

In Re: Prafulla Chandra Mitra

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Court : Kolkata

Decided On : Jul-13-1972

Reported in : AIR1973Cal99

Judge : Hazra, J.

Acts : [Presidency Towns Insolvency Act, 1909](#) - Section 21; ;Code of Civil Procedure (CPC) - Order 21, Rule 41

Appeal No. : Case No. 4 of 1971

Appellant : In Re: Prafulla Chandra Mitra

Advocate for Def. : Ahin Chowdhury and ;Gopal, Advs., Law led by S.K. Acharya, Adv.

Advocate for Pet/Ap. : B.K. Bachawat and ;S.C. Ukil, Advs.

Disposition : Petition allowed

Judgement :

ORDER

Hazra, J.

1. The insolvent, in this case is one Prafulla Chandra Mitra. An order of adjudication was passed on February 16, 1971 by this Court on his own

application. This application is made by the decree-holder M/s. Coal Products Pvt. Ltd. for annulment of the order of adjudication dated February 16, 1971 under Section 21 of the Presidency Towns Insolvency Act, 1909 (Act III of 1909). The relevant portion of Section 21 is as follows:

'Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent are paid in full, the Court shall, on the application of any person interested, by order annul the adjudication'.

2. The case of the decree-holder, Coal Products Pvt. Ltd., is that the debtor in this case, ought not to have been adjudged Insolvent. The learned counsel for the petitioner Mr. B. K. Bachawat placed before me certain facts which appear from the petition and affidavits of the parties and the records and proceedings of this matter and submitted that I should, in the facts of this case, as admitted or proved in this application and in the insolvency proceedings, annul the order of adjudication.

3. The relevant facts relied on by Mr. Bachawat are set out hereunder:

4. On July 2, 1967 a decree was passed by the Court of appeal in favour of the petitioner. Thereafter on July 10, 1968 an application was made for execution by the petitioner for examination of the judgment-debtor and at the request of the judgment-debtor the matter was adjourned from time to time. On February 4, 1969 the judgment-debtor Prafulla Chandra Mitra made an application under Section 13(1) of the Provincial Insolvency Act, 1920 in the Court of the District Judge, 24-Parganas, Alipur being Insolvency Case No. 4 of 1969.

5. In the petition, the said judgment-debtor, Prafulla Chandra Mitra, gave particulars of pecuniary claims and particulars of creditors and decree-holders. He also gave schedule of particulars of his properties. On May 2, 1969 the judgment-debtor Prafulla Chandra Mitra made a petition for amendment in the Insolvency Case No. 4 of 1969 in the Court of the District Judge at Alipore and stated that through inadvertence he omitted to include his undivided 2/11th share in the property at 5/C, Ramkrishna Lane, Calcutta.

6. M/s. Coal Products Pvt. Ltd. filed an affidavit of objection on March 28, 1969 to the petition for Insolvency by the judgment-debtor in the Alipore Court. Thereafter on February 16, 1970 and on February 18, 1970 the judgment-debtor Prafulla Chandra Mitra was examined in the said insolvency case. On March 9, 1970 the petition for adjudication was dismissed. A judgment was delivered by Mr. S. N. Koley, Addl. District Magistrate/Judge. Alipore and in the judgment the learned Additional District Judge said that the petitioner was not a resident of any local area under the jurisdiction of the Court of the District Judge, 24-Parganas at the time of the presentation of the Insolvency petition. Accordingly, the District Judge. 24-parganas had not the territorial jurisdiction to entertain the insolvency petition. The learned Judge refrained from making any observation with regard to the question whether the petitioner is unable to pay his debts or whether the insolvency petition contains particulars of all his properties. The judgment-creditor Coal Products Pvt, Ltd-, in the meantime, proceeded with the application for execution of the decree obtained by it by examination of the judgment-debtor under O. 21, R. 41 of the Code of Civil Procedure and the execution matter appeared in the list of this Court for hearing from time to time. The judgment-debtor failed to attend the Court, and on February 2, 1971 a warrant of arrest was directed to be issued and the Sheriff was directed to act on the signed copy of the minutes. The matter was mentioned on behalf of the judgment-debtor and this Court directed that the judgment-debtor should appear in Court on February 19, 1971. On February 2, 1971 the judgment-debtor Prafulla Chandra Mitra made a second application for adjudication before this Court being case No. 4 of 1971 and obtained an order of adjudication on the same day.

