SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

C.E. Grey Vs. Walker, Goward and Co.

C.E. Grey Vs. Walker, Goward and Co.

SooperKanoon Citation : sooperkanoon.com/873335

Court : Kolkata

Decided On : Feb-03-1913

Reported in : 18Ind.Cas.756

Judge : Fletcher, J.

Appellant : C.E. Grey

Respondent : Walker, Goward and Co.

Judgement :

Fletcher, J.

1. This is a suit brought by the Official Assignee as assignee of the property of Golab Chand Lakhim, an insolvent, against Messrs. Walker, Goward and Company to recover Rs. 13,074-2-2 for damages in respect of breaches of four contracts. The subject-matter of the contracts was the sale of certain Java sugar which was sold forward by Messrs. Walker, Goward & Co., to the insolvent under certain contract forms, numbers and particulars of which are specified in the second paragraph of the plaint. The contracts related to various quantities of sugar, two lots being for 150 tons and two lots of 371/2 tons. The deliveries of the various shipments under the contracts were all of the same period, July, August and September 1911. On the 11th June 1911, Gulab Chand Lakhim, the buyer, was adjudicated an insolvent and, therefore, under Section 52 of the Presidency Towns Insolvency Act, the property of the insolvent vested in Mr. Grey, Official

Assignee, as representing the estate of the insolvent. At the time of the insolvency, the insolvent was entitled to the benefit of these four contracts, but he having become an insolvent the rights which passed to Mr. Grey were not those of the insolvent as a solvent, but the rights of the insolvent as an insolvent, and one whose insolvency was the same as in a bankruptcy under the Bankruptcy Act, 1883, in England. Under those provisions, in my opinion, as I stated on the last occasion, the trustee was bound to tender cash before calling upon the defendant to deliver the goods Following Ex parte Chalmers L.R. 8 Ch, Ap. 289; 42 L.J. Ch. 37; 28 L.T. 325; 21 W.R. 349, he had to elect within a reasonable time as to whether he was going to take up the contracts, otherwise the sellers would be entitled to consider that the Official Assignee had abandoned the contract. For this, there is sufficient authority in Morgan v. Bain L.R. 10 C.P. 15; 44 L.J.C.P. 47; 31 L.T. 616; 23 W.R. 239. A point which has been raised in this suit was not raised in the other suit, and which is a matter, to my mind, of considerable importance, that is, how the Official Assignee was entitled to carry on, what has been disclosed in many of these suits, heavy transaction under contracts for dealing in sugar. No doubt, up to the present time he has been in the hands of a capable firm Messrs. Shaw, Wallace and Co., and owing to their good financial circumstances and other good arrangements, the matter has gone through successfully. Speaking for myself, I doubt whether the Official Assignee has the power that he has assumed in this case, although apparently he assumed it under pressure from some other bodies or authorities. In my opinion what the Official Assignee has been doing is in fact a carrying on the business of the insolvent so far as was necessary for the beneficial winding up of the same. It is quite obvious that the only two powers that he has got in acting of his own motion are, first, of all to sell the property and secondly, to give receipts; the other powers that were conferred upon him by Section 68 require the sanction of the Court. The second part of Section 68 is taken from Section 57 of the Bankruptcy Act, 1883, where the trustee can only do these things if he has the sanction of the Committee of Inspection. In India that is not usual. In fact I have never known a case where there has been a Committee of Inspection and the Court has been inserted in place of the Committee of Inspection in the Indian Act. But it is to be noticed that the sanction contemplated by Section 57 of the Bankruptcy Act is not a general sanction, but only a

permission to do a thing or things and I think the leave of the Court, which was contemplated by the second part of Section 68 for the Official Assignee to do the various acts there mentioned, means a particular leave to be obtained to do a certain particular thing or things That being so, I think the view that Mr. Grey took that he could not complete the contracts unless he obtained the sanction of the Court was a correct one. I do not think Mr. Grey was entitled to carry on the business of the insolvents so far as may be necessary for the beneficial winding up of the business: and that he could only do after obtaining the sanction of the Court. In my opinion, in this case it is not necessary to decide that point. In this case and in the other case, it is not denied that neither Mr. Grey nor the insolvent ever made a tender of cash before calling upon the defendant to deliver the sugar. The question is whether when Mr. Grey wrote on the 1st September that was a reasonable time within which he could elect to take up the contracts; A good deal of evidence and argument has been put forward as to when the last lots of the July, August and September shipments arrived here from Java. That seems to ma to have very little to do with this case. The only question is whether Mr. Grey, in writing on the 1st September that he elected to take up the contracts, gave Walker, Goward & Co., notice within a reasonable time, Obviously it was not. Under any circumstances, the time for shipping the July and August shipments from Java had both expired, and the mere fact that Messrs. Walker, Goward & Co., had, for the purpose of their own business, not cancelled the shipments of sugar that they proposed to deliver to the insolvent does not alter the rights of the Official Assignee one way or the other. He has got to stand on what he did and he has also got to elect to take up the contracts within a reasonable time. It seems to me quite clear that this election to take up the contracts communicated the first time on the 1st September to Messrs. Walker, Goward & Co., was far too late. That really in substance disposes of the case.

2. The other question that has been raised is the interesting question of what would happen in a case the Official Assignee had been able to establish his claim in the present case, as to what would happen under Section 47 of the Act as to the claim the defendants have against the insolvent under some previous contract and which they claim to set off as part of mutual dealings between themselves and the insolvent. That is a matter that does not arise now. We would have also to

consider in that event how the evidence given by Mr. Page as to Mr. Goward's attitude at the interview at the Bombay Company Office affected the matter.

3. The plaintiff has to establish, first of all that he elected within a reasonable time to take up these contracts, and, secondly, he having so elected, and having only the rights of the insolvent as an insolvent, that he complied with the provision which has been laid down in the case of Ex parte Chalmers L.R. 8 Ch. Ap. 289; 42 L.J. Ch. 37; 28 L.T. 325; 21 W.R. 349 as being necessary for him to comply with, namely, that he tendered cash before calling upon the defendants to deliver. He has not complied with either of those two provisions. The present suit, therefore, fails and must be dismissed with costs. The Official Assignee to retain his own costs out of the estate.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com