

(1935) 05 CAL CK 0029

Calcutta High Court

Case No: Appeal from Original Order No. 324 of 1934

G.C. Chakravarty

APPELLANT

Vs

E. White

RESPONDENT

Date of Decision: May 21, 1935

Judgement

1. This is an appeal from an order of the learned Additional District Judge of Howrah made in certain insolvency proceedings. The Respondent filed his petition on 8th February, 1934. The Appellant had taken proceedings to execute a decree obtained by him against the Respondent in the Small Cause Court, Calcutta, and had obtained an order for the attachment of the Respondent's salary. On 8th February, 1934, the Respondent moved the District Judge for the withdrawal of this order of attachment. The District Judge accordingly addressed the Registrar of the Small Cause Court and, among other things requested him (i) to withdraw the attachment, (ii) to make no further attachment. The present appeal is directed against that order. It may be noted that there was an order for summary administration under sec. 74 of the Provincial Insolvency Act. On behalf of the Appellant Dr. Mukherjee has contended that the order of the lower Court was without jurisdiction. The learned Judge held that in view of the provisions of sec. 74 (ii), he was entitled to make the order under secs. 51 and 52.

2. The effect of sec. 74 (ii) is that the property of the Respondent has vested in the Court as a receiver. But, in our judgment, there is nothing here which would give the insolvency Court jurisdiction to stay execution proceedings elsewhere. It is clear that the order made cannot be supported under either of the sections upon which the learned Judge has relied. Sec. 51 merely provides that the Appellant is not entitled to keep the money realised for himself; but Dr. Mukherjee has made no complaint against that part of the order which directs the Registrar to send any money realised to the insolvency Court. Sec. 52 by its very terms cannot be invoked in support of the order.

3. Sec. 28 (2) does not come into play until an order of adjudication has been made and there is nothing to prevent the Appellant from taking proceedings against the Respondent's property. Sec. 29 deals with suits or proceedings which are pending when an order of adjudication is made. But it is the trying Court and not the insolvency Court which has jurisdiction to decide whether such suits shall be stayed or not. In our opinion, the order of the lower Court, so far as it directed the Registrar to withdraw the attachment and to make no further attachment was without jurisdiction and must be set aside. We make no order as to costs. It is desirable that the Respondent's petition should be heard as soon as possible and the records should be sent down at once.