

APPELLATE CIVIL.

Before Mookerjee and Beachcroft JJ.

MADHU SARDAR

v.

KHITISH CHANDRA BANERJEE.*

1914

May 26.

Insolvency—Interim Receiver—Insolvent's money, attachment of, before the adjudication order—Provincial Insolvency Act (III of 1907), s. 13, cl. (2), s. 16, cl. (6), s. 34, cl. (1)—Bankruptcy Act of 1883 (46 & 47 Vict. c. 52), s. 40.

An *interim* receiver is appointed for the protection of the estate of the debtor for the benefit of the entire body of creditors.

Ex parte Fox (1) referred to.

Clause (1) of s. 34 of the Provincial Insolvency Act restricts the operation of s. 16, clause (6) thereof.

A creditor, who had attached a sum of money due to the insolvent before his estate vested in the receiver appointed after the adjudication order, is entitled to apply it exclusively in satisfaction of his debt.

APPEAL from Original Order by Madhu Sardar and another

One Khitish Chandra Banerjee carried on the business of a railway contractor at Damukdia up to November 1910 under the authorities of the E. B. S. Railway, his head office being at Beliaghatta, 24-Parganas, where he resided. For the purposes of his business he had to advance large sums of money to persons who absconded and had to close his business in consequence.

On the 1st August 1912, he applied to the District Judge of 24-Parganas to be adjudicated an insolvent.

* Appeal from Order No. 8 of 1913, against the order of H. P. Duval, District Judge of 24-Parganas, dated Sep. 30, 1912.

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The order was made on the 30th September 1912. In the meantime an *interim* receiver had been appointed. Notice was issued at the same time to the Examiner of Accounts of the E. B. S. Railway to pay into Court what was due from the Railway authorities to the insolvent. But this sum had already been attached in execution of a decree obtained by the appellants against the applicant in insolvency and paid into the Court of the Munsif of Goalundo, and then transferred to the Court of the District Judge of 24-Perganas, and thence to the receiver. On the 30th September, on objection being taken to this proceeding, the learned District Judge held that the execution made by the Goalundo Court being later than the appointment of the *interim* receiver could not prevail against the receiver.

Against this order the objectors appealed to the High Court.

Babu Brajendra Nath Chatterjee, for the appellants. I rely on s. 34, cl. (1) of the Provincial Insolvency Act. The money attached was assets realised in the course of execution before the adjudication order.

[MOOKERJEE J. Are there other creditors?]

Not in the same position as the appellants.

Regarding the words "assets realised" see s. 285 of the old Code of Civil Procedure. If realised before the adjudication order, it becomes immediately available for distribution among the creditors.

The money was attached after the appointment of the *ad interim* receiver but before the adjudication order was made by which the estate of the insolvent was vested in the receiver.

[MOOKERJEE J. See s. 16, cl. (6)].

This lays down the general rule, which is qualified by what is laid down in s. 34.

No one appeared for the respondent.

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MOOKERJEE AND BEACHCROFT JJ. This appeal is directed against an order made in the course of a proceeding under the Provincial Insolvency Act. On the 1st August 1912, the respondent, Khitish Chandra Banerjee, applied to be adjudicated an insolvent. The order was made on the 30th September 1912. Meanwhile on the 2nd September 1912, the District Judge had appointed an *interim* receiver under section 13, clause (2). Notice was issued at the same time to the Examiner of the Eastern Bengal State Railway to pay into Court what was due from the Railway authorities to the insolvent. Before this intimation reached the railway authorities, the sum in their hands, which had been attached in execution of a decree obtained by the appellant against the applicant in insolvency, was paid into the Court of the Munsif of Goalundo. The money has subsequently been transferred by the Goalundo Court to the Court of the District Judge of the 24-Perganas, and is now in the hands of the receiver appointed after the adjudication order. The question in controversy is, whether the appellant, as a creditor who had attached this sum before the estate of the insolvent vested in the receiver appointed after the adjudication order, is entitled to apply it exclusively in satisfaction of his claim. The answer must depend upon the effect of the order for the appointment of an *interim* receiver.

Section 13, clause (2) of the Provincial Insolvency Act, provides that the Court at the time when the insolvency petition is admitted or at any subsequent time before adjudication, may, of its own motion or on the application of any creditor, make an order for the appointment of an *interim* receiver of the property of the debtor or any part thereof. The object of the

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appointment is clear from the proviso to the section in which it is stated that an order for the appointment of an *interim* receiver shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court, has absconded or has departed from the local limits of the jurisdiction of the Court or has failed to disclose or has concealed, destroyed, transferred, or removed from such limits any documents likely to be of any use to his creditors. It is plain that an order for the appointment of an *interim* receiver of the property of the debtor is made for the protection of the estate of the debtor for the benefit of the entire body of creditors. At the stage when the *ad interim* receiver is appointed, no question arises as to the distribution of the property of the debtor amongst the creditors or as to preference amongst them. This view is not opposed to the decision in *Ex parte Fox* (1). It was there held, with reference to the terms of section 40 of the Bankruptcy Act, 1883, (46 & 47 Vict. c. 52) that the period of four months before the receiving order, for which the wages or salary of any clerk or servant in respect of services rendered to the bankrupt is entitled to priority over all other debts, include not merely the four months before the date of the receiving order but also the four months before the date of the order of appointment of an *interim* receiver where such appointment has been made. It is plain from an examination of the judgment of Cave J. that such construction was adopted with a view to afford protection to clerks and servants of the insolvent whom it was obviously the intention of the Bankruptcy Act to save. In our opinion, the money under attachment in execution of the decree obtained by the appellant against the applicant in

insolvency is still available for the satisfaction of his claim. We may add that the appellant is also entitled to the benefit of clause (1) of section 34 of the Provincial Insolvency Act which restricts the operation of section 16 clause (6) and is in the following terms : Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of execution by sale or otherwise before the date of the order of adjudication. In the present case, the sum in question had been realised before the date of the order of adjudication. It had in fact been transferred by the railway authorities to the Goalundo Court where the execution proceedings initiated by the appellant were pending at the time. From this point of view, the appellant is exclusively entitled to the benefit of this money.

The result is that this appeal is allowed, and the order of the District Judge made on the 30th September 1912 set aside in so far as it affects the appellant. The appellant will be entitled to take this money in satisfaction of his decree. The money will be returned to the Goalundo Court in order that it may be paid out to the appellant and satisfaction entered on his decree.

G. S.

Appeal allowed.

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