

1968 Present : Abeyesundere, J., and Samerawickrame, J.

JOHN KEILL THOMSON WHITE LTD., Appellant, and
T. D. R. KARUNARATNE, Respondent

S. C. 233/66 (Inty.)—D. C. Colombo, 6084/I

*Insolvency Ordinance—Sections 12 and 26—Adjudgment of a person as insolvent—
Subsequent application for annulment of it—Quantum of evidence.*

Where a person is adjudged insolvent under section 26 of the Insolvency Ordinance, such adjudgment cannot be annulled if there is sufficient evidence establishing the fact that the petitioning-creditor was in a position to sue out execution upon the judgment he had obtained in his favour.

APPEAL from an order of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *D. J. Tampoe*, for the Petitioner-Appellant.

No appearance for the Insolvent-Respondent.

March 22, 1968. ABEYESUNDERE, J.—

In this case the respondent was by order of the learned District Judge dated 25th March, 1966 adjudged insolvent under Section 26 of the Insolvency Ordinance. The respondent was deemed to have committed an act of insolvency under Section 12 of the Insolvency Ordinance. Thereafter the respondent filed objections to the aforesaid adjudgment and the learned District Judge after inquiring into the objections made the order dated 8th December, 1966 annulling the adjudgment made under Section 26 of the Insolvency Ordinance. The appeal of the petitioner in the insolvency proceedings is from that order of the learned District Judge.

The reason given by the learned District Judge for making the order appealed from is that the petitioner-creditor had failed to establish the fact that he was in a situation to sue out execution upon the judgment he had obtained in his favour and against the respondent. The evidence of Dharmasiri Ekanayaka given on behalf of the petitioner-creditor established that the petitioner-creditor was the holder of a decree entered on 11th June, 1962 against the respondent, that the petitioner-creditor was in a situation to sue out execution upon that decree, that there was nothing due from the petitioner-creditor by way of set off against that decree, and that the respondent had not paid, secured, or compounded for the amount of that decree. We are of the view that the evidence of Dharmasiri Ekanayaka was adequate to establish the fact that the decree holder was in a position to sue out execution upon the decree in his favour.

Further in the statement of objections filed by the respondent there is nothing to indicate that there is any legal impediment to the plaintiff's obtaining writ of execution. The learned District Judge has referred to the provisions of Section 347 of the Civil Procedure Code which require the court to cause the petition of application for execution to be served on the judgment-debtor. Those provisions, however, do not constitute a legal impediment to the plaintiff's obtaining a writ of execution.

For the aforesaid reasons we set aside the order of the learned District Judge dated 8th December, 1966. The appellant is entitled to the costs of the appeal and of the inquiry in the District Court.

SAMERAWICKRAME, J.—I agree.

Order set aside.

