

Jitmal Ram Gopal Vs. Nathu Ram

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Court : Allahabad

Decided On : Mar-01-1932

Reported in : AIR1932All385

Appellant : Jitmal Ram Gopal

Respondent : Nathu Ram

Judgement :

Niamatullah, J.

1. This appeal arises-out of insolvency proceedings. One Nathu Ram, respondent in this appeal, was adjudged insolvent. He applied under Section 31, Provincial Insolvency Act, for a protection order. The Judge in insolvency refused to grant the protection order. Notice of the application had been given to all the creditors. Only three appeared to contest the application, but the order was couched in general terms and refused protection as regards-the debt due to all of the creditors. The-insolvent appealed to the District Judge and impleaded the three Creditors who had appeared in the Court and who contested his application for a protection order. No notice of the appeal was issued to any of the other creditors. The District Judge allowed the appeal and granted an order for the protection of the insolvent from arrest or detention. Subsequently the appellant before us, who was not one of the three aforesaid creditors took out execution of his decree and prayed for the arrest and imprisonment of the insolvent judgment-debtor. The latter objected

relying on the protection order granted by the insolvency Court of appeal. The learned Munsif before whom the execution proceedings were pending overruled the objection holding that the protection order did not apply to the decree-holder before him. The learned District Judge took a different view holding that, as the protection order was unqualified, it should be deemed to apply to all the debts due from the insolvent. The decree-holder has preferred the present second appeal.

2. There can be no doubt that the order of the insolvency Court of original jurisdiction refused protection as regards all the debts due from the insolvent and as against every one of the creditors. The fact that only three of the creditors appeared to contest the application for the protection order will not detract from the effect of the Court's refusal for an order of protection as regards all debts.

3. Section 5, Sub-section (2), Provincial Insolvency Act, makes the provisions of the Civil Procedure Code applicable to all proceedings under that Act before the High Court and the District Court exercising appellate jurisdiction. The insolvent should have impleaded all his creditors as respondents who were entitled to a notice of the appeal. Section 31(4) provides that

every creditor shall be entitled to appear and oppose the grant of a protection order.

4. The order of the insolvency Court of appeal, though general in its terms, was effective only so far that it set aside the order of the Court of first instance as regards the three creditors, who were impleaded as respondents, and who had an opportunity of contesting the grant of the protection order. As regards the other creditors including the appellant before us, the order of the Court of first instance became final. As between them and the insolvent it was the only operative order. It follows that the order of the insolvency Court of appeal must be limited to the debts due to the three creditors, who had been impleaded and as against whom the order of the first Court was set aside. In this view the lower appellate Court was not right in reversing the order of the first Court which allowed process to issue in execution of the appellant's decree against the insolvent. Accordingly we allow this appeal, set aside the order of the lower appellate Court and restore that of the Court of first instance. The appellant shall have his costs from the

respondent.

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