

In Re: Sital Prasad and ors.

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Court : Kolkata

Decided On : Jun-16-1916

Reported in : 37Ind.Cas.663

Judge : Greaves, J.

Appellant : In Re: Sital Prasad and ors.

Judgement :

Greaves, J.

1. This is an application on behalf of Gouri Sunker and the other partners in the firm of Kedarnath and Juggernath, who were adjudicated insolvents on the 29th January 1912, Gouri Sunker having been adjudicated on the 22nd November 1911. These two insolvency proceedings have been consolidated. The application now before me is to set aside the order of adjudication so far as these three persons are concerned, on the ground that they were infants at the, date when the orders of adjudication made, against them respectively were passed. It appears that an order was passed in the Court of the District Judge of Ghazipore under Section 7 of Act VIII of 1890 (The Guardians and Wards Act) on the 11th December 1909. These three persons were minors on that date and Gouri Sunker attained his, majority in the year 1916 and the other two infants will attain their majority in the years 1925 and 1928 respectively, and by virtue of the order of the District Judge of Ghazipore the age of majority of the infants will be 21. The

application is opposed by certain secured creditors, who have obtained an order for sale for the purpose of realising their securities under Section 2, Clause 18, of the Presidency Towns Insolvency Act and I was referred to two Sections of the Contract Act, viz., Section 68, which provides that if a person incapable of entering into a contract is supplied with necessaries the person supplying the necessaries is entitled to be reimbursed from the property of the person incapable of so contracting, and also to Section 247 of the Contract Act, which provides that a person who is under the age of majority may be admitted to the benefits of partnership but cannot be made personally liable for any obligation of the firm; and the argument addressed to me founded upon these two Sections was that the infants, who are rendered liable under these Sections, must be debtors, or otherwise there would be no right against their property under those Sections. I think that argument is not well founded. I do not think that the Sections presuppose that they are debtors. In the case of infants who are under a disability, the law in this country to prevent hardships arising in the case of supply of necessaries, or in the case of a family partnership, has provided special remedies against their property, but I do not think for a moment that they are debtors, and so the distinction that Counsel who appeared for the secured creditors sought to make with regard to the English case of *In re Jones, Ex parte Jones* (1881) 18 Ch. D. 109 : 50 L.J. Ch. 673 : 45 L.T. 193 29 W. R. 747. the passage to which he referred being at page 119, does not seem to me well founded. I do not think that the law contemplates that an infant should be adjudged an insolvent, although there is a passage in *Williams on Bankruptcy*, 11th Edition, page 4, in which it is suggested that in respect of judgment-debts or necessities an infant may be so adjudicated, but there is no decision which so lays down, and I do not propose to so decide in the absence of any authority for the proposition. My own view is that an infant cannot be adjudged an insolvent under any circumstances, and so I grant the application and set aside the orders of adjudication made against Gouri Sunker and the other applicants Kedarnath and Juggernath, So far as the costs of the secured creditors are concerned, they can add their costs, of their appearing here, to their securities, and I make no order against Raghubir or against the infants themselves. The Official Assignee will take his costs out of the assets in his hands.

