

Nawab Muniruddaulah Dilawar Husain Vs Abdur Rahman Official Receiver

Court: Allahabad High Court

Date of Decision: Oct. 2, 1941

Final Decision: Dismissed

Judgement

Thomas, C.J. and Ghulam Hasan, J.

This revision application u/s 75(1) of the Provincial Insolvency Act is directed against an order of the

District Judge of Lucknow, dated the 24th August, 1940, upholding in appeal the order passed by the Judge, Small Cause Court acting as an

Insolvency Judge, u/s 27(2) of the Provincial Insolvency Act. The facts giving rise to the application are as follows:--

The applicant was declared an insolvent on the 20th October, 1938, upon an application presented by him to the Insolvency Court. The applicant

admitted in his application that on a previous occasion he had applied to be adjudged an insolvent, but the application was consigned to the record

as he did not deposit the publication charges of the Gazette and newspapers. The applicant was given six months' time within which he was to

apply for his discharge. This time was due to expire on the 20th April, 1939. On the 15th April, 1939, before the expiry of the period of his

discharge, the applicant put in a petition for discharge. Notices were issued to the creditors and to the Official Receiver. The application for

discharge was fixed for hearing on the 11th May, 1939. On this date objections were filed by some of the creditors and time was obtained by

others to file objections. The Official Receiver had also not filed his report. The case was, therefore, fixed for orders on the 13th July, 1939. On

this date the insolvent did not appear. Objections were, however, filed to the application for discharge by certain creditors on this date. One of the

creditors filed an application in which it was stated that the insolvent's mother had died on the 28th May, 1939, and that the insolvent had inherited

considerable property on the death of his mother, the value of which was shown in the objections as nearly three lacs. It was prayed that as a

Receiver had already been appointed to deal with the property of the Insolvent, the period of discharge be extended u/s 27(2) of the Provincial

Insolvency Act. The Insolvency Court thereupon extended the period of discharge for one year.

The learned District Judge in appeal declined to interfere with the order of the trial Court. This application has now been filed in this Court in

revision against the appellate order of the learned District Judge.

2. It has been contended by the learned Counsel on behalf of the applicant that in view of the fact that the applicant did not appear on the date

fixed for the hearing of the application for discharge, the only course open to the Insolvency Courts was to annul the adjudication and to apply the

provisions of Section 37 of the Provincial Insolvency Act, and that it had no jurisdiction whatever to act u/s 27(2) and extend the time for

discharge. In support of this contention the learned Counsel has relied upon the provisions of Sections 27 and 43 and the case reported in AIR

1937 37 (Nagpur)

3. Section 27, clause 2, runs as follows:--

The Court may, if sufficient cause is shown, extend the period within which the debtor shall apply for his discharge, and in that Case shall publish

notice of the order in such manner as it thinks fit.

4. Section 43, clause 1, is as follows:--

If the debtor does not appear on the day fixed for hearing his application for discharge, or on such subsequent days as the Court may direct, or if

the debtor does not apply for an order of discharge within the period specified by the Court, the order of adjudication shall be annulled, and the

provisions of Section 37 shall apply accordingly.

5. It has been argued that the case falls under the first part of Section 43(1), and that as the applicant had already put in an application for

discharge before the expiry of the period for such discharge, no question of extending the time within which the applicant should have applied for

discharge could possibly arise in the case, and consequently the provisions of Section 27(2) did not come into play and the Insolvency Court had

no jurisdiction to act under that section and extend the time for discharge.

6. We regret we are unable to accept this contention. Section 43 of the Provincial Insolvency Act must be read as subject to the provisions of

Section 27 of the Act. It is true that the applicant had not applied for an extension of the time for his discharge, but at the time when his application

for discharge came up for hearing on the 13th July, 1939, the six months" period of discharge had already expired. Under these circumstances it

was no doubt open to the Court to annul the order of adjudication and apply the provisions of Section 37 of the Act, but it was equally open to the

Court not to pass an order of annulment, but to take action upon the application of the creditors and extend the period of discharge by virtue of the

powers vested in it u/s 27(2) of the Provincial Insolvency Act. It appears that some of the creditors had proved their debts by that date and others

had been called upon to prove their debts on subsequent dates. The amount of debts outstanding against the applicant on his own showing was Rs.

