
(1935) 08 CAL CK 0013

Calcutta High Court

Case No: Case No. 43 of 1920

In Re: Satish Chunder
Roy and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 20, 1935

Final Decision: Dismissed

Judgement

McNair, J.

The Petitioner Agorenath Roy applies that the order made by the Registrar in Insolvency on the 24th July, 1925, be set aside. That was an order made by the learned Registrar reviewing an order for examination under sec. 36 of the Presidency Towns Insolvency Act at the instance of the Official Assignee. The learned Advocate-General has referred to the practice which has been followed in this matter of putting in affidavits in support of the appeal, affidavits in opposition, and affidavits in reply, but he contends that as this matter is an appeal there should be no affidavits other than the affidavits in support, and he points out that the procedure should be the same as that on appeal from the order of the Master where the appeal is made on notice of motion. It is not very clear what is the practice of this Court in such matters but in the absence of any rule providing that in appeals of this nature affidavits should be filed in opposition and in answer, in my opinion, the better procedure would undoubtedly be that the appeal should be on notice of motion supported by an affidavit setting out the grounds on which the applicant contends that the order appealed from is incorrect.

[His Lordship, after discussing the facts and enumerating the various points which were raised before the Registrar, proceeded.]

2. The learned Registrar has delivered a careful judgment in which he has dealt with all the points that have been raised and in his view the Official Assignee is justified in asking for an examination under sec. 36 to enable him to elicit facts by which he should be guided in investigating the claims and in deciding the course of action which he should adopt with regard to the threatened litigation.

3. The Courts have laid down both in this country and in England that applications by the Official Assignee under sec. 36 should be readily granted. It has also been laid down on many occasions that where a Judicial Officer is vested with a discretion, the Court will not lightly interfere with that discretion, particularly if it is shown as in this case that that discretion has been exercised after careful consideration both of the facts and of the principles involved.

4. In this case it cannot be said that the learned Registrar has failed to use his discretion in a proper manner and I can see no reason for interfering with his decision. [In the result his Lordship dismissed the appeal with costs.]