

APPELLATE CIVIL.*Before Courtney Terrell, C.J. and Fazl Ali, J.*

GANESH LAL SARAWGI

v.

SANEHI RAM.*

1932.

September,
15.

Provincial Insolvency Act, 1920 (Act V of 1920), sections 13 and 24—petition by debtor—requirements of law—court, duty of, to be satisfied as to the truth of the statements in the petition—creditors, whether entitled to adduce evidence to throw discredit on the statements of the debtor—petition, hearing of, not a formal matter—tendency of courts deprecated.

Section 13 of the Provincial Insolvency Act imposes upon the petitioning debtor the obligation to state the amount and particulars of all his property and of all his debts and he is to make a statement that he is unable to pay his debts.

Section 24 of the Act lays down :—

“(1) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned the Court shall require proof of the following matters, namely :—

(a) that the creditor or the debtor, as the case may be, is entitled to present the petition :

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are prima facie grounds for believing the same and the Court, if and when so satisfied, shall not be bound to hear any further evidence thereon ;

(2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.”

Held, that the court must treat the evidence produced by following the procedure prescribed in section 24 as

* Appeal from Original Order no. 239 of 1931, from an order of G. Monahan, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 4th August, 1931.

1932.

GANESH
LAL
SARAWGI

v.
SANEHI
RAM.

material to its decision as to whether or not to allow the petition and in deciding whether such evidence has satisfied the Court that there are *prima facie* grounds for believing the statements in the petition.

The statements in the petition by themselves, if merely repeated formally in the evidence, are not sufficient *prima facie* grounds for believing such statements.

The creditors are equally entitled to adduce such evidence as they think fit to throw discredit upon the statements in the petition.

There is a wrong tendency for Courts administering the Insolvency Act to believe that the hearing of a petition is a more or less 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. It is the duty of the Court to be satisfied *prima facie* and after following the necessary procedure and making the necessary investigation to come to a conclusion that the statements by the debtor are true.

The procedure of insolvency is for the protection of creditors quite as much as for the protection of debtors.

Appeal by the creditor.

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

Hasan Imam and *S. S. Rakshit*, for the appellant.

Raghosaran Lal, for the respondent.

COURTNEY TERRELL, C.J.—This miscellaneous appeal is against an order of the Judicial Commissioner of Chota Nagpur dealing with the petition of two persons, Sanehi Ram and Aliar Ram, who are said to have carried on business in partnership and who applied for adjudication of insolvency. The petition set forth a schedule of debts the principal creditor being the appellant in this case whose debt was said by the petitioners to amount to Rs. 2,835. The schedule set forth other debts which, we are told by the learned Advocate on behalf of the debtors, are

1932.

 GANESH
 LAL
 SARAWGI
 v.
 SANEHI
 RAM.

 COURTNEY
 TERRELL,
 C. J.

mainly, as in the case of the appellant, for goods supplied on credit. The younger of the two petitioners gave evidence before the Judicial Commissioner, the elder being his father, and it was stated that the elder was ill. The younger petitioner in his evidence states that the petitioning debtors carried on a business in lac in the district of Palamau and the debts which totalled Rs. 6,530 were for the greater part, as I have said, in respect of goods supplied on credit, the appellant creditor having supplied a very large quantity of cloth. The petition also scheduled a trifling quantity of moveable property and the only immovable property scheduled was Rs. 1,000 in respect of the house upon which it was said that a mortgage was held and the amount of the mortgage debt was set down amongst the other debts which the petitioners owed. They described themselves as Baniyas carrying on business in lac and the evidence of the younger petitioning debtor given in chief was of the briefest possible character. He stated that the debts of the firm amounted to Rs. 6,530 and the assets were worth only Rs. 300 or Rs. 400. He was unable to pay his debts and had concealed none of his assets. He was willing to place all his assets at the disposal of the Court and he stated that he suffered the losses which had brought about his insolvency in connection with the lac business. He then stated in cross-examination that he kept no books of account and that whenever he was supplied with goods on credit he merely signed the creditor's books. This was an unimpressive statement and two witnesses were called on behalf of the creditor who stated that they knew the petitioning debtors and that in fact they did keep books of account.

The learned Judicial Commissioner apparently thought that the requirements of the law was that he must simply have the evidence of the petitioning debtors to, as it were, merely verify the statements in the petition. That, however, is not the case. Section 13 of the Provincial Insolvency Act imposes

1932.

GANESH
LAL
SARAWGI
v.
SANDEH
RAM.

