
(1929) 04 CAL CK 0004
In the Calcutta High Court

Gopiram Bhotica

APPELLANT

Vs

Biraj Mohan Chatterjee

RESPONDENT

Date of Decision : 23-04-1929

Acts Referred:

Provincial Insolvency Act, 1920 — Section 41, 42

Citation : AIR 1929 Cal 576

Hon'ble Judges : Panton, J;B.B. Ghose, J

Bench : Full Bench

Judgement

B.B. Ghose, J.—This is an appeal by the creditor against the order of final discharge of an insolvent u/s 41, Prov. Ins. Act. This insolvent, it is stated was indebted to a sum of over eight lacs of rupees and it is also stated that his assets amounted almost to nothing. The receiver made a report objecting to the final discharge. An objection was also made by a creditor. The learned Judge has observed that the objections to discharge put forward by the creditor and the receiver do not appear to me to have any weight and I do not see that any good purpose would be served by the postponement of the order of discharge. The learned Judge, however, has not taken into consideration the facts which are necessary for him to be satisfied about before he makes an order of final discharge. Those are to be found in Section 42, Prov. Ins. Act. The insolvent has not at all been examined. One of the creditors stated that he had got properties in the benami of third persons. Those facts should be considered. It also appears that the insolvent's assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities and that being so he had to satisfy the Court that it is due to circumstances for which he cannot justly be held responsible. There are other things, to be considered before a final discharge of an insolvent is made. We, therefore, set aside the order of the learned District Judge dated 16th January 1928 and send back the case for decision according to the provisions of the law after taking evidence in the case.

Panton, J.

2. I agree.