

INSOLVENCY JURISDICTION.

Before Ameer Ali J.

In re KESHABLAL DHAR.*

1932

June 28.

Insolvency—Failure to apply for discharge—Annulment of adjudication, effect of—Vesting of insolvent's property—Claim by debtor—Presidency-towns Insolvency Act (III of 1909), ss. 23 (1), 41.

Where an adjudication is annulled under section 41 of the Presidency-towns Insolvency Act by reason of the failure of the insolvent to apply for his discharge within the prescribed time, his property should be vested in the Official Assignee or some other officer for the benefit of his creditors.

Jethaji Peraji Firm v. Krishnayya (1) followed.

Where, on such annulment, it was directed that the money to the credit of the insolvent's estate be kept in the hands of the Official Assignee pending further order of the court,

held that it was the intention of the court to vest the estate in the Official Assignee as aforesaid and that the fund did not revert to the debtor for his benefit.

APPLICATION by the Official Assignee of Calcutta for directions.

The relevant facts and arguments of counsel are sufficiently set out in the judgment.

Sudhis Roy for Keshablal Dhar.

J. C. Hazra for the creditor Beereshwar Ghosh.

AMEER ALI J. This is an application by the Official Assignee of Calcutta for directions. The directions asked for are not specified in the prayer to the petition. The matter arises in this way:—

Keshablal Dhar was adjudicated on the 9th April, 1923. Beereshwar Ghosh, the creditor, appearing on this present application, lodged his proof on the 11th July, 1923. Nothing apparently was done in the insolvency. On the 23rd April, 1928, the Official Assignee applied for and obtained an

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order for annulment, on the ground that the insolvent had not applied for his discharge, the application being under section 41 of the Presidency-towns Insolvency Act. The order was made with the direction that the money to the credit of the estate in the hands of the Official Assignee be kept pending the further order of the court. I have not got the order before me, but that gives the sense of the direction. The sum to the credit of the estate was a sum of Rs. 903, and that is the sum which is now in question.

The insolvent applied for payment to him of that sum. Apparently, notice of that application was given to Beereshwar Ghosh, the creditor, who opposes. Keshablal Dhar claims the money under section 23 of the Presidency-towns Insolvency Act, on the ground that, by the terms of that section, unless there is a specific order vesting the fund in any other person for the benefit of the creditors, the fund reverts to and vests in the "insolvent". He further relies on the fact that, if compelled to sue, the creditors' claim is well barred by limitation.

In my view, the principle of the law is as follows:—Where an adjudication is annulled by reason of the default of the insolvent, as in this case, the insolvent is to lose the benefit of the insolvency, but he is not to benefit by the annulment. The annulment is not for his advantage.

I, therefore, agree with the ruling in *Jethaji Peraji Firm v. Krishnaya* (1), that normally, on an annulment under section 41 being made, the fund should be vested in the Official Assignee or proper officer under the Act in force, and is so vested in him for the benefit of the creditors, and may be dealt with as if the fund was being dealt with in the insolvency.

Although the order in this case does not specifically vest the fund in the Official Assignee, I

(1) (1929) I. L. R. 52 Mad. 648.

take it that such was the intention. In any event, the order kept the fund in suspense. Although I do not think it necessary, I am prepared now to make an order vesting this fund in the Official Assignee for the benefit of the creditors, and he will deal with it as indicated above. Having regard to the nature of the application, to the lapse of time and inactivity of the creditors, I propose to give Keshablal Dhar his costs of this application out of the assets, as also the costs of the creditor. The Official Assignee's costs will also come out of the assets. I certify for counsel. This for practical purposes will effectively dispose of the fund in question.

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G. K. D.