
(1930) 02 BOM CK 0019

In the Bombay High Court

Case No : O.C.J. Appeal No. 45 of 1929 and Suit No. 949 of 1929

Grimault and Co.

APPELLANT

Vs

Premji Gopalji

RESPONDENT

Date of Decision : 03-02-1930

Acts Referred:

Citation : AIR 1930 Bom 336 : (1930) 32 BOMLR 414

Hon'ble Judges : N.W. Kemp, J; Amberson Marten, J

Bench : Division Bench

Judgement

Amberson Marten, Kt., C.J.—The appellants appeal from an order of the Chamber Judge refusing their application to be added as parties to this creditors' administration suit. They allege that the plaintiff, who has obtained leave under Order I, Rule 8, to sue on behalf of himself and all other creditors of the deceased, is really in collusion with the first defendant widow and others, and that the interim consent order appointing one Chunilal Dayabhai to be receiver without security and without remuneration but with power to carry on the business was wrong, and also that the Court should not have directed an allowance of Rs. 100 per month to be paid in favour of the widow and her two minor children inasmuch as it appears from the plaint itself that the deceased was alleged to have left large debts and that it is at least doubtful whether the estate is solvent.

2. The learned Judge discharged the summons, and we have not the benefit of his reasons. But we are informed by counsel that after some three months the allowance to the widow was discontinued. We are also informed that a short while ago an order was obtained from the Judge for the sale of the business in question. We have not the latter order before us but I wish to point out that in Chancery practice the Court would usually insist on a formal administration decree being made before it proceeded in effect to administer the estate by granting orders for sale and so on. Moreover, until that decree is passed and the ordinary creditors' debts are ascertained and the accounts made up, the proper

administration of the estate is being unduly held up. More especially does that observation apply in the unfortunate circumstances at present prevailing on the Original Side where a case may not come for hearing for some three years. And such delay facilitates the success of a collusive administration suit, as is alleged here.

3. However, on these objections being pointed out, what appears to us to be a satisfactory solution has been arrived at. In the first place all parties agree that an administration decree can be taken at once and that there is no opposition to it. We will, therefore, direct the suit to be set down for an administration decree on Monday next and to be starred at the head of my brother Kemp's board. Then as regards the person appointed receiver we think it preferable that instead of a private receiver without any security the Court Receiver should be appointed. We will accordingly ask the learned Judge passing the administration decree to appoint the Court Receiver as receiver in the place of the gentleman already appointed. We ask the Judge to make that order because in form the only application at present before us is one by the appellants to be added as parties.

4. Then, as regards that particular application, we propose to give the applicants liberty to attend all proceedings at their own risk as to costs including those on Monday next and including of course all proper inspection and obtaining copies of relevant documents. This should give them all necessary protection. Then when the accounts have been taken by the Commissioner and it is ascertained what has been actually done with the estate, the Court will be in a position to see whether any of the allegations made by the applicants are established, or whether in fact the estate of the deceased has been properly administered.

5. As regards costs we propose to reserve the costs of all parties of the Court below and before us, to be dealt with by the Court of first instance on further directions after the Commissioner has made his report but subject to any right of appeal. The existing order of July 8, 1929 discharged.