

## REVISIONAL CIVIL.

*Before Skemp J.*

C. FLEMING (INSOLVENT) Petitioner,

*versus*OFFICIAL RECEIVER, FERROZEPOR, AND  
OTHERS (CREDITORS) Respondents.

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Dec. 13.

Civil Revision No. 112 of 1933.

*Provincial Insolvency Act (V of 1920), SS. 41 and 42 (b) to (h) — Insolvent — Discharge — Payment of debts eight annas in the rupee — No misconduct under S. 42 (b) to (h).*

*Held*, that the Court must grant an absolute order of discharge provided that the insolvent pays eight annas in the rupee and is not guilty of misconduct as specified in S. 42 (b) to (h) of the Act.

*Nand Lal Mukerjee v. Girdhari Lal (1)*, relied upon.

*Revision from the order of Mr. M. R. Bhide, District Judge, Ferozepore, dated 23rd October, 1937, affirming that of Mian Jalal-ud-Din, Insolvency Judge, Ferozepore, dated 6th March, 1937, dismissing the application for discharge.*

C. L. GULATI, for Petitioner.

R. P. KHOSLA, for Respondent.

SKEMP J.—The petitioner in this case is Mr. C. Fleming, a driver on the North-Western Railway. He applied on the 14th of October, 1933, to be adjudicated insolvent and was so adjudged on the 24th April, 1935, being ordered to apply for discharge within a year.

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In his application for insolvency he showed debts amounting to about Rs. 6,700 as due to five creditors. Two only were scheduled: Bulaqi Mal for Rs.4,334,

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Ram Das for Rs.1,551-8-0. To these creditors a dividend at the rate of 6 annas 4 pies in the rupee has been paid giving Rs.1,725 odd to Bulaqi Mal and Rs. 617 odd to Ram Das.

At this stage the insolvent applied for discharge. The learned Insolvency Judge very briefly ordered without giving reasons that the insolvent's discharge should be suspended until such time as his scheduled debts were fully paid. The insolvent appealed to the District Judge who rejected the appeal because " his property was not attached nor was half his pay attached because originally he agreed to pay the whole of his liabilities in the course of 5 or 6 years \* \* \* He wrote to the Official Receiver that he was prepared to pay the whole of the debts provided his pay was not attached to the extent of more than Rs.60. \* \* \* \* \* The creditors are in any case not getting any interest on their amounts."

Mr. Fleming has come here on revision under section 75 of the Act through Mr. C. L. Gulati. Mr. Gulati's argument is that according to the theory and ideal administration of insolvency, the insolvent's property should be realised and distributed among his creditors and he should then become a free man within a reasonable time, whereas Mr. Fleming, who has already been before the Insolvency Court for more than 5 years and was actually adjudicated more than 3 years ago, is to be kept insolvent for several years more. He urges that the order of the Courts below is illegal, not being one of those permitted under section 41 of the Act and that the effect of section 42 of the Act is such that the Court must grant an absolute order of discharge, provided that the insolvent pays 8 annas in the rupee and is not guilty of the misconduct specified in section 42 (b) to (h). In the present case there is

no allegation or evidence that the petitioner has been guilty of any misconduct and he is willing to pay 8 annas in the rupee.

Mr. Khosla on behalf of the Official Receiver while admitting the force of these arguments relies on the statement made by Mr. Fleming before the Insolvency Judge on the 17th October, 1935: "I must have at least one-third of my pay for the maintenance of my family. At first half of it was cut. Now I cannot make both ends meet. The claims of the scheduled creditors can be satisfied in full if the case is being proceeded to an end. I will have no objection." On this the Advocates representing the creditors said they had no objection if the salary cut were reduced from one half to one-third and their debts were paid in full and the debtor not discharged till then. The Court then passed an order that according to the statements of the parties the salary cut should be reduced from one-half to one-third.

Apparently Mr. Khosla relies on this statement as an estoppel although he does not say so very definitely, apparently recognising that no estoppel can be pleaded against a statute. He also relies on the terms of section 41, and section 42 (1) (a) of the Act dealing with the insolvent's assets and argues that his future salary will in time be sufficient to satisfy the debts in full. The expression is "assets," not "future assets." "Assets" are defined in Wharton's Law Lexicon as "the property of any person, with reference to bankruptcy, available for division amongst his creditors." If the expression is not qualified in any way, as in the expression "future assets," it is generally understood to mean the amount actually in existence available for division among the creditors.

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*Nand Lal Mukerjee v. Girdhari Lal* (1) is a case almost exactly on all fours with the present. The District Judge on appeal had directed the petitioner to continue an insolvent and to continue payments until he liquidated the total amount of his debts or could show that he was no longer in a position to make payments. A Division Bench of the Oudh Chief Court, relying on *In re Kutner* (2) held that "when an insolvent in India whose case is governed by the provisions of the Provincial Insolvency Act of 1920, has paid up eight annas in the rupee he is entitled to be free from the disabilities of an insolvent unless it can be established that his case falls under the provisions of section 42 (b) to (e) of the Act."

*In re Kutner* (2) is very similar in principle and the Oudh Chief Court relied upon it because of the similarity between the provisions of the Provincial Insolvency Act and section 26 of the English Bankruptcy Act, 1914. The Court of Appeal held that an order made by the Registrar in Bankruptcy suspending the discharge of the debtor until he had paid 15s. in the pound was an order made without jurisdiction. Younger L. J. said "To give such a power to the Court" (to suspend the discharge until a larger dividend had been paid), "and thus, in effect, compel the debtor to work for his creditors to an extent beyond the prescribed sum as a condition of his discharge, is not in my judgment to be implied from the statute."

I accept Mr. Gulati's excellent argument and relying on the terms of section 42 and on *Nand Lal Mukerjee v. Girdhari Lal* (1), I accept the revision against the order of the learned District Judge as being not made in accordance with law.

(1) (1928) 109 I. C. 633.

(2) (1921) L. R. 3 K. B. D. 93.

It was said in Court that the amount paid by Mr. Fleming to the scheduled creditors was about Rs.200 less than 8 annas in the rupee. In accepting the petition I direct that his discharge be suspended until he has paid 8 annas in the rupee.

The cut of Rs.60 on his salary which was suspended during the hearing of this revision is re-imposed until the amount of 8 annas in the rupee is paid and Mr. Fleming shall then be discharged.

There will be no order as to costs in this petition for revision.

A. K. C.

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**APPELLATE CIVIL.**

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*Before Young C. J. and Ram Lall J.*

**MUSSAMAT UMRAO BEGUM AND OTHERS**  
(PLAINTIFFS) Appellants,

*versus*

**RAHMAT ILAHI (DEFENDANT) Respondent.**

Regular Second Appeal No. 1477 of 1936.

*Civil Procedure Code (Act V of 1908), O. XXII, rr. 3, 9, 11 — Legal representatives of deceased appellant — whole body of them not brought on the record within time — only one or some of them brought on the record within time — others brought on the record out of time — Appeal whether abates — Fraud — meaning of — distinction between legal and moral fraud — Consent decree — based on fraud — legal effect thereof.*

The appellant died during the pendency of her appeal leaving surviving her three grand children from her predeceased daughter as her legal heirs. An application was made to the High Court, *within time*, to bring the name of one of these heirs on the record as her legal representative, and later another application was made, *out of time*, to bring the names of the other two heirs on the record as her legal representatives. It was contended that the appeal must abate

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April 25.