
(1936) 05 MAD CK 0008
In the Madras High Court

The Buckingham and Carnatic Co. Ltd. APPELLANT
Vs
The Official Assignee of Madras RESPONDENT

Date of Decision : 06-05-1936

Acts Referred:

Presidency Towns Insolvency Act, 1909 — Section 60(2)

Citation : AIR 1936 Mad 907 : (1937) ILR (Mad) 103 : 165 Ind. Cas. 466 :
(1936) 44 LW 369 : (1936) 71 MLJ 432

Judgement

1. One E. Balasundara Mudaliar, an insolvent, was employed by the appellants, Messrs. Binny & Co., in their mills, and the insolvent having

agreed to pay an allocation to the Official Assignee in order to get protection, on the 15th August 1935, an order was made by the Insolvency

Court upon the appellants requiring them to withhold monthly a sum of Rs. 6 from the salary of the insolvent and immediately to remit it to the

Official Assignee until further or other order of the Court. On the 24th September, 1935, the appellants took out an application before the Master

in Chambers praying that the garnishee order before-mentioned should be vacated. The Master dismissed the application and from his order of

dismissal the appellants appealed to the Insolvency Judge who dismissed the appeal.

2. The Master on the objection of the Official Assignee held that the appellants had no locus standi to object to the order of attachment of the

insolvent's earnings in their hands and also that these earnings were "income" ejusdem generis with "salary" in Section 60(2) of the Presidency

Towns Insolvency Act and therefore liable to attachment. Wadsworth, J., ruled in favour of the appellants on the first point but against them on the

second. Hence this appeal.

3. These two questions have now to be considered. Although there is no appeal on the first point by the Official Assignee, he is entitled to uphold

the trial Judge's decision upon any ground that is open to him. This point was not argued by the appellants since it had been decided in their favour

by the trial Judge. For the Official Assignee Mr. Venkatesa Aiyar contends that the proceedings were entirely between the Official Assignee and

the Insolvent, that what was in question was the pay of the insolvent, that since he was willing that a part of it should be paid to the Official

Assignee as a condition for his getting the protection of the Court from arrest, the appellants have no right to be heard to the contrary and that the

insolvent having consented to this arrangement, such arrangement is binding upon the appellants. It is very difficult to understand this contention.

The appellants were not given any notice of the proceedings in the Insolvency Court in which the insolvent consented to the arrangement in

question and were never at that stage heard in opposition to it; nor do we think that at that stage it was necessary for them to be heard. They,

however, were not bound by those proceedings at all. As a result of them this attachment was made and they were served with the garnishee

notice. It is argued on behalf of the Official Assignee that it is not open to them to raise any objection whatever to this direction upon them but they

have merely to obey it, but no authority is cited in support of this contention. A refusal to obey the Court's direction would subject the appellants

to unpleasant consequences. Are they not to be heard to say that the order made upon them was an illegal order in that the earnings, the subject of

the order, were not attachable u/s 60 of the Act? Is a person upon whom an order, which appears to him to be illegal, has been made not to be

allowed to state his objection thereto? If the insolvent's earnings are not attachable u/s 60(2) then clearly the order upon the appellants is an illegal

one and ought never to have been made and the appellants have the right to show that it ought never to have been made upon them. We agree with

Wadsworth, J., on this point.

4. The next question is whether these earnings come within the words "salary or income" which appear in Section 60(2) of the Presidency Towns

Insolvency Act; and here some facts are necessary. The insolvent is a daily piece-work labourer in the Carnatic Mills belonging to the appellants

and his daily wages are calculated on the quantity of work turned out by him. His average daily earnings as a piece-worker amount to Rs. 1-11-1,

though for purposes of convenience he is paid once a month. His wages accordingly vary from month to month according to the number of days he

works and the amount of work he turns out. The insolvent joined the service of Binny & Co. in 1926; and his services are liable to be terminated

on a month's notice. He earns no wages on the days he is absent with leave and from paragraph 3 of the second affidavit of Mr. Barlow it appears

that he cannot be compelled to work against his will. Those being the facts, the decisions under the corresponding section of the English

Bankruptcy Act are of assistance to us. The first of these is *Ex parte Benwell* : In *re Hutton* (1884) 14 Q.B.D. 301. There it was held that the

word "income" in Section 90 of the Bankruptcy Act of 1869 applies only to an "income" ejusdem generis with a "salary" and does not enable the

Court to set aside for the benefit of the creditors of a professional man who is an undischarged bankrupt any part of his prospective and contingent

earnings in the exercise of his personal skill and knowledge. Brett, M.R., on page 306 says:

Section 89 deals with cases in which the bankrupt is entitled, either by the bounty of the Crown or under some Act of Parliament, to some "pay,

half-pay, salary, emolument or pension". He is entitled to one of these things, though he has not got it actually in possession, but he is certain to

have it if things go on as they are. And the Court is empowered to deal with matters of this kind, though they are not comprised in any of the

previous sections of the Act, for the bankrupt is certain to have them though they have not yet come into his possession. Section 90 goes further

still and enables the Court to deal with "a salary or income other than aforesaid" of which the bankrupt is in receipt. What is the meaning of the

word "salary" in the section? It must be a salary of the same kind as those things which have been already mentioned though it is not paid in respect

of similar services. Then there is the general word "income". The rule is that general words added to particular words do not include everything

which would come within them according to the literal meaning of the English language but are to be limited to things ejusdem generis with those

things which have been previously mentioned. "Income" therefore must mean "income" in the nature of a salary.

