

## APPELLATE CIVIL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice Zafar Ali.*

1927

NARAIN SINGH AND ANOTHER—Appellants

*versus*

Nov. 10.

GURBAKSH SINGH AND OTHERS—Respondents.

Civil Appeal No. 2232 of 1923.

*Insolvent—respondent—death of—during pendency of appeal by creditors against order adjudging him to be an insolvent—Abatement.*

*Held*, that an appeal preferred against the adjudication of an insolvent abates on his death, as the right to sue does not survive within the meaning of Order XXII, rule 4 of the Code of Civil Procedure, on the death of a respondent insolvent in an appeal by creditors against an order adjudging him to be an insolvent.

*Hardian Singh v. Sham Sundar (1)*, followed.

*Miscellaneous first appeal from the order of Sardar Sewaram Singh, District Judge, Lyallpore, dated the 9th May 1923, adjudicating Ram Singh an insolvent.*

V. N. SETHI, for Appellants.

DIWAN MEHR CHAND, for Respondent.

The judgment of the Court was delivered by—

SIR SHADI LAL C. J.—One Ram Singh applied to be declared insolvent, and his application was accepted by the trial Court and he was adjudicated an insolvent. Some of his creditors preferred the present appeal against the order of adjudication, but during the pendency of the appeal Ram Singh died, and the creditors seek to implead his minor son as his legal representative for the purposes of the appeal.

1927

NARAIN SINGH  
v.  
GURBAKHSI  
SINGH.

Now, it has been held by a Division Bench of the Punjab Chief Court in *Harthian Singh versus Sham Sundar* (1), that an appeal preferred against the adjudication of an insolvent abates on his death, as the right to sue does not survive within the meaning of section 368 of the Civil Procedure Code, 1882 (corresponding to Order XXII, rule 4 of the Code of 1908), on the death of a respondent insolvent in an appeal by creditors against an order adjudging him to be an insolvent. Such an order is purely personal to the insolvent. The learned counsel for the appellants has not invited our attention to any judgment which lays down the contrary rule. It is true that, as enacted in section 17 of the Provincial Insolvency Act, if a debtor, by or against whom an insolvency petition has been presented, dies, the proceedings in the matter shall, unless the Court otherwise directs, be continued so far as may be necessary for the realization and distribution of his property. It must be remembered that the object of the section is that the death of the debtor should not affect the realization and distribution of his assets: but it has no bearing upon the question before us.

We must accordingly hold that the appeal has abated. The appellants must pay the costs of the appeal.

A. N. C.

*Appeal abated.*

(1) 69 P. R. 1898.