

Monmohan Roy Vs. Hemanta Kumar Mookerjee

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Court : Kolkata

Decided On : Jul-26-1915

Reported in : 34Ind.Cas.777

Judge : Asutosh Mookerjee and ;Richardson, JJ.

Appellant : Monmohan Roy

Respondent : Hemanta Kumar Mookerjee

Judgement :

Asutosh Mookerjee, J.

1. This appeal is directed against an order calling upon the appellant, who has already been adjudicated an insolvent, to show cause why an order should not be made against him. under Sub-section (2) of Section 43 of the Provincial Insolvency Act. That section- authorises the Court to sentence an insolvent to simple imprisonment for a term which may extend to one year, when it is established that he has fraudulently concealed property. In this case, some of the creditors reported to the Receiver that the insolvent had fraudulently concealed property at his residence. The Receiver obtained the permission of the Court to pay a surprise visit. But the visit was of no use, because, although the insolvent was shown the order of the Court, he closed the doors and declined to admit the Receiver into the house. This was reported to the Court, and the Judge thereupon made an order on the insolvent to show cause in the terms stated. This order is clearly not

appealable under Sub-section 2 of Section 46 of the Provincial Insolvency Act, which allows an appeal against an order, under Sub-section 2 of Section 43, for imprisonment of the insolvent, and has no reference to an interlocutory order of the description now before us. The appellant, however, obtained leave of this Court under Sub-section 3 of Section 46 to prefer this appeal. Whether Sub-section 3 of Section 46 was even intended to be applied to a case of this description may be a matter for controversy; but it is plain that there are no merits whatsoever in the appeal. The insolvent has merely been called upon to show cause why an order should not be made against him under Sub-section 3 of Section 43; that does not in any way prejudice his position. But, on his behalf, it has been argued, first, that the Court should not have authorised the Receiver to pay a surprise visit, and, secondly, that the Court had no material for any order. These contentions are groundless. The Receiver is an officer of the Court and when he had good grounds to believe that an enquiry should be made into the conduct of the insolvent, the Court could authorise him to ascertain the facts and to report them to the Court, with a view to the adoption of such steps as might be deemed necessary in the interests of justice. Thus, if we assume that the appeal is competent, it is clearly groundless, and must be dismissed with costs, three gold mohurs.

2. Let the record be sent down as soon as possible.