

Privy Council Appeal No. 75 of 1914.

Bengal Appeal No. 23 of 1912.

Chhatrapat Singh Dugar - - - - *Appellant,*

v.

Kharag Singh Lachmiram and Others - - *Respondents,*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL DELIVERED THE 20TH NOVEMBER, 1916:

Present at the Hearing :

LORD SHAW.

SIR JOHN EDGE.

SIR LAWRENCE JENKINS.

[*Delivered by* SIR LAWRENCE JENKINS.]

Chhatrapat Singh Dugar, the present appellant, on the 21st May, 1909, presented as a debtor an insolvency petition under the Provincial Insolvency Act, 1907, to the District Court of Murshidabad for an order adjudging him an insolvent.

His application was opposed by the present respondents and was dismissed. The debtor's consequent appeal to the High Court in Bengal was dismissed by an order of the 12th April, 1912, and an application for review of the High Court's judgment was equally unsuccessful. This appeal has been preferred by the debtor to His Majesty in Council from the High Court's order of the 12th April, 1912.

The Provincial Insolvency Act presents a complete and exact delineation of a debtor's right to an order of adjudication, on his own petition. Subject to the conditions specified in the Act, if a debtor commits an act of insolvency an insolvency petition may be presented by the debtor, and the Court may on such petition make an order adjudging him an insolvent. The presentation by him of a petition is deemed an act of insolvency, and on that petition the Court may make an order of adjudication (section 5).

Provision is made by the 6th and succeeding sections for the presentation and admission of the insolvency petition, and

other matters of procedure, but no express reference to them need be made in the circumstances of this case. It will suffice to say that all that is thus prescribed has been observed by the present debtor.

By the 14th section it is enacted that on the day fixed for the hearing of the petition or on any subsequent day to which the hearing may be adjourned, the Court shall require proof that the debtor is entitled to present the petition, and shall examine him if he is present.

Then it is provided by sections 15 and 16 as follows :—

“15 (1). Where the Court is not satisfied with the proof of the right to present the petition or of the service of notice on the debtor as required by section 12, sub-section (3), or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts, or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition.

“16 (1). Where a petition is not dismissed under the preceding section the Court shall make an order of adjudication.”

The dismissal of Chhatrapat's petition by the District Court does not purport to rest on any failure to comply with the express terms of the Act. What was held was that the application was an abuse of the process of the Court and so must be dismissed. Presumably it was on this ground, too, that the High Court dismissed the appeal; no other reason is indicated. It is to be regretted that the Courts in India allowed themselves to be influenced by this plea instead of being guided to their decision by the provisions of the Act. In clear and distinct terms the Act entitles a debtor to an order of adjudication when its conditions are satisfied. This does not depend on the Court's discretion but is a statutory right; and a debtor who brings himself properly within the terms of the Act is not to be deprived of that right on so treacherous a ground of decision as an “abuse of the process of the Court.” This case illustrates the peril of this doctrine in India, for what has been treated by the Courts below as such an abuse appears to their Lordships in no way to merit this censure. It may, perhaps, give rise to a contest for priority between competing creditors, but that will be, if necessary, a matter for decision hereafter in the course of the insolvency. Be that, however, as it may, their Lordships are now concerned only with the debtor's position; and as to that they are satisfied that he has complied with all the conditions specified in the Act, and is entitled as of right to an order adjudging him an insolvent. This conclusion, apart from the decision under appeal, is in agreement with the current of authority in India, where it has been rightly held that the stage at which to visit with its due consequences any misconduct of a debtor is when his application for discharge comes before the Court, and not on the initial proceeding. As the dismissal of Chhatrapat's petition was, in their Lordships' view, erroneous, they will humbly advise His Majesty that the

order of the High Court of the 12th April, 1912, be reversed with costs, and in lieu thereof an order be made discharging the order of the District Court and adjudging Chhatrapat Singh Dugar an insolvent. The respondents will pay the costs of this appeal.