5. In a recent case, *In re Landau : Ex parte Trustee* (1934) 1 Ch.D. 549 Romer, L.J., refers to *Ex parte Benwell* and says:

It is true that Lord Esher in *Ex parte Benwell : In re Hutton*¹ said that income in the old section corresponding to Section 51, Sub-Section 2, was

income ejusdem generis with salary; but with all respect to that learned Judge, I do not think such a statement assists us very much unless the

statement goes on to tell us to what genus salary payment belongs. He did not do so.

6. With all respect to Romer, L.J., Brett, M.R., in *Ex parte Benwell : In re Hutton* (1884) 14 Q.B.D. 301 did state to what genus salary belonged

because he says salary must be of the same kind as "pay, half-pay, salary, emolument or pension" set out in Section 89 of the Act. Cotton, L.J., in

Ex parte Benwell : In re Hutton (1884) 14 Q.B.D. 301

In my opinion Section 90 points to some definite annual amount which is coming to the bankrupt and in such a case a part of it can be set aside for

the benefit of his creditors.

7. Next is *In re Shine* (1892) 1 Q.B.D. 522. There, the bankrupt had entered into an agreement with the management of a theatre to act for a term

of two years at a salary of thirty pounds a week payable weekly. The salary was to be subject to a proportionate reduction in respect of any night

upon which the theatre should not be open. It was held that the payment to the bankrupt for his services under the agreement was "salary or

income" within the meaning of Section 53, Sub-Section (2) of the Bankruptcy Act of 1883. Lord Esher, M.R., in his judgment referred to *Ex parte*

Benwell : In re Hutton (1884) 14 Q.B.D. 301 and said that, the payments being made under a contract, the rules laid down there did not apply. In

In re (1892) 1 Q.B.D. *Shine* there was a definite contract for a stated period and the amount to be paid was a definite amount; and Bowen, L.J.,

in the same case says:

I am of opinion, having regard to the contract, that it is a salary. "Salary," I think, must mean a definite payment for personal services arising under

some contract and (to borrow an expression of my brother Fry) computed by time.

8. In the case before us, no doubt the money is paid to the insolvent under a contract of service but it is not a definite payment; it is indefinite in

amount, the amount being dependent upon the quantity of work done and the number of days worked by the insolvent. It is no doubt for personal

services. In *In re Rogers : Ex parte Collins* (1894) 1 Q.B.D. 425, Vaughan Williams, J., on page 431, says:

It seemed to be rather assumed in argument that because money was personal earnings it could not be within the 53rd section. I do not agree. If

you happen to receive your personal earnings under a contract, so that your personal earnings are not daily earnings, but take the shape of yearly

or other periodical salary, I conceive that, subject to the rule of not depriving the bankrupt of the means of livelihood, if it be shown that after

providing fairly and liberally for the support of the bankrupt there will be a balance of salary, that. that balance of salary, even though the salary is a

salary for personal exertions, might be made the subject of an order under the 53rd section.

9. Therefore, in the view of Vaughan Williams, J., a salary means something in the shape of an yearly or other periodical method of calculation for

payment for services, and, as before stated by Cotton, L.J., in *Ex parte Benwell : In re Hutton* (1884) 14 Q.B.D. 301 "salary" must be some

definite annual amount which is coming to the bankrupt. The earnings in this case do not satisfy either of these tests. We now come to a case which

seems to us to be directly in point, namely, *In re Jones: Ex parte Lloyds*. In that case *Ex-parte Benwell : In re Hutton* (1884) 14 Q.B.D. 301 was

followed and it was held that wages earned by a workman employed in a colliery are not "salary or income" within the meaning of Section 53,

Sub-Section (2) of the Bankruptcy Act of 1883. The workman there was earning wages which averaged 25 to 30 shillings a week. We know that

colliers are paid on a piecework basis and their earnings therefore vary from day to day; and Cave, J., could not distinguish between the case of

the collier before him from the case of the debtor in *Ex parte Benwell : In re Hutton* (1884) 14 Q.B.D. 301, stating that in the latter case although

the debtor was making large sums of money amounting to more than £1,000 a year, yet inasmuch as he was not entitled to receive that money

with respect to any particular period such as a year or some part of a year irrespective of the amount of work he did, the money so received was

not "income" ejusdem generis with "salary". With regard to the case before him he said that as in *Ex parte Benwell : In re Hutton* (1884) 14 Q.B.D.

301 it was impossible to compel the debtor to go on working and earning money, in the same way in the case before him if the debtor did not

choose to go to work, he would earn nothing. Wadsworth, J., at first was inclined to think that the ruling in *In re Jones : Ex parte Lloyds* would

govern the present case but on further consideration was of the contrary opinion saying that:

The case of the collier was so far as the information available goes regarded as the case of a more or less casual employee paid for the job, though

the wages were paid weekly for convenience. The insolvent in the present case is not a casual employee but a permanent employee whose

conditions of service are governed by rules and who is entitled to a month's notice before his services are terminated, and, though perhaps in

theory he may have the option of staying away from work without any action for damages lying against him, in fact the rules of the company appear

to hold out such inducements as to make his employment as regular as that of any salaried worker.

10. With all respect to Wadsworth, J., we are unable to see any difference between the insolvent in this case and the collier in *In re Jones : Ex*

parte Lloyd (1891) 2 Q.B.D. 231. Wadsworth, J., in our view, was in error in regarding the collier as a more or less casual employee paid for the

job. That is not so. There is no reason for supposing that the collier in question was differently employed to other colliers. There is a contract of

service; they are paid for convenience weekly and are paid on a piecework basis as it is obvious that collier was in that case and are entitled to

notice; and their wages vary according to the number of days they work and the amount of work they do. A collier so employed has never been

regarded as a casual labourer in our experience. We are quite unable to distinguish this case from that case which in our view, having regard to the

other cases referred to and the tests laid down, was correctly decided.

11. Applying that case to this, we allow the appeal and give the appellants their costs throughout.