

(1906) 03 BOM CK 0015
In the Bombay High Court
Case No : O.C.J. Appeal No. 1417

R.S. Woonwalla and Co.

APPELLANT

Vs

N.C. Macleod

RESPONDENT

Date of Decision : 26-03-1906

Acts Referred:

Insolvency Act, 1848 — Section 31

Citation : (1906) 8 BOMLR 470

Hon'ble Judges : Lawrence Jenkins, J;Batty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Lawrence Jenkins, K.C.I.E., C.J.—This appeal arises out of an application by certain creditors in the insolvency of Bhucandas Lallubhai and Hurgovandas Itcharam to set aside a sale of property of the insolvent.

2. The property sold consisted of the insolvent's interest as puisne mortgagees in a mill in Bombay and the debt secured by the mortgage.

3. On the 10th of April 1905 the Official Assignee agreed with Mr. Ebrahim Rahimtoola to sell the property to him for Rs.. 8,000 subject to the sanction of the Court. On the same day Mr. Premchand Roychand made an offer of Rs. 10,500. Mr. Ebrahim at once expressed his willingness to increase his offer to the same amount.

4. Thereupon the Official Assignee brought the matter before the learned Commissioner in Insolvency, who directed that the property should be put up to sale between the two contending parties, Mr. Ebrahim and Mr. Premchand.

5. This was done and the property was knocked down to Mr. Ebrahim for Rs. 13,100.

6. On the 27th June 1905 a deed of assignment was executed by the Official Assignee in Mr. Ebrahim's favour.

7. On the 6th of September the present application to set aside the sale was made. It was heard by the learned Commissioner, who held he had no jurisdiction and discharged the rule.
8. From that order the present appeal is preferred.
9. In my opinion the rule was rightly discharged.
10. Under the Indian Insolvent Act the Official Assignee has full power to sell the property and effects of an Insolvent, and it is his duty to make sale of the same with all convenient speed (Section 31).
11. True it is that the first agreement for sale to Mr. Ebrahim was expressed to be subject to the sanction of the Commissioner, but this was not because the law so required, but because the Official Assignee desired the Commissioner's guidance.
12. In the end however it was not under this conditional agreement that the property was sold, but in a mode indicated by the Commissioner which required no subsequent sanction by him.
13. It cannot therefore in my opinion be contended that the sale was by the Court and as such liable to be set aside on a proceeding like the present.
14. How then can it be said that Mr. Ebrahim came within the jurisdiction of the Court in Insolvency ?
15. There clearly was no submission on his part, so the jurisdiction must rest, if any where, on the words of the Act.
16. But the only section to which the appellants can point is the 31st; they rely on the concluding words of that section.
17. But (in my opinion) that section does not vest the Court with power to set aside a sale completed, as the one in question has been.
18. But even if those concluding words were capable of the meaning for which the appellants contend, still the Court is not bound to interfere thereunder : it has a discretion.
19. And when regard is had to the circumstances of the case, and the nature of the contest, I hold that even if there be the jurisdiction, it ought not to be exercised in this case.
20. If the appellants think they are entitled to relief, then it should be sought in a regular suit. We therefore dismiss the appeal with costs. There will be separate costs for each respondent.