

Before Mr. Justice Mukerji and Mr. Justice Bennet.

1930
October, 23.

PANNA LAL AND ANOTHER (CREDITORS) v. OFFICIAL
RECEIVER (OPPOSITE PARTY)*

Provincial Insolvency Act (V of 1920), section 37—Disposal of assets on annulment of adjudication order—Court can not direct distribution among creditors—Civil Procedure Code, section 115—Revision—Interference, in appeal from one order, with a previous order which was not appealed from.

Upon the failure of a firm, which had been adjudicated an insolvent, to apply for a discharge the court annulled the adjudication and directed the assets in the hands of the official receiver to be distributed among the scheduled creditors. This order was not appealed against. Subsequently two creditors, with a view to participation in the assets directed to be distributed, applied to be entered in the schedule of creditors. This application being refused, they appealed to the High Court.

Held that section 37 of the Provincial Insolvency Act does not allow an insolvency court, on annulling an insolvency, to proceed to distribute the assets of the insolvent among any of the creditors. The course open to the court is either to return the property to the debtor on condition that he furnishes security which will make it available to the creditors to take their remedy under the ordinary civil law, or pending such security or for some other reason the court may direct the property of the insolvent in the hands of the receiver to vest in a certain person. Such vesting is only for the purpose, apparently, of making the property available to creditors to proceed through the civil court.

Held, also, that although the previous order directing distribution of the assets had not been brought before the High Court in appeal, still it was open to the High Court to alter that order under its powers under section 115 of the Civil Procedure Code, inasmuch as that order was one without jurisdiction.

Mr. *Hari Ram Jha*, for the appellants.

The respondent was not represented.

MUKERJI and BENNET, JJ.:—These are appeals brought by certain creditors against an order of the

*First Appeal No. 146 of 1929, from an order of H. J. Collister, District Judge of Jhansi, dated the 19th of May, 1929.

1930
PANNA LAL
v.
OFFICIAL
RECEIVER.

learned District Judge of Jhansi sitting as an insolvency court, dated the 19th of May, 1929, in which he has refused to add the names of the applicants as creditors to whom distribution shall be made of the assets of a certain firm. This firm, Abdulla Usman Abdul Ghaffar, was adjudicated insolvent in April, 1927, on the application of certain creditors. The insolvent firm did not apply for discharge and accordingly on the 29th of April, 1929, the court directed that the insolvency should be annulled and that the assets in the hands of the receiver should be distributed among the creditors. That order has not been brought in appeal before us, but the applicants desire that they should also be added to the creditors to whom distribution should be made. After this order had been made, the applicants applied to be added to the creditors and their applications were refused by the order of the 19th of May, 1929, now before us in appeal. We consider that the order of the 29th of April, 1929, was an order which was without jurisdiction, because section 37 of the Provincial Insolvency Act merely directs that "Where an adjudication is annulled, the property of the debtor who was adjudged insolvent *shall rest* in such person as the court may appoint, *or*, in default of any such appointment, *shall revert to the debtor* to the extent of his right or interest therein on such conditions (if any) as the court may, by order in writing, declare". We consider that this section does not allow an insolvency court on annulling an insolvency to proceed to distribute the assets of the insolvent among any of the creditors. The distribution of assets is a proceeding in insolvency, and by annulling the insolvency the court comes to the conclusion that it will not proceed with the insolvency. Having come to that conclusion, the course open to the court is either to return the property to the debtor on condition that he furnishes security which will make it

available to the creditors to take their remedy under the ordinary civil law, or pending such security or for some other reason the court may direct the property of the insolvent in the hands of the receiver to vest in a certain person. But the words, "to vest in such person", do not mean distributing the property among the creditors. Such vesting is only for the purpose apparently of making the property available to creditors to proceed through the civil court. Although the order of the 29th of April, 1929, has not been brought before us in appeal, still it is open to us to alter that order under the powers of this Court under section 115 of the Civil Procedure Code. Accordingly, we set aside that order except for the portion which directs that from the assets in the hands of the receiver the fee due to the receiver will be paid and whatever may be due to successful objectors will be allowed. Having therefore set aside the portion of the order which directs distribution among the creditors, we remand this case to the District Judge for passing a suitable order under section 37 of the Provincial Insolvency Act, which shall either vest the balance of the property in such person as he may appoint or will revert the balance of the property to the debtor under suitable conditions if any.

In appeal No. 169 the official receiver will receive the costs. In the remaining appeals the appellants whose case has failed will pay their own costs. No one has appeared on the other side. These appeals therefore fail and are dismissed.

1930

PANNA LAL
D.
OFFICIAL
RECEIVER.