

In Re: Gobindlal Mohata

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SooperKanoon Citation : sooperkanoon.com/882450

Court : Kolkata

Decided On : Nov-27-1934

Reported in : 164Ind.Cas.428

Judge : McNair, J.

Appellant : In Re: Gobindlal Mohata

Judgement :

ORDER

McNair, J.

1. This is an application by the insolvent, Gobindlal Mohata, in which he originally asked that the two orders made in his insolvency should be vacated and set aside on the ground that proceedings have been instituted by a joint Hindu family and that no such proceedings can be brought by such a family under the provisions of the Presidency Towns Insolvency Act.

2. Learned Counsel, however, has informed me that he does not now press for setting aside the earlier order but that he presses the second prayer in his petition, namely, that the order dated September 15, 1933, for examination of the petitioner and Sohanlal Mohata under Section 36 of the Presidency Towns Insolvency Act should be vacated and set aside on the ground that the application on which that order was passed, was made by Bhimraj Pursuram which admittedly is the trading name of a joint family business. It has been referred to as a "firm" and the

petitioner points out that that term is no longer applicable to a Hindu joint family business.

3. This seems quite clear, on referring to the definition under Section 4 of the Indian Partnership Act and the recent judgment of this Court in *Lalchand v. M. G. Bold and Co.* : AIR1934 Cal810 . The relevant section of the Presidency Towns Insolvency Act is Section 99, which states that any two or more persons being partners, or any person carrying on a business in partnership name, may take proceedings or be proceeded against under this Act in the name of the firm but learned Counsel for the petitioner points out that there is no provision under this Act which would entitle a joint family business to initiate proceedings.

4. It has been urged in opposition that the principle laid down by Section 99 of the Civil Procedure Code, should be followed, namely, that no decree shall be reversed or substantially varied owing to misjoinder of parties or for any defect or irregularity in any proceedings. The proceedings which were ordered under Section 36 of the Presidency Towns Insolvency Act have gone on and are particularly concluded and I am now urged not to set them aside. Much as I regret it, I feel that I am bound by the provisions of the Acts to which I have referred, and I must hold that the proceedings under Section 36 are a nullity and must be vacated. No order as to costs. Certified for Counsel.