

## IN THE SUPREME COURT OF FIJI

## Bankruptcy

No. 22 of 1961

*Re*: BHAGAL RAM PRASAD, s/o KAULESSAR Debtor*Ex-Parte*: RAM KUVER Creditor

Bankruptcy Ordinance (Cap. 37)—s. 42—completion of execution or attachment by creditor prior to receiving order.

This was a motion by a creditor (Ram Kuver) for the payment to him of a sum of money (£110) held by the Official Receiver as part of the bankrupt estate of Ram Kuver's debtor (Bhagal Ram Prasad). Ram Kuver's judgment debt against Bhagal Ram Prasad being unsatisfied, he had obtained a Charging Order *Nisi* in respect of this sum of £110 lying in Court to the credit of Bhagal Ram Prasad. The Charging Order was made absolute, but prior to the order for payment out of the £110 to Ram Kuver, a receiving order was made against Bhagal Ram Prasad and he was adjudicated bankrupt. When Ram Kuver's solicitors drew up the order for payment out and presented it to the Registrar of the Supreme Court, the Registrar declined to pay out the £110 to Ram Kuver but paid it to the Official Receiver as Bhagal Ram Prasad's trustee in bankruptcy.

*Held*.—Upon a strict construction of the words of section 42 of the Bankruptcy Ordinance (Cap. 37) Ram Kuver was entitled to the £110 as against the Official Receiver.

Motion allowed.

Cases cited:

*In re Hutchinson* Q.B.D. (1885-6) Vol. 16 515.

*Brereton v. Edwards* Q.B.D. (1888) Vol. 21 448.

*re Potts ex parte Taylor* Q.B.D. (1893) 648.

*re Love ex parte Official Receiver (Trustee) v. Kingston-upon-Thames County Court Registrar* (1951) 2 All E.R. 321.

V. R. Singh for the Official Receiver.

Maurice Scott for the Creditor.

KNOX-MAWER, Ag. J. (24th November, 1961).

This is a motion by Ram Kuver for an Order that the Official Receiver do pay him the sum of £110. The Official Receiver claims to hold this money as part of the bankrupt estate of Bhagal Ram Prasad.

The facts giving rise to this present motion may be summarised briefly as follows. Ram Kuver became a judgment creditor of Bhagal Ram Prasad, in Civil Action No. 354 of 1958, on 6th February, 1959. His judgment debt

being unsatisfied, Ram Kuver obtained, on 7th July, 1959, a Charging Order *Nisi* in respect of the sum of £110, which money was lying in this court to the credit of Bhagal Ram Prasad in another action, Civil Action No. 6 of 1952. The Charging Order was made absolute on 21st August, 1959, and an Order for payment out of the £110 to Ram Kuver was made on 20th May, 1960. The order for payment out was not, however, drawn up. On 1st March, 1961, a receiving order was made against Bhagal Ram Prasad, upon his own petition. The Official Receiver was appointed his trustee in bankruptcy. Bhagal Ram Prasad was adjudicated bankrupt on the same date. Later in the same month (March 1961) Ram Kuver's solicitors drew up the order for payment out of the £110 and presented it to the Registrar of the Supreme Court. The Registrar declined to pay out the £110 in the belief that this money had to be paid over to the Official Receiver, and this was in fact done.

The Official Receiver maintains his right to retain the £110 by reason of section 42 of the Bankruptcy Ordinance, Cap. 37. This provides—

" 42.—(1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor or of the commission of any available act of bankruptcy by the debtor.

(2) For the purposes of this Ordinance, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver."

In *re Hutchinson v. ex parte Hutchinson*, Q.B.D. 1885-1886 V. 16, p. 515, Cave J. held that an Order *Nisi* charging shares under 1 & 2 Vict. C. 110, s. 14 did not fall within section 45 of the Bankruptcy Act 1883. Counsel for the successful party in that appeal argued as follows—

" Before 1883 an order *nisi*, whether charging shares or attaching debts, rendered the holder of it a secured creditor. A judgment creditor, who, before the filing of a liquidation petition by his debtor, had obtained a garnishee order *nisi* attaching debts due to the debtor, was a secured creditor within ss. 12 and 16 of the Bankruptcy Act, 1869, and therefore entitled to the attached debts as against the trustee in the liquidation, even though they did not become actually payable until after the commencement of the liquidation: *Ex parte Joselyne, In re Watt*. The effect of that and other decisions was taken away as regards attachment of debts by the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 45. That section deals expressly with execution against goods, and lands, and attachment of debts, and deprives the creditor of the benefit of the execution or attachment unless completed before the date of the receiving order. But the law as to a charging order on shares is left unaltered. The terms of sub-s. 2, viz., ' For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver', are inapplicable to a charging order on

shares. Such an order under 1 & 2 Vict. c. 110, s. 14, brings the holder exactly within the definition of 'secured creditor' in s. 168 of the Bankruptcy Act, 1883."

Section 42 of the Bankruptcy Ordinance contains the same provisions as section 45 the Bankruptcy Act 1883. Section 2 of the Bankruptcy Ordinance contains the same definition of "secured creditor" as section 168 of the Bankruptcy Act 1883. It is true that the Charging Order in the instant case was not made under 1 & 2 Vict. c. 110 s. 14 but derives from the authority of *Brereton v. Edwards* Q.B.D. 1888 21, p. 448 (see Rules of Court, Order 46 Rule 1 and notes thereto). Nevertheless, adopting as did *Cave J.* in *re Hutchinson* an equally strict construction of the words of our section 42, I think Ram Kuver has a right to the £110 as against the Official Receiver.

I have carefully considered the other authorities which have been cited to me (*re Potts v. ex parte Taylor*, Q.B.D. 1893 p. 648; *re Love v. ex parte Official Receiver (Trustee) v. Kingston-upon-Thames County Court Registrar* All E.R. 1951 Vol. 2 p. 321). I can find nothing in this case law to justify any other conclusion.

It follows therefore that the motion must succeed and the Official Receiver is ordered to pay the sum of £110 to Ram Kuver.