(1931) 07 AHC CK 0013

In the Allahabad High Court

In Re: Official Receiver''s Remuneration

Date of Decision : 23-07-1931

Acts Referred:

Citation : (1931) 07 AHC CK 0013

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Judgement

Mukerji, J.—This is a reference by the Insolvency Judge of Agra, through the District Judge of the same place, as to what is the remuneration, which should be paid to the Official Receiver under the circumstances of this case.

2. The circumstances are these: The insolvents owned property, which consisted of two houses and some moveables. The houses were subject to an encumbrance, presumably, simple mortgage of Rs. 2,500. The insolvents and the creditors and the mortgagee came to terms with the result that they agreed that the houses should be sold to the mortgagee for Rs. 3,500, that the mortgagee should pay three annas in the rupee to all the unsecured creditors of the insolvents and keep the balance for himself, in full satisfaction of the mortgage. It has been ascertained that this arrangement would enable the mortgagee to keep Rs. 3,125 for himself and he would be liable to pay Rs. 375 to the unsecured creditors.

3. The remuneration of the Official Receiver has been fixed by a notification of the Government in the following language:

This notification is for Agra and will be published in the U.P. Gazette of 15th March 1930. The notification bears No. 359/VIX-277, dated 11th March 1930. It runs as follows.... the remuneration of the abovementloned Official Receiver is fixed at 5 per cent of the gross assets coming into his hands, subject to a minimum commission of Rs. 5 in each case.

4. We have to construe the words "gross assets" having regard to the circumstances of the present case.

5. The learned Counsel who appears for the Official Receiver has brought to our notice two cafes decided in this Court in which it was held that where an Official receiver is allowed to sell property, which was encumbered, as free from encumbrance, with the consent of the mortgagee, the total price fetched by the sale of the property was to be taken as the "gross assets" in that case. These cases cited before us are Emperor Vs. Nanhua Dhimar and Others, and David, E.V. Vs. The Judge, Small Cause Court It has been argued that the present case is on all fours with the cases decided in this Court and that the Official Receiver should be paid 5 per cent on the sum of Rs. 3,500.

6. We are not prepared to accept this contention. We have consulted Murray''s English Dictionary and we find that the word "assets" is defined as " effects of an insolvent debtor or bankrupt applicable to the payment of his debts." This definition implies that the interest of the mortgagee is not to be taken into account in considering what are the assets of an insolvent debtor. This must be so because a mortgage is the transfer of an interest in the immovable property and what has already been parted with by the insolvent cannot be considered to be his property available for distribution among his unsecured creditors. In the cases quoted on behalf of the Official Receiver, the entire property of the insolvents, free from encumbrance, came into the hands of the Official Receiver, and he was enabled by the consent of the mortgagee to sell the property. For this reason it was held that the property sold by the Official Receiver was the gross assets of the insolvents.

7. The word "gross," again means the "whole" "entire" and "total." This word qualifying "assets" does not give the latter word any extended meaning beyond this that the entirety of the assets have to be taken into consideration.

8. In the case before us the rights of the mortgagee have not been waived and the Official Receiver never had in his hands the property of the insolvents as it was before the mortgage.

9. That being the case we are forced to the conclusion that the words " gross assets " in this particular case must mean that portion of the property which is represented by the amount of Rs. 375. The Official Receiver therefore should have his remuneration calculated on the sum of Rs. 375.

10. Nothing has been said in the reference as to what became of the moveable properties attached. If those properties came into the hands of the Official Receiver he would be entitled to his 5 per cent commission on the value of those properties as well. This is only for the information of the insolvency Court lest it should be the case that it has overlooked this point

11. We may point out that an objection was taken by the insolvents before the insolvency Court, that the Official Receiver has done nothing for the benefit and in the interest of the insolvents or the creditors and therefore he should get nothing. As the insolvency Court has pointed out, the Official Receiver will do all that is necessary to complete the scheme at which the parties have arrived and

he was always prepared to do all that was necessary to be done in the case. We think therefore that the insolvency Court was right in holding that the Official Receiver was entitled to such remuneration as the rules awarded him. We direct that a copy of this order be sent to the insolvency Court through the District Judge of Agra as our answer to the reference.