COURTNEY
TERRELL,
C. J.

upon the petitioning debtor the obligation to state the amount and particulars of all his property and of all his debts and he is to make a statement that he is unable to pay his debts. The requirements of such a petition are set forth in section 13 of the Act. Section 24 of the Act imposes upon the Court the duty of requiring proof of the following matters:—

“(a) that the creditor or the debtor, as the case may be, is entitled to present the petition :

Provided that, where the debtor is the petitioner, he shall, for the purpose of proving his inability to pay his debts, be required to furnish only such proof as to satisfy the Court that there are *prima facie* grounds for believing the same.”

Under sub-section (2)

“The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.”

The Court in this case does not seem to have proceeded to carry out that obligation imposed upon it by sub-section (2). Moreover this procedure is to be adopted as a preliminary to the decision as to whether to grant the petition or not and, therefore, the matters disclosed by that procedure are material to be taken into consideration. Otherwise sub-section (2) would have to be considered superfluous.

By sub-section (3)

“The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.”

It is further incumbent upon the petitioning debtor under section 22 of the Act when his petition is admitted to produce all books of account. The debtor has stated here that he has no books of account but necessarily in order to consider the debtor's conduct of the business as directed by sub-section (2) of section 24 the Court should make an investigation as to whether the statement that he did not keep account books is to be believed or not. Indeed it is clear that

the Court must treat the evidence produced by following the procedure prescribed in section 24 as material to its decision as to whether or not to allow the petition and in deciding whether such evidence has satisfied the Court that there are prima facie grounds for believing the statements in the petition. The statements in the petition by themselves, if merely repeated formally in the evidence, are not sufficient prima facie grounds for believing such statements.

There has been a tendency for courts administering the Insolvency Act to believe that the hearing of a petition is a more or less 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. That is not the case. It is the duty of the Court to be satisfied prima facie and after following the necessary procedure and making the necessary investigation to come to a conclusion that the statements by the debtor are true. After all the procedure of insolvency is for the protection of creditors quite as much as for the protection of debtors. It is unfortunately more often used by debtors than by creditors with the consequence that the interest of the creditor has a tendency to be forgotten.

In this case we think that the proper course should be to remit the matter back to the learned Judicial Commissioner with a direction to follow the procedure prescribed by the Act and to come to a finding as to whether or not there are prima facie grounds for believing the statements in the petition and if he comes to the conclusion that there are such grounds then he may make the order for adjudication. The matter should be re-heard and the applicant will be in a position to adduce such evidence as he may be advised for the purpose of inducing the Judicial Commissioner, acting on the principles I have stated, to make the order in his favour. The creditors will be equally entitled to call such evidence

1932.

GANESH
LAL
SARAWGI
v.
SANSHI
RAM.

COURTNEY
FERRELL,
C. J.

1932.

GANESH
LAL
SARAWGI
v.
SANEHI
RAM.

as they think fit to throw discredit upon the statements in the petition. The present order of adjudication is vacated without prejudice to such order as the Judicial Commissioner may make. The costs of this hearing will abide the result.

FAZL ALI, J.—I agree.

COURTNEY
TERRELL,
C. J.

Appeal allowed.

Case remanded.

APPELLATE CIVIL.

Before Khaja Mohamad Noor and Dhule, JJ.

SUCHIT CHAUDHURI

v.

HARNANDAN SINGH.*

Hindu Law—guardian of infant, whether can contract loans on behalf of the minor for the latter's necessities and benefit—guardian, whether can impose personal liability on the minor—minor's estate, whether is liable for the debt.

A guardian of a Hindu infant has power to contract loans on behalf of the minor for the latter's necessities and benefit and, although the guardian cannot impose any personal liability, on the minor, the estate of the minor is liable for such a debt.

Padma Krishna Chettiar v. Nagamani Ammal,⁽¹⁾ followed.

Kashi Prasad Singh v. Akleshwari Prasad Narain Singh,⁽²⁾ distinguished.

Jodhi Singh v. Chhotu Mahto⁽³⁾, referred to.

* Appeal from Appellate Decree no. 1552 of 1930, from a decision of M. Muhammad Shamsuddin, Additional Subordinate Judge of Shahabad, dated the 10th November, 1930, confirming a decision of Babu Nanda Kishore Chaudhuri, Munsif of Shahabad, dated the 26th September, 1929.

(1) (1915) 30 Ind. Cas. 574.

(2) (1920) 2 Pat. L. T. 35.

(3) (1926) 7 Pat. L. T. 732.

1932.
Sept. 14, 15,
16.