

(1934) 11 AHC CK 0037
In the Allahabad High Court

Mool Chand

APPELLANT

Vs

Dip Chand

RESPONDENT

Date of Decision : 16-11-1934

Acts Referred:

Citation : AIR 1935 All 272 : 153 Ind. Cas. 869

Hon'ble Judges : Bennet, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bennet, J.—This is a first appeal from an order brought by a creditor against an order of the learned District Judge of Jhansi under the following circumstances. The opposite party Dip Chand was adjudged an insolvent on 14th July 1915, under Act 3 of 1907. He made an application for discharge in 1922 and notice was issued to the creditors who were represented and the Court held a proceeding for discharge. The provisions in regard to discharge in Section 44 of Act 3 of 1907 are identical with the present provisions in Sections 41 and 42 of Act 5 of 1920, with the exception that under the present Act a period is specified during which the application should be made. That question does not arise. The insolvent gave evidence that Rs. 150 had been paid by the sale of his house and that the debts were the debts of his father and that he also owned a ruined site of a house to the extent of a two annas share worth some Rs. 50 or Rs. 60 which, he placed at the disposal of the creditors. The Court then passed an order on 6th October 1922, to the following effect:

It is useless to carry on this insolvency longer and it does not appear that insolvent is to blame. His offer to pay in instalments has been refused by the chief creditor and so a composition is not possible. The property mentioned by insolvent will be sold and after the proceeds have been distributed the order of unconditional discharge will be written. If insolvent can arrange to sell this property in co-operation with the creditors it will be so much the better.

2. The Question is what construction is to be placed on this order. u/s 44 of the former Act and Section 41 of the present Act the Court could pass an order on the application either granting or refusing an absolute order of discharge or passing an order or suspending its operation for a certain time or passing a conditional order of discharge. The intention clearly was to pass an unconditional order of discharge. Learned Counsel argues that although that was the intention the actual order should have been passed as the Judge stated at some later date. I consider that the order of 6th October 1922, is an order of absolute discharge which is suspended for a specific time, that is until the property has been sold. The property was actually sold by the Court Amin in 1924 and there is an order of 6th February 1924, stating:

The property has been sold. Let proceeds be distributed at once.

3. In my opinion there was a clerical error of the office in not drawing up a formal order of discharge on or after 6th February 1924, but I consider that the Judge by his order of 6th October 1922, had passed the order of absolute discharge suspended for a certain period. His object in suspending the order clearly was to retain jurisdiction to deal with the insolvency case until the remaining property had been sold and the proceeds had been distributed. Under these circumstances it is clear that the Court below was correct in refusing to appoint a receiver or allow attachment of property now at a date nine years after the final discharge. The present application sets out that the insolvent has subsequently acquired one-fourth share in a ruined house and some share, one-fourth or one-half in another house and yard and that the insolvent is a partner in a shop of Dukhi Ram Lal Gopal. The creditor now desires attachment and sale of these assets. I consider that the insolvency proceeding terminated in 1924 with an unconditional discharge and therefore the insolvency proceeding cannot now be revived. The first appeal from, order is therefore dismissed with costs.