

BOMBAY HIGH COURT

Sayad Daud Sayad Mahomed

Vs.

Mulna Mahomed Sayad

(Macleod, C.J.)

08.03.1926

JUDGMENT

Macleod, C.J.

1. We think the Subordinate Judge was right in holding that the Official Assignee in this case was a new plaintiff, and the insolvent who filed his suit four days after he had been adjudicated on his own petition in Bombay was incompetent to sue.

2. After the vesting order, the whole of the insolvent's property passed to the Official Assignee by virtue of the Presidency Towns Insolvency Act. Consequently, nothing was left vesting in the insolvent which would give him a cause of action. It is true that an insolvent does not lose absolutely all interests in his property when he is adjudicated. He may, for instance, be able to settle with his creditors and get his property back. But the vesting order for the time being is paramount, and, even if an insolvent may eventually be entitled to what may remain as surplus after satisfying his creditors, it is perfectly clear that he cannot be allowed to take steps after he is adjudicated to recover his property.

That would be opening the door to fraudulent actions to the detriment of the creditors.

3. On the other hand, it seems unfortunate that an insolvent by concealing a particular asset from, the Official Assignee and filing a suit to recover it for himself may cause damage to his creditors. But that is how the law stands, and the Official Assignee's only remedy is to report that the insolvent has concealed his assets.

4. The appeal must be dismissed with costs.

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