7. The application before this Court for being adjudged as insolvent was filed by Prafulla Chandra Mitra on February 16, 1971. Certain statements which were made by him in this application for an order of adjudication, are relevant for the purpose of this application. The relevant portion of the said application for adjudication order is as follows:

'I, Prafulla Chandra Mitra at present residing at 5/C. Ramkrishna Lane, Calcutta 3, and lately residing at Gaipur, District 24-Parganas and formerly carrying on coal supply business at 5/C. Ram-krishna Lane under the name and style of P. C. Mitra

& Co from 1921 to 1962 and at present of no occupation and being unable to pay my debts which exceed Rs. 500/- and having within the last year ordinarily resided at 5/C, Ramkrishna Lane in the town of Calcutta within the Ordinary Original Civil Jurisdiction of this Hon'ble Court hereby petition this Court that an adjudication order may be made in respect of my estate and that I may be adjudged insolvent.

There is at present no petition for adjudication by or against me pending in this or any other Court.

This is my first petition in insolvency.

The business was closed about 8 years ago in the year 1962 and the books of accounts etc. of the said business were not properly preserved and therefore, damaged and ultimately destroyed'

8. On the same day namely, on February 16. 1971 Prafulla Chandra Mitra made a statement before the Official Assignee. He stated that he was aged 78 years and resident of 5/C, Ramkrishna Lane. Calcutta. In this statement he stated as follows:

'In or about 1921 I started my own business of coal supply under the firm name and style of P. C. Mitra & Co. Since then I did business all and sundry and sometime in the year 1962 I had to close my said business due to losses in my said business and in the share market. Besides that I also had to incur considerable costs to defend myself in various litigations instituted by my creditors. The house at which I am presently residing is a lease hold property which I along with my co-sharers let out to tenant and I receive Rs. 150/- being my share of rent in the said premises as also from 16/6. Bagbazar Street and 9 Anil Roy Road. Calcutta. Besides the said lease-hold interest I have also 1/11th undivided share in 9. Anil Roy Road. P. S. Tollvunge, Calcutta and un-divided 1/2 share of a hut situate on the land measuring 1.02 acre in mouza Gai-ipur. P. S, Habra. I have six sons and three daughters and all my said daughters are married. I am completely dependent on my sons and as my income is inadequate to maintain myself. I have to take money from my sons.

I have neither any banking account nor any insurance policy. I have no other property except as above.

Since the stoppage of my business in 1962 I have not been able to take any care of my books of account due to my old age worries and anxieties and litigations and penury and for such neglect the said books of account have been destroyed and/or mislaid and/or moth-eaten.'

9. Relying on the facts stated above Mr. B. K. Bachawat made his submission as hereunder: (a) the order of adjudication in this case has been made ex parte by the learned Master; (b) necessary averment to constitute jurisdiction has not been made; (c) rules of the High Court, Original Side. Part II Form No. 7-A at page 816 have not been complied with. Mr. Bachawat invited my attention to the relevant portion of Form No. 7-A (Rule 66) of the Rules of the High Court, Calcutta Vol. II which is as follows:

'Form No. 7-A (Rule 66)

Debtor's Petition

I,.....--.....

. *** ..

There is at present no petition for ad-Indication by or against me pending in this or any other Court.

This is my (first, second or as the case may be) petition in insolvency (if not the first give particulars of previous petitions and the manner in which they were disposed of and also if any previous adjudication was annulled for want of prosecution).

