(1925) 12 CAL CK 0015

In the Calcutta High Court

Gobinda Chandra Majumdar and Others APPELLANT

Vs

Hari Charan Marwari and Others RESPONDENT

Date of Decision : 01-12-1925

Acts Referred:

Provincial Insolvency Act, 1920 — Section 75(4)

Citation : AIR 1926 Cal 826 : 94 Ind. Cas. 332

Hon'ble Judges : Panton, J;Ewart Greaves, J

Bench : Division Bench

Judgement

Ewart Greaves, J.—This is an appeal by certain creditors named Majumdars against two orders of the District Judge of Birbhum, dated the 19th September, 1923 and 13th December of the same year.

2. A preliminary objection has been taken that the appeal is out of time having regard to the provisions of Sub-section (4) of Section 75 of the Provincial Insolvency Act. It is necessary to state a few facts before I deal with that objection. The creditors of the insolvent put in their proofs under the provisions of Section 33 of the Provincial Insolvency Act, and when the proofs had been put in they were referred to the Receiver who had been appointed to the insolvent''s estate to be dealt with by him and for a report to the District Judge. The Receiver dealt with the various proofs and made his report to the District Judge on the 12th of September, 1923. That report is to be found in the paper-book and it bears this date. The Receiver in his report rejected the proofs of the Majumdars for reasons which it is not necessary for me now to state. It appears from the order-sheet dated the 12th September, 1923 that the report was submitted to the Court on that date and the order concludes with these words ''Put up the report for further orders.'' Then comes the next order No. 53 dated the 19th September 1923. On that date the District Judge confirmed the Receiver''s report dated the 12th September, 1923 and two further reports of the 17th and 19th of September. We asked and asked in vain as to the procedure which is adopted when a report of this nature is confirmed and we have been unable to ascertain

whether notice is given to the creditors or at any rate to those creditors whose proofs have been rejected, by the Receiver. u/s 68 of the Provincial Insolvency Act the creditor who is aggrieved by an act of the Receiver is entitled to apply to the Court who has power to confirm, reverse or modify the act or decision complained of and there is a proviso to the section providing that no application is to be entertained after the expiry of 21 days from the date of the act or decision complained of, that is to say, the Statute clearly gives to every creditor aggrieved by the action of the Receiver, as these creditors were aggrieved by reason of the rejection of their proofs, 21 days in which to bring the matter before the Court (in this case before the District Judge). Within 21 days, namely, on the 1st October, 1923 the Majumdars filed a petition of objection against the Receiver''s report. On the 24th of May, the notice was served on the judgment-debtor and on certain creditors and apparently a question was raised on behalf of creditor No. 3 that no appeal lay. Eventually on the 13th December 1923, the District Judge rejected the application holding that as the report that had already been confirmed by him no appeal lay against that decision and that the proper remedy Was by, way of appeal to this Court. Now what is urged on behalf of the creditors who are opposing the appeal is that the appeal is out of time as it was not preferred within 90 days from the confirmation of the report, namely, the 19th September, 1923, and it is said that this is really the order by which the Majumdars are aggrieved and that inasmuch as the appeal was not preferred within 90 days from that date this appeal should be rejected or dismissed as out of time. Now the Majumdars had put in their objection within 21 days allowed by Section 68...and they were quite entitled to assume that the District Judge would consider their objection and, would not reject it on the ground on which it was rejected on the 13th December, and in my opinion, the District Judge had no jurisdiction to confirm the Receiver''s report except by consent of parties until 21 days had elapsed within which the creditors who were aggrieved could apply to the Court for the reversal or modification of the act or decision by which they were aggrieved. The result is, therefore, that the preliminary objection fails and that the appeal was preferred in time because it was preferred within 90 days from the date of the order by which for the first time the Majumdars found that the District Judge had refused to hear their application of the 1st October which had been filed within time. Suppose the Majumdars had appealed from the order of the 19th September, 1923 without making the application which they did to the District Judge they would then have been told that their appeal was premature because the District Judge had not dealt with their application and had neither re-considered the Receiver''s report or dismissed the application.

3. For these reasons, therefore, we think that the preliminary objection fails and this really disposes of any argument that can be urged against the appeal because clearly for the reasons which we have indicated the Majumdars were entitled to, have their objections to the Receiver''s report which were made within time considered and dealt with by the District Judge. It is suggested that in any case the appeal will be infructuous as all the assets of the insolvent''s

estate have been distributed. Whether that is so or not we do not know. We think for the reasons we have indicated, that this appeal is entitled to succeed and it is accordingly decreed and we accordingly set aside the order of the District Judge of the 13th December, 1923 and direct him to consider the Majumdars'' objections to the Receiver''s report on their merits.

4. The appellants will be entitled to their costs in this appeal--hearing fee, three gold mohurs.

Panton, J.

5. I agree.