
(1919) 06 CAL CK 0034

Calcutta High Court

Case No: None

Bhuramull Banka

APPELLANT

Vs

The Official Assignee of Bengal

RESPONDENT

Date of Decision: June 2, 1919

Acts Referred:

- Presidency Towns Insolvency Act, 1909 - Section 33

Citation: 56 Ind. Cas. 337

Hon'ble Judges: Lancelot Sanderson, C.J; John Woodroffe, J

Bench: Division Bench

Judgement

Lancelot Sanderson, C.J.

This is an appeal by the insolvent against an order of committal made by Rankin, J.

2. On the hearing of the appeal, the merits of the matter were not discussed by the learned Counsel for the insolvent and no attempt was made to justify his conduct.

3. It appears that the appellant was adjudicated insolvent on the 21st March 1919 at the instance of a creditor, and shortly before that, viz., on the 26th February 1919, a suit in which the insolvent's grandmother was the plaintiff and the insolvent was defendant was filed, and in that suit by consent of the parties the Official Receiver was appointed on the 10th March 1919 receiver of the book-debts, outstandings, cash, money, properties and assets of the insolvent's firm.

4. Notice of an application for an order of committal dated the 5th May 1919 was served on the insolvent on the 6th May. The notice was as follows:

Take notice that on Tuesday the 13th day of May 1919 at 11 o'clock in the forenoon or so soon thereafter as the matter may be heard an application will be made before the learned Commissioner in insolvency for an order that you be committed for contempt u/s 24 (3) and Section 33 (2) (c) and (e) and (4) on the following grounds:

1. That the order of adjudication passed against you on the 21st March 1919 was served on you on the 5th April 1919, and that you have failed to file your schedule.
2. That you were ordered by the Official Assignee personally on the 9th day of April 1919 to attend his office from day to day in order to make a list of the books belonging to your estate which had been removed to the Official Assignee's office. You have neither attended his office nor have you made a list of the books.
3. That you were directed by the Official Assignee on the same date to make enquiries and report to him as to the whereabouts of your current books. You have taken no notice whatsoever of such directions.
4. That you were directed by the Official Assignee to enquire and report as to the books, papers, belonging to your estate taken possession of by the Official Receiver appointed in the suit of Radha Bibee. You have failed to do so.
5. On the 13th May the insolvent applied for an adjournment, which was granted by the learned Judge, and the application was heard on the 16th.
6. The learned Judge came to the conclusion that the insolvent was deliberately trying to play off the Official Receiver against the Official Assignee and that in the insolvency he had done nothing, or as near as possible to nothing, for a period of a month, that he had deliberately done this with the idea that the Court would take no notice of it, if he gave sufficient trouble.
7. As I have already stated, there has been no attempt made to question the learned Judge's finding which, on the materials before us, was, in my judgment, amply justified.
8. It was, therefore, a case in which, as far as the merits are concerned, an order for committal was properly made.
9. The appellant's learned Counsel, however, raised several technical points, none of which were taken in the Court of first instance or referred to in the grounds of appeal. But having regard to the nature of the case, we allowed these points to be argued.
10. It was argued that the learned Judge had not committed the insolvent on the first ground and that the insolvent should not have been committed on grounds Nos. 2, 3 and 4 of the application.
11. The first reason alleged was that the orders of the Official Assignee were verbal and as such were not sufficient basis for committal. It was argued that if the insolvent did not attend, in pursuance of the order made by the Official Assignee on the 9th April referred to in ground No. 2 of the notice, the Official Assignee should have applied to the Court for an order for the insolvent's attendance, that the Court's order should have been in writing, that it should have been served personally on the insolvent, that it should have contained a notice that unless he

complied with it he would be committed for contempt, and that the insolvent could not be committed unless the above procedure had been carried out.

12. In my judgment, this question must depend upon the terms of Section 33 of the Presidency Towns Insolvency Act, 1909. Sub-section (2) of that section provides that "the insolvent shall...(c) wait at such times and places on the Official Assignee or special manager...(e) generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be required by the Official Assignee or special, manager or may be prescribed or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the Official Assignee or special manager, or any creditor or person interested, "

13. Sub-section (4) is as follows :

If the insolvent wilfully fails to perform the duties imposed upon him by this section, or to deliver up possession to the Official Assignee of any part of his property, which is divisible amongst his creditors under this Act and which is for the time being in his possession or under his control he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court and may be punished accordingly.

