

**Manindra Nath Roy Choudhury and ors. Vs. Rasik Lal Pakhira**

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**Court :** Kolkata

**Decided On :** May-11-1926

**Reported in :** AIR1927Cal69,97Ind.Cas.463

**Appellant :** Manindra Nath Roy Choudhury and ors.

**Respondent :** Rasik Lal Pakhira

**Judgement :**

Cuming, J.

1. This appeal arises out of an application by four persons constituting a firm of the name of Rajnarayan Rasik Lul Pakhira to be declared insolvent. There was also a petition by one of their creditors asking them to be declared insolvent. These applications were opposed by a number of creditors. The learned District Judge of Alipur hold that the firm was entitled to be declared insolvent and he made the necessary order. Against this order some of the opposing creditors have appealed to this Court. The first point raised by Mr. Roy on behalf of the applicants is that the variation of the mill which is one of the main assets of the debtors was made without any notice to the creditors and, therefore, cannot stand, and a fresh valuation should be made.

2. A reference to the judgment of the learned District Judge would show that the creditors were actually informed by the Receiver of the date on which the valuation was going to be made. No doubt in his order of the 23rd of May the learned District Judge stated that it was true that the Receiver had not given notice to the creditors. The learned District Judge, however, apparently subsequently found that his order of the 23rd May was passed on some misapprehension. Even if the creditors had not received any notice of the date when the expert was going to value the mill it is difficult to see what difference it would have made. The creditors did not suggest that they were experts in valuation of the mill property. What possible difference their presence or absence at the time when the valuation was made by the valuer could make it is difficult to conceive. However, in view of the finding of the learned Judge, this point fails.

3. The next objection urged by the appellant is that the valuation of the mill as made by the valuer is incorrect. The valuation was made by an expert apparently chosen by the Receiver out of a number of expert valuers whose names were suggested by one of the creditors. No objection was apparently taken to the appointment of this gentleman. This gentleman produced a long report which covers some four pages. No attempt has been made by the opposing creditors to cross-examine this gentleman to show that his conclusion or the data on which he based his conclusion were wrong. Nor did the opposing creditors as they could have done, send their own expert to

value the mill and give evidence that the value of the mill was very different from the figure of Rs. 40,000 at which this gentleman had arrived. There is no substance whatever in this objection.

4. The appellants have next argued that the Court ought to have considered whether some of the amounts were really debts owned by the firm. If I understand the appellants rightly they would seem to contend that at this stage of the case the learned District Judge should have gone into an elaborate enquiry as to the validity or otherwise of each of the debts which the insolvents alleged that they owed. This I think was never intended by the Act. Insolvency Act. Section 24 of the Provincial Insolvency Act provides as follows:

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.

5. I may point out that this proviso is new and the object of it is quite obvious namely, that the Court should not and need not at this stage go into an elaborate enquiry as to the validity or otherwise of the debts. It is sufficient if the Court is satisfied that there are prima facie grounds for thinking that the debtor is unable to pay his debts. It is quite clear from the judgment of the learned District Judge that he was so satisfied; and I am not prepared to say that he was wrong.

6. The appellants have next contended that the Court in considering whether the debtors were or were not able to pay their debts has not taken into consideration certain other properties belonging to the debtors, but has only taken into consideration the mill. I admit I do not see any reference in the judgment of the learned District Judge specifically to the other properties of the debtors. But, as a matter of fact that is really of no importance whatever. The debts alleged by the debtors were Rs. 1,09,000. Even adding to the amount of Rs. 40,000 (the valuation which has been put on the mill) the valuation put by the debtors on their other properties namely, Rs. 23,000, which valuation has not been challenged by the appellants the amount of assets still falls short of the amount of debts by considerably more than Rs. 500. The result is the appeal must fail and is dismissed with costs. Hearing-fee ten gold mohurs.

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7. In my opinion there is no substance in any of the contentions raised on behalf of the appellants. I agree that the appeal should be dismissed.