

1925.

LALA
PARSHOTAM
DAS
+
SAIYED
YAR ALI.

*Raza and
Nanavutty,
JJ.*

of the Transfer of Property Act. In the present case also, although village Manpur exists, the mortgagor Saiyed Yar Ali had no interest in the three plots Nos. 270, 32 and 98 purported to have been sold to him by Iqbal Rasool and neither Saiyed Yar Ali nor Lala Parshotam Dass intended that these three plots should form part of the security entered in the mortgage deed. That being so, we are bound to hold that the registration of the deed at Rudauli amounted to a fraud on the registration law and the mortgage deed upon which the plaintiff sued is, therefore, invalid. We uphold the view of the learned Subordinate Judge on all parts of issue No. 1. No other plea taken in the grounds of appeal has been pressed before us. This appeal, therefore, fails and we accordingly dismiss it with costs.

Appeal dismissed.

MISCELLANEOUS CRIMINAL.

Before Mr. Justice Gokaran Nath Misra and Mr. Justice E. M. Nanavutty.

1923.
July, 31.

GIRJA CHARAN AND ANOTHER (CREDITORS-APPELLANTS)
v. SHEORAJ SINGH (INSOLVENT-RESPONDENT.)

Provincial Insolvency Act (V of 1920), sections 10, 37, 41 and 43—Insolvent not applying for order of discharge within the specified period, effect of—Court's discretion to extend the time—Annulment of adjudication owing to failure to apply for discharge—Fresh application for adjudication, when can be granted.

Under section 41 of the Provincial Insolvency^s Act the debtor must apply for getting the order of discharge within the period specified by the court. The word "shall" in the

*Miscellaneous Appeal No. 17 of 1928, against the order of W. Y. Madley District Judge of Rai Bareilly, dated the 23rd of December, 1927.

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section is used in a mandatory sense. The court has no discretion to extend the time granted to the insolvent for his applying to obtain the order of discharge. If he does not apply for an order of discharge within the specified period the order of adjudication is annulled and the consequences stated in section 37 are to follow.

It is clear from the provisions of section 10 that a debtor in respect of whom an order of adjudication has been annulled owing to his failure to apply for his discharge within the time fixed, is entitled to make a fresh application; but his application can only be granted if he succeeds in obtaining the leave of the court for doing so, after showing good cause for his not having been able to apply in time.

Amjad Ali v. Mohammad Ali (1), and *Ram Krishna Misra, Ex parte* (2), relied upon. *A. J. E. Abraham v. H. B. Sookias* (3), dissented from.

Mr. *Saliq Ram*, for the appellants.

Mr. *Satyanand Roy*, for the respondent.

MISRA and NANAVUTTY, JJ. :—This appeal arises out of insolvency proceedings. One Sheoraj Singh was adjudicated insolvent on the 11th of March, 1921, and was given three years as the period in which he could apply for discharge. A receiver was also appointed in respect of his estate. The receiver, however, subsequently resigned and an application for appointment of a fresh receiver was not made by any of the creditors. On the 30th of April, 1927, one of the creditors named Girja Charan, the appellant before us, applied for annulment of the order for adjudication on the ground that no application for discharge had been made by the insolvent within the period fixed. It appears that before this application could be decided, the insolvent on the 11th of November, 1927, applied for discharge. The appellant Girja Charan objected in the court below that no

(1) (1927) I. L. R., 2 Luck., 757; (2) (1925) I. L. R., 4 Pat., 51.
4 O. W. N., 993. (3) (1924) I. L. R., 51 Calc., 337.

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extension could be granted to him in law. The learned District Judge of Rae Bareilly, however, rejected his objection and granted an order of discharge to Sheoraj Singh on the 23rd of December, 1927. It is against that order that the present appeal has been lodged.

Misra and
Nanavaty,
JJ.

The sole point for determination before us is whether the learned Judge was right in extending the period of three years originally fixed during which the insolvent could apply for discharge.

