

## APPELLATE CIVIL.

Before Das and Roßs, J.J.

1924.

July, 2.

RAM KRISHNA MISRA, EX PARTE.

*Provincial Insolvency Act, 1920 (Act V of 1920), section 43—whether mandatory.*

The provisions of section 43 are mandatory there being no discretion in the court to enlarge the time after the expiry of the period fixed by the court for an application for an order of discharge.

The word "shall" in section 41 of the Act imposes a duty upon the insolvent the breach of which involves the consequences pointed out in section 43.

Appeal by the petitioner.

The question in dispute in this case is stated in the judgment of Das, J.

*Nirod Chandra Roy*, for the appellant: The word "shall" is not always used in a mandatory sense. It may be sometimes directory, specially in insolvency matters, where technicalities should be brushed aside in favour of what is just and fair [see *In re. Lord Thurlow*, ex parte *Official Receiver* (1)]. Delay in applying for discharge is no justification for an absolute refusal of discharge [see re. *Pearse*, ex parte *The Bankrupt* (2)]. The Provincial Insolvency Act is based on the law of England and is in no way exhaustive. Courts in India have ample jurisdiction to exercise discretion in the matter of extending the time within which the insolvent should apply for his discharge, if sufficient cause is shown [see section 27, clause (2)].

S. A. K.

\* Appeal from Original Order no. 94 of 1923, from an order of C. H. Reid, Esq., I.C.S., District Judge of Bhagalpur, dated the 19th February, 1923.

(1) (1895) 1 Q. B. 724.

(2) 107 L. T. 659.

1924.

RAM  
KRISHNA  
MISRA,  
*ex parte.*

DAS, J.

DAS, J.—This appeal must be dismissed. The only question is, whether the provisions contained in section 43 of the Insolvency Act are mandatory. 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 accordingly.”

It is contended on behalf of the appellant that the provisions of section 43 are not mandatory and that there is a discretion in the Court to enlarge the time after the expiry of the period fixed by the Court for an application for an order of discharge. I am unable to agree with this view. Section 27 of the Act provides that :

“ If the Court does not dismiss the petition, it shall make an order of adjudication, and shall specify in such order the period within which the debtor shall apply for his discharge.”

The provision was intended to remedy the defect in the existing law under which the conduct of the debtor in many cases never came under the scrutiny of the Insolvency Court. It is a new provision and, in my opinion, must receive a strict interpretation. Section 41 provides 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, and the Court shall fix a day, notice whereof shall be given in such manner as may be prescribed, for hearing such application and any objection which may be made thereto.”

It is obvious to my mind that the debtor has complete discretion to apply when he likes provided he applies within the period specified by the Court. The word “ shall ” in section 41 of the Act imposes, in my opinion, a duty upon the insolvent the breach of which involves the consequences pointed out in section 43. In my opinion the decision of the learned District Judge on this point is right and must be affirmed.

I would dismiss this appeal.

ROSS, J.—I agree.

*Appeal dismissed.*