(1936) 05 MAD CK 0011

In the Madras High Court

The Official Assignee of Madras — APPELLANT

Vs

R.W. Manifold — RESPONDENT

Date of Decision : 12-05-1936

Acts Referred:

Citation : AIR 1936 Mad 855 : (1936) 44 LW 286 : (1936) 71 MLJ 415

Hon'ble Judges : Mockett, J

Bench : Division Bench

Judgement

Mockett, J.—This is an application by the Official Assignee for an order calling upon the insolvent to show cause why he should not be

directed to pay to the Official Assignee for the benefit of his creditors a portion of the Provident Fund amount payable to him by the South Indian

Railway Company. The insolvent was until recently employed on a salary of Rs. 1,550 a month by the Railway. He was adjudicated in November,

1935, and his liabilities are over Rs. 40,000. They mostly consist of loans by money-lenders and the cost of some unsuccessful litigation. He states

that the loans are mostly in his position as surety for another, one Mr. Danagher, who, I understand, is an insolvent. The application, though simple

in its form, raises what I consider a point of very great importance. u/s 3 on the Provident Funds Act it is clearly enacted that no deposit such as

this shall be liable to attachment and neither the Official Assignee nor any Receiver appointed under the Provincial Insolvency Act, shall be entitled

to or have any claim on any such compulsory deposit. It has been held by a Bench of this Court in Ranganayaki Ammal v. Official Assignee,

Madras (1931) 134 I.C. 179 that when once the money is paid to the depositor, it ceases to be exempt from attachment or the claim of the

Official Assignee. That decision of course is binding on me. When money has been paid over to the insolvent from the fund, the Official Assignee

can claim it. But it seems to me that the object of the present application is to anticipate money coming into the hands of the insolvent and to evade

the provisions of the Provident Fiends Act. It is quite obvious that if an anticipatory order can be made ordering the insolvent to hand over the

money directly he received it, the beneficent provision of the Act is entirely destroyed, and speaking for myself, I should be very reluctant to

exercise any discretion lying in me to bring about such an end. If it is open to me to order a part of the provident fund amount to be paid over, it is

equally open to me to order the whole of it to be paid over and so in every case of Railway Servants, Government Officials and others affected by

the Provident Funds Act, all that is necessary for the Official Assignee to do is to get an order that the provident fund amount should be paid over

to him directly it is received and the insolvent has the alternative either not to take it or to hand it over, in neither case there being any benefit to

him. This seems entirely contrary to the spirit and intention of the Provident Funds Act. u/s 33 of the Presidency Towns Insolvency Act, under

which I am now asked to act, an order can be made if the Court thinks fit to make such an order. I am not going to make such an order because I

think it would create a dangerous precedent. There are hundreds of poor people in this city interested in provident funds. The application of the

Official Assignee is therefore dismissed, but I wish to place on record that the insolvent R.W. Manifold has stated in Court through his learned

Counsel Mr. G.A. Pais that he is prepared voluntarily to pay over one-fifth of the fund into the hands of the Official Assignee for the benefit of his

creditors, and I understand that he is proposing to invite the Railway Company to pay this money over to the Official Assignee. All that I am doing

at present is to place this fact on record in order that the Railway Company may see what happened in this Court.

