

In Re: Gopal Dass Auroba

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Court : Kolkata

Decided On : Jun-23-1925

Reported in : 91Ind.Cas.975

Judge : Pearson, J.

Appellant : In Re: Gopal Dass Auroba

Judgement :

Pearson, J.

1. This is an appeal against an order made by the Registrar in insolvency, dated the 5th June 1925, by which he refused to pass a protection order in favour of the insolvent. He has set out the grounds on which he relies in his order, and the broad ground upon which his action has been taken is that the insolvent is a trader, carried on a joint family business of which family he was the karta, and that the looks have not yet been produced before the Official Assignee. It appears that at the time the adjudication order was applied for, the Registrar in insolvency-refused the application on the same ground. The order, however, was made by this Court on the 23rd April, and the schedule was filed. It appears from the order of the Registrar that the insolvent filed a list of his books at the time of his application for adjudication. It appears that they are in the possession of two Receivers who were appointed in a partition suit between the insolvent and the infant members of his family. It was instituted in December last year. An order of

this Court has been made directing the Receivers to deal with the insolvent's share in the property. The list of books filed by the insolvent was signed by the Receivers and he asked that he might be exempted from producing the books stating that they would be produced by the Receivers. That statement has not been borne out by what has subsequently happened, and at the time of application for protection order before the Registrar it was stated by the Attorney of the insolvent that he intended to apply to the Court for an order on the Receivers to deliver the books to the Official Assignee.

2. The main ground argued in the present application before me is that it is not possible for the insolvent himself to take any further steps than he has done to obtain the production of these books because not only, are they in the possession of the Receivers but the books themselves are not the books of the insolvent's own business but of the joint family business, of which he is one of the co-parceners. It is urged that the Official Assignee himself could apply to this Court under the provisions of Section 36 for an order that the books should be made over by the Receivers, or if not the Official Assignee, then a creditor might make the application. It is perfectly true that that procedure is open in this case. At the same time, *prima facie*, it is for the insolvent to produce his books, and before interfering with the discretion that has been exercised by the Registrar in this case I should require to be convinced that the insolvent had himself ' taken all steps that were in his power to effect the production of the books before the Official Assignee. Consequently I think I ought not to interfere with the order that has been made at present. I find it hard to believe that if the insolvent had taken proper steps even by approaching the Receivers unofficially or asking the Official Assignee for a letter on his behalf or by writing a letter of his own to the Receivers stating what the facts were, the Receivers as officers of this Court would have refused to assist the Official Assignee who is also an officer of this Court, by producing the books in his office. It may be that the terms of the order under which they are in possession of the books might technically prevent them from parting with the actual possession. If so, that is a matter which can easily be remedied by an application made to this Court. But so far as the actual production goes, I can see no reason to think that if proper steps had been taken they might not have been by now, effective.

3. With these remarks I dismiss the application. It will, of course, be open to the insolvent to renew his application for protection order on obtaining the books to be produced to the satisfaction of the Official Assignee.

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