I never kept any books of account and have no such books. I have deposited in the Official Assignee's office my books of account for the years as will appear from the annexed receipt (if books have been kept and are not produced give reasons for not doing so and state in whose custody they are at present.)

Dated the day of 19

(Signature).'

10. This form, according to Mr. Bachawat has not been complied with. Mr. Bachawat then placed before me certain facts as to suppression made by the said Prafulla Chandra Mitra. These facts are as follows: (a) The petitioner Prafulla Chandra Mitra deliberately suppressed that the petition before the High Court was not the first application and alleged in the petition before the High Court that that was the first application; (b) The petitioner alleged in the petition before this Court that he ordinarily resided at 5/C. Ramkrishna Lane. Calcutta, whereas in the petition before the Alipore Court he alleged that he ordinarily resided at Guipur 24-Parganas. (c) In the petition before the High Court, the petitioner alleged that the business was closed in 1962. This statement as to closure of business in 1962 was also made in the petition for the order of adjudication on February 16, 1971. Similar statement was also made on February 16, 1971 before the Official Assignee that the business was stopped in 1962. But this statement must be untrue and false, because, the said judgment-debtor Prafulla Chandra Mitra in his cross-examination before Shri S. N, Koley. Additional District Judge, stated as hereunder;

'No brick field is running there now. I closed the brick field in 1967 or 1968. I did not go there since the closure'.

In the affidavit-in-opposition affirmed by Prafulla Chandra Mitra on May 11, 1971 in this Court in paragraph 8 he stated as follows:

'I say that the said sum is due to the Collector, 24-Paraganas in respect of my coal depot at No. 35-A. Ultadanga Railway Siding and the said business of coal depot was closed down in or about 196 '.

The petitioner Prafulla Chandra Mitra again suppressed that he carried on business under the name and style of Yubak Byabasayee Dal and Coal depot at Ulta-danga Railway Siding as will appear from paragraph 8 of the affidavit-in-opposition.

11. So far as the books of account are concerned the statement made in the Insolvency Petition in the High Court was that the books of account of the said business were not properly preserved and, therefore damaged and ultimately destroyed. The statement made before the Official Assignee is that 'since the stoppage of my business in 1962 I have not been able to take any care of my books of account due to my old age, worries and anxieties and litigations and penury and for such neglect the said books of account have been destroyed and/or mislaid and/or moth-eaten'.

12. Mr. Bachawat submitted that from the statement of Prafulla Chandra Mitra it is clear that he carried on business not up to 1962 but up to 1968 and he carried on also other business apart from the business he disclosed in the petition before the High Court. He had books of account and maintained the same as will appear from the affidavit filed by Bholanath Bose, Income-tax Officer. District I & II affirmed on September 10. 1971. Paragraph 3 (a) of the affidavit of Bholanath Bose is as follows:--

'From the relevant assessment register it appears that the assessments of the said Prafulla Chandra Mitra upto the assessment year 1965-66 have been completed and return for the year 1966-67 was filed in March. 1971. The assessment for the said year has not yet been completed and the same still remains pending'.

13. Paragraph 3(b) of the affidavit of Bholanath Bose. Income-tax Officer, is as follows:

'I have further caused searches to be made in the relevant records in possession of this Department and have not been able to find out any return submitted after the said assessment year. I further state that from the balance sheet filed by and/or on behalf of said Prafulla Chandra Mitra in respect of the assessment year 1965-66. i. e. to say for the accounting year ended on April 13, 1965 it appears that the following was shown as the assets belonging to the said assessee.....

14. From the said affidavit of the Income-tax Officer, it appears that balance sheets were there in possession of Prafulla Chandra Mitra in respect of assessment year 1965-66, i. e.. upto the accounting year ending 13th April, 1965.

When balance sheets were there upto 1965, the books of account must be there at least upto 1965, otherwise how the balance sheets could be prepared? Therefore, conditions in Form 7-A of the rules of the Original Side. High Court, which provides that.

