

In Re: Upendra Kumar Mitra

In Re: Upendra Kumar Mitra

SooperKanoon Citation : sooperkanoon.com/881129

Court : Kolkata

Decided On : May-31-1935

Reported in : 164Ind.Cas.415

Judge : Panckridge, J.

Appellant : In Re: Upendra Kumar Mitra

Judgement :

Panokridge, J.

1. This is an appeal from the decision of the learned Registrar in Insolvency and it arises in the following circumstances.

2. One Upendra Kumar Mitra was adjudicated an insolvent on his own petition. Certain creditors, who had proved their claims before the Official Assignee applied for and obtained an order for the examination of one Salil Kumar Mitra under Section 36 of the Presidency Towns Insolvency Act. Under that section a person whose examination has been ordered is entitled to be represented by a legal practitioner. Counsel appearing for Salil Kumar Mitra objected to the examination being conducted by Counsel representing the creditors. The learned Registrar in Insolvency upheld the objection and it is against this decision that the creditors have now appealed.

3. Reading the section it appears to me that prima facie the intention of it is that the Court should examine the person summoned. My attention, however, has been drawn to various cases under the corresponding section of the Bankruptcy Act and of the former Insolvency Act, in which creditors have in fact put questions to the person summoned or to the insolvent, and in which, though exception was taken to particular questions, the right of the creditor to examine generally was not challenged. I should refer to the English cases, *In re Nicholson* 5 Bankruptcy 278 and *In re Easton* (1891) 64 LT 798. In an Indian case under the old Insolvency Act, *In re Alladinbhoy Habibhoy* 11 B. 61, although the Court refused to allow a particular creditor to conduct the examination, it expressly permitted another creditor who was considered to be acting bona fide to conduct it.

4. In my opinion these cases are not conclusive and I think the decision of the Bombay High Court, to which I have referred, is as much against the appellants as in their favour. In my opinion the Official Assignee has a discretion in the matter. In this case the Official Assignee points out that the creditor can, if he pleases, place all materials before the Official Assignee so that the latter may assist the Court (in this case the Registrar) in conducting the examination. If the Official Assignee decides not to make use of the materials laid before him by the creditor, the creditor may then apply for leave to appear at the examination and assist the Registrar with the materials at his disposal. The learned Registrar states that the creditors have not elected to give him any assistance, and have apparently not approached the Official Assignee and offered to place the materials in their possession at his disposal.

5. I have been referred to *In re Scharrer* (1888) 20 QBD 518 : 36 WR 388 : 5 Morrell 79 : 59 LT 188. The judgment of Fry, L.J., in that case clearly explains what the position of a person summoned under the provisions of Section 36 of the Insolvency Act is. The learned Lord Justice states that such person is not in the ordinary position of a witness called by a litigant party in order that he may be examined by the parties before the Court, but he is so to speak the witness of the Court. He indicates that if the Registrar when conducting the examination neglects to make proper use of the materials at his disposal, his decision may well be the subject of appeal. That situation has not, however, arisen in this case, because no

materials have been put at the Registrar's disposal upon which he can exercise his discretion.

6. The appellants in this case appear to be under an even greater misapprehension as to the position of the person summoned under Section 36, than that indicated by Fry, L.J. In the course of his address to me learned Counsel for the creditors said that if the Registrar were permitted to conduct the examination, he would be filling the dual role of prosecutor and Judge, and he seemed to think that the position of prosecutor was one that should be filled up by his clients. Such a submission, to my mind, discloses a complete misapprehension of the scope of Section 36. Although persons summoned under it are not infrequently persons who may be expected to wish to conceal the true nature of their dealings with the insolvent from the Court, that is by no means invariably so, and it cannot be too clearly understood that there is nothing to justify treating examinations under Section 36 as penal inquisitions.

7. In my opinion the Registrar has rightly held that he has a discretion to refuse to permit the examination to be conducted by the creditors and there are no materials which would entitle me to say that that discretion has been wrongly exercised.

8. In these circumstances, the application is dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com