

**CIVIL RULE.**

*Before Chatterjea and Panton JJ.*

A. J. E. ABRAHAM

*v.*

H. B. SOOKIAS.\*

1923

Aug. 6.

*Insolvency—Jurisdiction of Court to extend time to apply for discharge after the expiry of the period specified in the order of adjudication—Provincial Insolvency Act (V of 1920), s. 27, cl. (2).*

The Court has the power, under s. 27, clause (2) of the Provincial Insolvency Act of 1920, to extend the time to apply for discharge even after the expiry of the period of the order for discharge.

CIVIL RULE obtained by one of the creditors of the insolvent opposite party.

One H. B. Sookias was, on his own application, adjudicated an insolvent by the Court of the Subordinate Judge at Asansol. In the order of adjudication, the said learned Subordinate Judge directed the insolvent to apply for an order of discharge within six months from the date of adjudication. The said period of six months expired on the 18th March, 1923, but the insolvent did not apply for his discharge. On the 3rd April following, he applied for an extension of the period fixed by the Court within which he was to have applied for his discharge, alleging therein that he did not know of the said direction of the Court giving him six months' time to apply for discharge. The learned Subordinate Judge holding that there was sufficient ground for extending the time, under section 27, clause (2) of the Provincial Insolvency Act

\* Civil Rule, No. 760 of 1923, against the order of the Subordinate Judge of Asansol, dated May 31, 1923.

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of 1923), allowed the insolvent to apply for discharge the same day, which was done. On the 31st May, 1923, A. J. E. Abraham, the petitioner, in the present Rule, applied to the said Subordinate Judge for a reconsideration of his order of the 3rd April, 1923, on the ground that by the operation of section 43 of the said Act, the adjudication order stood automatically annulled on the 18th March, 1923. He also contended that as the fact of the adjudication had been notified immediately afterwards at the cost of the insolvent opposite party in the *Calcutta Gazette* for general information including all particulars about names of parties and the period within which an application could be made, the opposite party must have been aware of the period so fixed by the Court for his application for discharge. It was lastly asserted that the opposite party was in affluent circumstances and his only aim was to defraud the petitioner of the heavy amount owed to him by the said opposite party and that as soon as he got an adjudication order from Court his purpose was served. The learned Subordinate Judge disallowed the petitioner's objection, holding that section 43, clause (1) of the Act must be read with section 27, clause (2). The petitioner thereupon moved the High Court and obtained this Rule.

*Mr. S. C. Chaudhuri* (with him *Babu Phanindra Nath Das*), for the petitioner. Section 43, clause (1) even if read with section 27, clause (2) leaves no option to the Court to extend the time after the expiry of the period originally fixed. In fact the right of the debtor to apply at all is extinguished. The only remedy left to the debtor is to apply under section 10. Section 148 of the Code of Civil Procedure to which the lower Court has taken recourse has no application to the Provincial Insolvency Act.

*Mr. P. C. Basu* (with him *Babu Nirode Bandhu Roy* and *Babu Radha Gobinda Hati*), for the opposite party. The contention that the order of adjudication stood automatically annulled is untenable. The section says that the order shall be annulled. It must be annulled by the Court. There must be an order of annulment, and at the instance of somebody—either the creditor or the debtor. See section 41 of the Presidency Towns Insolvency Act, where the Court is given power to annul the order of its own motion. No such power is given in the Provincial Insolvency Act, though it is the later Act.

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On the question whether section 43 and section 27 should be read together, it has been contended that the former section is under the heading Discharge, the latter is under the heading Adjudication and that the Court ought not to have read them together. The Court can refer to the heading when there is ambiguity in the section itself: *In re Shival Padma* (1). See also *Abdul Rahim Mahomed v. Municipal Commissioner for City of Bombay* (2). Here, by the express words of the Act, the Court is given power to extend time if sufficient cause is shown. Your Lordships should not press it to constructive limitation upon the exercise of the power given by the express words of the Act on the ground that the section has been placed under the heading Adjudication. Further, the word 'shall' in section 43 is used not in the mandatory sense, but is directory. See *In re Lord Thurlow* (3), where it has been held that in a Court of Bankruptcy, one would not be inclined to construe 'shall' to be mandatory.

As regards the contention that there is a specific section regarding extension of time, that is section 27,

(1) (1909) I. L. R. 34 Bom. 316, 319. (2) (1918) I. L. R. 42 Bom. 462, 471.

(3) [1895] 1 Q. B. 724.

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clause (2), I submit that section 5 of the Provincial Insolvency Act gives the general procedure to be adopted by Court.

The principle laid down in section 148 of the Code is clearly applicable.

In case of redemption, the Court has power to extend time. There are cases to that effect. Here we have a much stronger case.

See section 10 of the Provincial Insolvency Act which gives power to the Court to grant leave to present another petition even after an order of annulment. It will tend no doubt to multiplicity of proceedings if your Lordships hold that the adjudication order stands annulled on the expiry of the time fixed by the Court.

My last submission is that *ex debito justitias*, the Court has inherent jurisdiction under section 151 of the Code. It would indeed cause great hardship and injustice if your Lordships place a different construction than what I have submitted.

*Mr. Chaudhuri*, in reply.

*Cur. adv. vult.*

CHATTERJEA AND PANTON JJ. This Rule arises out of proceedings under the Provincial Insolvency Act (V of 1920). The opposite party applied to be adjudged an insolvent and was adjudged insolvent by the Subordinate Judge of Asansol on the 19th September, 1922, who directed the insolvent to apply for his discharge within 6 months from that date. The 6 months expired on the 18th March, 1923. On the 3rd April, 1923, the insolvent made an application for his discharge supported by an affidavit explaining the delay in making it. On the 4th April, 1923, the Sub-ordinate Judge extended the time for making the application for discharge. That matter is now pending.

Against that order this Rule was obtained and it is contended on behalf of the petitioner that the Court had no power under section 27, clause (2), to extend the time after the expiry of the period of 6 months. Section 27, clause (2), of Act V of 1920 lays down that "the Court may, if sufficient cause is shown, extend " the period within which the debtor shall apply for " his discharge and in that case shall publish notice " of the order in such manner as it thinks fit." There is no doubt, therefore, that the Court has the power to extend the time. The only question is whether it can do so after the expiry of the period originally fixed.

It is argued by the learned counsel on behalf of the petitioner that section 43 provides that "if the " debtor does not appear on the day fixed for hear- " ing his application for discharge or on such subse- " quent day as the Court may direct, or if the debtor " does not apply for an order of discharge within the " period specified by the Court, the order of adjudica- " tion shall be annulled, and the provisions of section " 37 shall apply accordingly."

It is urged that on the expiry of the period specified, adjudication becomes automatically annulled if no application is made prior to the expiry of the period. We have not been shown any authority in support of that contention. It is true that section 43 provides that the order of adjudication shall be annulled; but that seems to indicate that it is to be annulled at the instance of the opposite party or by the Court itself, and does not stand cancelled automatically on the expiry of the period.

We think that under section 27, clause (2), the Court has the power to extend the time even after the expiry of the period of the order for discharge and the order of the Court below should not be interfered with. The Rule is therefore discharged with costs.

S. M.

*Rule discharged.*

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