
(1930) 08 CAL CK 0020
In the Calcutta High Court
In Re: Karim Mia

Date of Decision : 12-08-1930

Acts Referred:

Provincial Insolvency Act, 1920 — Section 41(2)

Citation : AIR 1931 Cal 392

Judgement

1. The order from which this appeal has been preferred is one passed u/s 41, Clause (2) (a), Provincial Insolvency Act. The learned Judge by this order refused an absolute order of discharge in favour of the insolvent who had applied for discharge in the proceedings. The learned Judge however has framed his order in this way:

It seems to me that nothing is to be gained from suspending the discharge or making a conditional order. The man is not fit to be given credit and that will be the result of his remaining an undischarged insolvent. I therefore refuse discharge absolutely.

2. If by this order the learned Judge meant that this order of his would preclude the insolvent from applying again for his discharge the learned Judge, in our opinion, was not right. What the legislature contemplates by Clause (a), Sub-section (2), Section 41 is not that there may be an order absolutely refusing to discharge an insolvent. It contemplates only an order either granting or refusing an absolute order of discharge as distinguished from an order of discharge subject to a condition. We may point out that the meaning of this section has been considered by the Allahabad High Court in the case of *Mul Chand and Another Vs. Official Receiver and Others*. The learned Judges, though differing on the question as to the effect of an order of a similar description that was passed in that case, were agreed in holding that the only order that Section 41 (2) (a) contemplates is one granting or refusing an absolute order of discharge and not an order absolutely granting or refusing for ever the discharge asked for. We think that the order in the present case must be regarded as merely an order by which the learned Judge refused to make an absolute order of discharge. The appellant therefore will be at liberty under altered circumstances and in view of his subsequent dealings, to come up before the Court again in future for applying

either for an absolute or for a conditional discharge. The appeal thus succeeds.