
(1942) 04 BOM CK 0003

In the Bombay High Court

Case No : O.C.J. Appeal No. 3 of 1942 and Insolvency No. 220 of 1938

The Official Assignee of Bombay

APPELLANT

Vs

Motilal Champalal

RESPONDENT

Date of Decision : 06-04-1942

Acts Referred:

Citation : AIR 1942 Bom 272 : (1942) 44 BOMLR 591

Hon'ble Judges : Kania, J; John Beaumont, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Beaumont, C.J.—This is an appeal from a decision of Mr. Justice Chagla, sitting as the Insolvency Judge, and it raises a question as to the rate at which the Official Assignee can charge commission under Rule 180(b) of the Bombay Insolvency Rules.

2. The facts are that the insolvents were adjudicated on July 1, 1938, and on March 6, 1940, a scheme of composition was suggested by the debtors, and in due course, on April 15, 1941, that scheme was sanctioned by the Court, and the adjudication was annulled. The scheme provided, in substance, that the Official Assignee should be the trustee of the scheme, and under Clause 2 he was, in the first instance, to pay all fees and percentage, costs, charges, expenses and commission payable to the Court and to the Official Assignee out of the moneys to be received by him under the scheme. Then under clause 4 he was to pay out of the balance of the moneys a composition of Re. 0-5-6 in the rupee. Then it was provided that certain outside parties were to pay him certain specified sums, and the scheme showed that there would be an estimated surplus in his hands after paying the agreed dividend on the claims of creditors who were not to release their claims. At the date when the scheme was sanctioned, Rule 180(6) provided that the Official Assignee was entitled to charge a commission of three per cent, on the amount paid in pursuance of a composition or scheme of arrangement. On April 24, 1941, that is nine days after the scheme was

approved, the rate of three per cent, was increased to five per cent., and the question is whether the commission chargeable by the Official Assignee in the present case is at the higher or lower rate. There may be a question, on which we have heard some argument, as to whether the words "on the amount paid in pursuance of a composition or scheme of arrangement" refer to the amount paid by the trustee under a composition or scheme of arrangement to the creditors, or the amount paid to the trustee by outside parties under that composition or scheme of arrangement. But it is unnecessary to express any opinion on that point, because in this case the moneys were paid by the outsiders to the Official Assignee as trustee of the scheme of arrangement after the date when the rate of commission was increased, that is to say, after April 24, 1941, and the payments made under the scheme to the creditors were, therefore, necessarily made after that date.

3. Mr. Justice Chagla held that the rate of commission was fixed as at the date when the scheme was sanctioned by the Court, and that to hold otherwise would be to give retrospective effect to the increase of the commission made by the alteration of the rule. That view seems to me to be wrong. In my opinion, there is no question of giving retrospective effect to the rule. The commission has to be paid on the amount paid in pursuance of the composition or scheme of arrangement, and it seems to me that the commission must be charged at the rate existing on the date of payment. No doubt, when the Court sanctions a scheme, it must base its opinion as to the merits of the scheme upon estimated figures, which are based on the assumption that rates and duties applicable will remain the same. But many schemes may take a long time to work out, and it is possible that rates and duties may be altered, and any Court must take that possibility into account. Many schemes provide for the sale of Immovable properties or investments, on which sales stamp duty would be payable, and it is obviously possible that the rate of stamp duty may be altered after the date when the scheme is sanctioned. In my opinion, it would not be competent for the Court to sanction a scheme limiting the amount payable to Government by way of stamp duty, or by way of commission. It must be remembered that the commission payable to the Official Assignee is not a sum payable to him as an individual; it is a sum payable to Government in return for the use of the services of its officer, and it would not be competent for the Court to limit the rate at which the commission is payable. In my opinion, the meaning of Rule 180(b), so far as this point is concerned, is quite plain. The Official Assignee must charge commission on the amount paid; and he must charge such commission at the rate observed when the amount is paid.

4. In my view, therefore, the appellant is right, and the Official Assignee is entitled to charge his commission at the rate of five per cent.

5. Costs of both sides to be paid out of the estate.

Kania, J.

6. I agree. The misunderstanding appears to have arisen from the fact that the words used in Rule 180(6) are that commission at three per cent, is to be charged on the amount paid in pursuance of a composition or scheme of arrangement. The words there used are not "on the amount payable in pursuance of a composition or scheme of arrangement". That difference in the phraseology makes it clear that the appropriate time for ascertaining the correct rate of commission on the amount to be charged is the date of payment, and not when the liability to pay the amount is declared.