1,53,122-8 on the date of the application. We are, however, informed by the Official Receiver that so far the debts proved against the applicant

by the creditors amount to Rs. 2,58,207-4 out of which the Official, Receiver has challenged debts amounting to Rs. 82, 121. This statement has

not been controverted on behalf of the applicant, and we have no reason to doubt its accuracy. It is also clear that the applicant has succeeded to

considerable movable and immovable property upon the death of his mother, which took place on the 28th May, 1939. Under these

circumstances we think that the Insolvency Court had perfect jurisdiction to extend the period of discharge u/s 21(2) of the Provincial Insolvency

Act, either at the instance of the creditor, who filed an application for such extension, or of its own motion. Section 27 of the Provincial Insolvency

Act confers ample power upon an Insolvency Court, upon proof of sufficient cause, to extend the period within which an applicant should apply

for his discharge, and this power can be exercised by the Court either of its own motion or at the instance of a debtor or a creditor. No doubt this

was not a case in which the debtor had applied for an extension of the period of his discharge within the meaning of Section 27(2) because he had

already applied within the time originally fixed for his discharge, and he did not stand in need of any further extension. The mere fact, however, that

an insolvent has applied for his discharge within the time originally fixed by the Court does not take away the power of such Court to extend the

period of discharge, irrespective of any application by the applicant for such an extension, if in its opinion it is desirable to extend the time. In the

present case it appears that a creditor moved the Court to extend the period within which the applicant should apply for his discharge-as the

original period had by then expired-as it would enable the creditors to realise their debts from the property of the insolvent which had devolved

upon him during the pendency of his insolvency on the death of his mother.

7. It has been held by a Full Bench of this Court in a case reported in *Fazal Azim v. Umanath Bakhsh Singh* 1938 O.A. 263 : 1938 O.W.N. 377

that

A Court has jurisdiction to extend the time originally fixed under S. 27, Provincial Insolvency Act, for an application by the debtor for discharge,

after the expiry of that time, but before an order of annulment is passed u/s 43, Provincial Insolvency Act.

8. In a case reported in AIR 1928 82 (Lahore) it was held that

Under Section 27(2) of the Provincial Insolvency Act the power to extend the period specified in the order of adjudication, within which a debtor

is to apply for his discharge, may be exercised by the Court either on the application of the insolvent himself, or on the application of the creditor,

or suo motu.

9. The learned Judges of the Lahore High Court in AIR 1928 82 (Lahore) adopted the view taken in a case reported in AIR 1927 136 (Rangoon)

by a Bench of the Rangoon High Court. In the Rangoon case the application for extension was filed by the creditor before the expiry of the period

fixed for the discharge application, and the Insolvency Court held that u/s 43 of the Provincial Insolvency Act it had no power to enlarge the period

fixed for the application for discharge, and that it was bound to annul the adjudication order, and accordingly did so. This view was set aside by

the Rangoon High Court, in appeal, and it was held that the Insolvency Court was not bound to annul the adjudication order, and that it had ample

power u/s 27 of the Provincial Insolvency Act to extend the period of discharge for good cause shown.

10. In a case reported in Suppiah Mooppanar Vs. Mallappa Chetty and Others, it was held that

Section 43 is controlled by S. 27 and an application for extension of period can, therefore, be made by any one interested, and is not restricted

merely to the debtor.

11. In this case, it was a creditor who applied for enlargement of time, and the Official Receiver agreed to an order being made.

12. Upon a plain construction of Section 27(2) read with Section 43, we are inclined to hold that the provisions of the latter section are subject to

those of the former, that Section 27(2) imposes no conditions on the powers of the Insolvency Court to enlarge the time save the existence or

proof of a sufficient cause and a fortiori it is open to the Court to extend the time instead of annulling the adjudication, even though the application

for discharge may have been made by the insolvent within the time originally fixed by the Court. The view which we have taken is in harmony with

the view laid down by the Division Bench of the Lahore High Court in AIR 1941 316 (Lahore) where it was held that

the default of a debtor under S. 43 does not bring about an automatic annulment nor is the Court bound to pass an order of annulment immediately

after the default occurs. The insolvency Court can postpone annulment after default either by extending the time in which the debtor is to apply for

his discharge or by merely postponing the actual pronouncement of annulment after the default has occurred.

13. It was also observed that

Section 43 is intended to act as a deterrent to insolvents who try to avoid discharge, and this was the expressed object with which the section was

introduced. Sections 37 and 43 cannot be interpreted in such a way as to favour the insolvent.

