

(1917) 02 MAD CK 0010
In the Madras High Court

S.K. Mohideen Kadirshaw Maraikar

APPELLANT

Vs

The Official Receiver and Another

RESPONDENT

Date of Decision : 23-02-1917

Acts Referred:

Provincial Insolvency Act, 1907 — Section 24, 26, 52

Citation : AIR 1918 Mad 206 : (1918) ILR (Mad) 30 : 45 Ind. Cas. 67

Hon'ble Judges : Oldfield, J; Bakewell, J

Bench : Division Bench

Judgement

1. The first question in this case relates to an order passed by an Official Receiver upon the claim of a creditor of an insolvent to rank as a secured

creditor under an hypothecation bond which was disputed by another creditor. The Official Receiver received oral and documentary evidence and

held that the bond was supported by consideration and was not fraudulent. His suocessor-in-office seeks to impeach the transaction

notwithstanding this decision.

2. By virtue of Section 52 of the Provincial Insolvency Act, 1907, and rules of this Court made thereunder, an Official Receiver has power (6) to

frame Schedules and to admit or to reject proofs of creditors, and (f) to hear and to determine any unopposed or ex parts application. Section

24(1) directs the Court to frame a schedule of creditors and the debts proved by them, and Section 25 prescribes the ordinary procedure for

proof of debts. Under these provisions all persons alleging themselves to be creditors are required to produce evidence of the amount and

particulars of their debts, which may: be upon affidavits containing certain particulars and the Court, by order, determines the persons who have

proved themselves to be creditors and the amount of their debts, and then frames the schedule.

3. Section 24(3) then provides for an application by a creditor after the schedule has been framed that his name may be entered therein, and

Section 26 provides that the Court may expunge an entry in the schedule or reduce the amount of a debt upon the application of a Receiver or, in

certain 1 cases, of a creditor or the debtor; and both provisions contemplate a judicial inquiry. Having regard to these express provisions for a

judicial enquiry upon the rectification of the schedule when framed, and to the absence of any such provision in relation to the framing of the

schedule in the first instance, we think that the latter operation is intended, at least in general, to be an ex parte determination by the Court upon the

evidence furnished by the alleged creditors. If this, construction be correct and the sections and rules already mentioned be read together, it is clear

that the power delegated to the Official Receiver is to frame the schedule after an ex parte examination of the evidence tendered by the alleged

creditors and that he does not decide judicially or finally upon contested claims.

4. For these reasons we are of opinion that the action of the Official Receiver amounted only to an entry of the appellant in the schedule of

creditors u/s 24, and does not preclude the Court from entertaining an application under Sections 26 and 36.

5. [Their Lordships then dealt with the evidence and, holding that the appellant's mortgage bond was a bona fide transaction supported by consideration, allowed the appeal with costs.]