

## APPELLATE CIVIL—FULL BENCH.

*Before Sir Murray Coutts Trotter, Kt., Chief Justice,  
Mr. Justice Krishnan and Mr. Justice Beasley.*

S. HARI RAO (INSOLVENT), APPELLANT, .

1926,  
January 18.

v.

THE OFFICIAL ASSIGNEE OF MADRAS AND THREE OTHERS  
(RESPONDENTS). \*

*Sec. 8 (2) of Presidency Town Insolvency Act (III of 1909)—  
Sale of insolvent's estate by Official Assignee—Insolvent's  
objection to sale before Judge — Confirmation of sale by  
Judge—Right of appeal to insolvent as "aggrieved person."*

An insolvent whose estate has vested in the Official Assignee is not entitled to appeal as an "aggrieved person" within section 8 (2) of the Presidency Towns Insolvency Act (III of 1909) against an order of a Judge rejecting his opposition to a sale of his estate by the Official Assignee.

*Ex-parte Sheffield, In re Austin* (1879) 10 Ch. D., 434, *In re Leadbitter* (1878) 10 Ch. D., 388, and *Sakhawat Ali v. Radha Mohan*, (1919) I.L.R., 41 All., 243, followed. Observations in *Sivsubramania v. Theethiappa*, (1924) I.L.R., 47 Mad., 120, to the contrary, disapproved.

APPEAL from the order of the Hon'ble Mr. Justice WALLER, dated 4th March 1924, passed in the exercise of the Insolvency Jurisdiction of the High Court in Insolvency Petition No. 218 of 1922 rejecting the objection of the insolvent to a sale of a part of his estate by the Official Assignee on the ground that the sale was prejudicial to the insolvent. The insolvent filed this appeal. The other facts are given in the judgment.

This appeal coming on for hearing, the Court (the CHIEF JUSTICE and VISWANATHA SASTRI, J.) made the following

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\* Original Side Appeal No. 47 of 1924.

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 B,  
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## ORDER OF REFERENCE TO A FULL BENCH.

"We refer the following question to a Full Bench whether the decision in *Sivasubramania v. Theethiappa*(1) is correct or whether the decision in *Sakhawat Ali v. Radha Mohan*(2) should be followed."

## ON THIS REFERENCE—

*P. R. Srinivasa Ayyangar* (with *A. Rajagopal Ayyar*) for appellant (insolvent).—I have a *locus standi* to appeal under section 8 (2) of the Presidency Towns Insolvency Act as an aggrieved person. I applied in the lower Court under section 86 of the Act as an "aggrieved person" to set aside the sale. The very inclusion of the insolvent as an "aggrieved person" in section 86 shows that he is likely to be aggrieved under certain circumstances. He is entitled to all surplus under section 76 of the Act. Section 33 (3) enjoins the insolvent to aid in the realization of his property. It is a duty coupled with a penalty for non-compliance. Section 39 (2) shows that the insolvent is entitled to an unconditional discharge if the assets realized are equal to four annas in the rupee. Hence he is interested in seeing that as much as possible is realized out of his estate. *Sivasubramania v. Theethiappa*(1), *Ketokay Churan Banerjee v. Sreemuthy Sarat Kumari Dixee*(3), *Asundji Damodar v. James Finlay & Co.*(4). The observations in *Ex-parte Sidebotham In re Sidebotham*(5) are in my favour. *Ex-parte Sheffield In re Austin*(6) is not against my contention and *Sakhawat Ali v. Radha Mohan*(2) is wrong. My *locus standi* was not questioned in the lower Court and there is a decision against me hence I am an "aggrieved person" and entitled to appeal. See also *In re Lamb Ex-parte Board of Trade*(7), *Shuttleworth v. Murray*(8). The Official Assignee is a trustee for the creditors only to a limited extent.

*M. S. Venkatarama Ayyar* for respondents.—The insolvent has no *locus standi*. The hope of getting a surplus eventually will not give him a right of interference in the administration of the estate by the Official Assignee in whom the estate is legally vested for all who are interested in it. During administration the Official Assignee is a trustee only for

(1) (1924) I.L.R., 47 Mad., 120.

(3) (1916) 20 C.W.N., 995.

(6) (1880) 14 Ch. D., 453, 464, 468.

(7) [1894] 2 Q.B., 805, 812.

(2) (1919) I.L.R., 41 All., 243.

(4) (1921) 62 I.C., 441.

(5) (1879) 10 Ch. D., 434.

(8) [1901] 1 Ch., 819, 823, 828.

creditors. It is only after a surplus results, he is a trustee for the insolvent. Till then he is not; and the insolvent has no legal interest to intervene simply on account of some probable or possible surplus. *Ex-parte Sheffield, In re Austin*(1), *Holdsworth v. M'Crea*(2).

