

**(1909) 07 CAL CK 0001**

**Calcutta High Court**

**Case No:** Appeal From Order No. 384 of 1907 and Rule No. 3028 of 1907

Kedar Bans Lal Misser

APPELLANT

Vs

Maharani Janki Koeri

RESPONDENT

---

**Date of Decision:** July 12, 1909

**Final Decision:** Dismissed

---

### **Judgement**

1. We have before us an appeal and a rule arising out of the same matter. The Appellant applied to the District Judge of Durbhanga under Ch. XX of the CPC to be adjudged an insolvent. The learned Judge refused the application on the ground that he had no jurisdiction to act in the matter, because the debts put forward by the applicant were debts which had been certified and in part been recovered under the provisions of the Public Demands Recovery Act. The first question is whether the Judge was right in so holding. Various debts were certified against the Appellant, and by force of sec. 19 of the Act, such certificates became enforceable in the manner provided by Ch. XIX of the Code and also all the provisions of Ch. XIX and also of Ch. XX of the Code thereby applied as far as they were applicable. Ch. XX of the Code allows any insolvent to apply to a District Court for the relief afforded in that chapter and in sec. 19 of the Public Demands Recovery Act there is nothing to limit the jurisdiction of the Court in any matter arising under the Act. We have then to consider whether an application by an insolvent under Ch. XX of the Code is a step in enforcing or executing any certificate made under the Act, because if it is, all the powers and duties conferred by the Code on the Court should under sec. 22 of the Act be exercised by the certificate officer. We find it impossible to suppose that proceedings taken by the insolvent-debtor for his own relief can be regarded as in any way enforcing or executing the liabilities which he has incurred under the Act. The very object of the petition in insolvency is to get rid of such liabilities on the terms which the law provides in order to make such release fair from the point of view of the creditors.

2. There is however sub-sec. (3) to sec. 22 which seems to show that the District Collector, who is under the defining sec. 4 of the Act one included within the meaning of certificate officer, has jurisdiction in insolvency. It is expressly provided that an Assistant Collector or Deputy Collector shall not act under the provisions of the Code relating to insolvent judgment-debtors, from which it seems to be inferred that the certificate officer being the District Collector may so act. It has been argued that if he has jurisdiction in insolvency, it cannot be that the Civil Court likewise has jurisdiction. What-ever the law may be as to the jurisdiction of the certificate officer in insolvency matters we do not think that the argument applies, and we cannot find anything in the Public Demands Recovery Act to take away the jurisdiction of the Civil Court where the debts of the applicant are debts enforceable under the Public Demands Recovery Act. We therefore conclude that the Judge was wrong in holding that he had no jurisdiction to deal with the present case.

3. We cannot however hold that appeal lies. Sec. 351 of the Code is the only place where provision is made for the rejection of an application in an insolvency matter, and that rejection is one which is made on the merits of the case. In the present case the merits had not been considered and the Judge has rejected the application because he has wrongly held that he had no jurisdiction to entertain it.

4. There is however a rule in this case. We hold therefore that while as the rejection was not under that section there is no appeal under sec. 588, there is a ground for the rule because the Judge has refused to exercise jurisdiction which he possessed.

5. We therefore make the rule absolute and direct the Judge to proceed in this matter according to law, if it appears on the facts of the case that the matter is still worth proceeding with.

6. The appeal is dismissed. Each party will pay his own costs in the appeal as well as in the rule.