
(1881) 03 CAL CK 0002

Calcutta High Court

Case No: None

Miller, Official
Assignee and
Assignee of the Estate
of Gobind Chand
Dugur, and Another,
Insolvents

APPELLANT

Vs

Mon Mohun Roy

RESPONDENT

Date of Decision: March 21, 1881

Citation: (1881) ILR (Cal) 213

Hon'ble Judges: Tottenham, J; Morris, J

Bench: Division Bench

Judgement

Morris. J.

1. We think that an attachment before judgment cannot have effect against the Official Assignee who holds the property of the judgment debtors under a vesting order of Court made before the order for attachment in question was passed. The District Judge comes to the opposite conclusion on the authority of the case of Anand Chandra Pal v. Panchilal Sarma (5 B. L. R. 691). But that case differs in two material respects from the present case. In it the question was, whether attachment after judgment shall have priority over the vesting order, and not, as here, attachment before judgment; and secondly, that case was governed by the procedure prescribed in Act VIII of 1859, under which the first attaching-creditor had priority over other judgment-creditors. But no such priority is allowed under the present on Procedure Code, Act X of 1877. It seems to us that this point, viz., that Preattachment before judgment does not take priority over the vesting order, has the been distinctly ruled in In the matter of Gocool Doss Soonderjee, an Insolvent (1 Ind. Jur. N. S. 327) Bank of Bengal v. Newton (12 B. L. R. App. 1) and Gamble v. Bholagiri (2 Bom. H. C. 146). In the last case Sir Richard Couch says sary listinctly, that

an attachment before judgment "cannot be regarded as the inception of an execution, or as binding the goods in such a manner as to exclude the right of the Official Assignee accruing after such attachment, but before judgment and warrant for execution."

2. We, therefore, set aside the judgment of the District Judge and direct that the execution be stayed as against Gobind Chand Dugur and Sitab Chand Dugur with costs.