

# ALLAHABAD HIGH COURT

Bhairo Prasad

Vs

S.P.C. Dass

(Rafique, CJ. Walsh. J.)

01.05.1919

## JUDGMENT

### **Rafique, CJ.**

1. This appeal must be dismissed. It was clearly an application under Section 22 of the Provincial Insolvency Act. A stranger to the insolvency is not bound to go to the Insolvency Court at all. He has the ordinary right, which every individual has, to seek redress in the ordinary Civil Courts for any grievance or trespass to his property, whether committed by an Official Receiver or anybody else, but he can if he pleases, if he complains against the act of the Receiver, apply under Section 22 to the Insolvency Court itself, and a Bench of this Court has held that if he does so and obtains a decision upon the merits, that decision is final. But similarly if he applies under Section 22, he must comply with the terms of Section 22. In this case he applied after the expiration of 21 days of the act of attachment of which he complains. We are inclined to think, though we do not decide, that Section 4 of the Limitation Act would have enabled him to apply as soon as the Court opened, it being sent at the time of the attachment, but even after the Court opened he delayed for a further ten days. The learned Judge was, therefore, right in dismissing the application, not upon the merits but as an application which, under the Provincial Insolvency Act, he had no jurisdiction to entertain.

2. The applicant, very foolishly in our view, added an alternative prayer to the District Judge asking him, in the event of his application being dismissed, to grant him permission to sue in a Civil Court. As a matter of law such permission could be neither given nor refused. It was in fact refused. We think in order to remove any possible misunderstanding that that refusal being nugatory must be struck out of the order, but holding as we do that the application was properly dismissed as one which had been made beyond time, this appeal, except to the extent already indicated by what we have said, is dismissed with costs, including in this Court fees on the higher scale.