'in a debtor's petition it should be stated either the applicant never kept any books of account and have no such books, or he must say that he has deposited in the official assignee's office his books of account for the year or if the books have been kept and are not produced, the petitioner must give reasons for not doing so and state in whose custody they are at present' are not complied with.

15. This is a very important averment according to the rules of the High Court and this averment must be stated in the debtor's petition; but although the debtor had in his custody such books at least upto the year 1965. he has not complied with the rules. On the other hand, he alleged that his business was closed in 1962 and did not produce any books at all.

16. With regard to the books of account Mr. Bachawat stated that although the said Profulla Chandra Mitra made allegations in petition before the High Court that the books of accounts have been destroyed and/or mislaid and/or moth-eaten, but no such allegation was made in the petition, in the Court of the District Judge at Alipore on or about February 4, 1969.

17. Mr. Bachawat submitted that the insolvent has made material mis-statement: (a) as to the names of the business, (b) as to the period of the business, (c) he did not state that this is second application for adjudication and (d) he did not state anything about the existence of his other business.

18. Again, in the list of assets given in the High Court he did not mention his interest in 5/C. Ram Krishna Lane. Calcutta which he stated in the petition in the Alipore Court namely that he had 2/11th Share in premises No. 5/C, Ram Krishna Lane. Calcutta.

19. Regarding Anil Roy Road property, Profulla Chandra Mitra stated in the petition in the High Court that he had 2/77th share. But in the statement before the

official assignee he stated that he had 1/11th undivided share,

20. Regarding 16/6 Baghbazar Street. Calcutta, in his evidence before the District Judge at Alipore on February 16, 1970 Prafulla Chandra Mitra stated that land comprised in 16/6 Baghbazar Street Calcutta was taken on lease in the name of his wife about 30 years ago. Land comprised in the premises was purchased by Prakash Chandra Maiumdar. brother-in-law of the insolvent who executed a deed of gift in favour of his wife. It is stated in the petition before the High Court that he had undivided 1/11th share. In the petition in the Alipore Court so far as the Anil Roy Road is concerned he stated that he had undivided 2/77th share.

21. Mr. Bachawat relied on 21 Cal WN 298 = (AIR 1917 Gal 117). (Mal Chand v. Gopal Chandra Ghosal) and submitted that the insolvency petition of Prafulla Chandra Mitra is an abuse of the process of the Court, and, therefore, the order of adjudication should be annulled on this ground. This is a case under Presidency Towns Insolvency Act, The headnote of the report runs thus:

'The Court has power to refuse or annul an adjudication order when the presentation of the petition for insolvency amounts to an abuse of the process of the Court'.

22. Sanderson. C. J. in this case said that

'the Court had jurisdiction under the Act to make the order for annulment, if it thought that the application for bankruptcy was made as an abuse of the process of the Courts; or to use the words of the learned Judge Mr. Justice Vaughan 'for a purpose foreign to the Bankruptcy Laws'.

23. The fact of the case before Sanderson, C. J. is of course a little different because, there the insolvency petition was made for the third time and for the purpose of preferring an old creditor and it appears that the judgment-debtors wanted to shelter themselves from such proceedings as the creditors may take against them. Mookerjee, J. also said that under the law of England it is well settled that when the presentation of a petition is an abuse of the process of the Court, the Court may decline to make any order on it or may rescind the receiving

order made on the petition. At page 304 Mookherjee. J. said

'if an application of this character were entertained, the result would be inevitable that an insolvent would be encouraged to make an application for insolvency to obtain an adjudication order, to take no substantial steps thereafter, or to abandon the proceedings and when pursued by his creditors again to seek relief in the Insolvency Court whenever convenient to him'.

