

MISCELLANEOUS CIVIL

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

RAM NATH (APPELLANT) v. GOBIND PRASAD, CENTRAL
NAZIR, RECEIVER (RESPONDENT)*

1940
March, 21

Provincial Insolvency Act (V of 1920), section 37—Annulment of insolvency order—Power of Insolvency Court to distribute assets of insolvent among creditors after passing of annulment order.

Section 37 of the Insolvency Act does not allow an Insolvency Court on annulling an insolvency to proceed to distribute the assets of the insolvent among any of the creditors. *Jaing Bir Singh and others v. The Official Receiver* (1), and *Panna Lal and another v. Official Receiver* (2), relied on. *Chouthmal Bhagirath v. Jokhiram Surajmal* (3), and *Balla Mal v. Mst. Fatima Bibi and others* (4), referred to.

Mr. D. K. Seth, for the Appellant.

Mr. Karta Krishna, holding brief of Mr. G. D. Khare, for the Respondent.

THOMAS, C.J. and YORKE, J.:—This miscellaneous civil appeal arises out of an order dated the 1st March, 1937, passed by the learned District Judge of Bara Banki.

Ram Nath was adjudicated an insolvent on the 13th May, 1933, and the court fixed one year from the date of the order of adjudication as the period within which he should apply for his discharge. The insolvent did not apply for his discharge within the time fixed, and he was served with a notice to show cause why the order of adjudication should not be annulled. This was served on him on the 14th December, 1936, but he did

*Miscellaneous Appeal No. 48 of 1937, against the order of R. F. S. Baylis, Esq., I.C.S., District Judge of Bahraich, dated the 1st of March, 1937.

(1) (1933) I.L.R., 11 Ran., 287

(2) (1930) I.L.R., 53 All., 313.

(3) (1932) I.L.R., 12 Patna, 163.

(4) (1934) I.L.R., 15 Lahore, 698.

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not appear, and the learned District Judge passed the following order:

"I direct that the order of adjudication shall be annulled. Certain sale proceeds are with the receiver. These shall vest in the receiver."

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The receiver on the 19th February, 1937, reported to the learned District Judge, that he had no sale proceeds with him. The learned Judge then passed another order to the effect that certain property was declared by him and the Hon'ble Chief Court in appeal to be the property of the insolvent, that the insolvent's transfer of the same in favour of his wife having been set aside on the application of the receiver, the property should vest in the receiver for the benefit of the creditors. He further directed that the receiver should proceed to realise the property which was formerly that of the insolvent and distribute the same in accordance with the provisions of the Insolvency Act subject always to the directions of the Insolvency Court. This order was passed on the 1st March, 1937 and this is the order which is under appeal before us.

The contention on behalf of the appellant is that the order was illegal and *ultra vires* because the court could not have ordered the receiver after annulling the adjudication to distribute the assets among the creditors. Reliance was placed on two cases: *Jaing Bir Singh and others v. The Official Receiver*, (1) and *Panna Lal and another v. Official Receiver* (2).

In the case of *Jaing Bir Singh and others v. The Official Receiver*, (1), it was held that on an order of annulment being passed under section 43 of the Provincial Insolvency Act the court ceases to have jurisdiction to entertain, hear or determine an application by the receiver to have a transfer of property set aside under section 53 or section 54 of the Act, whether such application was presented before or after the order of annulment and that in making a vesting order under section 37 the court may impose conditions relating to

(1) (1933) I.L.R., 11 Ran., 287.

(2) (1930) I.L.R., 53 All., 313.

the property of the debtor, but not of any other person. In vesting the property of the debtor in any appointee, the Court cannot order that he should continue the liquidation of the debtor's assets on the same terms and conditions as those on which the receiver in insolvency would have been entitled to carry out the liquidation of his estate if the insolvency had still been subsisting.

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In the case of *Panna Lal and another v. Official Receiver* (1), it was held that section 37 of the Provincial Insolvency Act does not allow an Insolvency Court, on annulling an insolvency, to proceed to distribute the assets of the insolvent among any of the creditors. The course open to the court is either to return the property to the debtor on condition that he furnishes security which will make it available to the creditors to take their remedy under the ordinary civil law; or pending such security or for some other reason the court may direct the property of the insolvent in the hands of the receiver to vest in a certain person. Such vesting is only for the purpose, apparently, of making the property available to creditors to proceed through the Civil Court.

The above decisions no doubt support the contention of the learned counsel.

On the other hand the counsel for the respondent relies on the case of *Chouthmal Bhagirath v. Jokhiram Surajmal*, (2) and on the case of *Balla Mal v. Mst. Fatima Bibi and others* (3).

In the case of *Chouthmal Bhagirath v. Jokhiram Surajmal* (2) it was held that where the court annulled an adjudication and by a subsequent order directed the debtor's property to vest in the receiver appointed by the court, after that order of annulment the court did not cease to have jurisdiction in the matter and that the vesting order was valid and operative.

The case of *Balla Mal v. Mst. Fatima Bibi and others* (3), more or less takes the same view.

(1) (1930) I.L.R., 55 All., 313.

(2) (1932) I.L.R., 12 Patna, 163.

(3) (1934) I.L.R., 15 Lahore, 698.

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Section 37(1) of the Provincial Insolvency Act lays down that "where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all acts therefore done, by the court or receiver, shall be valid; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions as the court may by order in writing, declare."

It is thus clear from the section that where an adjudication is annulled the property of the debtor who was adjudged insolvent shall vest in such person as the court may appoint, or, in default of any such appointment, shall revert to the debtor. In our opinion the section does not allow an insolvency court on annulling an insolvency to proceed to distribute the assets of the insolvent among any of the creditors. The distribution of assets is a proceeding in insolvency, and by annulling the insolvency it means that the court will not proceed with the insolvency. Therefore in our opinion the course open to the court is either to return the property to the insolvent on condition that he furnishes security which will make it available to the creditors or for some other reason the court may direct the property of the insolvent in the hands of the receiver to vest in a certain person. The words "to vest in such person" in our opinion do not mean distribution of assets among the creditors. We are, therefore, of opinion that the order of the learned District Judge was *ultra vires* and illegal.

We, therefore, set aside the order and allow the appeal to this extent that we order that the property shall vest in the receiver and it will be available to the creditors when they have taken their remedy under the ordinary civil law. In the peculiar circumstances of the case we direct that the parties will bear their own costs in this court.

Appeal allowed.