

INSOLVENCY JURISDICTION.

Before Page J.

KRISHNA KISHORE ADHICARY
AND ANOTHER, *In re*.*

1927

March 16.

Insolvency—Adjudication, whether subsequent adjudication is independent of the original—Scheme of composition—Locus Standi—Readjudication, when allowed—Presidency Towns Insolvency Act (III of 1909), ss 31 and 93, applicability of.

When a debtor is “adjudicated” or “readjudicated” or “freshly adjudicated” under section 31 of the Presidency Towns Insolvency Act, such adjudication is not independent of the original insolvency, although no doubt between the date when the scheme was approved and the date when the debtor is readjudicated an insolvent under section 31 in respect of the law relating to insolvency he is a free man.

Where a scheme has been approved and subsequently is annulled, and the debtor dies after the scheme has been approved and before it is annulled, section 93 of the Presidency Towns Insolvency Act applies; and, notwithstanding the death of the debtor, any person interested has a *locus standi* to apply that the debtor be readjudged an insolvent for the purpose of the further administration in insolvency of the deceased debtor's estate.

If the Court is of opinion that the creditors will not be benefited by an order annulling the scheme and readjudicating the debtor, in ordinary circumstances the Court will not make an order of readjudication under section 31 of the Presidency Towns Insolvency Act.

This was an application by the Benares Bank, a secured creditor, for the enforcement of a scheme of composition and a deed of trust modifying the scheme against the Official Assignee as representing the insolvent estate, and the guarantors under the deed of trust. An application was also made by the representatives of one Kalidas Laik, one of the original guarantors under the deed of trust, for the annulment of the aforesaid scheme on certain grounds.

* Insolvency Jurisdiction.

Mr. H. D. Bose and *Mr. F. S. R. Surita*, for the Benares Bank.

Mr. S. N. Banerjea and *Mr. S. C. Mitter*, for the Official Assignee.

Mr. N. N. Sircar and *Mr. S. C. Bose*, for the insolvent, Jugal Kishori.

Mr. B. C. Ghose, for some of the insolvents.

Mr. Langford James and *Mr. B. K. Ghosh*, for the Laik guarantors.

Mr. B. C. Mukherjee, Advocate, for three of the guarantors.

Mr. S. M. Bose, for one of the guarantors.

PAGE J. This is an application by the Benares Bank, a secured creditor, and, as I understand, the only creditor of the estate remaining unpaid. The applicant asks that the provisions of the scheme may be enforced, and sets out in prayer B particulars of the relief that it seeks. There is another application by the representative of Kalidas Laik for an order annulling the scheme, upon the ground that the administration of the scheme has been carried on with much negligence and irregularity, and without regard to the terms of the scheme, and, therefore, that the Court ought to hold that the scheme "cannot proceed without injustice or undue delay", and the scheme ought to be annulled and the debtor adjudicated insolvent under section 31 (1) of the Presidency Towns Insolvency Act (III of 1909). The Bank and the widow of Mukundalal Laik, one of the debtors, oppose the application for annulment of the scheme upon the following grounds:—

(1) that the applicants have no *locus standi* to present the application, and (2) assuming that they are persons entitled to ask the Court to readjudge the debtors insolvent and annul the scheme, that in the

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exercise of the discretion with which it is invested the Court in the circumstances ought to dismiss the application.

As regards the first ground of objection to the annulment of the scheme and the readjudication of the insolvent, in my opinion, there is no legal basis upon which the contention of the objectors can be sustained. The objectors urge that the effect of an order passed by the Court under section 31 (1) of the Presidency Towns Insolvency Act would be to adjudicate the debtors insolvents for a second time, the later adjudication being wholly independent of the original insolvency. Since the scheme was approved by the Court Mukundalal Laik has died, and the objectors therefore contend that in these circumstances the only person who is entitled to apply for the administration of the deceased debtor's estate is a creditor under section 108 of the Insolvency Act. That that is not so, in my opinion, is clear from the wording of section 31, which provides that the application may be made "by any person interested", and it is not disputed that the Laiks are such persons. I am of opinion that when a debtor is "adjudicated" or "readjudicated" or "freshly adjudicated" under section 31, such adjudication is not independent of the original insolvency, although no doubt between the date when the scheme was approved and the date when the debtor is readjudged an insolvent under section 31 in respect of the law relating to insolvency he is a free man. In my opinion his legal position is analogous to that of an insolvent, who has obtained his discharge but whose discharge ultimately is cancelled, during the period between the date when he obtained his discharge and the date when the discharge is cancelled. In either case, during that period the debtor is a person *sui juris*; but, in my

opinion, after the acceptance and approval of the scheme the jurisdiction of the Court continues, and the scheme when accepted and approved operates only as a conditional discharge, and subject to section 31 (2) upon annulment and readjudication the *status quo ante* is restored. *Ex parte Bacon* (1), *Re Hardy* (2) Williams on Bankruptcy (13th ed.) at p. 99. It follows, therefore, where a scheme has been approved and subsequently is annulled, and the debtor dies after the scheme has been approved and before it is annulled, that section 93 of the Insolvency Act applies; and, notwithstanding the death of the debtor, any person interested has a *locus standi* to apply that the debtor be readjudged an insolvent for the purpose of the further administration in insolvency of the deceased debtor's estate.

In my opinion, the second ground of objection also ought not to prevail. In considering whether it ought to readjudge the debtor under section 31 the Court in the first instance should have regard to the position of the creditors, and if the Court is of opinion that the creditors will not be benefited by an order annulling the scheme and readjudicating the debtor, in ordinary circumstances the Court will not make an order of readjudication under section 31.

Now, the only creditor who remains unpaid is the Benares Bank, and the Bank strenuously urges that it would be against the interest of the Bank that the scheme should be annulled and the debtors readjudicated. On the other hand, the Court must have regard to all the circumstances in considering whether an order ought to be made under section 31, and Mr. B. K. Ghose on behalf of the Laiks contended that so much delay and irregularity has taken place during the sixteen years in which this

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(1) (1881) 17 Ch. D. 447.

(2) [1896] 1 Ch. 904.

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estate has been in the hands of the Official Assignee that it would work injustice to all the parties concerned if the scheme were allowed to proceed. I have considered the matter, and, in my opinion, the Court ought not to allow the scheme to be annulled in the present case. At the same time I think that the question as to whether in the circumstances an order for annulment and readjudication ought not to have been made was a matter that reasonably and properly might be canvassed, and while I dismiss the application of the Laiks for annulment and readjudication, I do not think that they ought to be ordered to pay the costs incurred by the other parties, and I make no order as to costs. [His Lordship then proceeded to pass an order for the enforcement of the scheme.]

Attorney for insolvents: *N. C. Bose.*

Attorneys for opposing of adjudicating creditors: *Orr, Dignam & Co., O. C. Ganguly & Co., Ghose & Bose, Morgan & Co., P. K. Roy, A. N. Ghose, Pugh & Co., S. D. Dutt. Ghose, Dutt & Sen, I. C. Ghose, N. C. Seal, G. C. Moses, S. C. Sen, B. B. Newjee & H. C. Banerjee.*

B. M. S.