

In Re: L. King and Co.

In Re: L. King and Co.

SooperKanoon Citation : sooperkanoon.com/854272

Court : Kolkata

Decided On : Mar-07-1911

Reported in : (1911)ILR38Cal542

Judge : Harington, J.

Appellant : In Re: L. King and Co.

Judgement :

Harington, J.

1. This is a matter in which an order has been made directing a Mr. James to attend here to be examined. The order was made in pursuance of the statute which directs this Court to act in aid of the Bankruptcy Court at home. Mr. James objects that he ought not to be examined because the order ought not to have been made. Inasmuch as the order was made ex parte, it is open to him to take the objection that the order ought not to be made, and that this Court had no jurisdiction in the matter before it to direct him to be examined against his will. The question to be considered and which has been argued at some length is whether on the materials before me this Court has jurisdiction to examine Mr. James under the provision of the law directing the English Court to authorise another Court to act in aid. Now the section dealing with this matter is Section 126 of the Indian Insolvency Act, which provides that all Courts having jurisdiction under this Act shall make such orders and do such things as may be necessary to give effect to

Section 118 of the Bankruptcy Act, 1883. It is necessary to refer to the Bankruptcy Act, Section 118, to see, what it is this Court has to give effect to. Now that section provides 'that every British Court elsewhere' - that is, outside of the United Kingdom - 'having jurisdiction in bankruptcy or insolvency, and the officers of those Courts respectively, shall severally act in aid of, and be auxiliary to, each other in all matters of bankruptcy, and an order of the Court seeking aid, with a request to another of the said Courts, shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either the Court which made the request, or the Court to which the request is made, could exercise in regard to similar matters within their respective jurisdiction.' The provision under which Mr. James could have been examined under the English Bankruptcy Act is contained in Section 27 of that Act, and it is that jurisdiction that this Court is asked to exercise. The objection taken by the learned Counsel for Mr. James is this: to get this jurisdiction there must be a request from the English Court asking this Court to act in aid and a letter of request from the one Court to the other ought to have been sent and that the order of the English Court presented by the Trustee in Bankruptcy is not sufficient to give this Court jurisdiction. On the best Consideration I can give to the matter, I think that contention is right. It appears to me that under Section 118 the jurisdiction, in respect of which this Court is asked to exercise its powers as a Court in aid, is given on the request of the English Court, and in the absence of a request by the English Court to this Court the jurisdiction cannot properly be exercised. To my mind the presentation, therefore, of a copy of the order of the Court by some other person is not sufficient. The order, therefore, I make is that this matter stand over for two months in order that if the English Bankruptcy Court thinks fit to give a letter of request to act in aid, the application may be renewed.