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### OPINION.

COURTS TROTTER, C.J.—The question raised here is whether the insolvent has a right of appeal against an order confirming a sale of a part of the estate which was originally his and subsequently vested in the Official Assignee, an order which he sought to oppose. The matter was referred to a Full Bench in view of what were represented to be the directly conflicting decisions of this Court in *Sivasubramania v. Theethiappa*(3) and of the Allahabad High Court in *Sakhawat Ali v. Radha Mohan*(4). We observe that the English decisions on the subject were not cited to the Madras Court, so far as appears from the report. We have examined those decisions and come to the conclusion that they ought to be followed.

COURTS  
TROTTER, C.J.

The only ground on which the insolvent's right to appeal can be based is that he is a "person aggrieved," because, his estate having vested in the Official Assignee, he is nevertheless entitled to say that, if all the claims of the creditors who had proved were set aside or discharged by payment, he would have an interest in the surplus which might be left over. The leading English cases, *Ex parte Sheffield, In re Austin*(1) and *In re Leadbitter*(5) have disposed of this contention on grounds which, we think, are unanswerable. The insolvent has no legal interest but has merely a hope or expectation and as JAMES, L.J., pointed out, the mischief

(1) (1879) 10 Ch. D., 434.

(2) (1867) 2 H.L.R., 387.

(3) (1924) I L.R., 47 Mad., 120.

(4) (1919) I L.R., 41 All., 243.

(5) (1878) 10 Ch. D., 388.

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of allowing a bankrupt on the contingent chance of his ultimately acquiring title to some surplus which might never be realized, to interfere with and embarrass the administration of the estate, would be immeasurable. We are therefore of opinion that the insolvent has no right of appeal, which will therefore stand dismissed. The question referred to us was perhaps not rightly framed, and I say so with the more freedom because I drafted it myself. I have had the advantage of perusing the judgment about to be delivered by KRISHNAN, J., and I agree that we can follow the ruling in *Sakhawat Ali v. Radha Mohan*(1) without the necessity of saying that *Sivasubramania v. Theethiappa*(2) was wrongly decided. The right claimed by the insolvent in the latter case was to object to a creditor's proof and that is not directly before us.

(This judgment is that of myself and BEASLEY, J.)

BEASLEY, J.

BEASLEY, J.—I concur.

KRISHNAN, J.

KRISHNAN, J.—I agree with the learned Chief Justice that we should follow the view expressed in *Sakhawat Ali v. Radha Mohan*(1) which is in accordance with the view taken in the English cases cited to us, *Ex-parte Sheffield*, *In re Austin*(3) and *In re Leadbitter*(4). As pointed out in those rulings the insolvent has after adjudication no legal interest in his estate which has vested in the Official Assignee; and he has therefore no legal right to interfere in the realization of that estate and he cannot be treated as "aggrieved" by any order passed in the course of such realization. It is true that if any surplus remains after the creditors are paid in full such amount will be paid over to the insolvent and it is also true that if a certain proportion of his debt is paid from his assets he will be entitled to

(1) (1919) I.L.R., 41 All., 243.

(3) (1879) 10 Ch. D., 434.

(2) (1924) I.L.R., 47 Mad., 120.

(4) (1878) 10 Ch. D., 388.

a discharge. But these are merely expectations as pointed out in the English cases which may or may not be realized. They do not give any legal right to the insolvent to interfere in the realization of his property which is entirely left to the Official Assignee. The reasoning to the contrary in the judgment of OLDFIELD, J., in *Sivasubrahmaniam v. Theethiappa*(1) cannot be supported. That case itself was however one of an appeal by the insolvent against an order admitting proof of a creditor to which he had objected. The question whether the insolvent is a person aggrieved in such circumstances does not arise in the present case and I express no opinion on the point. I would answer the reference by saying that the ruling in *Sakhawat Ali v. Radha Mohan*(2) should be followed and that no appeal lies in the present case, and I agree in dismissing the appeal.

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N.R.

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### ORIGINAL CIVIL.

*Before Sir Murray Coutts Trotter, Chief Justice,  
Mr. Justice Krishnan and Mr. Justice Beasley.*

*In re A. V. P. M. R. M. MURUGAPPA CHETTIAR.*

*Income-tax—Sec. 10 of Indian Income-tax Act (XI of 1922)—  
Profits—Money remitted to headquarters in British India  
by foreign branch—Presumption.*

1925,  
28  
September

Money remitted to the headquarters of a firm in British India from a branch situated in a foreign country is presumed to be profits and not capital and is assessable to income-tax as profits unless the assessee proves the contrary; *Scottish Provident Institution v. Allan*, [1903] A.C., 129, followed.