

(1909) 02 CAL CK 0038
In the Calcutta High Court
In re: Maud Anderson

Date of Decision : 15-02-1909

Acts Referred:

Citation : (1909) ILR (Cal) 489 : 2 Ind. Cas. 405

Hon'ble Judges : Francis W. Maclean, C.J.; Brett, J

Bench : Division Bench

Judgement

Francis W. Maclean, C.J.—One Maud Anderson became insolvent on the 4th of August 1908. It appears that she was a monthly tenant of certain premises known as 77, Dhurrumtollah Street, at a rent of Rs. 300. On the 7th of September 1908, an application was made by her landlord the practical object of which was that the insolvent should be ordered to show cause why she should not forthwith deliver up possession of those premises either to the landlord or to the Official Assignee. That matter came on for hearing, and notwithstanding the objection of Maud Anderson, the insolvent, the Court ordered the insolvent to make over possession within a week to the Official Assignee. She did not do that, and the result was that a contempt order was passed on the 18th of November 1908. She now appeals: and she says that the Court sitting in Insolvency had no jurisdiction to make the first order. I think her contention must prevail. I can see nothing in the Insolvency Act which enables the Court to make at the instance of a landlord, what is virtually an order for ejectment against his tenant. It is said that her interest in this house vested in the Official Assignee. That would be true if she had any interest, but the landlord proceeds on the footing that the lease had determined, that Maud Anderson was a trespasser and that he was entitled to immediate possession. In this view, there was nothing to vest in the Official Assignee. If the Official Assignee thought he was entitled to and wanted possession, it was for him to have applied to the Court. But there are no provisions in the Insolvency Act which enable the Court sitting in Insolvency on a summary proceeding like the present to make virtually an ejectment decree, at the instance of a landlord, against his tenant. The appeal therefore succeeds and, must be allowed with costs both here and in the Court of first instance. The order for committal must also be discharged. I regret the result, because I think

the appellant has been too smart for the other side.

Brett, J.

2. I agree.