14. In the later case of the Rangoon High Court reported in *R.M.K.R.M. Chettyar v. Ko Po Thit*, neither the insolvents nor the creditors appeared

on the date fixed for the insolvents' discharge, and there was no application for discharge by the Insolvents. The Insolvency Court, therefore,

acting u/s 43(1) of the Provincial Insolvency Act annulled the adjudication. It was, however, held by the Division Bench that there was nothing

whatever in Section 43(1) of the Provincial Insolvency Act which could be construed as meaning that a Court cannot extend time for the

application for discharge on its own motion. It was further observed by the Division Bench, of a reference to the provisions of Section 43(1) of the

Act that

this section, which was new in 1927, would be useless if the Court could not act under it of its own motion, for, among other results, it would

follow that the protection and control of the Court could not be withdrawn from an insolvent where he deliberately omitted to apply for his

discharge. The intention of the sub-section, as I understand it, is to make it compulsory for an insolvent to come before the Court, if he wishes for

discharge.

15. Upon the facts of that case one of the learned Judges held that

the Court should not have annulled the adjudication, but of its own notion have extended the time for discharge, for by passing the annulment order

the insolvents and their estate were placed outside the control of the Court, and the interests of creditors may well have been imperiled.

16. It has been suggested in the course of the argument on behalf of the applicant that the order of annulment of the adjudication does not remove

the property of the applicant from the control of the Court, and that u/s 37 of the Provincial Insolvency Act it is open to the Insolvency Court to

vest the property in the Receiver, and not to allow it to revert to the applicant. The learned Counsel argued that if this course was adopted by the

Insolvency Court the property would have remained with the Receiver, the creditors would have been driven to their remedy in the regular Civil

Courts and that the applicant would have been in a position to contest their claims. We do not think that such a course would have been expedient

in the interests of the creditors. As we have already stated, the creditors had already proved their debts in the insolvency proceedings, and the

applicant had ample opportunity to assist the Receiver in contesting such of the debts as he thought were fictitious. As it is, the Receiver states that

he himself has challenged debts to the extent of Rs. 82,121, and the matter is pending consideration in the Insolvency Court. We do not think that

the applicant suffers any prejudice by the extension of the period of his discharge; on the contrary we think that the interests of the creditors would

have been prejudicially affected by the Insolvency Court's annulling the adjudication and driving the creditor to the necessity of proving their claims

in the regular Civil Courts afresh. We think that the Insolvency Court not only had jurisdiction to extend the period of the applicant's discharge u/s

27(2) of the Provincial Insolvency Act, but acted properly in doing so. If the interpretation placed upon the provisions of Sections 43 and 27 of the

Act by the learned Counsel for the applicant were accepted, it would mean that an insolvent, after filing the application for his discharge before the

period originally fixed for such discharge, can easily make a default in appearance, and compel the Insolvency Court to annul the adjudication and

apply the provisions of Section 37, and to re-vest the property in him or in the Receiver and then fight out the case afresh with the creditors in the

regular civil Courts. We cannot persuade ourselves to accept the view that the Insolvency Court is powerless to prevent the perpetration of this

fraud on the part of the insolvent, and that where an application has been made by the insolvent for his discharge before the period originally fixed

for such discharge the powers of the Court u/s 21(2) of the Provincial Insolvency Act do not come into play.

17. The case of AIR 1937 37 (Nagpur) relied upon by the learned Counsel for the applicant does not, in our opinion, advance his case. That was

a case in which an absolute order of discharge was granted to the insolvent. The insolvent's debts amounted to Rs. 4,000, and his total assets

were only 45 acres of occupancy land. The insolvent had failed to satisfy the Court that the amount of his liabilities had arisen from circumstances

for which he could not justly be held responsible. The order of discharge, was therefore, set aside in revision. The learned Judge also annulled the

adjudication u/s 43(1) of the Provincial Insolvency Act, and observed that

When the debtor has applied for his discharge within the prescribed period, and Section 27 does not apply, then the provision in Section 43 must

apply, and the order of adjudication must be annulled, if thereafter the debtor does not appear on the days fixed for hearing his application for

discharge.

18. We are of opinion that this case is distinguishable from the facts and circumstances of the present case. Here the creditor had applied for an

extension of the period of discharge, but even if no such application had been made it was open to the Insolvency Court suo motu to grant an

extension of time within which the insolvent should apply for his discharge to prevent the perpetration of fraud upon the creditors. We hold,

therefore, that the decision arrived at by the lower Courts is correct, and dismiss this revision application with costs.