

REVISIONAL CIVIL.

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

PANDIT HAR KISHORE (APPLICANT) *v.* MASUM ALI KHAN AND OTHERS (OPPOSITE-PARTY.)*

1929

November, 8.

Provincial Insolvency Act (V of 1920), sections 30, 35 and 43—Oudh Civil Rules, rule 277(39)—Adjudication order—Annulment of the order of adjudication for non-deposit of the costs of publication, validity of.

An order of adjudication once made can only be annulled under the provisions of section 35 or section 43, Act V of 1920. Neither section provides for annulment on failure to deposit the costs of publication of the notices of the order of adjudication. The court has therefore, no authority to annul the adjudication for non-deposit of the costs of publication but should follow Rule 277(39) of the Oudh Court rules which gives a Court power either to recover the costs from the insolvent's property, if the property is sufficient for the purpose, or to remit the costs, if the property is insufficient.

Messrs. *A. P. Sen and G. P. Bajpai*, for the applicant.

Mr. *Khaliq-uz-zaman*, for the opposite party.

STUART, C. J. and RAZA, J. :—The facts are as follows. Masum Ali was adjudicated an insolvent by the learned Additional District Judge of Lucknow at Unao under the provisions of section 27, Act V of 1920 on the 20th of January, 1928. Under the provisions of section 30 of the same Act a notice of the order of adjudication had to be published in the local Gazette. Under the Rules framed by this Court under that Act it was for Masum Ali ordinarily to deposit the costs of publication. As he did not deposit the costs the learned Additional District Judge annulled the order of adjudication on the 1st of September,

*Section 115 Application No. 4 of 1929, against the order of Pandit Bishambhar Nath Misra, Second Additional District Judge at Lucknow at Unao, dated the 1st of September, 1928.

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1928. One of the creditors has applied in revision against the annulment on the ground that the court had no jurisdiction to annul the order for that reason. This objection must prevail. An order of adjudication once made can only be annulled under the provisions of section 35 or section 43, Act V of 1920. Neither section provides for annulment on failure to deposit the costs of publication. Rule 277 (39) of our rules gives a court power either to recover the costs from the insolvent's property, if the property is sufficient for the purpose, or to remit the costs, if the property is insufficient, and the court below should have followed the rule, and should not have annulled the order of adjudication as it had no authority to do so. In these circumstances we set aside the order of annulment which we consider not to have existed and the Receiver will continue to perform all such functions as functions with which he was originally invested from the 1st September, 1928, onwards. Costs on parties.