

(1928) 01 CAL CK 0001**Calcutta High Court****Case No:** None

Laxmi Industrial Bank, Ltd.

APPELLANT

Vs

Dinesh Chandra Roy Choudhury

RESPONDENT

Date of Decision: Jan. 6, 1928**Citation:** 113 Ind. Cas. 105**Hon'ble Judges:** Zahhadur Rahim Zahid Suhrawardy, J; Graham, J**Bench:** Division Bench**Judgement**

Graham, J.

This appeal is against an order of the District Judge, 24-Parganas, and arises out of insolvency proceedings. The facts shortly stated are that on the 27th January, 1926, one Jewraj Khariwal made an application before the District Judge to be declared an insolvent and a Receiver was appointed. Subsequently an order of adjudication was recorded on the 3rd May, 1926. One of the creditors of the insolvent, the Laxmi Industrial Bank (Creditor No. 4), is the present appellant before us. It appears that this Bank had advanced, or at all events claimed to have advanced various sums of money to" the insolvent upon the security of certain ornaments which were deposited with the Bank. The Receiver wanted inspection of these articles and of the Bank"s accounts. The Bank objected to produce them on the ground that it was a secured creditor. The learned Judge, however, considered that it was desirable that the articles should be inspected by the Receiver and he accordingly recorded an order directing the Bank to grant facilities to the Receiver for the purpose of inspecting and valuing the ornaments. In making the order he observed that the Bank had not yet proved that they were actually secured creditors in respect" of the articles; and in his opinion it was necessary that this should be done as there were certain allegations in the report of the Receiver which raised some doubt as to the position of the Bank in the matter. He accordingly directed the Bank to prove that they were secured creditors in respect of the articles and issued an interim injunction restraining the Bank from selling the ornaments. It is this order which forms the subject-matter of the present appeal and more particularly that portion of it which

restrained the Bank from selling the jewellery.

2. On behalf of the appellants two points have been argued. First, it has been contended that the question whether the appellants are secured creditors or not cannot be gone into in insolvency proceedings; and, secondly, it has been urged that, even assuming that the appellants have to prove their right as secured creditors, the proper procedure was not adopted by the Court below. In my judgment there is no substance in these contentions. With regard to the first point, the learned Advocate for the appellants was constrained to concede that Section 4 of the Act, as it now stands, confers the widest possible powers upon the Court; but he laid stress on the opening words of the section "subject to the provisions of this Act" and then went on to argue that, as no enquiry or proceeding u/s 53 or Section 54 was started against the Bank, the Court below had no jurisdiction to call upon the Bank to prove that they are secured creditors or to issue the injunction. In my opinion this contention is without substance. The appellants, if secured creditors, have their rights. But they must first satisfy the Court that they have the right which they claim and the Court below certainly had jurisdiction u/s 4 of the Act to require proof that they have that right. If such proof is not forthcoming, the properties in question will be available for distribution among the general body of creditors. The *ipse dixit* of a creditor that he is a secured creditor cannot have the effect of precluding the Court from judicially determining the matter. The adoption of such a view would render the Court powerless in cases of collusion between the insolvent and a favoured creditor. In my judgment both the order directing an enquiry and the order of injunction were proper orders to make in the circumstances of this case.

3. With regard to the second point, it is to be observed in the first place that this has not been included in the grounds of appeal. Apart, however, from that it has, in my opinion, no merits. It was argued that the Receiver should have filed regular petition in the nature of a plaint so as to enable the appellants to put in a written statement in reply. I do not think that this procedure was imperative. All that was necessary was an enquiry directed to the determination of the question whether the Bank were secured creditors or not. In my opinion the appeal fails and should be dismissed with costs three gold mohurs.

Suhrawardy, J.

4. In my opinion there is no appeal against the order appealed from in this case. It is not necessary to discuss this matter as I agree with my learned brother in dismissing the appeal.