

In Re: Sarat Kumar Sen

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Court : Kolkata

Decided On : Aug-02-1899

Reported in : (1899)ILR26Cal973

Judge : Stanley, J.

Appellant : In Re: Sarat Kumar Sen

Judgement :

Stanley, J.

1. In this matter it has been clearly established that the insolvent procured two loans amounting together to Rs. 9,000 upon the false representation that the property which formed the security for the loans was free from all incumbrances. The property, or a portion of the property, had been mortgaged the year previously to secure a sum of Rs. 4,000. It is apprehended by the puisne mortgagee that the mortgaged property will not realise sufficient to satisfy the three mortgages, and he opposes the discharge of the insolvent upon the ground of the false and fraudulent representation made to him and on the faith of which he advanced his money. No other creditor is opposing the discharge of the insolvent. I regard the conduct of the insolvent as very reprehensible and I cannot overlook it.

2. Under the circumstances I grant a personal discharge as regards all the creditors save and except creditor No. 2, and as regards creditor No. 2 I shall apply the provisions of Section 51 of the Insolvent Act. It appears to me

reasonably clear upon the reading of that section of the Act that I have no power to order the immediate commitment of the insolvent inasmuch as the creditor No. 2 has not placed himself in a position to issue execution against the insolvent. In the case of *In the matter of Manoharji Hirji Beadymoney* (1868) 5 Bom. H.C. 0. C, 55, it was held that such an order of adjudication does not in itself operate as an order for the imprisonment of the insolvent, but the detaining creditor if he wishes to arrest the insolvent, for the period prescribed by the Court, must, if he has not already done so, place himself in a position to issue execution against the insolvent. Accordingly, I can only make a prospective order, viz., that as to creditor No. 2 the insolvent shall be entitled to be discharged as soon as he shall have been in custody at the suit of that creditor for the period of six months. The effect of this order may be that if the debt be satisfied out of the proceeds of the sale of the mortgaged properties or otherwise no proceeding may be taken by the creditor No. 2 to enforce this order; but I abstain altogether from saying that the effect of payment will be to relieve the insolvent from the penalty prescribed by this section.

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