

date on which it was presented, I do not think that any good purpose would be served by allowing this question of the review of judgement to be further litigated between the parties. I only wish to add that, if the defendants should be advised even now that an appeal is maintainable against the decree as amended, or against any part of that decree, on any valid plea of law or of fact, I think that any court to which such petition of appeal is presented would be well advised to take a liberal view of the provisions of section 5 of the Limitation Act as applicable to the particular circumstances of this case, and as far as possible, allow the defendants an opportunity, should they desire it, of having the more debatable of the two questions raised by the application for review of judgement finally decided on the merits. Subject to these remarks, I set aside the decree of the court below and in lieu thereof pass a decree dismissing the appeal against the order of the Subordinate Judge granting review of judgement, with costs in this and in the lower appellate court.

Order set aside.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

NET RAM (APPLICANT) v. BHAGIRATH SAH AND OTHERS (OPPOSITE PARTIES).*

Act No. III of 1907 (Provincial Insolvency Act), sections 5, 15 and 16—

Insolvency—Grounds for dismissing petition to be adjudged an insolvent.

A petition to be adjudged an insolvent presented under the provisions of the Provincial Insolvency Act, 1907, can be dismissed only upon one or other of the grounds mentioned in section 15 of the Act. It is not a good ground for dismissing such a petition that the petitioner's brother, being joint with the petitioner, has not been made a party to it, *Ohhattrapat Singh Dugar v. Kharay Singh Lachmiram (1)* and *Triloki Nath v. Badri Das (2)* referred to.

THIS was an appeal against an order of the District Judge of Meerut under section 15 of the Provincial Insolvency Act, 1907, dismissing a petition presented by one Nathu Ram to be adjudged an insolvent. The application was dismissed apparently upon the main, if not the sole, ground that the petitioner's

1917

KHURSHED
ALAM KHAN
v.
RAHMAT-
ULLAH
KHAN.

1917
November, 1st

*First Appeal No. 40 of 1917, from an order of L. Johnston, District Judge of Meerut, dated the 9th of February, 1917.

(1) (1917) 15 A. L. J., 87.

(2) (1918) L. R., 36 All. 250

1917

NET RAM
v.
BHAGIRATH
SAH.

brother, who was joint with him, had not been made a party to it.

Mr. A. H. C. Hamilton, for the appellant.

The respondents were not represented.

RICHARDS, C. J., and BANERJI, J.:—This appeal arises out of an application made by the appellant to the District Judge of Meerut to be adjudicated an insolvent. It is not very clear from the judgement of the learned District Judge upon what grounds he rejected the application. Section 5 of the Provincial Insolvency Act provides that where a debtor commits an act of insolvency a petition for adjudication may be presented by a creditor or by the debtor. The presentation of a petition to be declared insolvent is deemed to be an act of insolvency within the meaning of the section. Section 15 (1) mentions certain matters which will justify the court in dismissing the petition of insolvency. Section 16 (1) provides that where a petition is not dismissed for any of the matters mentioned in section 15 the court shall make an order of adjudication. It would, therefore, appear that the court is only justified in refusing an order of adjudication in the cases prescribed by the Act. So far as we have been able to understand the order of the District Judge, he dismissed the application because he thought that it was necessary that the brother of Net Ram, who was joint with him, should have joined in the application. The concluding words of the order are "at present I reject the dishonest application of Net Ram, as premature." We may refer to the recent decision of their Lordships of the Privy Council in the case of *Chhatraput Singh Dugar v. Kharay Singh Lachmiram* (1) and also to the case of *Triloki Nath v. Badri Das* (2). We allow the appeal, set aside the order of the learned District Judge and remand the case to him with directions to re-enter the application in the list of pending cases and proceed to hear and determine the same according to law. We make no order as to costs. No one appears on the other side and respondent No. 7 has not been served.

Appeal allowed.

(1) (1917) 15 A. L. J., 87.

(2) (1913) 1, L. R., 36 All., 250.