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We are further of opinion that the purchaser can recover the amount on the principle that whenever one of two persons must suffer by the act of a third, he who has enabled that third person to occasion the loss must sustain it himself.

We, therefore, allow the application and decree the plaintiff's suit with costs against both the defendants.

Application allowed.

MISCELLANEOUS CIVIL

*Before Mr. Justice Ziaul Hasan and
Mr. Justice A. H. deB. Hamilton*

BADRI NATH (APPELLANT) v. RAM CHANDRA
AND ANOTHER (RESPONDENTS)*

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Provincial Insolvency Act (V of 1920), section 41—Application for discharge, if can be rejected absolutely—Civil Procedure Code (Act V of 1908), section 115—Official receiver's application to sue in forma pauperis rejected—Revision against the order, whether lies.

An absolute refusal to grant an order of discharge is not justified by section 41 of the Provincial Insolvency Act. An application by an insolvent for an order of discharge should not ordinarily be entirely rejected, and if the Court is of the opinion that the insolvent should not be granted an absolute order of discharge, it should consider whether a conditional order of discharge should not be passed or whether an order of discharge, with a provision that its operation be suspended for a specified time should not be made. *Bhag Mal v. Parshotam Singh* (1), relied on. No revision lies against an order refusing permission to an official receiver of the Estate of an insolvent to sue in *forma pauperis* for when a Court has jurisdiction to decide a question and decides it whether rightly or wrongly, there can be no revision under section 115, C. P. C., as even if the Court decides the question wrongly it does not exercise its jurisdiction illegally or with material irregularity. *Raja Amir Hasan Khan v. Sheo Baksh Singh* (2)

*Miscellaneous Appeal No. 66 of 1936, against the order of Babu Gopendra Bhushan Chatterji District Judge of Gonda, dated the 6th July, 1936, and section 115 Application No. 207 of 1936, for revision of the order of S. Abid Raza, Civil Judge of Gonda, dated the 12th September, 1936.

(1) (1935) A.I.R., Lahore, 919.

(2) (1888-84) L.R., 11 I.A., 237.

and *Balkrishna Udayar v. Vasudeva Aiyar* (1), relied on. *Perumal Goundan v. The Thirumalarayapuram Jananukoola Dhanesekhara Sangha Nidhi* (2), *Sivagami Ammal v. T. S. Gopalaswami Odayar* (3), *Ammakannammal v. V. K. Damodra Mudaliar* (4), *Mobia Khatun v. Sheikh Sathari* (5), *Shree Shankarji Maharaj v. Mst. Godavaribai* (6), *Swaminathan v. The Official Receiver of Ramnad* (7), *S. M. Mitra v. Corporation of the Royal Exchange Assurance* (8), and *Bharat Abhyudoy Cotton Mills, Ltd. v. Maharajadhiraj Sir Kameshwar Singh* (9), referred to.

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Messrs. *Haidar Husain and H. H. Zaidi*, for the appellant.

Mr. *H. D. Chandra*, for the respondent no. 2.

ZIAUL HASAN and HAMILTON, JJ.:—These are two connected cases. In one Badri Nath insolvent appeals against an order of the learned District Judge of Gonda refusing to grant him an order of discharge and in the other the official receiver in charge of Badri Nath insolvent's estate applies under section 115, C. P. C., for revision of an order of the learned Civil Judge of Gonda dismissing his application for permission to sue as a pauper. The official receiver wanted to bring a suit to get it declared that the partition between Badri Nath insolvent and his father Ram Harakh was collusive and that Badri Nath was possessed of property not shown by him in his application.

We take up the insolvent's appeal first. The appellant was adjudged an insolvent on the 1st June, 1933, and was given one year's time to apply for his discharge. The application for discharge was made on the 9th May, 1934, and was objected to by the creditors. Thereupon the District Judge disallowed the application for discharge mainly on the ground that he had been informed that a suit had been filed to have it declared that the insolvent still owns considerable property and that in the circumstances the insolvent should

(1) (1916-17) L.R., 44 L.A., 261.

(3) (1925) A.I.R., Mad., 765.

(5) (1927) 100 L.C., 264.

(7) (1937) I.L.R., Madras, 784.

(9) (1938) A.I.R., Cal., 745.

(2) (1918) I.L.R., 41 Mad., 624.

(4) (1928) A.I.R., Madras, 66.

(6) (1935) A.I.R., Nagpur, 209.

(8) (1930) A.I.R., Rangoon, 259-

126 I.C. 650.

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not in his opinion be given a discharge, absolute or conditional. We are of opinion that the order of the learned Judge absolutely refusing to grant a discharge was bad. Section 41(2) of the Provincial Insolvency Act provides—

“Subject to the provisions of this section, the Court may, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver—

(a) grant or refuse an absolute order of discharge; or

(b) suspend the operation of the order for a specified time; or

(c) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.”

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It seems to us clear that this sub-section gives discretion to the Court to grant or refuse an absolute order of discharge but does not give the same discretion to pass or refuse to pass an order of conditional discharge. On the other hand clauses (b) and (c) provide that the operation of the order of discharge may be suspended for a specified time or an order of discharge may be granted subject to certain conditions. We therefore hold that an absolute refusal to grant an order of discharge is not justified by section 41 of the Act. We are supported in this opinion by the case of *Bhag Mal v. Parshotam Singh* (1) in which it was held that an application by an insolvent for an order of discharge should not ordinarily be entirely rejected, and that if the Court is of the opinion that the insolvent should not be granted an absolute order of discharge, it should consider whether a conditional order of discharge should not be passed or whether an order of discharge, with a provision that its operation be suspended for a specified time should not be made. The learned counsel for the respondents has not been able to refer us to any authority justifying an absolute refusal to grant an order of discharge. We are of opinion that the appellant should

(1) (1935) A.I.R., Lahore. 919.

have been granted a conditional order of discharge as was prayed for by him in his subsequent application dated the 18th May, 1936.

