

In Re: Krishna Kishore Paul

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SooperKanoon Citation : sooperkanoon.com/876682

Court : Kolkata

Decided On : Jan-28-1931

Reported in : AIR1931Cal775

Appellant : In Re: Krishna Kishore Paul

Judgement :

Pankckridge, J.

1. This is an application on behalf of a creditor whose debt amounts to Rs. 11,761-8-3 to adjudicate Krishna Kishore Paul an insolvent.

2. This only difficulty in the matter is occasioned by the fact that on the 5th of this month the debtor was adjudicated in the District Court of 24 Perganas under the provisions of the Provincial Insolvency Act. I am asked to exercise the powers conferred upon this Court by the recently enacted Section 18-A, Presidency Towns Insolvency Act. Under that section it is open to this Court to stay any insolvency proceedings pending against the debtor in any Court subject to the superintendence of this Court and also to annul a debtor's adjudication. The section affords no indication as to the grounds on which an order staying proceedings or annulling an adjudication should be made. In this case I have before me the debtor's petition on which the adjudication order was made by the Alipore Court. It appears from it that there are eight creditors all of whom are shown as having addresses either of their own or by their agents in Calcutta. The

petitioner is described in the summons as residing in Howrah though I am told he does in fact reside at Dum Dum. It is not denied that he has carried on business for some years in Clive Street. I have taken into consideration the affidavit in opposition which the debtor desires to use though I am doubtful if I am justified in doing so having regard to the fact that no copies were supplied to the applicant within the time limited by Rule 20 or filed with the Registrar within the time limited by Rule 24.

3. From the affidavit it appears that the present applicants may have been somewhat dilatory in not presenting the petition before. They say that they were unaware of the order of adjudication passed on 5th January, though after it had been passed their pleader appeared in Court and sought to question the jurisdiction of the Alipore Court. Whether they had actual notice of adjudication or not I cannot on the materials before me decide, but looking at the matter as a whole it seems to me that as a substantial creditor desires that the insolvency proceedings should proceed in this Court and that to put it at its lowest such a procedure can cause no inconvenience to the other creditors preference should be given to this Court. It has not been shown that any real inconvenience would be caused to the debtor himself by the order I am asked to make but whether this be so or not, I do not consider that an insolvent debtor is in the same position as a plaintiff as to the right of choice of the Court in which his insolvency should be conducted.

4. In the circumstances I make the order of adjudication and stay the insolvency proceedings pending in the Court of Alipore, and I annul the order of adjudication made on 5th January. The receiver appointed by the District Judge of Alipore will make over possession of such assets as he has collected to the custody of the Official Assignee. Certified for counsel.