

(1937) 01 MAD CK 0039
In the Madras High Court

Kodak Ltd.

APPELLANT

Vs

South Indian Film Corporation Ltd.

RESPONDENT

Date of Decision : 08-01-1937

Acts Referred:

Citation : AIR 1937 Mad 833 : (1937) 46 LW 260

Hon'ble Judges : Gentle, J

Bench : Division Bench

Judgement

Gentle, J.—In this matter the Royal Talkies, Trichinopoly, have been admitted by the liquidator as creditors of the Company in the sum of Rs. 250. It is contended on behalf of the creditor that they are a different category to the ordinary unsecured creditor. The indebtedness arose in this way. The Company was in the habit of letting out films upon hire to renters and on the 10th September 1935 the Company wrote to these creditors setting out the terms upon which they were prepared to hire out a film and the letter concludes: "If you agree to the above condition, send us a deposit of Rs. 1,000 immediately." Instead of Rs. 1,000, only a sum of Rs. 250 was sent and on the 19th September 1935, the Company by letter intimated to the creditors that it was unable to conclude the agreement for hiring the film. This Rs. 250, it appears from the correspondence and from the books of the Company, was entered into a suspense account to the credit of the Royal Talkies. Applications for payment were made on many occasions but the Company failed to repay this sum.

2. At the date of the winding up order of the Company, there was in the credit of the Company's account at the bank a sum of approximately Rs. 1,100 and there is no evidence before me that it was even less sum than that amount between the time of the payment by the creditor to the Company of the Rs. 250 I have mentioned and the date of the winding up order. The creditors' contention is that this sum of Rs. 250 is not divisible amongst the general body of creditors. I have been referred first of all to Section 229, Companies Act, 1913, which provides that in the winding up of an insolvent Company, the same rules apply that will be

observed and will prevail in regard to the respective rights of secured and unsecured creditors as are in force for the time being under the law of insolvency. By Section 52(1), Presidency Towns Insolvency Act 1919, it is provided that the properties of the insolvent divisible amongst his creditors shall not comprise amongst others the property held by the insolvent on trust for any other person. Section 94, Trusts Act, provides that in any case not coming within the scope of any preceding sections of the Act, where there is no trust, but the person having possession of property has not the whole beneficial interest in such property, he holds it for the benefit of the persons having such interest.

3. The learned counsel on behalf of the liquidator has quite properly informed me that under those circumstances the position of the trust arises. When the sum of Rs. 250 was paid, this money was sent by way of an anticipated earnest payment in respect of the contract which was contemplated would come into existence between the parties. There was never any contract and therefore the moneys paid remained the moneys of the creditor. I have been referred to *The Official Assignee of Bombay Vs. Moulvi Abdul Hayee*, a case in which a sum of Rs. 1,000 was paid to a firm subsequently becoming insolvent by way of deposit in contemplation of the payer entering into a service agreement with the payee, the sum paid being the contemplated sum by way of fidelity guarantee. No agreement was ever concluded and in that case it was held by Wadia, J. that the payees were the trustees of the payers in respect of that money. His decision went to appeal and whilst approving of his view it was reversed upon another point which was not argued before the learned Judge in the first instance.

4. When the Company intimated to the creditor that there would be no concluded contract between them, in other words, when the Company withdrew its offer to make a contract upon the terms contained in an earlier letter (which they were entitled to do), the position of mere negotiation which had then existed terminated and upon the letters which I have seen it is quite clear that the Company were holding this sum of Rs. 250 for the benefit of the creditor. I have been referred to several decisions, both Indian and English: *In re Hallett's Estate* (1880) 13 Ch D 696, *In re Hallett & Co; Ex Parte Blanc*, (1894) 2 QB 237, *James Roscol (Bolton) Ltd. v. Winder*, (1915) 1 Ch 62. The tenor of all those decisions is that a fiduciary position having been established, it must be shown that the moneys received can be identified as still in the hands of the recipient. That does not mean that the actual moneys paid over to a recipient and paid into his own banking account are traceable, but an equivalent sum. Subsequent withdrawals from the banking account, it is presumed, are first of all in respect of his own moneys and not as against the moneys which he was holding for the benefit of another person. As long as there is in his possession at material times moneys of the total value of the sum held by him to the benefit of another, that other is entitled to take up the position that he has traced those moneys paid over by him. If the balance is less than the moneys paid, then the principles set out by Mr. Justice Serghant in *James Roscol (Bolton) Ltd. v. Winder*, (1915) 1 Ch 62 cited above apply, i.e. the payer is entitled to look to the recipient up to the amount of

money remaining in his hands. The claim of these creditors is the only one of its nature as far, as I have been informed and the sum which they paid into the hands of the Company, namely Rs. 250, apparently being still in the hands of the Company, at the date of the winding up order, in my view they are entitled to be brought within the benefits which Section 229, Companies Act, coupled with the provisions of Section 52(1)(a), Presidency Towns Insolvency Act, affords him.

5. I therefore hold that the sum of Rupees 250 out of the sum of Rs. 1,100 is in the words of Section 52(1) property not divisible amongst the general body of creditors, in other words they are not entitled to that amount. Whether questions arise in regard to other secured creditors I do not know. It may be a matter for subsequent application to the Court. So far as this matter is concerned, these creditors' claim is allowed with costs.