

redemption was extinguished by the effect of the foreclosure proceedings of 1879. The right to redeem, therefore, does not subsist, and the claim for redemption must fail.

We accordingly dismiss this appeal with costs.

Appeal dismissed.

1927
KHANNA
SINGH.
v.
GULZAR
SINGH
Husain
and Misra,
JJ.

REVISIONAL CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge and Mr.
Justice Muhammad Raza.*

AMJAD ALI (APPLICANT) *v.* MOHAMMAD ALI (OPPOSITE-PARTY).*

*Provincial Insolvency Act (V of 1920), sections 41 and 43—
Discharge of insolvent—Application for discharge not
made within time specified by court, effect of—Provisions
of section 43, Insolvency Act, whether mandatory.*

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September,
30.

Held, that the provisions of section 43 (1) of the Provincial Insolvency Act (V of 1920) are mandatory. The debtor has complete discretion to apply for discharge when he likes provided he applies within the period specified by the court. The word "shall" in section 41 of the Act imposes a duty upon the insolvent, the breach of which involves the consequences pointed out in section 43. *Ram Krishna Misra, Ex parte* (1), followed. *A. J. E. Abraham v. H. B. Sookias* (2), dissented from.

Mr. Bishambhar Nath Srivastava, for the appellant.

Mr. Nazir-uddin, for the respondent.

STUART, C.J., and RAZA, J.:—The question in this application is whether the provisions of section 43 (1) of Act V of 1920 are or are not mandatory. In

*Civil Miscellaneous Application No. 24 of 1927, against the order J. R. W. Bennett, District Judge of Lucknow, dated the 19th of July, 1927, reversing the decree of Jotendra Nath Roy, Judge, Small Cause Court, Lucknow, dated the 16th of March, 1927.

(1) (1926) I.L.R., 4 Pat., 51.

(2) (1924) I.L.R., 51 Calc., 337.

1927

AMJAD ALI
v.
MOHAMMAD
ALI.

Stuart,
C. J., and
Raza, J.

1923 a Bench of the Calcutta High Court decided in *A. J. E. Abraham v. H. B. Sookias* (1) that the provisions of this section were not mandatory. A Bench of the Patna High Court decided in 1924 in *Ram Krishna Misra, Ex parte* (2) that the provisions were mandatory. We take the view which was taken in Patna. To quote the decision of Mr. Justice Dass: "It is obvious to my mind that the debtor has complete discretion to apply when he likes, provided he applies within the period specified by the court. The word 'shall' in section 41 of the Act imposes, in my opinion, a duty upon the insolvent the breach of which involves the consequences pointed out in section 43." The operation of the law involves no real hardship, for, under the provisions of the section 10 of the same Act a debtor in respect of whom an order of adjudication has been annulled owing to his failure to present or prosecute an application for his discharge will ordinarily be granted leave to present a fresh insolvency application if he can show that he was prevented by any reasonable cause from presenting or prosecuting his application for discharge. We, therefore, uphold the order of the learned District Judge, and dismiss this application with costs.

Application dismissed.

(1) (1924) I.L.R., 51 Calc., 337.

(2) (1925) I.L.R., 4 Pat., 51.