

W.E. Howatson Vs. W.E. Durrant

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Court : Kolkata

Decided On : Jan-22-1900

Reported in : (1900)ILR27Cal351

Judge : Sale, J.

Appellant : W.E. Howatson

Respondent : W.E. Durrant

Judgement :

Sale, J.

1. The question in this rule is as to the effect of the inso(sic). the defendant under the vesting order of the 1st of February 1899.(sic) previous order made in this suit on the 8th of September 1893.

2. The plaintiff is the creditor of the defendant. He obtained a decree in this suit, and after various proceedings he obtained on the 8th of September 1898, an order under Section 295 of the Civil Procedure Code, whereby, after directing certain payments to be made out of the fund in Court representing realizations made in execution of decrees, it was directed that the Registrar should proceed to enquire and report as to who were the creditors of the judgment-debtor entitled to payment out of the fund in Court, and that for the purpose of that enquiry the Registrar was to be at liberty to include in his report any further sum or sums of money which

may be paid into Court to the credit of this suit up to the date of such report, and then the order proceeded to direct that the balance of the fund, after payment of the amounts already mentioned, be applied in payment rateably to persons found by the report entitled to a distributive share therein in the proportion indicated in the report. Now that 13 an order of a character frequently made by this Court under Section 295, and the object is to provide for rateable distribution among such of the creditors of the judgment-debtor as shall be entitled to payment under Section 295. It has certainly always been the practice of this Court to regard an order of this sort as an order, not merely for an enquiry, but also for payment of the sums found payable upon the enquiry. I think that is the way in which the order should be read. But so reading the order, it affects only interests existing at the time. But the insolvency of the defendant introduces a new interest and a different question arises.

3. Now upon the insolvency of the defendant, the whole estate of the insolvent vested under Section 4 of the Insolvent Act in the Official Assignee, and the Official Assignee became empowered to administer the estate of the insolvent for the benefit of the general body of creditors. The estate so to be administered is the estate of the insolvent subject to any rights, equitable or otherwise, which were existing at the date of the insolvency in favour of third persons. I think, therefore, that the operation of the order of the 8th September must be restricted to the period previous to the date of the vesting order.

4. It is clear that the Official Assignee is entitled to administer all sums representing the salary of the judgment-debtor accrued, or accruing due to him subsequent to the date of his insolvency, but as regards salary which had accrued due to the judgment-debtor prior to the insolvency, the order of 8th September 1898 has created rights which are not affected by the insolvency.

5. I think that this view is in no way opposed to the principle explained by this Court, in the case of *Soobul Chunder Law v. Russiok Lall Mitter* (1888) I.L.R., 15 Cal., 202.

6. That is a case which deals only with the rights of a judgment-creditor under an attachment made before the decree for the administration of the judgment debtor's

estate. It decides that an attachment does not create in favour of the attaching creditor any interest in or charge upon the property as against other creditors, and the principle laid down is that under an administration decree the whole of the unrealized assets of a deceased debtor are divisible among the; general body of creditors. In my opinion, so much of the fund in Court as represents salary accrued due prior to the insolvency must, under the order of the 8th of September, be treated as realized assets, and as such does not fall within the principle of the decision, which has been cited. The Official Assignee is, I think, entitled under Section 49 of the Insolvent Act to apply to this Court in the suit in which the order of the 8th September is made to have the operation and effect of that order restricted in the manner already indicated. I think the rule may be made absolute to that extent. The Official Assignee and the judgment-creditors, who have appeared, are entitled to their costs payable out of the balance of the fund after satisfying the payments directed by the order of the 8th of September.

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