
(1880) 03 CAL CK 0009

Calcutta High Court

Case No: None

Juggutjeebun
Goptoo

APPELLANT

Vs

Harocoomar Pal

RESPONDENT

Date of Decision: March 8, 1880

Citation: (1880) ILR (Cal) 719

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

Judgement

Morris, J.

A preliminary objection is taken by the decree-holder, respondent, that no appeal lies in this case, because the order appealed against is not an order passed u/s 351, declaring the judgment-debtor, appellant, to be an insolvent. It is an order disallowing his application to be declared an insolvent. Looking at the strict terms of Section 351, it seems to us an order under that section can only be such an order as that section in its latter paragraph prescribes,--namely, an order declaring the applicant u/s 344 to be an insolvent, and also appointing a receiver of his property, or in lieu of appointing a receiver discharging the insolvent. This view is supported by the terms of Section 354, which says--"that every order" u/s 351 shall be published in the local Official Gazette, and shall operate "to vest in the Receiver all the insolvent's property (except the particulars "specified in the first proviso to Section 266), whether set forth in his application or "not." From the words it is clear that it was never intended that every order disallowing an application to be considered an insolvent should be published in the Gazette.

2. The appeal allowed u/s 588, Clause 17, so far as an order u/s 351 is concerned, appears to be on behalf of the judgment-creditor only. The amending Code, like the former Act VIII of 1859, allows no appeal to the judgment-debtor whose application to be considered an insolvent and to be discharged as such is disallowed.

3. The appeal is dismissed with costs.