

Kunj Bihari Lal Vs. Munnu Lal

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Court : Allahabad

Decided On : May-01-1922

Reported in : (1922)ILR44All605

Judge : Piggott and ;Walsh, JJ.

Appellant : Kunj Bihari Lal

Respondent : Munnu Lal

Judgement :

Piggott and Walsh, JJ.

1. The court of the District Judge of Aligarh sitting in insolvency had before it an appeal from a decision of the Subordinate Judge of that place in the exercise of insolvency jurisdiction, by which certain questions arising under Section 4 of the Insolvency Act, No. V of 1920, had been decided in favour of the Receiver in bankruptcy for the benefit of the general body of creditors. The District Judge did not hear or dispose of the appeal on the merits. He recorded a finding, if it can be called a finding, that the questions raised by the pleadings of the parties in this matter were of such a nature that they ought to be decided by a regular suit and not in the course of insolvency proceedings. On this ground alone he allowed the appeal, set aside the decision of the Subordinate Judge and gave certain directions to the Receiver. A little more than two weeks later the Receiver petitioned the District Judge, pointing out, in the first place, that it was impossible

for him to comply precisely with the directions which had been given him. In issuing those directions the District Judge had overlooked the fact that possession had passed under the transaction which the Receiver was seeking to impugn, so that a suit for a mere declaration would not be maintainable. The Receiver asked the District Judge, in effect, to reconsider his own position and submitted that the view which the District Judge had taken regarding the powers and duties of an insolvency court in a matter of this sort, was a mistaken one and not in accordance with the latest decisions of this Court. Reference has since been made to the case of *Shikri Prasad v. Aziz Ali* (1921) I.L.R. 44 All. 71, which was published after the District Judge had passed his first order on the appeal. The District Judge issued notice to the opposite party and, after hearing both parties, passed an order granting a review of his own previous judgment and fixing a date for hearing and determining the appeal on the merits. We have before us an appeal against that order, and a number of legal objections have been raised on both sides. We are content to say that, in our opinion, the District Judge had jurisdiction to review his own order, because Section 5 of the Provincial Insolvency Act, No. V of 1920, gave him, when sitting as an appellate court, the same powers under the Code of Civil Procedure which he would have had if he had been sitting to hear any ordinary appeal. On the other hand, it has been questioned before us whether there is any right of appeal from this order granting review of judgment, or whether, assuming such right to exist, it is not bounded by the provisions of Rule 7, Order XLVII, of the Code of Civil Procedure. We may note that the appeal before us does not purport to be preferred under Order XLIII, Rule 1(w), of the Code of Civil Procedure, but under Section 75(3) of the Provincial Insolvency Act, No. V of 1920, the leave of the District Court having been obtained for the purpose. We think, however, in dealing with an appeal of this sort, we ought in any case to be guided by the principles laid down in the Code of Civil Procedure. We are satisfied that the first order passed by the District Judge on the appeal before him was a mistaken and unfortunate order and that it was proper in the interests of justice that he should proceed to hear and dispose of the appeal before him on the merits, as he is anxious to do. He will have full jurisdiction in the matter when he comes to hear the appeal, and if in his opinion there has been anything unsatisfactory in the procedure of the Subordinate Judge sitting as a trial court,

that is a matter which can be considered and gone into at the hearing of the appeal. We are further satisfied that under the Code of Civil Procedure this order granting a review of judgment could not be questioned under any of the provisions of Rule 7 of Order XLVII of that Code. On the whole, the conclusion we come to is that the order in question granting review is not one with which we ought to interfere.

2. The result is that we dismiss this appeal with costs.

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