

(1929) 07 AHC CK 0072
In the Allahabad High Court

Santi Lal and Another

APPELLANT

Vs

Raj Narain and Another

RESPONDENT

Date of Decision : 15-07-1929

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 2

Citation : AIR 1929 All 858

Final Decision : Allowed

Judgement

1. In this case Sant Lal was adjudicated a bankrupt on 26th March 1926. He was ordered as is usual to apply for discharge within six months. On 18th October 1926, he applied for his discharge. Notice of this application was served on Raj Narain, the only creditor. On 13th December 1926, no objection having been received, or no one appeared on behalf of the objector, the insolvency Court passed an order of discharge. On 15th January 1927, Raj Narain filed an appeal. This appeal was not accompanied by a copy of the formal order which had been drawn up on 13th December 1926. On 16th March 1927, Sant Lal objected to the appeal on the ground that it was not accompanied by a formal order. On 21st March 1927, Raj Narain applied for a copy of the formal order and on 26th March, he obtained it and filed this copy. On 21st April 1927, Raj Narain, the appellant, took the point that the notice of the application to discharge was not served upon him. The District Judge directed an issue on this point to the insolvency Court, and, on 15th July 1927, the insolvency Court found that notice had been served. On this being returned to the District Judge, the District Judge allowed the appeal and annulled the order of discharge. The bankrupt comes up here in appeal. The first point taken by Mr. Malik on behalf of the appellant is that a copy of the formal order not having accompanied the appeal and not having been filed until the 26th March 1926, the appeal itself therefore is out of time owing to the operation of limitation.

2. We do not think it is possible to agree with him on this point. There is no authority as far as we are aware which lays down that the filing of the formal order outside the limitation period for the filing of an appeal, which was itself

filed within time, will bring the appeal itself outside limitation. So long as the formal order is filed before the hearing we consider it to be sufficient. It is only when the matter comes up for hearing without a formal order that the rule of this High Court applies i.e. Order 43, Rules 2 and 3. Civil P.C. The second point was that as the notice had been duly served upon Raj Narain he ought not now to have been allowed to agitate the matter afresh, but it is pointed out by the learned Counsel for the respondent that. Section 42, Prov. Ins. Act has not been complied with by the insolvency Court. Raj Narain could certainly appeal on a point of law against an ex parte decree against him. It was clear from the application for discharge itself that the bankrupt was not paying a sum equal to eight annas in the rupee on the amount of the unsecured liabilities. Therefore the onus was upon him according to Section 42(1)(a) to show that the reason for this state of affairs had arisen from circumstances for which he could not be justly held responsible. In the proceedings before the insolvency Court Sant Lal gave no evidence to discharge the onus which was upon him. The proceedings before the insolvency Court were therefore undoubtedly faulty and the insolvency Court had no jurisdiction to pass the order which it in fact did. It appears to us that the proper order to pass in this case is that the matter be remanded to the insolvency Court for its decision, after having taken the necessary evidence, as to whether the fact that the insolvent's assets are not equal to eight annas in the rupee is due to circumstances over which he cannot be justly held responsible, This being so both the appellant and the respondent should have an opportunity of leading evidence on this matter. The appeal is allowed and the order for remand as indicated above is made. Costs will abide the result.