

ORIGINAL CIVIL.

Before Sir Lawrence Jenkins, K.C.I.R., Chief Justice, and Mr. Justice Batchelor.

1908
January 10.

IN RE GANESHIDAS PANALAL (ADJUDGED INSOLVENT).

R. D. SETHNA (APPLICANT AND APPELLANT) *v.* R. S. D. CHOPRA
(RESPONDENT) *

Indian Insolvent Act (11 and 12 Vict., c. 21), section 27, 26—Jurisdiction of the Insolvent Court outside the Bombay Presidency—Person in possession of Insolvent's property can be directed to hand it over to the official Assignee.

The Court for the relief of insolvent debtors sitting in Bombay has jurisdiction to make an order section 26 of the Indian Insolvent Act against a person residing outside the Bombay Presidency.

ON the 10th November 1906 the firms of Shivanathrai Panala carrying on business as merchants and commission agents and having their principal place of business at Amritsar and a branch only at Bombay stopped business and entrusted their property, both moveable and immoveable, to a Board of Trustees with the consent of a majority of their creditors by a trust deed which was duly registered, and handed over their books of accounts to such trustees who on examination found that they contained false entries showing that monies had been misappropriated by the Insolvents. On the 3rd December 1906 on the application of three of the creditors the Insolvent Estates Court at Amritsar made an order directing the notices be issued to the debtors calling upon them to show cause on the 12th December 1906 why they should not be declared insolvents and directing that their property both moveable and immoveable throughout the Punjab be attached.

On the 12th December 1906, four of the insolvents appeared before the said Insolvent Estates Court at Amritsar and said that they had no objection to their being declared Insolvents.

The Court thereupon on the same day made an order declaring them insolvent, attached their property, and appointed the

* Appeal No. 1499.

Registrar of the Small Cause Court at Amritsar receiver of the Insolvents' Estate. 1908

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On the 31st May 1907, the Insolvent Debtors' Court of Bombay made an order adjudicating the same persons Insolvents and a vesting order was made on that day ordering that all the real estate and effects of the insolvents be vested in the Official Assignee under section 11 of the Indian Insolvent Act.

On the 6th June 1907, the Official Assignee made an application to the Court at Amritsar praying for an order for removal of the attachment and for the delivery of the properties under attachment and the books of account of the Insolvents to him.

The said application was dismissed on the 17th June 1907 by the said Court holding, *inter alia*, that on the date on which the vesting order was passed by the Bombay High Court there were no rights subsisting in the Insolvents in the moveable and immoveable properties in the Punjab as all their estates had already vested in the receiver who was appointed under section 351 of the Civil Procedure Code. The Small Causes Court also directed the receiver to proceed with the sale.

An application was made on behalf of the Official Assignee on the 18th June 1907, to the Chief Court of the Punjab for stay of the sale proceedings, and for revision of the order of the Small Cause Court. The Chief Judge granted the stay of sale and issued a notice against the receiver to show cause why he should not hand over the property to the official Receiver.

On the receiver appearing before the Insolvent Debtors' Court at Bombay Mr. Justice Beaman decided that the Insolvent Debtors Court had no jurisdiction or power to order a receiver appointed by the Amritsar Insolvency Court and who was in possession of the Insolvents' property to hand over the assets to the Official Assignee in Bombay.

Against this decision the Official Assignee appealed.

Inverarity (with *Scott* and *Bahadurji*) for the appellant.

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In the course of his argument Inverarity referred to the following authorities :—

Callender Sykes & Co. v. Colonial Secretary of Lagos and Davies⁽¹⁾;
Waite v. Bingley⁽²⁾; *In re George Blackwell*⁽³⁾; *In the matter of James Currie*⁽⁴⁾; *In re Cockburn*⁽⁵⁾; *In re Dorothea Riels*⁽⁶⁾; *In re Tietkins*⁽⁷⁾; *In re Cowasji Ookerji*⁽⁸⁾; *In re Ajudhia Prasad*⁽⁹⁾; *In re Dwarkanath Mitter*⁽¹⁰⁾; *In the matter of Ambica Nundun Biswas*⁽¹¹⁾.

E. Sorabji Taljarkhan for the respondent.

JENKINS, C. J. :—The only question that arises on this appeal is whether the Court for the Relief of Insolvent Debtors sitting in Bombay has jurisdiction to make an order under section 26 of the Indian Insolvent Act against a person residing at Amritsar. The merits of the case have not been discussed before us.

