1918

EMPEROR v. KIFAYAT.

to order confiscation of money as well as gambling instruments found on the spot."

Neither the accused nor the Crown was represented.

RAFIQ, J.:—I have read the order of reference of the learned Sessions Judge of Meerut. It appears to me that in view of the provisions of section 8 of Act III of 1867, the order about the forfeiture of the money seized at the house is correct, *vide Emperor* v. *Tota* (1). Let the record be returned to the lower court.

Reference rejected.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

1918
December, 21.

MUHAMMAD SHARIF (PETITIONER) v. RADHA MOHAN (RECEIVER).*

Insolvency—Rights of judgment creditor of insolvent as against the receiver in respect of execution of his decree before and after adjudication.

In 1914 one B. P. attached in execution of his own decree a decree held by his judgment-debtors against other parties. In the same year a petition in insolvency was filed against the judgment-debtors, and in 1915 an *interim* receiver was appointed. The judgment-debtors deposited the amount due under the attached decree in court to the credit of B. P. who proceeded to draw out a considerable part of it. After this the judgment-debtors were declared insolvents and, subsequently to the adjudication, B. P. assigned his rights under the attached decree to one M. S.

Held that the receiver had no right to recover the money realized by B. P. prior to the adjudication: but in respect of any balance of the decretal money remaining due after the date of the adjudication the assignee might prove his claim as against the insolvents. The assignee would, however, be bound to account for any part of the decretal money which he might have realized after the adjudication. *Sri Chand* v. *Murari Lal* (2) and *Dambar Singh* v. *Munawar Ali Khan* (3) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Dr. *S. M. Sulaiman*, for the appellant.

Munshi *Harnandan Prasad*, for the respondent.

PIGGOTT and WALSH, JJ.:— This is an appeal from the order of the District Judge in an insolvency matter, dated the 8th of March, 1918.

*First Appeal No. 85 of 1918, from an order of W. F. Kirton, District Judge of Benares, dated the 8th of March, 1918.

(1) (1904) I. L. R., 26 All., 270. (2) (1912) I. L. R., 34 All., 628.
(3) (1917) I. L. R., 40 All., 86.

One Batuk Prasad obtained a decree for Rs. 6,449-3-9 against the debtors who were subsequently adjudicated insolvents. This decree was obtained in the court of the Subordinate Judge of Benares on the 27th of June, 1912. The debtors had obtained a decree in the court of the Subordinate Judge of Jaunpur in suit No. 92 of 1914. The decree was attached by Batuk Prasad in 1914. On the 7th of August, 1914, a petition was filed in insolvency against the judgment-debtors. On the 4th of March, 1915, an *interim* receiver was appointed. On the 4th of May, 1915, the money due under the decree was deposited in the court of Jaunpur to the credit of the attaching decree-holder, who, on the 19th of May, 1915, applied to that court for payment out to him, without giving notice to the receiver. On the 7th of July, the creditor obtained an order for payment and on the 10th of July, 1915, Rs. 1,928-4-1 were paid out to him leaving Rs. 2,699-0-11 of the amount attached unrealized. A further sum of Rs. 169-10-0 was paid out to him in respect of a decree in a suit No. 250 of 1912 in the court of Mansif of Jaunpur City, making a total of Rs. 2,097-14-1 realized in all. On the 3rd of September, 1915, the debtors were adjudicated insolvents, and on some date in November, 1917, Batuk Prasad assigned his rights to Muhammad Sharif, the present appellant. Batuk Prasad tendered a proof of his claim against the estate, founded upon his decree, on the 20th of November, 1915, without any account or any affidavit in support. He alleged that he had transferred his decree to the appellant. The actual date of this transfer is not clear upon the evidence before us. It is possible that an agreement to transfer had been entered into, and that it was subsequently completed by a formal transfer. But this point is not material, as the fact of the assignment is not denied and nothing turns upon it. It was in any case subsequent to the realization already mentioned, and to the adjudication. On the 6th of February, 1918, the appellant served a petition upon the official receiver claiming to prove for the balance of the decretal amount, and supported it by an affidavit, which appears to be the only matter which was before the District Judge at the hearing in March, by way of evidence, except so far as other facts alleged before him were treated by

1918

MUHAMMAD SHARIF v. RADHA MOHAN.

both parties as common ground, and not disputed. The procedure adopted seems to have been irregular and informal, and somewhat slovenly. The creditor's duty on receiving notice from the receiver of the rejection of his proof, if he ever received such notice, was to appeal to the Judge against such rejection. However, the receiver seems to have filed two lists—list I purporting to be a schedule of creditors who claimed to prove, and list II a list of creditors *amongst* whom the receiver asked for an order sanctioning the distribution of a seven per cent. dividend. Together with these lists he also filed a report asking for sanction of the claims in list I, for sanction of the distribution proposed in list II, and for disposal of the application of Muhammad Sharif, whose claim he had rejected. For the grounds on which he had rejected the claim he referred to a note made on list I, objecting that Batuk Prasad had filed neither affidavit nor account, that he had transferred his decree to the appellant; that he, the receiver, was ignorant of the amount which had been realized and that certain creditors raised the question that there were other co-judgment-debtors with the insolvents. The bearing of this allegation upon the liability of the insolvents, or their estates, for the amount of the decree against them and the availability of their decree which had been attached is not apparent, and the point was either not pressed upon the learned Judge, or failed to impress him.