24. Mr. Bachawat invited my attention to Section 15. Sub-section (3) and submitted that on making of an order on a debtor's petition for adjudication unless the Court otherwise directs, the debtor shall produce all his books of accounts and file such list of creditors and debtors and afford such assistance to the Court as may be prescribed failing which the Court may dismiss the petition.

25. Mr. Bachawat submitted that the whole purpose of the debtor here is to mislead and to conceal from the Court the books of account and suppress his properties. He is not making true and faithful disclosure of his properties and concealing the books of account Mr. Bachawat next cited AIR 1930 Mad 544, (R. Viswanatha Chetty v. Official Assignee of Madras) and relied on a passage et P. 546 which runs thus.

'We do not think it makes any difference whether the allegation is deliberately untrue or whether the debtor's misstatement is due to carelessness or to an honest mistake'.

He submitted that it does not matter whether the debtor has wilfully made suppression or not but the fact remains that he did suppress and made untrue and false statements.

26. The next case cited by Mr. Bachawat is 27 Cal WN 739 - (AIR 1923 Cal 703), (In re Ballav Chand Serowgee). The headnote of this case runs thus:

'An insolvent was adjudicated on his own petition but having failed to apply for his discharge within the time provided by the Act his adjudication was annulled. Subsequently on his own application, on the same facts and materials his second adjudication took place, and a creditor applied to annul the adjudication'.

It was held that the presentation of the second insolvency petition by the debtor was an abuse of the process of the Court, and the second adjudication order founded upon it must be annulled.

27. The judgment in the aforesaid case was delivered by Greaves. J. and it appears that the decision of the Privy Council reported in 44 Ind App 11 = 21 Cal WN 497 = (AIR 1964 PC 64). (Chhatrapat Singh Dugar v. Kharag Singh Lachmiram) was placed before Greaves. J.. but Greaves. J. said that the facts of that case before the Privy Council stand on a different footing.

28. In the aforesaid case, the debtor's petition for an order of adjudication under the Provincial Insolvency Act was dismissed on the grounds of the abuse of the process of the Court. The Privy Council was considering questions 15 and 16 of the Provincial Insolvency Act and said as follows:

'It is to be regretted that the Courts in India allowed themselves to be influenced by this plea instead of being guided to their decision by the provisions of the Act, In clear and distinct terms the Act entitles a debtor to an order of adjudication when its conditions are satisfied. This does not depend on the Court's discretion but is a statutory right and a debtor who brings himself property within the terms of the Act is not to be deprived of that right on so treacherous a ground of decision as an 'abuse of the process of the Court'.'

29. Under Section 21 of the Presidency Towns Insolvency Act where in the opinion of the Court a debtor ought not to have been adjudged an insolvent on the application of any creditor, the Court shall annul the adjudication.

30. What is meant by the words 'a debtor ought not to have been adjudged an insolvent'? The words 'abuse of the process of the Court' do not appear in Section 21 but if there is abuse of the process of the Court, then the Court can form an opinion that a debtor by reason of the abuse of the process of the Court, ought not to have been adjudged insolvent.

31. What is 'abuse of the process of the Court?'

32. As to the meaning of the words 'abuse of the process' in Halsbury's Laws of England, Third Edition, Vol. VIII. para. 27, page 16, it appears as follows :

'Abuse of the process: ... Abusing the process of the Court is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious, or oppressive, the ordinary remedy in such a case being to apply to strike out a pleading or stay the proceedings, or to prevent further proceedings being taken without leave. Beyond this the Court has jurisdiction to punish abuse of the process by committal or attachment as a contempt.'

33. In Halsbury's Laws of England, Third Edition Volume II. Article 691 at page 354, the following passage occurs:

'691. Orders which should not have been made: An adjudication order made under proceedings which are an abuse of the process of the Court or foreign to the purpose of the Bankruptcy Acts may be annulled, and so may an order made under a defective petition which has not been amended before the making of the receiving order or adjudication order'.

