(1925) 02 BOM CK 0036

In the Bombay High Court

Case No : O.C.J. Suit No. 1162 of 1919

Hardayal Shivlal — APPELLANT

Vs

Haji Adam Goolmahomed — RESPONDENT

Date of Decision : 12-02-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 52
Presidency Towns Insolvency Act, 1909 — Section 74

Citation : AIR 1925 Bom 344 : (1925) 27 BOMLR 545 : 87 Ind. Cas. 1011

Hon'ble Judges : Taraporewala, J

Bench : Single Bench

Judgement

Taraporewala, J.—The point for decision in this matter is whether moneys in the hands of the Official Assignee, which are payable to the judgment-debtors as creditors of the insolvent by way of dividend declared by the Official Assignee, are attachable under Order XXI, Rule 52, of the Civil Procedure Code.

2. I have been told that there have been judgments of single Judges of this Court disallowing such attachment, following the English cases on the point There is no judgment of a Judge of this Court with reasons given for the decision on the point which might be of some assistance to me in deciding this question The judgments of single Judges, however, are not binding on me.

3. Now there is no doubt that in England it has been held that the moneys in the hands of the Official Receiver payable by way of dividend to the judgment-debtor as creditor of the insolvent are not a debt liable to be attached within the meaning of Order XLV, Rule 1, of the Supreme Court Rules. The point was decided in Prout v. Gregory (1889) 24 Q.B.D. 281 on appeal from the Order of a Master discharging a garnishea order nisi, referred by a Judge at Chambers to the Court. The judgment of Lord Coleridge C.J. is no doubt based on a broad ground, namely, that to make a garnishee order in such a case would be to interfere with the administration of an estate which has to be administered under the provisions of a statute (Bankruptcy Act 1883, 46 & 47 Vic. c. 52) expressly

dealing with the subject-matter, and containing express directions as to the manner in which the subject-matter is to be dealt with.

4. The judgment of Mathew J., however, is put on the ground that the amount of the dividend so payable to the creditor of the insolvent cannot be treated as a debt and that the Official Receiver is not a debtor. In support of the opinion he cites the judgment in Dolphin v. Layton (1870) 4 C.P.C. 130 where it was held that money in the hands of the Registrar of a County Court as an Officer of the Court was not subject to the process of attachment on the ground that the moneys were not a debt due by the Registrar.

5. Whether Lord Coleridge C. J. was right under the English law in laying down the broad ground on which he disallowed the attachment or not, in my opinion, the matter is covered by Order XXI, Rule 551, of the Civil Procedure Code. That rule provides for attachment of property in the custody of any Court or public officer. 1 find that there is no similar provision in the Supreme Court Rules, the only provision in the Supreme Court Rules being the rules under the heading "Attachment of debts" and. as put by Mr. Justice Mathew in Prout v. Gregory, unless the moneys sought to be attached are a debt, they cannot come under Order XLV, Rule 1, of the Supreme Court Rules, so as to be liable to be attached. The provision in the CPC for attachment of debts is made by Order XXI, Rule 46. Rule 52 deals with attachment of moneys in the custody of any Court or public officer. A public officer is defined by Section 2, clause 17, Sub-clause (h), of the Civil Procedure Code, and the Official Assignee is a public officer coming within that definition. It was so held in Joosub Haji Alii v. N.W. Kemp (1902) 4 Bom. L.R. 929.

6. There is no doubt that the amount in the hands of the Official Assignee which is payable by way of dividend to the judgment-debtors in this matter is the amount in the hands of of a public officer and is payable by the public officer to the judgment-debtors. I do not think that by making an order on the Official Assignee to pay the amount to the decree-holder, who is the creditor of the person entitled to the dividend, I should be in any way interfering with the administration of the insolvent''s estate. Immediately the creditor goes to the Official Assignee and asks for the moneys he is entitled to receive the same.

7. If the Official Assignee does not pay the dividend to the creditor, no suit cm be filed against him, but the Court may, on the application of the creditor who is aggrieved by such refusal, order him to pay it, and also to pay out of his own money interest thereon at such rate as may be prescribed for the time that it is withheld, and the costs of the application as provided by Section 74 of the Presidency Towns Insolvency Act.

8. By this order I direct the public officer to pay the moneys to the decree-holder of the creditor instead of to the creditor.

