
(1877) 05 CAL CK 0008

Calcutta High Court

Case No: None

In Re: Bungseedhur
Khettry, an Insolvent
Claim of Ramlall
Budree Doss

APPELLANT

Vs

RESPONDENT

Date of Decision: May 2, 1877

Citation: (1877) ILR (Cal) 359

Hon'ble Judges: Macpherson, J

Bench: Single Bench

Judgement

Macpherson, J.

On these affidavits I find the facts to be, that, about 10 P.M., on the 20th of December, the firm of Ramlall Budree Doss, merchants in the Burra Bazar, promised at once to give Rs. 5,000 to the insolvent if he would next morning deliver to them goods to that amount, and would in the meantime satisfy them that he had sufficient goods in his godown and would allow them (Ramlall Budree Doss) to put their lock on the door of the godown so as to secure the goods therein until they had received the value of their Rs. 5,000.

Thereupon the insolvent took the gomasta of Ramlall Budree Doss to his godown, let him see that it contained goods worth more than Rs. 5,000, and allowed him to put his master's lock on the door, while the insolvent, at the same time, replaced his own locks.

2. The gomasta and the insolvent then returned to Ramlall Budree Doss' kothi, where Rs. 5,000 were at once paid to the insolvent, who promised to deliver in the morning Rs. 5,000 worth of goods out of the godown which had been locked up. Having got the money, the insolvent absconded from Calcutta that same night, and never returned to his place of business.

3. Next day he was adjudicated insolvent, and the question now is, whether the goods in that godown passed to the Official Assignee, as being in the order and disposition of the

insolvent.

4. I have considered the cases to which I was referred in the course of the argument, and certain other cases also, in particular that of *Ex parte Watkins* (8 L.R. Ch. 520); and I think I am bound to hold that the goods did not remain in the order and disposition of the insolvent within the meaning of the statute.

5. The goods which were to be given to Bamlall Budree Doss in return for the Rs. 5,000 were, it is true, not actually set apart on that night, and the agreement was that they should not be formally set apart and delivered until next morning. But the godown containing the goods was secured by the lock of Ramlall Budree Doss, and was no longer under the control of the insolvent; and the Rs. 5,000 were paid in consideration of the godown having been so secured. After the locks were put on, the goods could not be dealt with save through the joint action of Ramlall Budree Doss and the insolvent, and they were in fact no longer in his order and disposition, but were subject to the lien of Ramlall Budree Doss. As to the notoriety of the transfer of possession or of the creation of the lien, the transaction was conducted with as much notoriety as was under the circumstances possible.

6. On the whole I think that Ramlall Budree Doss have established their claim, and entitled to be paid out of the proceeds of the sale of these goods the sum of Rs. 5,000 and their costs of this application.

7. The matter is one of some doubt, and the Official Assignee was clearly right in resiting the claim and having the question inquired into and discussed, and his costs must be borne by the estate.