34. As to the meaning of the words 'debtor ought not to have been adjudged insolvent' Mr. Bachawat contended that it means that adjudication order should not have been made. He submitted that there may be variety of reasons: (a) lack of bona fide; (b) suppression of material facts; (c) the rules, forms and procedures are not complied with and (d) any other ground when party ought not to have been adjudged insolvent. Mr. Bachawat relied very much on the non-compliance of the rules framed by the High Court being Rule 66 and Rule 67. He submitted that under Rule 66 a debtor's petition shall be in forms Nos. 7-A and 7-B as prescribed by the High Court. Under Rule 67 the petition presented by a debtor shall also state whether any previous petition has been presented to the Court either by or against the debtor with particulars of any such petition and the manner in which it was disposed of.

35. With regard to Form No. 7-A, prescribed by the High Court under R. 66 Mr. Bachawat submitted that it should be stated whether the debtor's petition for adjudication is the first, second or as like case may be petition in insolvency. If it is

not the first petition then particulars of previous petitions and the manner in which they were disposed of has to be stated. Mr. Bachawat contended that this was not done by the debtor in the instant case. He said that admittedly the forms are not complied with and the debtor's petition was defective.

36. Mr. Bachawat next contended that insolvency law is to protect not only the debtors but also the interest of the creditors and as such the debtor must disclose all his properties; but what has been done in this case is that the debtor omitted to disclose his valuable properties. One property which belonged to the debtor was completely omitted. This is 5/C, Ram Krishna Lane property. This is a very material suppression apart from other suppression as to the nature or interest of the debtor in respect of other properties. Further the order of adjudication was obtained on material irregularity, fraud and suppression. The debtor failed and neglected to produce his books of account.

37. In this connection Mr. Bachawat referred to : [1958]1SCR257 and submitted that the law of insolvency is calculated to advance the interest of the business community. On the one hand it protects the creditors by compelling the insolvent to place all his assets at the disposal of the Court without concealing his assets; similarly it protects the interest of the honest debtor,

38. The Insolvency Act he submitted, is meant to protect an honest debtor if two conditions are fulfilled: (a) He is not dishonest and (b) he discloses all his properties.

39. Mr. Bachawat relied on AIR 1931 All 162 (Anand Prakash v. Narayan-das Borilal) at p. 168 which says as follows:

'The Insolvency Act is designed to give relief to a debtor. When a man has incurred several debts which he is unable to pay, the Insolvency Court grants him relief from being harassed by his creditors if. to speak, broadly two conditions are fulfilled: One is that the debtor has not done any act of dishonesty with respect to the debts and the second is that he gives over the entire property that he possesses (excepting those enumerated in Sub-section (5)r Section 28) into the hands of the Court'.

40. In this connection Mr. Bachawat also relied upon Section 15(3) of the Presidency Towns Insolvency Act and said that on making of the order admitting the petition a debtor shall, unless the Court otherwise directs, produce all his books of account and file the list of creditors and debtors and afford such assistance to the Court as may be prescribed, failing which the Court may dismiss the petition.

41. The contention of Mr. Bachawat is that by reason of the above-mentioned defaults, breaches and non-compliance with the rules and procedures of this Court, the debtor ought not to have been adjudged insolvent.

42. Mr. Gopal Law appearing for (the insolvent Profulla Chandra Mitra submitted that I should not decide the case on affidavits but try this matter on evidence. I granted opportunity to Mr. Law to produce his client as witness, if he so desired, but he did not do so, and stated that his client was not available. I think that this matter can be decided on facts which are either admitted or proved on the petition and affidavits and on the matters appearing on record. Mr. Law relied On AIR 1931 All 331 (Mohan-lal v. Madhava Prasad). The head note of this case runs as follows:

'The debtor realised certain debts due to him before presenting the insolvency petition and nevertheless showed the debts as still due to him. The court further found him to be dishonest in his dealings and that he was entering recklessly into transactions and incurring debts which he never hoped to pay. Upon these grounds the Judges annulled the adjudication. It was held in this case that the facts found might furnish grounds for refusing an absolute order of discharge, but they furnished no grounds for dismissing an insolvency petition and that consequently no legal grounds for annulling an adjudication. The learned Judges relied on the decision of the Privy Council in 44 Ind App III = 44 Cal 535 = (AIR 1916 PC 64).'

