(1930) 07 AHC CK 0013

In the Allahabad High Court

In Re: Official Receiver

Date of Decision : 08-07-1930

Acts Referred:

Citation : AIR 1931 All 94

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mukerji, J.—This is a reference from the District Judge of Moradabad. It appears that the auditor auditing the accounts of the Official Receiver took an objection that the Official Receiver had paid himself too much and in this way. The Official Receiver sold properties of the insolvents and among those properties were some which were encumbered. In the case of latter properties, sometimes the mortgagee agrees that the property should be sold free from incumbrance and he should be given the same right over the sale proceeds as he had over the mortgaged property. In the case of the last mentioned sale the Official Receiver realized 5 per cent over the entire amount of the sale price received by him. The auditor''s objection is that the whole amount was not " distributable " among the creditors of the insolvents and the amount distributable was the money that was left after paying the mortgagee. The auditor''s opinion was that 5 per cent could be charged only on what remained after deducting the amount paid to the mortgagee. In order to come to the right conclusion we have to read carefully the Notification of the Government dated 20th May 1925, being No: 607/VII-247. The language is as follows:

Under Clause (4) of the said section of the said Act, the remuneration of the above-mentioned official receiver is fixed at Rs. 5 per cent of the gross assets coming into his hands subject to a minimum commission of Rs. 5 in each case.

2. In our opinion the expression "gross assets" means the entire amount realized by the Official Receiver irrespective of whether the whole was distributable or not among the creditors. In this view the auditor''s objection is not maintainable. This is our answer to the reference.

