
(1928) 09 CAL CK 0020
In the Calcutta High Court

P.N. Dutt Choudhuri and Others

APPELLANT

Vs

J.H. Blades

RESPONDENT

Date of Decision : 07-09-1928

Acts Referred:

Provincial Insolvency Act, 1920 — Section 42(1)(a)

Citation : AIR 1928 Cal 843 : 115 Ind. Cas. 585

Hon'ble Judges : Bose, J;B.B. Ghose, J

Bench : Division Bench

Judgement

1. In this case an order of discharge was made by the learned Judges of the insolvent by his order dated 3rd January 1927. It seems that the creditors 1 and 2 asked for time on various occasions to file their objection. But, they did not file their objection on 3rd January 1927 nor did they give any indication to the Court as to the reason why they were opposing the final discharge. The creditor who is the appellant before us states that he could not file his objection to the final discharge before the Receiver had submitted his report. This report was submitted on 17th December, 1926, a few days before the Court closed for the Christmas vacation, and it reopened on 3rd January. It is stated on behalf of the creditor that within this short; time he could not make any enquiry on which he could base his petition for objection. This argument does not seem to be very convincing because the Receiver's report is such a short document that within the course of the 5 or 6 days that the Court remained open before the Christmas vacation he ought to have been in a position to prefer any objection or at least to indicate, as the Court said, the reason why he opposed the final discharge. But there is another serious defect in the order of the learned Judge u/s 42(1)(a), Provincial Insolvency Act. The Court is bound to refuse to grant an absolute order of discharge u/s 42 unless the insolvent's assets were of value equal to 8 annas in the rupee on the amount of his unsecured liabilities (as it was in this case), unless the insolvent satisfies the Court with regard to certain matters stated in that clause. In the order of the learned Judge it is only stated that there was nothing in the report of the Receiver to stand in the way of the insolvent's

discharge. That is not sufficient. The Judge must be satisfied that the assets were not of the requisite value from circumstances for which the insolvent could not be held-to be justly responsible. There is no such finding.

2. This order therefore does not satisfy the provisions of the law and should, therefore, be set aside and the matter is sent back to the learned Judge. The creditors if they choose are allowed to file their objection. The learned Judge will hear their objection and then dispose of the matter according to law. The creditors may raise any objection to the final discharge but on no ground would they be entitled to delay the hearing of the matter.

3. There will be no order as to costs in this appeal.