

(1932) 09 BOM CK 0020

In the Bombay High Court

Case No : O.C.J. Appeal No. 7 of 1932 and Suit No. 1424 of 1931

Currimbhai Abdulhusain

APPELLANT

Vs

Ahmed Ali Lukmanji

RESPONDENT

Date of Decision : 13-09-1932

Acts Referred:

Limitation Act, 1908 — Section 19

Provincial Insolvency Act, 1920 — Section 78(2)

Citation : (1933) 35 BOMLR 12 : (1934) ILR (Bom) 505

Hon'ble Judges : John Beaumont, J;Blackwell, J

Bench : Division Bench

Judgement

John Beaumont, C.J.—[After setting out the facts his Lordship proceeded:] The next point which the learned Judge dealt with was the question whether an acknowledgment of the plaintiff's claim made by the Official Assignee in the insolvency of the defendant could take the case out of the Indian Limitation Act. That depends on Section 19 of the Act which provides that where before the expiration of the period proscribed for a suit in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. Now, it is clear that the Official Assignee is not a party against whom any right or property is claimed; the claim is against the defendant, and the only claim which could have been made against the Official Assignee was for a right to prove the debt of the plaintiff and to receive a dividend. So that, clearly the acknowledgment by the Official Assignee does not come within the body of Section 19. But then Explanation II says that for the purposes of the section, "signed" means signed either personally or by an agent, duly authorised in this behalf. It has been argued that the Official Assignee was an agent duly authorised on behalf of the defendant, that is the insolvent, to acknowledge this debt. It seems to me quite impossible to say that the Official Assignee was an agent of the insolvent, or that he had any authority to sign the

acknowledgment. Mr. Desai contends that inasmuch as the Official Assignee was the person in whom the property was vested it must be inferred that he had authority to sign an acknowledgment on behalf of the debtor, and reliance was placed on the observation of Mr. Justice Coutts Trotter, as he then was, in *Govindasami Pillai v. Dasai Goundan* ILR (1921) Mad. 971. That was a case in which money had been paid into Court under the Land Acquisition Act, and the Judge paid certain moneys out on behalf of the owner to a decree holder, and it was held that the Judge must be treated as the agent of the owner of the moneys so as to make the payment a part payment within Section 20 of the Indian Limitation Act, That is clearly a different case. One difference is that nobody else could have made a part payment out of these moneys except the Judge, whereas in this case it would have been possible for the insolvent himself to have made an acknowledgment. I think that case is not really an authority which assists us. Mr. Desai has contended that unless the Official Assignee has authority to acknowledge a debt, creditors may suffer a very serious hardship when an insolvency is annulled, The insolvency may have gone on possibly for some years, and meantime the creditors may not have filed a suit, for which they would have to get the leave of the Court, and may not have troubled to get any acknowledgment, relying on the hope that they would be paid in the insolvency, and when the insolvency is annulled they may find their debts statute-barred, Undoubtedly that risk does exist, and I think that it is something in the nature of a trap which the Insolvency Judge in annulling an insolvency ought to bear in mind, The point has been dealt with by the legislature in the case of provincial insolvencies, because it is provided in Section 78, Sub-section (2), of the Provincial Insolvency Act that where an order of adjudication has been annulled under the Act, in computing the period of limitation prescribed for any suit or application for the execution of a decree which might have been brought or made but for the making of an order of adjudication under the Act, the period from the date of the order of adjudication to the date of the order of annulment shall be excluded. It is, in my opinion, a matter for the consideration of the legislature whether similar provisions should not be inserted in an amendment of the Presidency-towns Insolvency Act. However, we can only deal with the Act as it stands, and it is, in my opinion, quite impossible to say that an acknowledgment by the Official Assignee is an acknowledgment made by an agent duly authorised on behalf of the insolvent, which takes the ease out of the Indian Limitation Act. [The rest of the judgment is not material to this report.]