

The Official Assignee of Madras Vs. Lupprian

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Court : Chennai

Decided On : Mar-16-1910

Reported in : (1912)ILR34Mad121

Judge : Miller, ;Munro and ;Abdur Rahim, JJ.

Appellant : The Official Assignee of Madras

Respondent : Lupprian

Judgement :

1. The insolvency jurisdiction is conferred upon the High Court by Section 18 of the Letters Patent and that section gives the High Courts the power to hear an appeal from the Commissioner in Insolvency. Section 15 of the Letters Patent provides for an appeal to the High Court from the judgment of two Judges of the High Court who differ in opinion. The appeal from the Commissioner is heard by the High Court and (leaving out of consideration Section 73 of the Indian Insolvency Act) Section 15 of the Letters Patent applies to the judgment in it unless there is something in some other section of the Letters Patent which prevents its application. Section 18 confers the power to hear the appeal, the power that is to say which is given by Section 73, but it does not of itself deny the right of further appeal, and there is thus nothing in the Letters Patent to prevent the application of Section 15. But Section 73 of the Indian Insolvency Act provides that the order made by the Court of Appeal shall be final and conclusive. If, however, that provision is inconsistent with the provisions of Section 15, then by

virtue of the provision of Section 11 of the High Court Act,; 24 and 25 Vict., Ch. 104, it is not applicable to the High Court,

2. We think therefore the preliminary objection fails. This appeal being argued on merits on Wednesday and Thursday, the 2nd and 3rd days of March, 1910, and having stood over for consideration till this day, the Court delivered the following judgments:

Miller, J.

3. In this case it was suggested on behalf of the Official Assignee that we should consider whether, in the event of a decision that the insolvents held the money in a fiduciary capacity, the money could be followed, the contention being as I understood it that the cash balance in the hands of the insolvents at the date of the insolvency was insufficient to meet the demands upon them by persons entitled to be paid in full as out of trust funds. This question was not raised below and no evidence was adduced as to the sufficiency or insufficiency of the assets held in cash at the time of the insolvency; we therefore declined to allow it to be argued in this appeal, On the merits I agree in the conclusion arrived at by Abdur Rahim, J., that at the time of the insolvency Mr, Lupprian was simply a creditor of Arbuthnot & Co. to the amount of his current account. There can be no doubt that on the 10th of October, 1906 the money was the banker's money. A mere direction by a customer to a banker to apply money at credit of the former's account in a particular way has never, so far as I know, been held to alter the relationship between the banker and the customer; there must, it seems to me, be something to show that the banker not merely undertook to change the position in the future, but that by taking some step to apply the money or otherwise, he did effect a change 'of position. Here I do not think there is any evidence of change of position. I find nothing to indicate that Lupprian intended the money to be transferred from his current account to any other account. Till the purchase of the promissory note, the money was to remain the banker's money. On the 10th of October Lupprian was told that Ms instructions (to buy the promissory note) would be carried out in due course. What then was the agreement? Messrs. Arbuth-not & Co. owed Lupprian, say, Rs. 1,000. Lupprian says. 'Instead of paying me what you owe me

buy me a Government promissory note;' and Messrs. Arbuthnot & Co. reply 'We will do so in due course.' There is nothing that I can see in the affidavit, which forms the only evidence, to suggest that the purchase was to be made with Lupprian's money and not with Arbuthnot's money which they owed to Lupprian, nothing to suggest; that either party treated or intended to treat the current account as closed before the purchase, to suggest, i.e., any transfer made or intended to be made of any of Arbuthnot & Co.'s funds to a trust fund of which Lupprian was the beneficial owner. Lupprian might no doubt have directed Arbuthnot & Co. to transfer the money to another account and Arbuthnot & Co. might or might not have agreed to do so, but it seems to me that the affidavit does not disclose any such proposal on Lupprian's part. Arbuthnot & Co. promised to buy him a Government promissory note and so pay their debt and then failed to do so before they stopped payment. I do not think that there is anything more in the case upon the evidence, and I must hold that at the date of the insolvency the money was held by Arbuthnot & Co. as debtors of Lupprian and not in a fiduciary capacity. It is then argued for the respondent that the Official Assignee can be required to perform the contract and buy a Government promissory note for him. It is probably a sufficient answer to that contention that that is not what is asked for in the notice of motion. It was not suggested that the learned Commissioner should either specifically enforce the contract or give the respondent damages against the Official Assignee. I would therefore allow the appeal with costs throughout

Munro, J.

4. On further consideration I have come to the conclusion that the view which I formerly took of this case cannot be supported. All that appears in this case is that the respondent directed Arbuthnot & Co. to buy a Government promissory note for Rs. 1,000 on his account, that Arbuthnot & Co. undertook to do so, and that the respondent had at the time to the credit of his current account a sum sufficient to cover the cost of the note. There is nothing to indicate that the ordinary procedure should not be followed, viz., that Arbuthnot & Co. should buy the note and debit the respondent's current account with the cost of it. The direction of Arbuthnot & Co. was a direction to purchase out of their own funds, for the amount standing to

the respondent's credit was not the respondent's money, but merely represented the extent to which Messrs. Arbuthnot & Co. were his debtors. The bars undertaking by Arbuthnot & Co. to purchase the note could not have the effect of transferring the ownership of the sum of money necessary for the purchase from Arbuthnot & Co. to the respondent. The undertaking was nothing more than an undertaking by Arbuthnot & Co. to purchase with their own funds. I am therefore of opinion that nothing had occurred at the date of the insolvency to affect the relation of debtor and creditor which previously had existed between Arbuthnot & Co. and the respondent and agree in allowing the appeal with costs throughout.

Abdur Rahim, J.

5. I concur and do not wish to say anything more than what I have already said.

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