
(1926) 06 CAL CK 0022
In the Calcutta High Court

Ramratandas Bagri

APPELLANT

Vs

Dwijendra Nath Sen

RESPONDENT

Date of Decision : 29-06-1926

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 17, 81

Citation : AIR 1926 Cal 1033 : 97 Ind. Cas. 294

Hon'ble Judges : Charu Chunder Ghose, J

Bench : Single Bench

Judgement

Charu Chunder Ghose, J.—The question raised on this summons is whether the Official Assignee of Calcutta as assignee of the estate and effects of one Dwijendra Nath Sen is entitled to retain a sum of Rs. 185-1-11, as and by way of commission in the circumstances stated below.

2. It appears that the said Dwijendra Nath. Sen executed three deeds of hypothecation, one dated the 21st March, 1925, in favour of Ramratandas Bagri and two others dated the 15th February, 1924, and 14th January, 1925, in favour of Nandaram Mathuradas. The property mentioned in the deeds of hypothecation consisted of goods which were the stock-in-trade in the business carried on by Dwijendra Nath Sen. It appears that Ramratandas Bagri instituted a suit, in this Court on the 6th June, 1925, being Suit No. 1660 of 1925, against the said Dwijendra Nath Sen for the purpose of enforcing the deed of hypothecation executed by him in favour of the plaintiff. It is said that at the time of the institution of the suit it was not known that Dwijendra Nath Sen had been adjudicated an insolvent and an application was, therefore, made on this Court on the 22nd June, 1925, for an order that the Official Assignee be brought on the record. By an order made by this Court dated the 22nd June, 1925, the application was granted and the Official Assignee was brought on the record. Thereafter it appears that the Official Assignee wrote on the 12th November, 1925, to Messrs. Dutt & Sen, the Solicitors for the plaintiff, Ramratandas Bagri, stating that inasmuch as the insolvent had admitted in his schedule that the

plaintiff, Ramratandas Bagri, was a secured creditor for two sums, namely, Rs. 2,500 and Rs. 1,200, being the amounts claimed in the said suit, and that in the events which had happened, he would not contest the suit. The suit ultimately came on before my learned brother Mr. Justice Buckland on the 1st December, 1925, when his attention being drawn to the letter of the 12th November, 1925, he made a decree in favour of the plaintiff, Ramratandas Bagri. It appears that thereafter a question of priority was raised between Ramratandas Bagri and Nandaram Mathuradas and ultimately it was agreed between them that whatever monies were realised by sale of the stock-in-trade of the said Dwijendra Nath Sen would be divided between the plaintiff, Ramratandas Bagri, and the said Nandaram Mathuradas in the proportion of 1 to 2, i.e., the plaintiff, Ramratandas Bagri, would get a 1/3rd share of the sale-proceeds of the stock-in-trade and the said Nandaram Mathuradas would get a 2/3rds share of the sale-proceeds. It appears that thereafter an arrangement was arrived at by which the Official Assignee was to sell the stock-in-trade through Messrs. Mackenzie Lyall & Co. The goods were accordingly sold and a sum of Rs. 3,702-7-3 was realised by the sale of the goods. The Official Assignee has furnished an account in which he says that the net balance available for distribution among the plaintiff, Ramratandas Bagri, and the said Nandaram Mathuradas is a sum of Rs. 3,226-13-10. This sum has been arrived at by deducting a sum of Rs. 185-1-11 on account of the Official Assignee's commission and this last mentioned sum is the subject of exception on this summons.

3. The Official Assignee has appeared by Counsel and he has argued that u/s 81 of the Presidency Towns Insolvency Act and Rule 178 of the Rules made thereunder, the Official Assignee is entitled to charge the commission referred to above. On the other hand, it has been argued on behalf of the plaintiff, Ramratandas Bagri, that under the Presidency Towns Insolvency Act and the Rules made thereunder, the Official Assignee is not entitled to deduct any commission whatsoever on the facts of this case.

4. It appears to me that in this case the parties concerned, namely, "the two hypo-thecees did not avail themselves of the provisions of the Second Schedule of the Insolvency Act for the purpose of realising their security and that, therefore, they not having availed themselves of the machinery provided by the Insolvency Act, cannot be charged with commission in the manner proposed by the Official Assignee. The present plaintiff proceeded to institute a suit and has recovered a decree on his deed of hypothecation. The sale by Messrs. Mackenzie Lyall & Co. was a sale by arrangement between the parties--and at the time when the sale was so held the only property which had vested and which remained vested in the Official Assignee under the terms of Section 17 of the Insolvency Act was the equity of redemption which the insolvent had after the deeds of hypothecation had been executed by him. In these circumstances I do not see how the Official Assignee can contend that under Rule 178(b) he is entitled to charge a commission. It is said that the explanation to that rule is merely a guide for the purpose of construing Rule 178(b). I agree; and on the

construction of Rule 178(b) there cannot be the slightest doubt, in my opinion, that the Official Assignee is not entitled to claim the commission referred to above.

5. The result, therefore, is that there will be an order in terms of the summons and the Official Assignee must pay the costs of this application personally.