
(1932) 02 CAL CK 0013
In the Calcutta High Court

(Mallik) Ramlal

APPELLANT

Vs

Official Assignee of Calcutta and Others

RESPONDENT

Date of Decision : 01-02-1932

Acts Referred:

Provincial Insolvency Act, 1920 — Section 36

Citation : AIR 1933 Cal 115

Hon'ble Judges : Rankin, C.J;C.C. Ghose, J

Bench : Full Bench

Judgement

Rankin, C.J.—This is an appeal by one Malik Ramlal who is stated to have on 4th February 1930 presented a petition in the Delhi Court for adjudication of the firm of Tulsidas Kissendayal and on whose petition the Delhi Court made an order of adjudication against these parties on 13th February 1930. At the time these proceedings were initiated and taken to completion the position was that the debtors had committed an act of insolvency under the Presidency Towns Insolvency Act on 4th January, a petition in insolvency had been presented against them in Calcutta and this Court in Calcutta on 17th January had appointed the Official Assignee interim receiver of their assets in Calcutta, Delhi, Karachi and elsewhere. On 15th February, that is, two days after the date of the adjudication order of the Delhi Court, this Court made an adjudication order. In these circumstances, an application was made by the Official Assignee to the Delhi Court for an order u/s 36, Provincial Insolvency Act, that Court should cancel the insolvency proceeding pending before itself or stay those proceedings. That application was dismissed by the Delhi Court. A Calcutta creditor had at or about the same time presented a similar application which application has not yet been disposed of by the Delhi Court. In these circumstances, the Official Assignee in Calcutta who had taken possession of certain Calcutta properties as interim receiver applied to the learned Judge on the original side sitting in insolvency for a direction whether the estate should stay under his own management or whether the proceedings ought to be carried on by the Official Receiver, Delhi.

2. The learned Judge before whom it first came made an order and directed that a copy should be sent to the Judge of the insolvency Court in Delhi and to the receiver. Nothing happened as a result of that and, on 1st September 1931, another learned Judge exercising the insolvency jurisdiction of this Court directed the Official Assignee to take steps to sell the property in his hands. It appears that he also directed the Official Assignee to appeal from the order of the Delhi Court refusing to take action u/s 36, Provincial Insolvency Act. But Mr. Roy informs us that this latter course would be infructuous as the time for appealing has elapsed.

3. We have therefore to say whether the learned Judge's direction to the Official Assignee to sell the Calcutta property in his hands should be allowed to stand. Now, it is true that under the Presidency Towns Insolvency Act, the title of the trustee relates back to the date of the first available act of bankruptcy having regard to the date of the petition and in this case the act of bankruptcy relied upon by the Calcutta petitioning creditor was prior to the adjudication order made in Delhi. It has however been decided in the case of *Official Assignee of Madras v. Official of Rangoon* AIR 1919 Mad 566 that the adjudication order which is prior in time vests the property of the insolvent regardless of the doctrine of relation back which might be applied in favour of the Official Assignee under the later order. In these circumstances it appears to be plain that on 13th February 1930 the property with which we are concerned really vested in the insolvency Court at Delhi or its receiver and, in my judgment, it was not in these circumstances open to the learned Judge on 1st September 1931 to give a direction to the Official Assignee here to sell the Calcutta property.

4. The position is of course that unless the proceedings under the prior adjudication order can be dislodged, the proceedings under the later order will have no effect, and, if it does not seem necessary on this application to do more than deal with the question whether the property should be sold, I may point out that the course provided by the statute in the matter is simply this that if in the end the Delhi Court cannot be induced to set aside its own order or stay the proceedings thereunder then it will be for this Court on a proper application to consider whether it should not stay its own proceedings and annul its own adjudication u/s 22, Presidency Towns Insolvency Act. I do not think that we ought to make any order under that section now. We will leave it to any person who may desire to have such an order to apply for it and obtain, if he can, having regard, in particular, to the fact that the application by the Calcutta creditor in Delhi has not been disposed of. But all that is necessary on the present appeal to say is that we set aside that part of the order of the learned Judge by which he directed the Official Assignee to sell the Calcutta property in his hands. The Official Assignee will have his costs out of any assets that may be in his hands. Both Mr. Roy's client and Mr. Banerjee's client will have liberty to add their costs in these proceedings before the learned Judge and before us to their proofs in any administration in this Court.

C.C. Ghose, J.

5. I agree.