

(1935) 07 CAL CK 0039
In the Calcutta High Court

Jatindra Nath Saha

APPELLANT

Vs

Katihar Oil Mills Ltd. and Others

RESPONDENT

Date of Decision : 03-07-1935

Acts Referred:

Provincial Insolvency Act, 1920 — Section 41

Citation : AIR 1935 Cal 644 : 158 Ind. Cas. 398

Judgement

1. This is an appeal from the decision of the learned District Judge, Rajshahi, refusing the application of an insolvent for discharge, u/s 4.1 Provincial Insolvency Act. The application made by the insolvent was opposed by one of the creditors, on this ground amongst others that the insolvent had not disclosed all his properties. The Judge in the Court below gave effect to this objection; and rejected the application for discharge. Hence the appeal.

2. At the hearing of the appeal, a preliminary objection as to the competency of the same as it now stands, was raised on behalf of the respondents, the creditors. The preliminary objection related to the position that the appeal has abated as a whole seeing that it had abated in regard to the heirs of one of the creditors respondent No. 7 in the appeal who was dead, who were not brought on the record within the time allowed by law. The creditor who died during the pendency of the appeal to this Court and whose heirs were not substituted, was undoubtedly a necessary party to the proceeding before the Court below, and a necessary party to this appeal; the effect of non-substitution of the heirs of such a necessary party was that the appeal as a whole became infructuous and incompetent. It was contended on the side of the appellant that objection to the application for discharge as made by the insolvent was opposed by one of the creditors only, and the respondent 7, who died during the pendency of the appeal to this Court not having been a party who raised any objection to the discharge, the absence of his heirs from the category of respondents could not and did not result in the abatement of the appeal as a whole.

3. We are unable to give effect to this contention, on the ground that no effective

order for discharge of an insolvent as contemplated by law, could be passed in the absence of any of the creditors before the Court. An order of discharge as contemplated by Section 41, Provincial Insolvency Act, could only be made in the interest of the general body of creditors of the insolvent, and the fact that one of them only raised objection to the discharge was not material for the purposes of the Courts making an order which was to affect the entire body of creditors. In the above view of the case seeing that no valid order of discharge could, in the circumstances that have happened, be made in favour of the appellant in the absence of the heirs of the creditor respondent No. 7 the appeal must fail, for the reason that it has abated as a whole. It may be mentioned that if there is a Receiver in insolvency appointed in the case, as was not the case here, the absence of heirs of one of the creditors would not have rendered the appeal infructuous and incompetent, if the Receiver representing all the parties concerned was on record.

4. The appeal is dismissed. There is no order as to costs in the appeal.