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Court : Allahabad

Decided On : Jan-24-1947

Reported in : AIR1948All49

Appellant : Abu Obaida

Respondent : Jami Hasan

Judgement :
ORDER

Mootham, J.

1. The facts of this case are peculiar. Jamil Hasan, the respondent, was adjudicated an insolvent in the year 1935. In November 1936, an order was made by the Insolvency Court which was assumed by all concerned to be an order annulling the adjudication. In 1939 Abu Obaida, the present applicant, in execution of a decree which he had obtained against the respondent, attached a sum of money belonging to him which was then in the hands of the Official Receiver. The Official Receiver deposited the money in Court whence it was withdrawn by the applicant. Five months later this Court by an order dated 6th June 1940, held that the respondent's adjudication had never been annulled and that consequently he had throughout remained an insolvent. Although the applicant had not in 1939 obtained the leave of the Court to execute his decree against the respondent, no steps appeared to have been taken by the Official Receiver, after it had become

clear that the adjudication had not been annulled to recover from Abu Obaida the amount which he had realised in execution. But on 26th March 1943, the insolvent himself filed an application in the Insolvency Court for the refund by Abu Obaida of this amount. The application was allowed by the learned Insolvency Judge, and an appeal by Abu Obaida to the Court of the District Judge of Cawnpore was dismissed. It is from the order of that Court that the present application in revision under Section 75, Provincial Insolvency Act, has been filed.

2. The question which arises is whether the insolvent's application is maintainable. In my opinion it is not. On the making of the order of adjudication the whole of the insolvent's property vested in the Official Receiver; the insolvent ceased to have any legal interest in the property and he had no locus standi in the administration of his estate : Sakhawat Ali v. Radha Mohan 6 A.I.R. 1919 All. 284. It was suggested that he had an interest in the surplus of his estate after his creditors had been paid. But it is clear that he had in that surplus no property and nothing more than a mere hope or expectation : Ex parte Sheffield; In re Austin (1879) 10 Ch. 434. I think it is clear that an insolvent has no right to interfere in the administration of his estate; and that if he were allowed to do so, the mischief, as pointed out by James L.J. in the last mentioned case, would be enormous.

3. It was held by the lower appellate Court and argued before me that the insolvent was entitled to make his application under Sub-section (1) of Section 28, Provincial Insolvency Act, as that sub-section imposed on him the duty of assisting the Court in the realisation of his assets for the benefit of his creditors. But the obligation which the Act places on an insolvent is the duty of assisting the Official Receiver to collect the assets. It is for the insolvent to inform the Receiver where his assets are to be found; and for the Receiver to institute such proceedings as he may deem necessary for their recovery. The insolvent may possibly be able to complain if the Receiver takes no action, but in my opinion he has no power to take action himself. To allow him to do so would lead to confusion and uncertainty and would constitute an intolerable interference in that management of his property which is exclusively vested in the Official Receiver.

4. No notice of the insolvent's application in this case appears to have been served on the Official Receiver, but I cannot think that he is ignorant of the fact of the application having been made. I am at present at a loss to understand why the Official Receiver did not take steps to recover from Abu Obaida the amount which the latter had withdrawn from the Court in execution of his decree. It may be that there is some good reason for this inactivity on the Receiver's part; the applicant before me says that there is good reason, and he further says that if the Receiver now endeavours to recover this amount, he has a good answer to his claim. I do not know whether this is so, and I express no opinion on the point, but as the result of the order which I feel bound to make in this case will be to leave the applicant in possession of that money, I assume that the Receiver will now give consideration to the question whether he should not himself take steps to recover it. The reluctance which I have in leaving the applicant in possession of money which he had obtained as a result of execution proceedings instituted against the insolvent without the leave of the Court is tempered by the fact that there appears to be only one other creditor whose claim is for a trifling amount. In the result, therefore, I allow this application with costs.

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