INSOLVENCY JURISDICTION.

Before Lort-Williams J.

In re GULABRAI PALIRAM.

1938

June 28.

Insolvency—Examination of witness—Admission in deposition—Presidency-towns Insolvency Act (III of 1909), s. 36 (5).

Prior to their insolvency, the debtors executed a deed of composition, of which B was one of the trustees. The said deed provided that the debtors assigned to the trustees certain piece-goods which had been pledged by them with a bank and that the trustees should clear the goods from the bank by advancing or raising money and sell them to reimburse themselves. The debtors were adjudged insolvents on January 12, 1937. B in his examination under s. 36 of the Presidency-towns Insolvency Act stated that the debtors owed him money and that he paid to the bank whatever was owing, received the piece-goods and sold them and that there was a profit of Rs. 8,469-15-6 less Rs. 47-6 for interest on the money he had advanced and that such profit was not made over to the Official Assignee because he had not demanded it and because the insolvents were owing money to him. He also stated that the goods were not received by him as a trustee. Subsequent to his examination, B set up the case that, as the composition did not materialise, he agreed with the debtor to clear the goods from the bank on condition that the profit arising out of the sale would be appropriated towards satisfaction of his dues.

Held that the deposition of B contained a clear admission that he had in his possession property belonging to the insolvents and the case came within the provisions of s. 36(5) of the Presidency-towns Insolvency Act.

APPLICATION by the Official Assignee.

The facts of the case appear fully from the judgment.

S. M. Bose, Standing Counsel, and *B. C. Mitter* for the Official Assignee. There is a clear admission by Brij Mohon Serowgee in his evidence that he had in his possession the profit realised in the sale of goods belonging to the insolvents.

Sudhis Roy for the respondent. There is no admission that he had in his possession property belonging to the insolvents. The profits arising out of the sale of goods do not belong to or form part of the property of the insolvents.

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LORT-WILLIAMS J. This is an application under s. 36(5) of the Presidency-towns Insolvency Act, which provides that, if, on his examination under that section, any person admits that he has in his possession any property belonging to the insolvent, the Court may, on the application of the Official Assignee, order him to deliver it to the Official Assignee.

It is to be observed that the powers of the Court under this sub-section depend upon the word "admits". Formerly, before the sub-section was amended, it was provided that the Court had to be satisfied that such person had in his possession property belonging to the insolvent. Obviously this gave wider powers to the Court than the present sub-section, and the Court cannot now act unless there is a clear admission by the person examined.

In the present case, the debtors were adjudicated insolvent on January 12, 1937. Prior thereto, on November 6, 1936, the insolvent executed a deed of composition, of which Brij Mohon Serowgee, the person who was examined under s. 36, was one of the trustees. That deed provided, *inter alia*, that the debtors assigned to the trustees certain properties mentioned in the schedule, which included certain piecegoods lying with the Hongkong & Shanghai Banking Corporation.

It further provided that the trustees should be at liberty to raise or advance money from their own or anybody else's pocket in order to clear these goods lying in deposit with the Hongkong & Shanghai Banking Corporation, and to sell them and reimburse themselves. The goods had been pledged by the debtors with the Hongkong & Shanghai Banking Corporation.

Upon his examination under s. 36 Brij Mohon Serowgee said, *inter alia*, that in November, 1936, the debtors owed him Rs. 10,000 with interest. There were many other creditors, and at a meeting of creditors it was found that Rs. 2,80,000 was owed

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by the insolvents. At that meeting a scheme was approved and a document was signed. Five trustees were appointed and he was one of them. Certain monies were received by them from the insolvents. He went on to depose as follows :—

I received some piecegoods from Hongkong Bank. They belonged to the insolvents who had pledged them with the bank. I paid to the bank whatever was due and took over the goods. I paid them about Rs. 35,000 personally. I sold the goods and there was a profit of Rs. 8,469-15-6. From this, is to be deducted Rs. 47-4-6 for interest on the money I advanced. I kept an account of my dealings with these goods in my books of account. I did not get anything else, nor did the trustees.

Further he said that he did not make over the money to the Official Assignee, first, because he did not demand the money, and, secondly, because the insolvents were owing money to him. The money was lying with him.

The hearing was adjourned from the 8th June to the 10th July, when he said that the gross profit on the goods may have been Rs. 9,000 but from that amount had to be paid interest. Also that, he had paid godown rent but he did not mention the figure. The document executed by the insolvents was by way of composition.

Then he continued as follows :—

I was one of the trustees. Besides the properties mentioned by me I did not receive any other property from the insolvents. The goods were not received by me as a trustee.

In my opinion, that deposition contains a clear admission that Brij Mohon Serowgee had in his possession property belonging to the insolvents, *namely*, the profit realised upon the sale of these goods less necessary expenses.

As a result of the examination the Official Assignee called upon Brij Mohon Serowgee to pay to him all the money in his hands belonging to the estate of the insolvents.

It was not until November 19, 1937, that the attorney for Brij Mohon Serowgee set up for the first time, in a letter to the Official Assignee, the story

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upon which Brij Mohon Serowgee now seeks to rely, *namely*, that the other proposed trustees having refused to advance any money for clearing the pledge on the goods the proposed composition did not materialise and the bank having refused to adjourn the sale of the pledged goods on November 10, 1936, he had agreed with the debtors to prevent the sale by paying the dues of the bank himself but on condition that the net profit arising out of the sale would in the first instance be appropriated towards satisfaction of his old claim to which I have already referred. On this ground Brij Mohon Serowgee has refused to hand over to the Official Assignee the amount realised by the sale of these goods less expenses which according to Brij Mohon Serowgee include also a sum of Rs. 200 which he had to pay to some attorney.

I do not believe this belated story and, in the circumstances, I have no hesitation in holding that the case comes within the provisions of s. 36(*5*), and Brij Mohon Serowgee must pay to the Official Assignee the sum of Rs. 8,469-15-6 less two sums of Rs. 47-4-6 and Rs. 200, that is to say, the sum of Rs. 8,222-11 and the costs of this application.

Application allowed.

Attorneys for applicant: *K. K. Dutt & Co.*

Attorney for respondent: *S. C. Palit.*

A. C. S.