

## **Zahid Hussain vs B. Khairati Lal Jain And Ors. on 23 December, 1953**

**Equivalent citations: AIR1954ALL419, AIR 1954 ALLAHABAD 419**

### **JUDGMENT**

Malik, C.J.

1. This is an appeal under Section 75 of the Provincial Insolvency Act (Act No. V of 1920), A creditor Khairati Lal applied on the 30th July, 1931, that Sh. Zahid Husain be adjudicated an insolvent. On the 14th November, 1931, an order of adjudication was passed. The creditors were all paid up in full and on the 10th March, 1948, the insolvent was discharged. A sum of Rs. 22,000, however, after payment of all the debts in full, remained in the hands of the Official Receiver and the creditors claimed that interest from the date of adjudication at the rate of 6 per cent. per annum might be allowed to them in accordance with the provisions of Section 48 of the Act. The creditors also claimed that prior to the date of adjudication they should be given interest at the contractual rate.
2. The learned Insolvency Judge granted the request that interest at 6 per cent. per annum should be allowed from the date of adjudication. As a matter of fact, he had no option in the matter as the provisions of section 61(6) were mandatory.
3. As regards interest prior to the date of adjudication, he did not allow any interest to Ruqayya Khatoon, the wife of the insolvent, who had claimed a sum of Rs. 10,000/- as her dower, but he allowed interest to the other creditors at the rate of 6 per cent. per annum. Two of these creditors, Bansi Dhar and Khairati Lal, have filed cross-objections and the others have submitted to the order.
4. The appeal has no force and has not been seriously pressed. On behalf of Bansidhar and Khairati Lal it is urged that the cross-objections should be allowed and they should be awarded interest at the contractual rate from the dates when the money was borrowed by the insolvent.
5. The first question that arises is whether these cross-objections are maintainable. Section 75 of the Insolvency Act provides for an appeal within 30 days to the District Court and within 90 days to the High Court. There is no provision for a cross-objection to be filed within 30 days after service of notice as under Order XLI. Rule 22 of the Civil Procedure Code. So far as we can see there is nothing in the Provincial Insolvency Act making the provisions of Order XLI, Rule 22, Civil P. C. applicable to an appeal under Section 75. These cross-objections were, therefore, misconceived.
6. We are further satisfied that there is no force in these cross-objections. The creditors have been allowed interest at 6 per cent. per annum from the dates when the money was lent to the date of adjudication and thereafter for a further period of almost 22 years. This, in our view, should be quite

sufficient.

7. There is no force in the cross-objections and the appeal which are dismissed with costs.