In this informal manner, the proof of the appellant came before the District Judge for adjudication. The claims in list I and the distribution proposed by list II were sanctioned. Upon the claim of Muhammad Sharif the following order was made:—"Whatever they may have received in satisfaction of their decree against the insolvents should be paid to the receiver: on doing this the applicant may be allowed to rank for rateable distribution along with other creditors of the insolvent."

Against this order Muhammad Sharif appeals to this Court. In our opinion, the order directing payment of the amount realized cannot be supported. It is covered by the express language of section 34 (1) of the Provincial Insolvency Act, and

also by a two Judge Bench decision of this Court reported in *Sri Chand* v. *Murari Lal* (1).

So far as the claim for the admission of a proof for the amount unrealized is concerned, we think that the order of the Judge amounts to a finding that this is established as a matter of fact, and that the objections raised by the receiver were not well-founded. There is nothing before us to suggest either that this decision was wrong or that the receiver did not have ample opportunity to prove any matter which was relevant to support his rejection of the proof. He was responsible for bringing the matter before the court on grounds which he was no doubt right in thinking required investigation, but there is nothing before us to show that if we remanded the matter for further hearing by the learned Judge any other conclusion would be reached. This part of the order must stand.

It was stated before us that the appellant had again applied to the execution court in June, 1918, without notice to the receiver, for payment to him of the balance mentioned above, and that either the money had been paid out to him, or that he had obtained an order for payment. We have no materials before us to enable us to adjudicate upon this matter. It is clear, however, that section 34 (1) has no application to moneys realized after adjudication, and the decision in *Dumbar Singh* v. *Munawar Ali Khan* (2), would appear to be applicable. In any case the order would not bind the receiver unless he were made a party to the proceeding, and would not be binding on the Insolvency Court. It is open to the receiver to take such steps as he may be advised in the Insolvency Court or elsewhere, for the recovery of this sum, if it has been realized, as being part of the insolvent's estate. We only mention the matter for the purpose of making it clear that the appellant before us cannot be allowed to recover any part of his claim twice over, and his proof as an unsecured creditor for the balance unrealized after giving credit for the sum of Rs. 2,097-14-1 above mentioned, can only be allowed to the extent to which he either fails to receive, or is ordered to refund, any sum of money which he has applied to have paid to him by way of realization of his decree,

(1) (1912) I. L. R., 34 All., 628. (2) (1917) I L. R., 40 11, 86.

1918

MUHAMMAD SHARIF v. RADHA MOHAN.

since the adjudication, when the controversy between him and the receiver as to the proper destination of this money has been determined.

Our order is that this appeal be allowed with costs, that the appellant be allowed to retain as against the insolvent's estate the sum of Rs. 2,097-14-1 realized by Batuk Prasad, and that his proof for the balance of his decree be admitted after giving credit for such portion of the balance as he may otherwise receive and be allowed either by the receiver or by the order of a competent court, to retain. Each party must pay his own costs in the court below, and the receiver will be allowed his costs, and the costs we order him to pay to the appellant, out of the insolvent's estate.

Appeal allowed.

1919

January, 3.

Before Justice Sir George Knox and Justice Sir Pramada Charan Banerji.

ZAFAR HUSAIN (DEFENDANT) *v.* UMMAT-UR-RAHMAN (PLAINTIFF) *

Muhammadan law—Marriage—Suit for dissolution—False charge of adultery made by the husband a ground for dissolution of marriage.

A Muhammadan wife is entitled to bring a suit for divorce and obtain a decree for dissolution of marriage on the ground that her husband has falsely charged her with adultery. *Jaun* v. *Beparee* (1) doubted.

THIS was a suit for dissolution of marriage brought by a Muhammadan lady against her husband. The grounds stated in the plaint were that the defendant had treated the plaintiff with cruelty and intended to kill her or cut off her nose, and more particularly that he had stated before several persons that the plaintiff had had illicit intercourse with her brother Aziz-ur-Rahman and had imputed fornication to her. The defence was mainly a denial of the allegations contained in the plaint. The court of first instance (Subordinate Judge of Farrukhabad) gave the plaintiff a decree declaring the marriage to be dissolved. The defendant appealed; but the lower appellate court (Additional District Judge of Farrukhabad) dismissed the appeal and upheld the decree of the first court. The defendant thereupon appealed to the High Court.

* Second Appeal No. 686 of 1916, from a decree of G. C. Badhwar, Additional Judge of Farrukhabad, dated the 22nd of January, 1916, confirming a decree of Ali Ausat, Subordinate Judge of Farrukhabad, dated the 25th of August, 1915.

(1) (1865) 3 W. R., C. R., 93.