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**(1933) 04 AHC CK 0031**  
**In the Allahabad High Court**

Kundan Lal

APPELLANT

Vs

Nathu

RESPONDENT

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**Date of Decision :** 03-04-1933

**Acts Referred:**

Provincial Insolvency Act, 1920 — Section 42

**Citation :** AIR 1933 All 600 : (1933) ILR (All) 636

**Hon'ble Judges :** Mukerji, J

**Bench :** Division Bench

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**Judgement**

Mukerji, J.—This is a reference by the learned Judge, Small Cause Court of Jhansi, in the following circumstances : The plaintiff, Kundan Lal, sued the defendant, Nathu, for recovery of a sum of Rs. 137-12-0 on foot of a promissory-note dated 31st May 1929, executed for Rs. 82. The defendant put up two defences. One was that the real holder of the promissory-note was not Kundan Lal but his master, Ram Prasad, and that the defendant had been discharged from insolvency and that therefore the suit was not maintainable.

2. The learned Judge found that there was no evidence before him to prove that Kundan Lal was not the real holder of the promissory note but his toaster was. Then the learned Judge proceeded to consider the effect of Nathu having been declared an insolvent and subsequently discharged but finding himself unable to come to a clear decision he referred the matter to us. The question has been formulated as-follows: How does the fact of the defendant being a discharged insolvent affect the case?

3. On the last occasion when the case came before us, we sent for the record of the insolvency case so that we might be in full possession of the facts relating to it. It appears that Nathu made an application for being declared an insolvent on 31st May 1930 and in the list of creditors he mentioned one Ram Prasad and mentioned Rs. 82 as the amount of the debt payable to him. We find many acknowledgments on the record, that the notice issued to Ram Prasad was received by one Kundan Lal who signed himself as the mukhtaram of Ram

Prasad. If it were of any importance in this case to decide the point, we might notice that the signature of Ram Prasad in pen of Kundan Lal seems to be similar to the signature of Kundan Lal himself in the petition of plaint in the Small Cause Court suit. However we have not to decide any question of fact but only the question of law. After notices, were issued to the creditors mentioned in the schedule attached to the petition and. without any publication of notice in the local official gazette or in any local newspaper Nathu was given a discharge.

4. The case of Kundan Lal is that he never heard of the proceedings in insolvency and could not have possibly proved his debt in those proceedings.

5. The question is whether in the circumstances Kundan Lal's debt had become unenforceable although he had no notice of the proceedings.

6. For an answer to the question we have to look to the rules of law enacted under the Provincial Insolvency Act. Section 42 deals with discharge and Section 44 mentions the result of discharge. u/s 44, Sub-clause (2):

an order o? discharge shall release the insolvent from all debts provable under this Act.

7. There are certain exceptions but this case does not fall within any of the exceptions. This rule of law, viz., an order of discharge shall release the insolvent from all debts provable under this Act, is not qualified by any rule that the creditor should have notice of the proceedings. In our opinion, the rule is based on a policy of law and not any rule of constructive notice. Notice or no notice therefore the Section 44 comes into play and releases the insolvent from the debt in question which could undoubtedly have been proved under the Act. There is no question of fraud involved in the case and we need not express any opinion on that point. This view seems to be in consonance with the English decision in *Elmslie v. Corrie* (1877) 4 QB D295, which is based on Sections 49 and 125, Bankruptcy Act, of 1869. Mr. I.B. Banerji, who appears for the creditor has drawn our attention to Rule 34 framed by this High Court u/s 79, Provincial Insolvency Act, and has urged that it would be in the interest of justice to modify the rule to his extent: that at least some advertisement might appear in a local newspaper and that some steps might be taken to proclaim the insolvency proceedings by beat of drums in the locality in which the insolvent resides. We think that there is some force in this proposal and a copy of our judgment will be circulated for the information of the learned Judges of this Court so that if necessary the rule may be amended.

8. Coming back to the point in question we see no reason to hold that the discharge was dependent on notice being given to the plaintiff. The result would be the same even if the omission of the name of Kundan Lal was deliberate on the part of the insolvent provided of course no question of fraud is involved. Our answer therefore to the question framed by the learned Judge, Small Cause Court, is that the defendant is discharged from the liability under the promissory-note in suit. Let a. copy of this judgment with the seal of the Court be sent to the

learned Judge, Small Cause Court for his information. A copy of this judgment will be sent to the registrar of the High Court for circulation.