We have heard the parties and it appears to us that the order of the discharge granted by the learned District Judge cannot be maintained. Section 41 of the Provincial Insolvency Act (V of 1920) lays down that a debtor may, at any time after the order of adjudication, *and shall, within the period specified by the court*, apply to the court for an order of discharge. We have italicized the words which, in our opinion, are significant. The clear meaning of these words appears to us to be that the debtor has complete discretion to apply whenever he likes for getting the order of his discharge, but that he must do so within the period specified for the purpose by the court. The word "shall" used in this section appears to us to be used in a mandatory sense; it imposes a duty upon the insolvent the consequences of the breach of which, we may point out, are set forth in section 43. That section provides that if the debtor does not apply for an order of discharge within the period specified by the court, the order of adjudication shall be annulled and the provisions of section 37 shall apply. Referring to section 37 we find that it provides that in cases where an adjudication is annulled, all sales and dispositions of property and payments duly made shall be considered valid, and

if there is any property left it 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.

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It, therefore, appears to us to be quite clear that the intention of the legislature was that if the order of discharge is not applied for within the specified period the adjudication as to insolvency is to be annulled and on such annulment the consequences stated in section 37 are to follow. It also appears to us to be clear on referring to the provisions of section 10 of the Insolvency Act (V of 1920) that a debtor in respect of whom an order of adjudication made under this Act has been annulled owing to his failure to apply for his discharge within the time fixed is entitled to make a fresh application, but this application can only be granted if he succeeds in obtaining the leave of the court for doing so after showing good cause for his not having been able to apply in time. This, in our opinion, makes the position of the insolvent who has failed to obtain the order of discharge within the time fixed quite clear. The learned Judge, we feel bound to remark, had no discretion to extend the time granted to the insolvent for his applying to obtain the order for his discharge. If the insolvent is so advised, he may apply again to the learned Judge for a fresh order of adjudication provided he satisfies him that the delay on his part was justified.

Misra and
Nanavatty,
JJ.

We may point out that we are supported in this view by a recent decision of a Bench of this Court reported in *Amjad Ali v. Mohammad Ali* (1) decided by STUART, C. J. and RAZA, J. In that case the Bench of this Court did not follow the ruling of the Calcutta

(1) (1927) I. L. R., 2 Luck., 757.

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High Court reported in *A. J. E. Abraham v. H. B. Sookias* (1), but chose to follow the decision of the Patna High Court reported in *Ram Krishna Misra, Ex. parte* (2) in which case the same view was taken which we have now taken in the present case. We are in full agreement with the view taken by the Patna High Court and by the Bench of this Court. The case in this Court was decided on the 30th of September, 1927 and it was unfortunate that the attention of the learned Judge was not directed to the said decision.

We, therefore, accept this appeal and set aside the order of discharge granted by the learned District Judge to Sheoraj Singh Under the circumstances we make no order as to costs.

Appeal allowed.

APPELLATE CIVIL.

*Before Mr. Justice Gokaran Nath Misra and
Mr. Justice E. M. Nanavutty.*

1928.
August, 8.

JAGDAT SINGH (PLAINTIFF-APPELLANT) v. RAWAT
KANHAIYA BAKHSH AND ANOTHER (DEFENDANT-
RESPONDENT.)*

Hindu law—Hindu widow—Debts incurred by a Hindu widow to meet the costs of litigation—Reversioners, how far bound to pay those debts.

If a Hindu widow has incurred debts to meet the costs of litigation brought against her, in order to protect her title to the estate, the debt so incurred would be binding on the reversioner. If, however, she has incurred debts in litigation

*First Civil Appeal No. 28 of 1928, against the decree of Pandit Damodar Rao Kelkar, Subordinate Judge of Rae Bareilly, dated the 14th of November, 1927.

(1) (1924) I. L. R., 51 Cal., 337. (2) (1925) I. L. R., 4 Pat., 51.