

In Re: Chuni Lal Oswal

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SooperKanoon Citation : sooperkanoon.com/856180

Court : Kolkata

Decided On : Apr-24-1902

Reported in : (1902)ILR29Cal503

Judge : Stephen, J.

Appellant : In Re: Chuni Lal Oswal

Judgement :

Stephen, J.

1. In this case there is an order under Section 36 and a rule under Section 26. It is argued that both of these are bad. In the first place, it is said that proceedings cannot take place under any part of Section 36, until after the day appointed for 'The hearing. I cannot agree with this contention, and it seems to me that the limitation relating to the appointed day is confined to the first part of Section 36, and that 'the words' and it shall also be lawful for the Court on those or any other occasions' are intended to receive a very wide application. I think the Court has power to proceed under this section as soon as there is an insolvent.

2. It has been further argued before me that the Court cannot proceed under Section 36 without' an application on the part of an assignee or by an admitted or established creditor. This contention also, I think, is unsound whether we take the words of the section itself or whether we take the purpose for which it was framed.

3. As regards the words of the section, I think the Court is to act on its own responsibility on information it may happen to receive from any quarter, and, if I am right in supposing that the Court may act as soon as there is an insolvent, it may plainly be advisable that the Court should act, before the parties concerned in the insolvency have ascertained their rights or formulated their claims.

4. As much therefore of the present proceedings as are framed under Section 36 are, I think, in order.

5. As regards the rule under Section 26, I think it was improperly granted. It was not granted on the application of the assignee, and no creditor has yet been admitted within the meaning attached to that phrase in the case *In the matter of Bucktwar Chund* (1896) 1 C. W. N. 328. It has been contended that there is an established creditor because the insolvency in this case is on a creditor's petition.

6. I do not think that this contention has any substance in it. The legal view of the petition is that the creditor has proved the debtor an insolvent, and no man can for present purposes be regarded as a creditor until his name is admitted to the schedule or until he establishes it there.