

1933.

DOMOO
KHAN
v.
AGHA
ARSHAD
KHAN.

WORT,
A. C. J.

far as the interest is concerned the decree will be varied by allowing interest at six per cent. only, from the date of the suit. The petition is rejected and the rule is discharged with costs. Hearing fee three gold mohurs.

KULWANT SAHAY, J.—I agree.

FAZL ALI, J.—I agree.

Rule discharged.

APPELLATE CIVIL.

Before Macpherson and Agarwala, JJ.

JAGARNATH SAHU

v.

BENI PRASAD.*

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August, 17,
18.

Provincial Insolvency Act, 1920 (Act V of 1920), proviso to section 24(1), clause (a)—debtor, application for adjudication by—court, whether bound to accept the statement of petitioner—court, duty of, to investigate facts—prima facie proof of inability necessary.

Before adjudicating an applicant to be an insolvent the court is required to be satisfied that he is not in a position in fact to pay his debts.

The court is not bound to accept the statement of the petitioner, but is required to investigate the facts for itself; in other words, the duty of the court is to be satisfied *prima facie*, that is, after following the necessary procedure and making the necessary investigation, to come to a conclusion that the statement by the debtor is true.

Ganeshi Lal Sarawgi v. Sanehi Ram(1) and *Narayan Mistri v. Ram Das*(2), followed.

* Appeal from Original Order no. 179 of 1931, from an order of G. J. Monahan, Esq., I.C.S., Judicial Commissioner of Ranchi, dated the 16th of July, 1931.

(1) (1932) I. L. R. 12 Pat. 107.

(2) (1928) I. L. R. 7 Pat. 771.

Appeal by the applicant.

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The facts of the case material to this report are stated in the judgment of Agarwala, J.

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Rai Gurusaran Prasad and *Ragho Saran*, for the appellant.

Naqvi Imam and *S. S. Rakshit*, for the respondents.

AGARWALA, J.—The appellant applied to the Judicial Commissioner of Chota Nagpur to be declared an insolvent, stating his debts to be Rs. 13,000 and his assets to be Rs. 1,645. He attributed his losses to the failure of a cloth business which he had had at Haidarnagar in the years 1333 and 1334 Fs. The learned Judicial Commissioner rejected the application not being satisfied that the applicant was unable to pay his debts. It was admitted by the applicant that the value of the stock in the shop at Haidarnagar was Rs. 10,000 and that the whole of this stock was disposed of before the business was closed down. The only explanation given with regard to what has been done with the money realized from the sale of the stock is that a considerable portion was spent in medical treatment. In support of this he has filed a number of medical prescriptions and reports as to the state of his health. While it appears that since 1926 the applicant has been subject to attacks of asthma, there does not seem to be any reason to suppose that any very considerable sum has been spent in the treatment of this disease. The applicant has failed to convince both the Judicial Commissioner of Chota Nagpur and this Court that he had insufficient means to pay his debts.

It was suggested that, when a person files an application in insolvency, the onus of showing that he is in a position to pay his debts lies on the person asserting it. That view, however, is clearly unsustainable in view of the provisions of the proviso to

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clause (a) of sub-section (1) of section 24 of the Provincial Insolvency Act. Before adjudicating an applicant to be an insolvent the Court is required to be satisfied that he is not in a position in fact to pay his debts. As was pointed out by this Court in *Ganeshi Lal Sarawgi v. Sanehi Ram*(¹), the Court is not bound to accept the statement of the petitioner, but is required to investigate the facts for itself. The tendency of Courts administering the Insolvency Act to believe that the hearing of a petition is more or less a formal matter and that if the petition is, as it were, merely verified by the evidence of the debtor, the court is bound to accede to the petition, was deprecated; and it was pointed out that the duty of the Court is to be satisfied *prima facie*, that is, after following the necessary procedure and making the necessary investigation to come to a conclusion that the statement by the debtor is true. Similarly, in *Narayan Mistri v. Ram Das*(²) my learned brother observed: "To my mind that proviso (namely, the proviso already referred to) ought not to be interpreted in such a way as to reduce the requirements of the most salutary new provision that the debtor must prove his inability to pay his debts, to a mere assertion or nominal proof. The least that is required of him is such proof as to satisfy the Court that there are *prima facie* grounds for believing his plea of inability to pay his debts."

The applicant having failed so to satisfy the Court of his inability to pay his debts this appeal must be dismissed with costs.

MACPHERSON, J.—I agree.

Appeal dismissed.

(1) (1932) I. L. R. 12 Pat. 107.

(2) (1928) I. L. R. 7 Pat. 771.