

In Re: Keshablal Dhar

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SooperKanoon Citation : sooperkanoon.com/875397

Court : Kolkata

Decided On : Jun-28-1932

Reported in : AIR1933Cal386

Appellant : In Re: Keshablal Dhar

Judgement :

Ameer Ali, J.

1. This is an application by the Official Assignee of Calcutta for directions. The directions asked for are not specified in the prayer to the petition. The matter arises in this way: Keshablal Dhar was adjudicated on 9th April 1923. Beereshwar Ghosh, the creditor, appearing on this present application, lodged his proof on 11th July 1923. Nothing apparently was done in the insolvency. On 23rd April 1928 the Official Assignee applied for and obtained an order for annulment on the ground that the insolvent had not applied for his discharge, the application being under Section 41, Presidency Towns Insolvency Act. The order was made with the direction that the money to the credit of the estate in the hands of the Official Assignee be kept pending the further order of the Court. I have not got the order before me, but that gives the sense of the direction. The sum to the credit of the estate was a sum of Rs. 903, and that is the sum which is now in question. The insolvent applied for payment to him of that sum. Apparently notice of that application was given to Beereshwar Ghosh, the creditor, who opposes. Keshablal Dhar claims the money under Section 23, Presidency Towns Insolvency Act, on

the ground that, by the terms of that section, unless there is a specific order vesting the fund in any other person for the benefit of the creditors, the fund reverts to and vests in the 'insolvent.' He further relies on the fact that, if compelled to sue, the creditors' claim is well barred by limitation.

2. In my view, the principle of the law is as follows: Where an adjudication is annulled by reason of the default of the insolvent, as in this case, the insolvent is to lose the benefit of the insolvency, but he is not to benefit by the annulment. The annulment is not for his advantage. I therefore agree with the ruling in *Jethaji peraji v. Krishnayya* AIR 1930 Mad 278, that normally, on an annulment under Section 41 being made, the fund should be vested in the Official Assignee or proper officer under the Act in force, and is so vested in him for the benefit of the creditors and may be dealt with as if the fund was being dealt with in the insolvency. Although the order in this case does not specifically vest the fund in the Official Assignee, I take it that such was the intention. In any event, the order kept the fund in suspense. Although I do not think it necessary, I am prepared now to make an order vesting this fund in the Official Assignee for the benefit of the creditors, and he will deal with it as indicated above. Having regard to the nature of the application, to the lapse of time and inactivity of the creditors, I propose to give Keshablal Dhar his costs of this application out of the assets, as also the costs of the creditor. The Official Assignee's costs will also come out of the assets. I certify for counsel. This for practical purposes will effectively dispose of the fund in question.