

In Re: Annapurna Co. Ld

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Court : Allahabad

Decided On : Dec-18-1925

Reported in : AIR1926All397

Appellant : In Re: Annapurna Co. Ld

Judgement :

1. The liquidators in this case sought the direction of the Court to sell a certain flour mill as an asset of the Company in liquidation.

2. One Dr. Tug objected to the sale of the property, and this date was fixed for the disposal of his objection. Dr. Tug's case seems to be this: On the 23rd of January 1923 he entered into an agreement, with the Managing Agents of the Annapurna Company, to the effect that the latter were to employ Dr. Tug's son as their servant on a pay of Rs. 200 per month, Dr. Tug or his son furnishing a security of Rs. 10,000. Dr. Tug under the agreement was not to receive any interest on the money deposited. The money was to be re-paid after the expiry of the term of appointment, namely three years, or as soon as the appointment of his son otherwise terminated. It was also provided that Dr. Tug might in the absence of his son carry out the duties entrusted, or to be entrusted to his son. On the foot of this agreement, says Dr, Tug, he deposited the sum of Rs. 10,000 and that out of the sum of Rs. 10,000 a sum of Rs. 3,500 was utilized in the purchase of the flour mill in question, and the rest went to pay up a mortgage debt due to a sister Company, namely the Union Bank, Allahabad, Ld. on foot of a mortgage executed by the Annapurna Company. Dr. Tug's position is this: with his money the mill was

purchased and therefore either the mill is his property or that he has a charge over the mill, so that he has a preference over all the creditors of the Company in respect of the sum of Rs. 3,500. As regards the balance of Rs. 6,500 he apparently claims that he should be treated as preferential creditor, though he does not say so in express terms.

3. The agreement or a copy of it has not been produced, but we were shown an uncertified copy of the document and it was agreed between the parties that it was a correct copy. On the document itself, as we read it there is no direction that the money handed over by Dr. Tug was to be kept aside in trust for him, and was not to be utilized by the Company for any purpose. All that was provided for was that in case the Company went into liquidation Dr. Tug would have the position of a preferential creditor. The words actually used are 'super-preferential claim over the assets of the Company.' It is clear therefore that in the agreement it was not provided that if the money was utilized for the purchase of any immovable property Dr. Tug would have a charge over that property.

4. Apart from the agreement we are not aware of any law applicable to India by which a creditor, who has advanced money, is entitled to a charge over the property acquired with the money advanced. No such authority has been quoted to us. The case of *Malvankar v. Credit Bank of India Ltd.* AIR 1914 Bom 118 does not, in our opinion, help the objector. We hold therefore that Dr. Tug has no charge over the property.

5. As to preferential claim he is as much in the position of a creditor as anybody else. It is common ground that Dr. Tug is not one of the persons who is entitled to preferential treatment under Section 230 of the Indian Companies Act. This disposes of the second ground of the claim as well. As to the sum of Rs 6,500, it may be conceded that it was utilized by the Company in paying off a creditor of theirs. It cannot be imagined that Dr. Tug has been substituted, by the rule of subrogation into the position of the Union Bank, Ltd., because the mortgage was of movable property (grain) and that grain has long disappeared.

6. In any view of the case Dr. Tug's application must be dismissed, and is hereby dismissed with costs which will include counsel's fees in this Court on the higher

scale. We may add that Dr. Tug will be entitled to establish his claim, if he so wishes, as an ordinary creditor before the Official Liquidator, and if the Official Liquidator be disposed to dispute that claim, the matter may be brought up before the Court but Dr. Tug must proceed in the ordinary way.

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