

(1912) 12 BOM CK 0003
In the Bombay High Court
In Re: Subrati Jan Mahomed

Date of Decision : 04-12-1912

Acts Referred:

English Bankruptcy Act, 1883 — Section 35(1)
Presidency Towns Insolvency Act, 1909 — Section 15(2)

Citation : (1913) 15 BOMLR 748 : 20 Ind. Cas. 859

Hon'ble Judges : Macleod, J

Bench : Single Bench

Judgement

Macleod, J.—This is an application on behalf of an adjudicated insolvent that he should be allowed to withdraw his petition on the ground that he has settled with his creditors.

2. Counsel referred to Section 15, Sub-section (2) of the Presidency Towns Insolvency Act (III of 1909) but that sub-section as well as Sub-section (8) of Section 13 only apply to petitions which are pending before any order has been made.

3. Once an order of adjudication has been made, the debtor who presents his own petition, or the respondent in the case of a creditor's petition, becomes an insolvent, and remains so until the order of adjudication is annulled or he obtains his discharge.

4. The Court has no jurisdiction to annul the order of adjudication except in the manner provided for by the Act. u/s 21(1) the order can be annulled if the Court is of opinion that the debtor ought not to have been adjudged insolvent, or if it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full.

5. This clause is the same as Section 35 (1) of the English Bankruptcy Act of 1883. In re Keet [1905] 2 K.B. 666 it was held that to satisfy that section the "debts " including at least all debts which have been actually and properly proved in bankruptcy must have (been fully paid in cash.

6. u/s 22 the order may be annulled if insolvency proceedings are pending in any

other British Court.

7. u/s 30 the order shall be annulled if the Court approves of a proposal for a composition or for a scheme of arrangement.

8. Under the Indian Insolvency Act a practice had been established in this Court of allowing an insolvent to apply for leave to withdraw his petition on serving notices on all his creditors in the Schedule, and if no creditor appeared to oppose the application, leave was granted as a matter of course.

9. The Court did not concern itself with the conduct of the insolvent or the manner in which he had settled the claims of his creditors.

10. It is now the duty of the Court to scrutinize the conduct of every insolvent who applies either for an order of discharge or for the annulment of the adjudication order. u/s 21 the Court has a discretion to make an order of annulment, and when the ground on which the application is made is the payment of the debts in full, it is entitled not only to be satisfied that as a matter of fact the debts have been fully paid in cash but also to take into consideration the antecedent conduct of the debtor, since it would not be a good exercise of that discretion to make an order of annulment where, if the insolvent were applying for his discharge, an order of discharge would not be granted : see per Stirling L. J. in *In re Keet* [1905] 2 K.B. 666. When a proposal is made by an insolvent for a composition or a scheme of arrangement, provision has been made by " Sections 28 and 29 that the proposal should be placed before the creditors in the prescribed manner, whereby the statutory majority of creditors can bind the minority, and all creditors receive equal treatment, thus preventing one or more creditors from refusing to accept the debtor's proposal except on preferential terms.

11. Moreover before the Court approves of the proposal it is bound to consider the conduct of the insolvent.

12. This application must be refused. That it ever was made seems to be due to a failure to comprehend the change introduced by the Insolvency Act of 1909.