
(1920) 05 CAL CK 0033
In the Calcutta High Court

Sripat Singh and Others

APPELLANT

Vs

Maharaja Sir Prodyat Kumar Tagore and Others

RESPONDENT

Date of Decision : 19-05-1920

Acts Referred:

Provincial Insolvency Act, 1920 — Section 10, 24(3), 47

Citation : AIR 1921 Cal 219 : 57 Ind. Cas. 810

Hon'ble Judges : Teunon, J; Asutosh Chaudhuri, J

Bench : Division Bench

Judgement

1. This appeal arises out of certain insolvency proceedings. It appears that one Chattarpat Singh applied in the Court of the District Judge of Murshidabad to be declared an insolvent. This was on some date in 1909. His application to that Court was reduced, and the order of the District Judge refusing his application was, affirmed on appeal to this Court. Finally on appeal to the Privy Council Chattarpat Singh was adjudged an insolvent on the 20th November 1916. On the return of the records from England on the 2nd August 1917 a Receiver was appointed. Thereafter with a view to submitting a proposal of composition with his creditors, the insolvent on the 5th March 1918 presented an application to the District Judge praying that the sum really due from him should be ascertained. He annexed to this application three schedules, schedule A being a schedule of debts which he said he had satisfied; schedule B being a schedule of debts which he said had become barred by limitation in the interval that had elapsed from the date of his original application in 1909; the third schedule C was a schedule of the debts or claims which he admitted to be still due. In effect this application is one presenting an amended schedule in accordance with the provisions of Section 11(d). On this application the District Judge directed that necessary proceedings for ascertainment of the debts still due from the insolvent should be taken. Unfortunately thereafter on or about the 9th May 1918 the insolvent Chattarpat died. Acting at the instance of his gone, the appellants before UP, the learned District Judge directed u/s 10 of the Insolvency Act that the proceedings should be continued as if the insolvent was still alive.

2. In accordance with the orders that had been made by the District Judge a number of creditors appeared and were prepared to substantiate the claim that they made against the insolvent. When eventually on the 26th May 1919 the case came on for hearing, a preliminary objection was taken on behalf of the creditors that the sons of the insolvent had no locus standi either in the matter of proposing or submitting a proposal for composition or in framing , the schedule which the District Judge directed to be prepared u/s 24, The District Judge gave effect to this contention and his order declining to permit the sons of the insolvent to appear and assist the Court in the preparation of the schedule be affirmed in a subsequent order, dated 9th June 1919. It is against the order refusing to permit the sons of the insolvent as his heirs and representatives to appear at the enquiry held with a view to framing the schedule that this appeal is directed.

3. As a matter of fact a schedule has been prepared in which claims have been entered amounting, we are informed, to some 8 lakhs of rupees. To these claims with the exception of sums aggregating some 80 thousand rupees, the heirs and representatives of the insolvent take exception.

4. As we have said, the application of the insolvent which initiated the subsequent proceedings is in effect an application presenting to the Court an amended schedule of creditors. That amended schedule is to be found in the schedule designated schedule C annexed to that petition. The creditors outside that schedule, who wish to have their claims included in the schedule now to be framed, are in substance in the position of creditors appearing u/s 24(3), and we fail to understand how it happened that notwithstanding the clear provisions of that sub section, which not only empowers but requires the Court to serve notices on the insolvent and hear him, the orders against which exception is here taken came to be made. On general principles as well as on the express provisions contained in Section 21(3), read with the farther provision contained in Section 47 of the Act, it was clearly incumbent on the Court to permit the present representatives of the insolvent to be present so as to give them an opportunity of cross-examining the claimants-creditors and their witnesses and to offer rebutting evidence in support of their plea that their claims had either been satisfied or barred.

5. For these reasons we set aside the orders of the District Judge shutting out the insolvent's representatives from the enquiry that should have been made u/s 24(3) of the Act and in so far as the items entered in the schedule (which has been prepared) are objected to by the insolvents' representatives, we direct that proceedings be taken afresh according to law. This appeal is accordingly decreed with costs. As the result of our order setting aside the District Judge's order of the 20th May, all orders for sale made subsequent to that date are also set aside.

6. In so far as the order appealed against is one which holds that the representatives of the insolvent have no locus standi to submit a proposal for composition, all we need say with regard to that is that that order was clearly

premature, and should the representatives of the insolvent after the schedule has been framed in accordance with law he advised to submit a composition proposal it will be open to them to act on such advice as they may receive.

7. The appellants are entitled to their costs from the contesting respondents, who are respondents Nos. 6, 9, 10 and 13. The hearing fee is assessed at two gold mohurt against each respondent. The Receiver will get his costs, two gold mohurt, cut of the estate of the insolvent.