
(1871) 02 CAL CK 0002

Calcutta High Court

Case No: None

In Re: Ajudhia Prasad
and Another
(Insolvents)

Mohant Jairam Gir

APPELLANT

Vs

RESPONDENT

Date of Decision: Feb. 3, 1871

Judgement

Norman, J.

The first point to which I shall advert is this: Mr. Graham and Mr. Evans objected that the learned Judge had no power, under the 26th section of the Insolvent Act, to adjudicate and make the order that he did, and they have also taken various objections founded on the evidence to show that the decision is erroneous. With regard to the objections on the merits, the attempt to show that the decision is wrong on the facts of the case, it appears to me that the appellants have not placed themselves in a condition to be heard. (His Lordship here read sections 72 See ante, p. 76 and 73³ of the Insolvent Act). Now, in the present case, the evidence not having been taken down and recorded as provided by the 72nd section, we have no means whatever on the materials before us of knowing the facts on which the judgment proceeded; we must, therefore, take it that the evidence was such as fully to warrant the decision of the Court. The only question then remaining is whether the Insolvent Court had jurisdiction to entertain the question, and to make the order that the Mohant should pay to the Official Assignee the sum he was found to be indebted to the insolvent. (His Lordship here read section 26 Ante, p. 75 of the Insolvent Act).

2. Now I think no one can read the 26th section without seeing that there are many cases in which the Court is empowered to make an order that debts due to an insolvent shall be paid to the Assignee. It has been pointed out by the Chief Justice in in re Dwarkanath Mitter 4 B.L.R., O.C., 63 that it is discretionary with the Court to enter upon the trial of such a question, and to make the order. I think that is a correct view of the law. In the first place the language of the provision is that "it shall be lawful for the Court to cause notice

to be given," &c.; and again, it shall be lawful for the Court to order such person to pay such debts or any part thereof." It seems to follow that the Court has a discretionary power. Even where it is shown that there is a debt, the Court is not bound to order the whole to be paid. The section empowers the Judge, who finds that a debt is due to the insolvent, to make an order that the whole of the debt, or part thereof, shall be paid,—that is to say, that where the circumstances of the case render it necessary or proper that the Court should make an order for payment, the Court has power to make such order. As I have said, we have no evidence before us to show the circumstances which induced Mr. Justice Phear to make the order for the payment of the money in this case. The Mohants sought to escape liability by alleging that the papers and documents relating to the transaction were in fictitious names. These papers show on the face of them, as I understand it, that the money is payable to the insolvents. The learned Judge may have exercised his discretion properly, or it may be that he ought to have left the parties to litigate the matter in a regular suit. But we are not in a condition to say anything as to the propriety of the order; and I express no opinion on that point. All I do say is that the order of Mr. Justice Phear is, or may be, so far as the materials before us go, a legal and proper order, and therefore we cannot interfere. For these reasons I think that the appeal should be dismissed with costs.

Paul, J.

In this case I am also of opinion that the appeal should be dismissed. The only point which has struck me during the argument is whether the Insolvent Court had jurisdiction to try the question. On that point the case of *in re Dwarkanath Mitter* 4 B.L.R., O.C., 63 is an authority that the Court can entertain such a case. This point has not been taken in the grounds of appeal, and I don't think that the justice of the case requires that we should entertain it; when a proper case is put before the Court, it will be time enough to consider the ruling in *in re Dwarkanath Mitter* 4 B.L.R., O.C., 63. In the present case, no injustice has been done, and I therefore concur in dismissing the appeal, though I entertain doubts as to the soundness of the opinion expressed in *in re Dwarkanath Mitter* 4 B.L.R., O.C., 63.

¹ 11 & 12 Vict., c. 21, s. 26.--"In case any person shall, after any such insolvent shall have petitioned for his discharge under this Act, or shall have been adjudged to have committed an act of insolvency, and before the said insolvent shall have obtained his discharge in the nature of a certificate as hereinafter mentioned, be possessed of, or have under his power or control, any property whatsoever of such insolvent, other than any such Government stock, funds, or annuities as" aforesaid, or other than any of the stock or shares in any public Company either in England, Scotland or Ireland, or within the limits aforesaid, or to which such insolvent may be in any way entitled, either under any trust, express or implied, or otherwise held for his use and benefit, or in case any such persons shall be at any such period indebted to such insolvent, it shall be lawful for the said Court, upon the application of any assignee, or any creditor of such insolvent

whose debt or demand shall have been admitted or established in the matter of the said insolvency, to cause notice to be given to such person, directing him to hold and retain the said property till the said Court shall make further order concerning the same; and thereupon it shall be lawful for the said Court further to order such person to deliver over such property, and to pay such debts as aforesaid, or any part thereof to the assignee or assignees of the estate and effects of "such insolvent, for the general benefit of the creditor of such insolvent; and such delivery and payment shall be made accordingly in obedience to such order, and such person shall by such payment and delivery so made in pursuance of such order of the said Court, be discharged in respect of such property and debts against all persons whatsoever to all intents and purposes.

² 11 & 12 Vict., c. 21, s. 72.--"Any person who shall be interested in any proceeding of any of the said Courts for the Relief of Insolvent Debtors, upon depositing with the proper officer of the Court a sum of money of which the amount shall be fixed by the Court, may require that the whole of the evidence relating to any such proceeding may be taken down in writing by a sworn officer of the Court, and the same shall be done accordingly; and in case such person shall not within one calendar month thereafter present a petition of appeal as is hereinafter directed, it shall be lawful for the Court in which such evidence shall have been so taken down in writing as aforesaid, to pay the reasonable costs and expenses thereof out of the money which shall have been so deposited as aforesaid, returning the surplus, if any, to the person who shall have deposited the same.

³ 11 & 12 Vict., c. 21, s. 73.--"It shall be lawful for any person who shall think himself aggrieved by any adjudication order or proceeding of any such Court for the Relief of Insolvent Debtors, to present within one calendar month thereafter a petition to the Supreme Court of Judicature in the Presidency; and it shall be lawful for such Court to order that the whole of the evidence, if any, which shall have been so taken down in writing as aforesaid and the minutes and records of the proceedings of which complaint shall have been made, shall be brought before it; and the said last mentioned Court shall enquire into the matter of the petition, and of such proceedings and evidence, and shall make such order thereon as to the same Court shall seem meet and just, and shall thereby direct by whom and in what manner the costs of such petition, and of the proceedings which shall have been had thereon, and of the taking down of any such evidence in writing, and of the proceedings of which complaint shall have been made, shall be paid; and such order shall be final and conclusive as to all parties, and shall be compulsory and binding upon the Court in which such proceedings so complained of shall have been had.