
(1944) 05 CAL CK 0020

In the Calcutta High Court

Case No : Appeal from Original Order No. 70 of 1943

Re. Ali Mohammed Hashim, an Insolvent Md. Siddique Yusuf	APPELLANT
Vs	
The Official Assignee of Calcutta and Others	RESPONDENT

Date of Decision : 29-05-1944

Acts Referred:

Citation : (1944) 05 CAL CK 0020

Final Decision : Allowed

Judgement

Gentle, J.—This appeal arises in connection with Insolvency Case No. 49 of 1339. It is an appeal by a creditor against part of the order of adjudication made on June 13, 1939, in the insolvency petition and to have deleted there from one of several acts of insolvency and by which it was held that an assignment executed by the insolvent on January 20, 1939, in favour of the Appellant was a fraudulent preference. Several proceedings have taken place in connection with the present matter. Finally the Judicial Committee in Mahammad Siddique Yousuff v. The Official Assignee of Calcutta 47 C. W. N. 914 (1942). gave to the Appellant two month extension of time to appeal against the order of insolvency and this appeal has been preferred in accordance with the leave granted by the Board. In paragraph I in the order of insolvency, it was directed that the assignment was made by the insolvent in favour of the Appellant with intent to defeat or delay his creditors and in paragraph 5 that such assignment was a fraudulent preference.

2. The appeal is limited to the extent that these two parts of the order should be deleted. We are of opinion that the appeal should succeed. It is probable that the facts connected with this matter will discussed in future proceedings. Consequently it is desirable that as few observations as possible should be made with regard to them. Since the appeal is to allowed and the two parts of the order mentioned above deleted, we think it will be sufficient to say that this procedure will be followed and that the deletions will take place. This is following the directions given in Ex parte Tucker: In re: Tucker L. R. 12 Ch. D. 308 (1879). which was followed in the Divisional Court in England In re: A Debtor 106 LT 344

(1912).

3. This appeal will be allowed. The costs will abide the result of any application which the Official Assignee may make in the Insolvency Court, alleging that the assignment was a fraudulent preference. If the application is not made within two months from to-day then the following order will come into force that the Appellant's costs will be paid by the Official Assignee of Calcutta out of the assets of the estate of the insolvent in his hands.

Sen, J.

I agree.