

Brojendra Nath Ghose Vs. Satish Chandra Das and ors.

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Court : Kolkata

Decided On : Jul-22-1932

Reported in : AIR1933Cal495a,145Ind.Cas.185

Appellant : Brojendra Nath Ghose

Respondent : Satish Chandra Das and ors.

Judgement :

Guha, J.

1. This appeal is directed against an order passed by the learned District Judge of, in a proceeding under the Provincial Insolvency Act. It appears that two persons Satish Chandra Das and Subodh Chandra Das were adjudicated insolvents. Long before the order of adjudication was made, the debtors filed in Court, on 30th August 1928, a composition scheme, stating the terms of agreement with the creditors arrived at by them, and praying that the composition scheme might be given effect to after the order of adjudication is passed. The scheme was ordered to be kept with the record and put up on the date fixed for hearing. The order of adjudication was passed on 20th September 1928, but no attention was given to the composition scheme by any of the parties concerned, and no step was taken in regard to the same. The proceeding before the Court followed in the manner provided by law, on appointment of receivers in insolvency, without any reference to the composition scheme by any party. The insolvent prayed for final discharge on 19th September 1929. Upon that, attempt was made by the creditors to agitate the matter of the composition scheme, filed on 30th August 1928, by way of revival of the same. The insolvents filed their petition of objection on 28th July 1930, and applied for rejection of the so-called composition scheme on various grounds. One of the grounds was that the scheme filed in Court and which the creditors wanted to be put into operation at such a late stage, was not entertainable under the law, inasmuch as it was filed before the order of adjudication was made. The learned District Judge has given effect to the objection of the insolvents; and one of the creditors has appealed to this Court.

2. On the facts and in the circumstances of the case before us, also in view of the clear provisions of the law contained in Section 38, Provincial Insolvency Act, 1920, there can be no doubt the order made by the learned District Judge rejecting application of the creditors to put into operation the composition scheme filed in Court on 30th August 1928, is right. It may be pointed out that under the Provincial Insolvency Act 1907, Section 27, a proposal for a composition scheme could be submitted by the debtors either before or after an order of adjudication. Under the present Act of 1920, a proposal can only be submitted after an order of adjudication has been made. The only point urged in support of the appeal by the learned Counsel for the appellant that the learned District Judge in the Court below was wrong in

holding that composition scheme could only be entertained after an order of adjudication, being decided against the appellant, this appeal must be dismissed and we direct accordingly. The insolvent respondents in the appeal are entitled to their costs. The hearing fee in this appeal is assessed at three gold mohurs.

Bartley, J.

3. I agree.

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