

Kesho Das Vs. Anup Kumar

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Court : Allahabad

Decided On : Apr-25-1917

Reported in : (1917)ILR39All547

Judge : Henry Richards, C.J. and ;Pramada Charan Banerji, J.

Appellant : Kesho Das

Respondent : Anup Kumar

Judgement :

Henry Richards, C.J. and Pramada Charan Banerji, J.

1. This appeal arises out of an insolvency matter. An application was made by one Jamna Das, to be adjudicated an insolvent. Lala Anup Kumar had obtained a decree against Jumna Das and he had attached property of the judgement-debtor and the property was about to be sold. Swami Kesho Das, alleged to be another creditor of Jamna Das, made an application to the District Judge contending that if the property was sold at the suit of Anup Kumar, the other creditors would be prejudiced, because Anup Kumar would probably get a larger portion of the assets. He prayed that pending the disposal of the insolvency application the sale proceedings pending in the Subordinate Judge's court should be stayed. The learned Judge in a somewhat summary manner, made the following order: 'The application is therefore allowed. Injunction will issue staying the sale pending the result of the insolvency petition.' The present appeal is by Lala Anup Kumar

against this order. It is an admitted fact that Jamna Das was not at the date of the order adjudicated an insolvent (apparently even up to the present he has not been so adjudicated). It seems to us that the order of the court below was wrong. The only provision which by any possibility could give jurisdiction to the District Judge is Section 47 of the Provincial Insolvency Act which incorporates certain provisions of the Code of Civil Procedure. It is argued that the District Judge in an insolvency matter has the same powers which a Civil Court has, and inter alia power to issue an injunction where property is in danger of being wrongfully sold under a decree. But it cannot be said that this property.(which is admittedly the property of the judgement-debtor) was about to be wrongfully sold in execution of the decree. Therefore this was not a case in which the Civil Court could have issued an injunction, and therefore (even on the assumption that the court in an insolvency matter has jurisdiction to issue an injunction to prevent one of the creditors executing his decree) it is not a case in which an injunction ought to or could legally have been issued. It is quite clear that the judgement-creditor was entitled to pursue all his legal rights and remedies in executing his decree save so far as he was restricted by the provisions of the Insolvency Act. Section 35 provides that 'where the execution of a decree his issued against any property of a debtor which is saleable in execution and before the sale notice is given to the court executing the decree, that the order of adjudication had been made against the debtor, the court shall, on the application, direct the property, if in the possession of the court, to be delivered to the receiver.' This section and the preceding Section 34 only apply when there has been an adjudication of insolvency or the appointment of a receiver. In the present case there has been neither an adjudication in insolvency nor the appointment of a receiver. We must allow the appeal, set aside the order of the court below and dismiss the application with costs in both courts to be paid by the opposite party.