
(1925) 09 BOM CK 0030
In the Bombay High Court
Case No : O.C.J. Suit No. 63 of 1923

Gulam Hussein Bundeally Hurji	Vs	APPELLANT
Piarally Abdulla Dossal and Sons		RESPONDENT

Date of Decision : 15-09-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 25 Rule 1

Citation : (1926) 28 BOMLR 1074 : 97 Ind. Cas. 797

Hon'ble Judges : Mirza, J

Bench : Single Bench

Judgement

Mirza, J.—The original plaintiffs filed this suit against the defendants claiming a sum of Rs. 11,140, interest, and costs. The original plaintiff's were adjudicated insolvents, and the second plaintiff, the Official Assignee of Madras, was brought on the record as the second plaintiff being their assignee in insolvency.

2. By an order made by Taraporewala J., dated March 12, 1926, the Official Assignee of Madras was ordered to deposit a sum of Rs. 1,600 as security for the defendants' costs incurred up to that date, The learned Judge further ordered that the plaintiffs (meaning the defendants) be at liberty to apply for further security as further coats are incurred.

3. The defendants, under the liberty so reserved to them, have, by their Chamber Summons, dated Septemer 1, 1925, called upon the Official Assignee of Madras to deposit a further sum of Rs. 4,000, or such other sum as to this Court may seem proper, as security for the defendants' costs incurred subsequent to the date of the original order.

4. The practice in England appears to be that whenever a liquidator, or assignee in bankruptcy, adopts the proceedings which were instituted previous to the liquidation, or previous to the bankruptcy, he is held liable for all the costs incurred including the costs incurred prior to his coming on the scene. Order XXII, Rule 8, appears in effect to incorporate that practice in the case of the

Official Assignee adopting the proceedings which were instituted previous to the insolvency. Order XXII, Rule 8, provides as follows :-

(1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for costs thereof within such time as the Court may direct.

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency, and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

5. It is contended, on behalf of the defendants, that what Order XXII, Rule 8, contemplates is, security for the costs of the suit incurred in the past and to be incurred in the future until its termination. It appears that Taraporewala J. has accepted this contention as being correct. With great respect to the learned Judge, I differ from him in the interpretation of Order XXII, Rule 8, It appears to me that the object of Order XXII, Rule 8, is to make the Official Assignee, in case he fails in the suit, liable for all costs of the suit, and not only liable for such costs as were incurred after he appeared on the scene. It would be inequitable to allow the Official Assignee under such circumstances to contend that for the previous costs the defendants should go -pro rata with the other creditors of the insolvent. This is now the well-established practice of the English Courts, and, in my opinion, all that this rule does is to incorporate that practice by providing that the Official Assignee shall give security for the costs of the suit incurred before he adopted the proceedings.

6. Order XXII, Rule 8, Sub-rule (1), requires the Official Assignee to give security for the costs of the suit. By that what is intended, in my opinion, is, the costs of the suit incurred up to the date when the Official Assignee is made a party plaintiff to it. Were the intention of this rule as contended for by the defendants, one would expect to find the legislature use language similar to that of Order XXV, Rule 1 Order XXV, Rule 1, in cases where it applies, requires the plaintiff to give security for the payment of all costs incurred, and likely to be incurred, by any defendant. Were the Official Assignee himself to institute proceedings, it is common ground that there is no provision in the Code which would compel him to give security for the costs of the action which he institutes, In cases where he is sued as a defendant, he is liable for costs not personally but to the extent of the assets of the insolvent that may be in his hands, but where he institutes proceedings in his own name as plaintiff, he is liable for those costs personally like any other litigant: see *In re Glanville: Ex parte The Trustee* (1885) 2 Morr. 71. In the present case it is clear that the Official Assignee is personally liable for the costs of the suit incurred after he has become a co-plaintiff. Whether the assets

in his hands are sufficient or insufficient, he must personally pay the costs to the full extent after he became a party plaintiff should he lose the action.

7. Under the circumstances, it cannot have been the intention of the legislature to handicap the Official Assignee where he adopts the proceedings instituted previous to the insolvency by making him give security to the full extent for the costs of the suit both already incurred and to be incurred until its termination.

8. The latter part of the order made by Mr. Justice Tarapore-wala, I am of opinion, was without jurisdiction, and is not binding upon the parties. Under these circumstances the summons should be discharged with costs.