43. On the materials placed before me by Mr. Bachawat learned counsel for the petitioner, it seems to me that (the debtor Profulla Chandra Mitra is taking recourse to insolvency proceedings not for the purpose of Insolvency Law but for some other purpose.

44. In Ringwood's 'Principles of [Bankruptcy]' 18th Edn. there is a passage which is appropriate to quote in this connection,

'The Law of Bankruptcy is designed to meet the case of an individual who has no reasonable prospect of being able to pay his debts. Its aim is two-fold, firstly to distribute the debtor's property among the creditors in the most expeditious and economical manner, and secondly, to give the debtor a new start in life, freed from the demands of his creditors, when he has not been guilty of certain serious offences.

Both of these objects are beset with difficulties. What is the last resources of an honest man in misfortune is a Rreal opportunity for the rogue,

The task of weaving a mesh coarse enough to let the honest man through, but fine enough, to catch, the scoundrel.has proved to be one of extraordinary difficulty, and the tendency to tighten up the bankruptcy law has been pronounced in recent years.'

45. From the facts appearing from the records of this case, it appears to me that not only there is suppression of several materials by the debtor, but the debtor has also not made the petition in conformity with the rules of this court. The rules provide that if it is not, the first petition for adjudication he must state so. But this he has not done. The rules also provide that he must either state that he never kept any books of account or if the books have been kept and not produced, he must give reasons for not doing so and state in whose custody they are at present. Here, in this case, the debtor has not given a correct statement and has not complied with the forms. In the petition for insolvency he stated that his books were not properly preserved end therefore, damaged and ultimately destroyed. Then in the statement before the Official Assignee he says that the books of account have been destroyed and/or mislaid and/or moth-eaten.

46. I am satisfied from the facts which are either admitted or proved in this case, that the debtor carried on business till 1968. He had books of account,

47. He prepared balance-sheet, There was Sales Tax certificate case being case No. 82-ST of 1967-68 for the recovery of sales tax for the year 1371 BS which corresponds to 1965-66.

48. From the affidavit of Income-tax Officer it appears that certain balance sheets ending 13th April, 1965 were filed. Therefore, no balance sheet could be prepared without having any books. The debtor did not comply with the statement necessary to be stated in Form No. 7-A, (Rule 66). The debtor himself stated in his evidence before the learned District Judge at Alipore that premises No. 9, Anil Roy Road was purchased in or about 1930. Admittedly he purchased this premises. But he stated that he executed a Deed of Gift in favour of his wife in 1946. A two storeyed building was constructed after the gift. The monthly rental of the said premises is Rs. 2,500/-. He gives different statement as to his interest in the several immovable properties. He is an old man and having regard to his age, I cannot believe that he wants to pay off all his debts through the insolvency proceedings and then apply for an order for his discharge. Nothing has been done by him as an honest debtor to pay off his creditors. Insolvency petition was made just at the time when application was made for his examination as judgment-debtor under Order 21, Rule 41 of the Code of Civil Procedure as to his means to payoff the debts. The debtor did not place the true facts in the insolvency petition but got an ex parte order for adiudication without stating that there was a previous petition for insolvency filed by him in the Alipore Court.

49. Under the facts of this case and for the reasons stated above, I am of opinion that in the instant case the debtor ought not to have been adjudged insolvent. I am also inclined to accept the contention of Mr. Bachawat that this is a case where the debtor has abused the process of this court in the premises the order of adjudication dated February 16, 1971 is annulled and the petition dated Feb. 16, 1971 be and the same is hereby dismissed. There will be no order as to costs.