14. There is nothing in the section to show that an order of the Official Assignee to attend his office in pursuance of Section 33 (2) (c) must be in writing. Consequently, the order given verbally on the 9th April was valid order and there was then a duty upon the insolvent to comply with the order. This section further provides in Sub-section (4) that if the insolvent wilfully fails to perform the duties imposed upon him by the section, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court and may be punished accordingly. So that in this case when the insolvent failed to attend at the Official Assignee's office in accordance with the order of the Official Assignee, he failed to perform a duty imposed upon him by the section and he was guilty of a contempt of Court. The contempt was complete and he was liable to be punished accordingly.

15. Consequently, in my judgment, having regard to the terms of the section, there was no need for the Official Assignee to pursue the procedure indicated above, which the learned Counsel for the appellant urged, was necessary, before proceedings for contempt could be properly taken.

16. The next point urged was that there was no time specified in grounds Nos. 3 and 4. I do not think it necessary to consider this at any length; the learned Judge has found that the insolvent did practically nothing for a month: farther, this point does not touch ground No. 2 of the application and that ground alone, having regard to the facts of this case and the finding that the insolvent was deliberately trying to play off the Official Receiver against the Official Assignee with the idea that if he gave sufficient trouble, the Court would take no notice of it, would be sufficient to

justify the order for committal

17. It was next argued that the affidavit filed on behalf of the Official Assignee should have been Sled together with or before the notice of application, and should have been served on the insolvent at the same time as the notice of application : and referenda was made to the Insolvency Rules Nos. 36, 37 and the preceding rules 17 to 20. The notice of application was served on the insolvent on the 6th May; on the 9th May the Official Assignee seat copies of the affidavits which he intended to use in support of his application for contempt. On the 10th May the notice if application, and the affidavits were filed by the Official Assignee. On the 13th May the matter was before the learned Judge; at the insolvent"s request the application was adjourned until the 10th. At the hearing of the application on the 16th the insolvent relied upon an affidavit put in by him, which he had affirmed on the 15th, and in which he replied to the allegations contained in the affidavit filed on behalf of the Official Assignee.

18. There is no express provision that the affidavit in support of the application should be served at the same time as the notice of application, bat assuming that there was any irregularity in the procedure, the learned Counsel for the Official Assignee relied upon rule 200 of the Insolvency Rules and the decision in *Rendell v. Grundy* (1895) 1 Q.B. 16 : 64 L.J.Q.B. 135 : 14 R. 19 : 71 L.T. 564 : 43 W.R. 50 in this case the insolvent was served with the notice on the 6th May, one week before the day originally fixed for the hearing : the notice set, out the grounds of the application. On the 9th copies of the affidavits intended to be used were sent by the Official Assignee.

19. The insolvent affirmed his affidavit on the 15th and the case was heard on the 16th. The insolvent had everything, to which he was entitled, and he has not been prejudiced in any way and in my judgment on the facts of this case the non-compliance with the rules, if any, does not invalidate the proceedings.

20. The learned Counsel for the insolvent argued that the application was in the nature of a criminal proceeding and, therefore, that there could be no question of waivar : in my judgment, on the facts of this case, it was not necessary for the Official Assignee to rely on the doctrine of waiver.

21. For these reasons, in my judgment, this appeal must be dismissed.

22. In this case there was no doubt as to the verbal orders, which were made by the Official Assignee. We think, however, that in future, if the Official Assignee intends to apply for a committal order for contempt of court, he will be well advised to put his order into writing and have it served on the person intended to be proceeded against, with a notice that if the order is not complied with, proceedings for contempt will be taken. Further, it is eminently desirable, from all points of view, that the procedure laid down by the rules should be strictly complied with.

23. The Official Assignee will get his costs out of the assets--the costs will be as between Attorney and client.

Woodroffe, J.

24. The contention that a written order of the Court was necessary, which order had to be served on the appellant, in practice amounts to this that if the orders of the Official Assignee are repeatedly disobeyed and then an order is made by the Court which is obeyed, no punishment by way of contempt can follow under the Act upon the repeated disobedience, though according to the Act the offence is complete immediately the Official Assignee's directions are disobeyed, it would be possible in this way to delay, and to some extent to defeat, the insolvency proceedings. In my opinion, no order in writing was requisite either from the Official Assignee or from the Court, though a* regards the former it may be, as the learned Chief Justice has pointed out, desirable for the Official Assignee to put his directions into writing. The other alleged irregularities of procedure are in my opinion, not made out but if they were, they have not in fact occasioned any failure of justice. The merits are not the subject of discussion before us, the question before us merely being whether the technical grounds have been established which would justify this Court in holding that the appellant should not be committed for acts which call for the proceedings which have been taken against him.

25. I agree, therefore, that the appeal fails and should be dismissed.