2 MLJ 448

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This appeal raises the question whether the Official Assignee is entitled to charge commission when funds have been paid into his hands in pursuance of a scheme of composition. The appellant was adjudicated an insolvent by this Court on the 8th January, 1936. His liabilities amounted to Rs. 56,978, but he was entitled to have his debts scaled under the Madras Agriculturists' Relief Act of 1938, and when this had been done his total indebtedness was reduced to Rs. 47,832. Later three creditors withdrew their claims, and as the result of their action the total indebtedness was reduced further to Rs. 33,887-7-6. The Official Assignee sold certain properties belonging to the insolvent and in this way realized Rs. 9,538-15-8. At this stage the appellant made a proposal to his creditors that they should waive interest and that they should be paid the principal sums due to them in full. He had arranged with one Mr. R. S. A. Sankara Aiyar, a banker, to advance him Rs. 25,750 on the security of a mortgage of immovable property. The creditors were willing to forego their interest and the Court was asked to approve and did approve of the scheme. Accordingly on the 27th of October, 1941, Mr. Sankara Aiyar paid into Court the Rs. 25,750.

2. In order to pay the creditors in full a further sum of Rs. 1,783 was required. This was paid into Court by the insolvent in three instalments between the 10th of November, 1941 and the 4th of December, 1941. On the 17th of November, 1941, the Court passed an order annulling the adjudication and directed that the money should be paid to the Official Assignee but should not be distributed by

him for two weeks. The order directing the distribution to be delayed was passed in order that time should be given to Mr. Sankara Aiyar to obtain the execution and registration of the mortgage. This was done within the period and (hereupon Mr. Sankara Aiyar informed the Official Assignee that he was in a position to distribute the monies in his hands to the creditors in accordance with the composition arrangement. The Official Assignee did this and claimed to be entitled to charge the usual commission of five per cent. The appellant objected. According to him the rules did not permit the Official Assignee to charge commission in the circumstances of the case. His objections were heard by Chandrasekhara Ayyar, J., who held that the commission was payable. The appeal is from the learned Judge's order.

3. Order 17, rule 19 of the Insolvency Rules of this Court states:

The Official Assignee shall charge a commission at the rate of five per cent, upon the monies from time to time to be paid as dividends out of the estate of any insolvent in his hands and credit the commission so levied to the office charges fund.

Mr. K.V. Krishnaswami Aiyar on behalf of the appellant says that as the Official Assignee is permitted to charge commission on monies paid "as dividends out of the estate" it means that he can only charge a commission on assets realized by him, and in this case, apart from the sum of Rs. 9,538-15-8 on which he was paid his commission, there has been no realisation. In support of his contention he points to the decision of Wright, J., in *Be Christie : Ex parte Christie* (1900) 1 Q.B.D. 5. That decision was concerned with the English Bankruptcy Rules, and as Chandrasekhara Ayyar, J., has pointed out the language in the English rules is very different from the language used in rule 19 of Order 17 of our rules.

4. It has throughout been the practice of this Court to allow the Official Assignee a commission of five per cent, on all monies paid out by him under a scheme of composition. Form 21 of Appendix I to the rules, which is the form used when there is a proposal for a composition mentions the commission payable to the Official Assignee, and the debtor in making the proposal has to state what provisions are to be made for its payment. Rule 21 of Order 17 provides for, the payment of commission to the Official Assignee upon the balance remaining in his hands upon, the dismissal of a petition or the annulment of an order of adjudication. It is the practice of other High Courts and in England to allow commission on amounts paid under a scheme of composition. The Insolvency Rules of the Calcutta and Bombay High Courts make express provision for this, and to prevent the present question arising in future it is advisable that the position should be made perfectly clear by a suitable amendment in our rules. Rule 218 of the Bankruptcy Rules, 1915, relates to payments under a composition scheme, and in the margin there is this note: "Dividends under composition or scheme". Therefore, according to the English practice a payment made under a composition is regarded as a dividend.

5. We are not prepared to read rule 19 of Order 17 of our rules differently from the way in which it has hitherto been read. We have already indicated that it has been the settled practice of this Court to allow the Official Assignee to charge commission on payments made under a composition and we hold that the rule is wide enough drawn to permit of this, but to save trouble in future we advise that it should be recast.

6. The appeal will be dismissed.