

APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Mya Du.

BOLA RAM AND OTHERS v. SOHAN SINGH.*

1935

Mar. 12.

Insolvency—Suspension of discharge—“Dividend not less than four annas in the rupee”, meaning of—Presidency-Towns Insolvency Act (IV of 1909) s. 39 (i) (c).

Under s. 39 (I) (c) of the Presidency-Towns Insolvency Act the Court may suspend the discharge of an insolvent until a dividend of not less than four annas in the rupee has been paid to the creditors, but the Court is not empowered to suspend the discharge until a dividend of more than four annas in the rupee has been paid. An order suspending an insolvent's discharge until twelve annas in the rupee are paid is not in accordance with law.

In re Kutner, (1921) 3 K B. 93—referred to.

N. N. Sen for the appellants.

Hay for the respondent.

PAGE, C.J.—This appeal is allowed. With all due respect to Braund J., who heard the application for discharge, the order that was passed, in my opinion, cannot be sustained either in law or on the merits. The respondent was adjudicated insolvent on the 17th of February 1934, and he filed an application for his discharge on the 13th of July 1934. At the time of his insolvency his liabilities amounted to Rs. 24,795, while his assets consisted of a life policy for Rs. 2,000 and a debt of Rs. 1,500 alleged to be due to him under three promissory notes. The order passed by Braund J. was in these terms :

“In these circumstances I take the view that this insolvent can and should pay twelve annas in the rupee of his debts and that he can well afford to pay Rs. 80 a month out of his present salary. I shall accordingly suspend his discharge until

* Civil Misc. Appeal No. 145 of 1934 from the order of this Court on the Original Side in Insolvency Case No. 44 of 1934.

1935

BOLA RAM

v.

SOHAN
SINGH.

PAGE, C.J.

twelve annas in the rupee is paid, and I shall make an order for payment of Rs. 80 a month to the Official Assignee."

Now, the Official Assignee reported that the insolvent's

"assets are not of a value equal to four annas in the rupee on the amount of his unsecured liabilities, he has not properly accounted for several sums borrowed from creditors and paid to creditors, and he has contracted debts without having at the time of contracting them any reasonable or probable ground of expectation that he would be able to repay them."

There can be no doubt that the report of the Official Assignee in the present case is correct and must be accepted.

The case, therefore, falls within section 39 (1) of the Presidency-Towns Insolvency Act, and although the learned Judge in insolvency did not specifically so state, it would appear that he passed the order under appeal upon the footing that the case fell within section 39. In such circumstances it was incumbent upon the Court strictly to comply with the provisions of section 39 in passing an order on the present application. Under section 39 (1) (c) it is provided that the Court "may suspend the discharge until a dividend of not less than four annas in the rupee has been paid to the creditors."

I am of opinion that under section 39 (1) (c) the Court is not empowered to suspend the discharge until a dividend of more than four annas in the rupee has been paid [*In re Kutner* (1)]. It follows, in my opinion, that the order suspending the insolvent's discharge "until twelve annas in the rupee is paid" was not in accordance with law.

I am further of opinion that the appeal must also succeed on the merits. The insolvent is

employed by the Irrawaddy Flotilla Company, Ltd., on a salary of Rs. 270 a month, and it is obvious both from his own admissions and the report of the Official Assignee that he has been living in an extravagant manner inconsistent with the position which he holds. The insolvent stated that his father had been a carpenter employed in the Burma Railways at a wage of Rs. 1-4 a day, and that after he had worked for the Burma Railways for 15 or 16 years he retired. He further stated that his father had no provident fund, and that after his retirement his father commenced to do business upon the proceeds of the earnings of the insolvent and his brother. The insolvent also stated that the business that his father carried on was a provision business. I am bound to say that I suspect that the provision business was little more than a cloak for a money-lending business carried on by the father as the *Kurta* of this Hindu undivided family. It would be natural in such circumstances that the father should make use of all the money the resources and the credit of the family that were available. Exhibits 1 and 2, in my opinion, strongly support the view which I am disposed to take. There is no doubt from the schedule of assets and liabilities filed by the insolvent that, although he was a man of slender means and of family obligations (he stated "I had to marry three times"), he did not hesitate from 1930 onwards to incur liability in respect of loans amounting to over Rs. 24,000. Why he should have incurred this heavy liability it is not easy to understand, unless it was for the benefit of the family and the family business that was being carried on. He stated that he had spent no less than Rs. 15,000 on expenses incurred through the marriage of his family relations,

1935

BOLA RAM

Z.

SOHAN
SINGH.

PAGE, C.J.

1935
 BOLA RAM
 v.
 SOHAN
 SINGH.
 PAGE, C. J.

(although none of them were his own children), and he further admitted that for the purpose of properly carrying through these marriages he had on several occasions performed the journey to the Punjab and back to Burma. Further, it appears that the members of the family have been able to construct three or four houses in Burma, and it may be that the family possesses other property in India. A perusal of the testimony of the insolvent in his public examination and the report of the Official Assignee leads me firmly to the conclusion that the insolvent is not a person who ought to be allowed to repeat his career of extravagance at present. It does not appear to me that the financial position of the insolvent and the reasons why he had incurred these heavy liabilities have been sufficiently or effectively investigated; and it may be that before the time arrives when the respondent will have another opportunity of applying for his discharge the position of the insolvent in relation to his assets and the manner in which he incurred his liabilities will further be enquired into by the Official Assignee. I am clearly of opinion that the insolvent ought not to be granted his discharge. The appropriation order will stand.

The result is that the appeal is *pro tanto* allowed, and the order from which the appeal is brought set aside. The discharge of the respondent is refused.

MYA BU, J.—I agree.