

Mulchand Vs. Rajdhar

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Court : Allahabad

Decided On : Jun-19-1925

Reported in : AIR1925All735

Appellant : Mulchand

Respondent : Rajdhar

Judgement :

1. The appellant before us is the decree-holder Mulchand. He is represented by Dr. Katju. The respondent Rajdhar is unrepresented. In this case the respondent on the 28th of June, 1913, was declared an insolvent on his own petition. By the adjudication order Mulchand, the present appellant, was given permission to sue and to execute, but this was limited by the condition that the proceeds were to be deposited with the Receiver. In pursuance of this permission, Mulchand obtained a decree on the 18th of February, 1914. On the 10th of September, 1914, he was entered in the schedule of creditors under Section 33; but he did not proceed to attempt to execute his decree, and it is indeed difficult to see how he could have proceeded, when the property of the insolvent was wholly vested in the Receiver. To execute the decree against the Receiver, obtain payment of his debt, and then to re-deposit it with the Receiver in pursuance of the conditions laid down in the order would have been a futile proceeding. During the subsequent years, certain dividends were paid by the Receiver in which Mulchand shared. The last dividend, was paid on the 29th of July, 1921. On the 30th of November, 1921 an annulment order was passed apparently under Section 43(1) as a result of which nobody

having been specially appointed under Section 37, the remaining property re-vested in the debtor Rajdhar. On the 7th of July, 1923, Mulchand applied to execute his decree for the balance. His application has been dismissed by both Court; both of which held that Mulchand having been granted permission to sue and execute under Section 28 Clause (2) was debarred from invoking Section 78 to extend limitation, that section being expressly inapplicable to a case where a party is permitted under Section 28, Clause (2) to take proceedings. With this finding we are unable to agree. The permission to execute was one that was not only not acted upon but on which it was (in the circumstances) impossible to act, and was therefore ineffectual to exclude the unfettered operation of Section 78. We hold, therefore, that the period between the adjudication and annulment should have been deducted from the period allowed for limitation.

2. We, therefore, set aside the orders of both the lower Courts and remit the case to the First Court for disposal according to law. The appellant here will have his costs in the lower Appellate Court and in this Court including in this Court Counsel's fees on the higher scale. The costs in the First Court will abide the result.