
(1919) 02 AHC CK 0029
In the Allahabad High Court

Jugal Kishore and Another

APPELLANT

Vs

Bankim Chandra

RESPONDENT

Date of Decision : 25-02-1919

Acts Referred:

Citation : AIR 1919 All 255(1) : (1919) ILR (All) 481 : 51 Ind. Cas. 192

Hon'ble Judges : Muhammad Rafiq, J; Henry Richards, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Henry Richards, Kt., C.J. and Muhammad Rafiq, J.—This appeal arises out of insolvency proceedings. The appellants are mortgagees of the property of the insolvent. The mortgaged property has been taken possession of by the receiver and sold. The court below thought that the mortgagee was only entitled to interest at the contractual rate up to date of the insolvency. In our judgment the court below was quite wrong. The mortgagee according to law is clearly entitled to receive out of the proceeds of the sale of the mortgaged property his principal, interest and costs. He is entitled to receive interest up to the date of payment. A mortgagee as mortgagee is not a person proving in the bankrupt's estate—he is a secured creditor and entitled to look to his security to realize the amount of the debt secured thereon, We do not think that the cases cited by the learned District Judge have any bearing on the question involved in this appeal. We allow the appeal, and modify the order of the court below by directing that the mortgagees appellants here must be paid the principal, and interest, (the latter calculated up to the date of payment at the contractual rate mentioned in the mortgage). As the mortgagee has had to appeal here, we think that to this sum should be added the costs of the appeal necessarily incurred in the court below. These sums also should come out of the proceeds of the sale of the mortgaged property. As stated above, the appellants will have their costs in this Court.