

(1935) 01 PAT CK 0001
In the Patna High Court
Case No : Appeal No. 151 of 1933

Firm Nanak Ram Moti Lal

APPELLANT

Vs

Jugal Kishore Marwari and others

RESPONDENT

Date of Decision : 31-01-1935

Acts Referred:

Citation : (1935) 01 PAT CK 0001

Final Decision : Dismissed

Judgement

James, J.—This is an appeal from the order of the District Judge of Muzaffarpur dated 15th May 1933 whereby he dismissed an application for review of an order of his predecessor which was made on 17th December 1932. The order was made in a proceeding in insolvency and the practical effect of the original order was to dismiss the debtor's petition under S. 25, Provincial Insolvency Act. Under S. 75 (2) of the Act the petitioning-debtor had a right to appeal to the High Court within ninety days of the order; but instead of appealing to the High Court he applied to the District Judge for review of the order dismissing the petition. It is objected now on behalf of the respondent that the appeal from the order refusing review cannot be entertained in view of the provisions of O. 47, R. 7, Civil P.C. The learned advocate for the appellant suggests that as special provisions are made for appeals under S. 75, Provincial Insolvency Act, the provisions of O. 47, R. 7 could not be held to apply to the order now under appeal. But there is nothing in the Provincial Insolvency Act itself which authorises the District Judge to review his orders; and in fact the petition for review which was presented to him purported to be a petition under O. 47, R. 1, Civil P.C., which the Judge was empowered to entertain under S. 5, Provincial Insolvency Act. It is clear therefore that no appeal can be entertained from the order refusing review and that an appeal from the original order of the District Judge had long been barred by limitation when this appeal was preferred. The learned advocate for the appellant suggests that we should treat this memorandum of appeal as an application in revision; but it would not be proper to utilize the power of the Court in revision in order to entertain an appeal where

an appeal is expressly prohibited by the Civil Procedure Code, or where an appeal has long been barred by the application of the law of limitation. I would there fore dismiss the appeal with costs.

Macpherson, J.

2. I agree.