

REVISIONAL CIVIL.

1928
March, 9.

*Before Sir Louis Stuart, Knight, Chief Judge
and Mr. Justice E. M. Nanavutty.*

NAND LAL MUKERJI (INSOLVENT-APPLICANT) v.
GIRDHARI LAL CREDITOR-OPPOSITE PARTY).*

Provincial Insolvency Act (V of 1920) sections 41 and 42 (b) to (i)—Discharge of an insolvent paying up eight annas in the rupee—Insolvent's liability for his unpaid debts after the order of discharge—Court's power to impose conditions for payment of undischarged liabilities in the order of discharge.

Held, that ordinarily when an insolvent in India whose case is governed by the provisions of Act V of 1920 has paid up eight annas in the rupee he is entitled to be free from the disabilities of an insolvent unless it be established that his case falls under the provisions of section 42(b) to (i). It does not, however, follow that the removal of his disabilities as an insolvent should be accompanied by an absolute acquittance in respect of the liabilities which he has not discharged, for section 41 of Act V of 1920 gives to the court a discretion similar to the discretion given in section 26 of the English Act to impose conditions for the payment of the balance of the liabilities which will bind the insolvent after discharge.

Mr. A. P. Bose, for the applicant.

Messrs. Mahesh Prasad and Karta Krishna, for the opposite party.

STUART, C. J. and NANAVUTTY, J. :—This is a revision against a decision of the learned District Judge of Lucknow contained in an order passed in appeal under the provisions of section 75, Act V of 1920. (The Provincial Insolvency Act). The facts are these. Nand Lal Mukerjee was declared an insolvent on the 14th of August, 1922. He applied for his discharge on the 15th of October, 1924. His discharge was then suspended for

*Section 115 Application No. 5 of 1928, against the order of J. R. W. Bennett, District Judge of Lucknow, dated the 20th of January, 1928, setting aside the order of Shambhu Dayal, Judge, Small Cause Court, Lucknow, dated the 3rd of February, 1927.

two years. He again applied for his discharge in 1926 and the learned Small Cause Court Judge sitting as a Court of Insolvency granted him an absolute order of discharge on the ground that he had paid up one half of his proved liabilities to the extent of eight annas in the rupee. This order under section 41, Act V of 1920, was taken in appeal to the learned District Judge who reading section 41 as giving him an unfettered discretion to grant or refuse an absolute order of discharge set aside the order of the learned Judge of the Small Cause Court and directed Nand Lal Mukerjee to continue an insolvent and to continue payments until he liquidated the total amount of his debts or could show to the court that he was no longer in a position to make payments. Nand Lal Mukerjee has come here in revision taking pleas that the learned District Judge has acted without jurisdiction or illegally in the exercise of his jurisdiction in taking a view of the law which cannot be borne out upon a proper interpretation thereof. The main contention for the applicant is that once it is established that an insolvent has paid eight annas in the rupee he is entitled to his discharge provided that it is not established that his case falls under the provisions of section 42(b) to (i), Act V of 1920; and in support of this contention the learned Counsel for the applicant has referred us to a decision of the Court of Appeal *In re Kutner* (1). This decision was cited before the learned District Judge. He was of opinion that it was not authoritative and did not bind him. In determining the weight to be attached to the pronouncements of English courts of law the first consideration to be applied is whether the English courts were dealing with facts similar to the facts in the particular case before the Indian courts. Here their Lordships in appeal were considering the validity of an order of a Registrar in Bankruptcy by which he refused to grant an absolute order of discharge to a certain Kutner until Kutner had

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paid fifteen shillings in the pound. They were of opinion that that order was without jurisdiction and remitted the matter back to the Registrar to be decided in accordance with law. In order to arrive at their decision their Lordships had to consider the provisions of section 26 of the English Bankruptcy Act, 4 and 5 George V, Cap. 59. The provisions of sections 41 and 42 of the Indian Act V of 1920 are so closely akin to the provisions of section 25 of that Act that views of the learned Judges of Appeal are of the greatest value in determining the point before us; and we unhesitatingly arrive at the conclusion that on the same reasoning as satisfied their Lordships of Appeal in that case we must hold that ordinarily when an insolvent in India, whose case is governed by the provisions of Act V of 1920, has paid up eight annas in the rupee he is entitled to be free from the disabilities of an insolvent unless it can be established that his case falls under the provisions of section 42(b) to (i). It does not, however, follow in our opinion that the removal of his disabilities as an insolvent should be accompanied by an absolute acquittance in respect of the liabilities which he has not discharged, for section 41 of Act V of 1920 gives to the court a discretion similar to the discretion given in section 26 of the English Act to impose conditions for the payment of the balance of the liabilities which will bind the insolvent after discharge. The case as it stands before us is that the learned District Judge has not only misapprehended the law but has actually passed an order which is without jurisdiction as it stands and withheld for an indefinite period the order of discharge. We set aside that order, but we express no opinion as to the subsequent results. The case will go back to the learned District Judge and he or his successor will hear out the appeal again and dispose of it according to the provisions of sections 41 and 42 of Act V of 1920. Costs will follow the result.

Case remanded.