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MOHAMMED HOSAIN v. FARLEY.

thereupon directed the matter to be placed on the list, and heard him. The learned Judges stated that although they doubted their power to review a judgment already signed, they had given the accused an opportunity to be heard, as they felt that if any ground was shown for reconsidaration of their decision, they might have made a recommendation to the Government stating their views, but they found no reason for altering their views and they affirmed their judgment.

An application was then made by the vakil for the complainant for enhancement of the sentence. The learned Judges held that they could not entertain such an application on the reference, especially as it was not ordinarily entertained on behalf of a private party.

INSOLVENCY JURISDICTION.

Before Greaves J.

KISSORY MOHAN ROY, *In re.**

Insolvency—Practice—Presidency Towns Insolvency Act (III of 1909), s. 36, whether applications under, may be made ex parte—S. 112, rules framed thereunder—Rules 17, 18, 19 and 30.

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June 27.

According to the rules framed by the Calcutta High Court under s. 112 of the Presidency Towns Insolvency Act, applications under s. 36 may be, and are intended to be, made *ex parte*.

APPLICATION.

This was an application on behalf of one Lachmi Chand Karnavat to set aside an order made on April 26, 1916, by the Registrar in Insolvency for his examination under s. 36 (*1*) of the Presidency Towns Insolvency Act. The order was obtained *ex parte* on the petition of one Balkissen Bagri, a creditor of the insolvent, and the applicant sought to have the Registrar's order set aside by the Court on the ground that it was made *ex parte*.

Mr. Langford James (with him *Mr. B. K. Ghosh*),

* Insolvency Jurisdiction ; No. 194 of 1911.

for the applicant, Lachmi Chand Karnavat. The Registrar ought not to have made an order against my client *ex parte*. Under rules 17 and 18 of the Calcutta Insolvency Rules all applications in insolvency should be made by motion or notice, unless the Court is satisfied that the delay caused by proceeding in the ordinary way would or might entail serious mischief. There was nothing in the petition of Balkissen Bagri to show that such delay would have caused any mischief.

Mr. Sarat C. Bose (for *Mr. N. N. Sircar*), for Balkissen Bagri. Rules 17 and 18 do not apply. Rule 30 is the rule that lays down the procedure governing applications under s. 36. That rule does not require that such applications should be made on notice. I submit applications under s. 36 can be made *ex parte*.

GREAVES J. This is an application made on behalf of one Lachmi Chand Karnavat to set aside an order made on the 26th April, 1916, by the Registrar for his examination under section 36 of the Presidency Towns Insolvency Act. The order was obtained *ex parte* at the instance of one Balkissen Bagri, a creditor of the insolvent. It was made on the petition of Balkissen Bagri filed on the 15th April, 1916, and the petition alleges that Balkissen Bagri filed an affidavit in proof of his claim, and I understand from the petition that the Official Assignee admitted the proof by a letter dated the 31st July 1915 addressed to Balkissen's attorney. The ground upon which the applicant seeks to set aside the order is, that it was made *ex parte*

Section 36 (*1*) of the Presidency Towns Insolvency Act provides that the Court may, on the application of the Official Assignee or of any creditor who has proved his debt at any time after an order of adjudication

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GREAVES J.

has been made, summon before it, in such manner as may be prescribed, the insolvent or any person known or suspected to have in his possession any property belonging to the insolvent or supposed to be indebted to the insolvent or any person whom the Court may decree capable of giving information respecting the insolvent, his dealings or property, and that the Court may require any such person to produce any documents in his custody or power relating to the insolvent, his dealings or property.

Rule 17 of the rules made under the Act provides that every application to the Court (unless otherwise provided by these rules, or the Court shall in any particular case otherwise direct) shall be made by motion supported by affidavit.

Rule 18 provides that where any party other than the applicant is affected by the motion no order shall be made, unless upon the consent of such party duly shown to the Court or upon proof that notice of the intended motion and a copy of the affidavit in support thereof have been duly served upon such party, but the rule contains a proviso that the Court may make an *ex parte* order if delay would entail serious mischief.

If these rules govern applications under section 36 of the Act, then the *ex parte* order was clearly wrong, unless the Registrar thought that any delay would entail serious mischief.

But I was referred to another rule by counsel who opposed the application, that is to say, to rule 30 which is as follows: "Every application to the Court under section 36 of the Act shall be in writing, and shall state shortly the grounds upon which the application is made." This rule to my mind clearly contemplates a procedure other than that laid down under rules 18 and 19, and it contains no provision for

service of the application upon the person sought to be examined such as is contained in rule 19. Under these circumstances, the inference to my mind is irresistible that applications under section 36 are intended to be made *ex parte*, and that this is the manner prescribed by the rules framed under section 112 of the Act.

I am fortified in this view by a reference to the English Bankruptcy Act of 1914, (4 & 5 Geo. 5, c. 59). The section of that Act, which corresponds to section 36 is section 25 ; the wording is almost identical, except that the section of the English Act does not contain the words " in such manner as may be prescribed." Rules 26 and 27 of the English Act are identical with rules 17 and 18 of the Presidency Towns Insolvency Act, and rule 74 of the English Act is identical with rule 30 of that Act.

Form 144 of the forms under the English Act is a form of summons under section 25 of that Act (*see* William's Bankruptcy Practice, 11th edition, p. 645) to attend for examination, and a perusal of that form, to my mind, indicates that this is the first notification to the person to be examined, and that he has had no previous notice of motion served upon him at the time of the application for leave to examine him, and that is to say that the order for his examination was made *ex parte*. The application is dismissed with costs.

A. K. R. *Application dismissed.*

Attorney for the applicant : *J. N. Mitter.*

Attorney for the creditor : *S. C. Mitter.*