We now take up the official receiver's application in revision. The learned Civil Judge refused to give permission to the applicant to sue in *forma pauperis* on the strength of the ruling of the Rangoon High Court in *S. M. Mitra v. Corporation of the Royal Exchange Assurance* (1), in which it was held that the word "person" in Order 33, C. P. C., means a natural person, that is, a human being and does not include a juridical person such as a receiver and that therefore a receiver appointed under the provisions of the Insolvency Act cannot be allowed to sue as a pauper.

The learned counsel for the appellant argues that the learned Civil Judge did not consider the rulings of the Madras High Court and of the Nagpur Judicial Commissioner's Court in which a contrary view was taken and it was held that an official receiver of the estate of an insolvent could sue in *forma pauperis* as a juridical person. He has referred us to the cases of *Perumal Goundan v. The Thirumalarayapuram Jananukoola Dhanasekhara Sangha Nidhi* (2), *Sivagami Ammal v. T. S. Gopaldaswami Odayar* (3), *Anmakanammal v. V. K. Damodara Mudaliar* (4), *Mobia Khatun v. Sheikh Satkari* (5), *Shree Shankarji Maharaj v. Mst. Godavaribai* (6), and *Swaminathan v. The Official Receiver of Ramnad* (7).

On behalf of the opposite party, it is contended that in the circumstances of the case no revision lies. We are of opinion that this objection is well founded. In *Raja Amir Hasan Khan v. Sheo Bakhsh Singh* (8), at page 239 their Lordships of the Judicial Committee held that when a Court has jurisdiction to decide a question

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(1) (1930) A.I.R., Rang., 259 126 (2) (1918) I.L.R., 41 Mad. 624.
I.C., 650.

(3) (1925) A.I.R., Mad., 765.

(4) (1928) A.I.R., Mad., 66.

(5) (1927) 100 I.C., 264.

(6) (1935) A.I.R., Nagpur, 209.

(7) (1937) I.L.R., Mad., 784.

(8) (1883-84) L.R., 11 I.A., 237-239.

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and decided it whether rightly, or wrongly, there can be no revision under section 115, C. P. C., as even if the Court decided the question wrongly it did not exercise its jurisdiction illegally or with material irregularity. Similarly in *Balkrishna Udayar v. Vasudeva Aiyar* (1), their Lordships of the Judicial Committee referring to section 115, C. P. C., observed at page 267—

“It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved.”

In the present case the court below had jurisdiction either to allow or disallow the applicant's application for permission to sue as a pauper, and has exercised that jurisdiction following the ruling of a High Court. As admittedly there is no ruling of this Court on the point, the learned Judge cannot be said to have acted with irregularity in following the Rangoon High Court's ruling, which, we may mention, is supported by a ruling of the Calcutta High Court reported in *Bharat Abhyudoy Cotton Mills, Ltd. v. Maharajadhiraj Sir Kameshwar Singh* (2). It is not necessary for us in this case to express an opinion which view is correct even if the learned Judge of the court below had taken a wrong view of the law in the matter that would not have given jurisdiction to this Court, according to the pronouncements of their Lordships of the Privy Council, to entertain an application in revision against his order. We are therefore of opinion that no revision lies in the present case.

We decree Badri Nath's appeal with costs and setting aside the order of the learned District Judge grant him an order of discharge on condition that in case on a suit by the official receiver or the creditors the insolvent be declared to hold some property, that property will be

(1) (1916-17) L.R., 44 I.A., 261.

(2) (1938) A.I.R., Cal., 745.

available to the creditors, and that half of whatever may be his earnings or income during the next three years will also be distributed among the creditors.

The application of the official receiver is dismissed with costs.

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Appeal allowed.

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*Before Mr. Justice G. H. Thomas, Chief Judge, and
Mr. Justice R. L. Yorke*

BRIJ MANOHAR AND OTHERS (APPELLANTS) v. RAMANAND
AND ANOTHER (RESPONDENTS)*

 1939
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Civil Procedure Code (Act V of 1908), Order 1, rule 10 and Order 43, rule 1—Order adding new party to a suit, whether appealable—Revision against an order adding new party, whether lies—Remand of case for re-trial—Appeal against order of remand made in exercise of inherent power of Court, whether lies.

An order adding a new party to a suit is not appealable as it could only be appealable as an order and an order under Order 1, rule 10 is not appealable as it does not find a place in Order XLIII, rule 1. It is also not one which can be assailed in revision because it is clearly an interlocutory order. *Tuan Man and another v. Che Som and others* (1), and *Banbihari Mukerji v. Bhejnath Singh Mahapatra* (2), referred to.

An order of remand made in the exercise of the inherent powers of the Court is not appealable under the provisions of Order XLIII, rule 1, Civil Procedure Code.

Messrs. G. D. Khare and Karta Krishna, for the appellants.

Mr. B. P. Misra, for the respondents.

THOMAS, C. J., and YORKE, J.:—This is a Miscellaneous appeal purporting to be an appeal under the provisions of Order XLIII, rule 1(u), C. P. C. from an order of remand.

The present plaintiffs appellants are the mortgagees of certain property which includes plots nos. 87 and 90

*Miscellaneous appeal No. 89 of 1936, against the order of Mr. Shiva Charan, Civil Judge of Unao, dated the 30th October, 1936.

(1) (1932) A.I.R., P. C., 146.

(2) (1932) A.I.R., Cal., 448.