The Act was passed by the Imperial Parliament, which was competent to give the jurisdiction claimed; the words of the section are sufficiently wide for that purpose; and it is clear that under section 7 the Court sitting here is authorised to make an order that would affect estate and effects situate outside the Presidency of Bombay. I can, therefore, find no sufficient reason on the face of the Act for withholding from section 26 its literal and natural effect.

But then it is argued that the Amended Letters Patent have affected the jurisdiction of the Court.

By section 2 of the Indian Insolvent Act it is provided that the Courts established as therein mentioned shall be continued and continue to be Courts of Record and each shall continue to be styled "The Court for the Relief of Insolvent Debtors" and to be holden before any one Judge of the Supreme Courts of Judicature at Calcutta, Madras and Bombay, respectively, within the limits of the said Towns of Calcutta, Madras and Bombay.

(1) (1891) A. C. 460 at pp. 466 467. (6) (1866) 3 Mad. H.C.R. 151.
(2) (1882) 21 Ch. D. 674. (7) (1868) 1 Beng. L. R. (O. J.) 84.
(3) (1872) 9 Bom. H. C. R. 461. (8) (1888) 13 Bom. 114.
(4) (1896) 21 Bom. 405. (9) (1871) 7 Beng. L. R. 74.
(5) (1867) 2 Ind. Jur. N. S. 326. (10) (1869) 4 Beng. L. R. (O. J.) 63.
(11) (1878) 3 Cal. 434.

By 24 & 25 Vic., c 104, the High Courts were established and the Supreme Courts were abolished and by the section 11 it was provided as follows:

“ Upon the Establishment of the said High Courts in the said Presidencies respectively all provisions then in force in India of Acts of Parliament, or of any Orders of Her Majesty in Council or Charters, or of any Acts of the Legislature of India, which at the time or respective times of the establishment of such High Courts are respectively applicable to the Supreme Courts at Fort William in Bengal, Madras, and Bombay respectively, or to the Judges of those Courts shall be taken to be applicable to the said High Courts, and to the Judges thereof respectively, so far as may be consistent with the Provisions of this Act, and the Letters Patent to be issued in pursuance thereof and subject to the Legislative Powers in relation to the matters aforesaid of the Governor-General of India in Council.”

The Insolvent Courts still continued to be separate tribunals and were not affected by the Act 23 and 24 Victoria except that provision was thereby made as to the officers who were to preside over them (*vide* clause 13 of the Secretary of State's Despatch of the 14th of May 1862. Page 44 of the Rules of the Bombay High Court)

Then by clause 17 of the Letters Patent of the 26th June 1862, which accompanied the despatch, it was provided as follows:

“ And we do further ordain that the Court for Relief of Insolvent Debtors at Bombay shall be held before one of the Judges of the said High Court of Judicature at Bombay, and the said High Court, and any such Judges thereof shall have and exercise, whether within or without the Presidency of Bombay, such powers and authorities with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in India.”

On the 28th of December 1865 the Amended Letters Patent were granted; the purpose being to make further provision respecting constitution of the High Court, and the administration of justice thereby.

By the 18th clause it was provided as follows:

“ And we do further ordain that the Court for Relief of Insolvent Debtors at Bombay shall be held before one of the Judges of the said Court of Judicature at Bombay; and the said High Court and any such Judge thereof, shall have and exercise, within the Presidency of Bombay,

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such powers and authorities with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in India."

Relying on the difference of language in this clause as contrasted with that which it superseded, it is argued before us for the respondent that the Insolvent Court's jurisdiction is now limited to the Presidency in the sense that no order can be made under section 26 against a person residing outside its limits.

If that be so, then it must follow that the Court cannot make an order vesting property outside the Presidency. But it is conceded that the Court has jurisdiction to make such an order, and undoubtedly this is the view that always has been accepted by the Courts.

But if clause 18 of the Amended Letters Patent has not for the purpose of a vesting order curtailed the jurisdiction of the Court it cannot have cut it down for the purposes of section 26, as obviously the mere *construction* as distinguished from the operation of that section cannot have been altered by anything contained in the Amended Letters Patent. The first clause of the Amended Letters Patent does not require the construction for which the respondent contends, and I, therefore, hold that the Court has jurisdiction, but whether it should be exercised or not must be determined by the Commissioner when all the facts have been placed before him.

The result of my conclusion is that the order under appeal must be reversed with costs, including the costs occasioned before the Commissioner by the contention that he had no jurisdiction and the case must now go back to the Commissioner in order that it may be heard and determined by him.

Order reversed.

B. N. L.