

*Before Mr. Justice Lindsay and Mr. Justice Kanhaiya Lal.*  
 KHUNNI LAL (DEFENDANT) v. RAMESHAR AND ANOTHER  
 (PLAINTIFFS).\*

1921  
 May, 4.

*Civil Procedure Code (1908), order XXII, rule 8—Appeal—Insolvency of one appellant and death of the other—Abatement of appeal—Substitution of names—Limitation.*

Of two appellants in a civil appeal, one died and the other became an insolvent. Neither the representatives of the deceased appellant nor the official assignee applied within the time limited by the Court for substitution in place of the deceased appellant, nor did the insolvent himself, who was said to have compounded with his creditors, apply. The defendant, on the other hand, asked for the dismissal of the suit.

*Held* that, there being no limitation provided for the Official Assignee to appear and apply for substitution or for the debtor to appear and apply for the restoration of his name on the record after the adjudication is annulled, until an order is obtained under order XXI, rule 8, of the Code of Civil Procedure the proceedings cannot abate and must be deemed to continue.

THE facts of this case sufficiently appear from the judgment of the Court.

Maulvi *Iqbal Ahmad* and the Hon'ble *Saiyid Raza Ali*, for the appellant.

Dr. *Kailas Nath Katju*, for the respondents.

LINDSAY and KANHAIYA LAL, JJ.:—This appeal arises out of a suit brought by a firm styled *Debi Dat Dina Nath* for the recovery of money due on a balance of account. The suit was dismissed by the trial court. Its finding was that Rs. 900 had been paid to the plaintiffs and Rs. 131-11-0 should be deducted on account of discount, and that after deducting those items nothing was due to the plaintiffs. The plaintiffs appealed. During the pendency of the appeal, *Dina Nath*, one of the plaintiffs, died; and *Debi Dat*, the other plaintiff, is said to have been declared an insolvent. On the 23rd of March, 1918, the court before which the appeal was pending passed an order allowing six months time to the heirs of *Dina Nath* to appear and to the Official Assignee of the estate of *Debi Dat* to apply to be brought on the record. No application was, however, made on behalf of either of them within the allotted time. On the 22nd of November, 1918, the heirs of *Dina Nath* applied to be

\* Second Appeal No. 726 of 1919 from a decree of E. H. Ashworth, District Judge of Cawnpore, dated the 4th of March, 1919, modifying a decree of *Kshirod Gopal Banerji*, Subordinate Judge of Cawnpore, dated the 20th of June, 1917.

1921

KHUNN, LAL  
v.  
RAMSHAR.

brought on the record and on the same day they were brought on the record. The Official Assignee did not, however, put in his appearance. On the 6th of January, 1919, the defendant applied that the suit should be dismissed, because the application made by the heirs of Dina Nath was not made within the time allowed by law and the Official Assignee had taken no steps to prosecute the appeal on behalf of Debi Dat. The lower appellate court was of opinion that the question of the abatement of the appeal in consequence of the failure of the heirs of Dina Nath to apply to be brought on the record within the time allowed by law was immaterial, because Debi Dat, the other appellant, had a right to continue the appeal. We find it stated in the judgment that the insolvency proceedings against Debi Dat had been discontinued and that he was no longer subject to the jurisdiction of the Insolvency Court. It is stated on behalf of the plaintiffs respondents before us that, as a matter of fact, by reason of a composition that the creditors had entered into with the insolvent the adjudication of Debi Dat had been annulled. No evidence was filed by the defendant along with the application of the 6th of January, 1919, to establish that on the date on which the application was made the adjudication of Debi Dat as insolvent was still in force. There was no affidavit filed with the application, and we must take it for granted that the fact that the insolvency proceedings were no longer in force was not then questioned. Nothing has since been shown to us to indicate that that was not so. We are unable, therefore, to hold that Debi Dat had no right to continue the appeal on his own account.

There is no limitation provided for the Official Assignee to appear and apply for substitution or for the debtor to appear and apply for the restoration of his name on the record after the adjudication is annulled. Till an order is obtained under order XXII, rule 8, of the Code of Civil Procedure the proceedings cannot abate and must be deemed to continue. The lower appellate court was therefore right in dismissing the preliminary objection. The learned counsel for the defendant appellant admits that he cannot support the appeal on the merits. The appeal fails and is dismissed with costs.

*Appeal dismissed.*