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In Re: Abdul Samad

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Court : Kolkata

Decided On : May-09-1922

Reported in : 70Ind.Cas.468

Judge : Greaves, J.

Appellant : In Re: Abdul Samad

Judgement :

Greaves, J.

1. This is an application by one Mahomed Omari for an order that a certain order made by the Registrar in Insolvency, on the 12th April 1922, on the application of Messrs. J.F. Kendrew and Co., may be set aside.

2. The order of the 12th April was an order made by the Registrar in Insolvency under the provisions of Section 36 of the Insolvency Act directing Mahomed Omari's examination under that section. The order of the Registrar in Insolvency is attacked by the applicant on two grounds. First, it is said that, having regard to the provisions of Section 56, Messrs. J.F. Kendrew and Co., are not entitled to the order which has been made by the Registrar and, secondly, it is said that upon the merits no such order ought to have been made.

3. Counsel for the applicant has directed my attention to the evidence upon which the Registrar made his order under Section 36, and on reading that evidence I am

not prepared to disturb the order on that ground, but, so far as the first point is concerned, I think the application is entitled to succeed. Section 36 provides that the Court (in this case the Registrar) may, on the application of the Official Assignee, or of any creditor who has proved his debt, summon before it any person whom the Court may deem capable of giving information. What, it appears, has happened is this. Messrs. J.F. Kendrew's name appears as that of a creditor in the Schedule filed by the Insolvent and it appears that they have also submitted to the Official Assignee proof of their claim supported by an affidavit, but there has been no adjudication upon this claim, and, in my opinion, the words in Section 36 'any creditor who has proved his debt' mean not merely a creditor who has lodged proof of his debt but a creditor whose proof has been admitted by the Official Assignee under the provisions contained in Section 25 of the Second Schedule to the Insolvency Act. I think that no creditor is entitled to apply under Section 36.unless his proof has actually been admitted by the Official Assignee, and the mere fact that his name was included in the Schedule filed by the Insolvent and that so far his claim has not been challenged, does hot assist him if his debt has not been admitted by the Official Assignee so that he becomes a creditor who has proved his debt within the meaning of Section 36 of the Act.

4. The application, therefore, succeeds on this ground, and I set aside the order of the Registrar in Insolvency of the 12th April. Messrs. J.F. Kendrew must pay the costs of this application.

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