

(1921) 01 CAL CK 0018

Calcutta High Court

Case No: Suit No. 98 of 1920

In Re: A.F. Seldana: Exparte:
Suklal Karnani

APPELLANT

Vs

RESPONDENT

Date of Decision: Jan. 7, 1921

Final Decision: Dismissed

Judgement

Greaves, J.

This is an application on behalf of one Suklal Karnani to set aside an order, dated the 29th November 1920, for the examination of Suklal Karnani under the provisions of sec. 36 of the Insolvency Act. Sec. 36 provides that the Court may on the application of the Official Assignee or of any creditor who has proved his debt summon before it any person known or suspected to have property of the Insolvent in his possession or supposed to be indebted to the insolvent or any person whom the Court deems capable of giving information respecting the insolvent, his dealings or property. Under the provisions of that section the Official Assignee applied to the Court on the 29th of November last for an order for Suklal Karnani's examination. Paragraph 2 of the application states that Suklal is capable of giving information regarding the dealings with the properties of the insolvents. This is the only allegation contained in the application. It is verified by the Official Assignee who swears that the matters stated are true to the best of his information and belief.

2. Suklal Karnani was duly served and he appeared and was examined, I think on two occasions, before the Registrar in insolvency by whom the order was made. The order is now attacked on certain grounds.

3. Firstly, it is said that under the insolvency rules of this Court such an application must be verified by affidavit and that the verification is insufficient as it only relates to the information and belief of the Official Assignee.

4. Secondly, it is said that the application is insufficient in that it only refers to information regarding the dealings and properties of the insolvent, that it contains no reference to any indebtedness of Suklal to the insolvent and that this being so the insolvent has wrongly been questioned with regard to his indebtedness, especially having regard to the terms of an agreement between the insolvent and Suklal, dated the 22nd of August 1918, and lastly, it is said that having regard to certain Police Court proceedings pending against the insolvent and against Suklal, the examination is being used for an improper purpose and amongst other things to displace cl. (7) of the aforesaid agreement. So far as the verification is concerned it is difficult to see how on applications of this kind the Official Assignee can be possessed of actual knowledge himself. He must rely upon information which he believes to be accurate which he has received in the course of the insolvency and accordingly I am not prepared to say that the verification in this case is insufficient.

5. Then so far as the general nature of the application is concerned I think it is very important having regard to the somewhat drastic provisions of sec. 36 that applications of this nature should set out fully and in detail the object with which an examination is sought under sec. 36 and the printed form of application which is before me does not seem to me really a sufficient compliance with sec. 36. At the same time it is noticeable that the form under sec. 25 of the English Bankruptcy Act (Form No. 114) is in general terms, and that no affidavit is necessary if the application is by the Official Receiver or trustee. I think that the Official Assignee should condescend to some further detailed information if and when he desires an order under sec. 36. At the same time he has followed the exact words of sec. 36 and I am unable to say that he was not entitled to an order for the examination of the insolvent for the purpose of obtaining information regarding the dealings and properties of the insolvent and there is ample material before me to show that Suklal was in a position to give some information with regard to the dealings and property and indeed I doubt if he would have submitted himself to examination unless he had been able to give some such information. This being so I think it is difficult to say that questions were incompetent with regard to any question of the indebtedness of Suklal to Seldana if they arose in the course of the examination although I think that, if it had been desired to establish this, the application should have so specifically stated but I am not prepared to interfere under the circumstances on the ground that such questions have been put. Then lastly with regard to the alleged improper purpose of the examination it seems to me that it is for the witness to object to such questions as he considers are put for an improper purpose and if necessary I think he would be justified on the advice of Counsel in refusing to answer such questions even if directed to do so.

6. Under these circumstances it would be for the Registrar in insolvency if he thought the refusal was ill-founded to report to the Court the refusal in order that the Court might consider the nature of the question and of the objection and I think that if this course is followed the witness will be amply protected with regard to the

putting of any question which may be improper and I only desire to add that I think the Official Assignee in future when he makes similar applications should place the Court in possession of fuller materials for considering if any application under sec. 86 is well-founded or not.

7. In the result I must dismiss the application.

8. Mr. Avetoom asks for costs.

Greaves, J.

9. I not think under the circumstances I will make any order for costs. You can take them out of the assets.

Mr. Langford James

10. Asks for adjournment of the examination of Suklal fixed for to-day for one week.

Greaves, J.

I direct the examination not to proceed for one week from to-day. If you ask for leave to appeal, Mr. James, I will give you leave.

Mr. Langford James

I ask for leave now.

Greaves, J.

Very well.