

Jagmohan Narain Vs. Grish Babu

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Court : Allahabad

Decided On : Apr-15-1920

Reported in : AIR1920All210; (1920)ILR42All515; 58Ind.Cas.557

Judge : Tudball and ;Sulaiman, JJ.

Appellant : Jagmohan Narain

Respondent : Grish Babu

Judgement :

1. This appeal arises out of insolvency proceedings, Apparently there was a partnership firm which, at the time of the application for adjudication, consisted of two partners, Banke Behari Lal and a minor called Grish Babu, Certain creditors applied for an adjudication, not that the firm itself had gone bankrupt, but that the two persons who constituted the firm had become bankrupt and should be adjudged insolvents. The application being in this form, the Judge separated the case into two parts. The case of Banke Bahari Lal has been settled otherwise. notice was issued to the minor's mother, but nobody appeared and the Judge passed a final order declaring the minor to be an insolvent Subsequently an application was made on behalf of the minor that he could not legally be declared an insolvent and, therefore, the order should be annulled under Section 42 of the Provincial Insolvency Act. This was opposed. The District Judge has held that a minor cannot be declared an insolvent and has annulled the adjudication in the case of the minor, One of the creditors has appealed here. The point is already

covered by a decision of the Calcutta High Court to be found in the case of Sanyasi Charan Mandal v. Asutosh Ghosh 26 Ind. Cas. 836 : 42 C. 225. The portion of the judgment which covers this point is to be found at page 231 Page of 42 C.-- Ed. As the learned Judges who decided the case have pointed out, Section 247 of the Indian Contract Act is very clear. It sets forth that 'a person who is under the age of majority according to the law to which he is subject may be admitted to the benefits of a partnership but cannot be made personally liable for any obligation of the firm, but the share of such minor in the property of the firm is liable for the obligations of the firm.' If the application had been directed simply against the minor's interests in the firm, there would have been no difficulty. The law is perfectly clear. The present application is directed against the minor himself personally and the order of adjudication is clearly wrong in view of the terms of Section 247 of the Contract Act. It is urged that the District Judge had no power to annul the adjudication. We do not think there is any force in the contention, for the section clearly says that where in the opinion of the Court a debtor ought not to have been adjudged insolvent the Court shall, on the application of the debtor or of any other person interested, annul the adjudication.' It is obvious that in the present case the minor ought not to have been adjudged an insolvent, and the Court, therefore, had power to annul the adjudication. There is, therefore, no force in this appeal. It is still open to the creditors to make a proper application against the firm and the minor's interests in that firm, We make no order as to costs as the opposite party is not represented.