

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

IN THE MATTER OF MEGHRAJ GANGABUX, AN INSOLVENT.*

1910.

March 17.

Presidency Towns Insolvency Act (III of 1909), section 25—Protection order—Previous decisions on applications for interim orders—Discretion—Practice.

It has never been the practice of Commissioners in Insolvency under the Indian Insolvent Act (11 and 12 Viet., c. 21) to consider themselves bound by their previous decisions on applications for *interim* orders when it has been a matter for their discretion, and it by no means follows that because an application has been refused on the first occasion it must also be refused on the second occasion.

Section 25 of the Presidency Towns Insolvency Act (III of 1909) clearly intends that while an insolvent diligently performs the duties prescribed by the Act he should not be harassed by execution creditors, and should not be rendered liable to pressure whereby one creditor may get undue advantage over another. The section does not deprive the Court of its discretion in granting or refusing protection, but sub-section (4) indicates clearly the lines along which that discretion should be exercised when a creditor opposes the grant. If an insolvent can produce the certificate referred to, the onus is thrown on the opposing creditor of showing cause why the protection orders should not be granted.

THIS was an application by the insolvent for an *interim* protection order.

The facts appear sufficiently from the judgment.

Mankar for the insolvent.

Weldon for an opposing creditor.

Bhadrugi for another opposing creditor.

MACLEOD, J.:—The insolvent has applied for a protection order under section 25 of the Presidency Towns Insolvency Act. This application is opposed by two of his creditors. On the 16th January a similar application was refused by Davar, J., and an appeal against that decision was dismissed. It has been urged before me that the situation is exactly the same as it was on the 16th January, and since the application was refused then

* In Insolvency No. 2 of 1910.

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I am bound to refuse it now. It has never been the practice for Commissioners in Insolvency under the Indian Insolvent Act to consider themselves bound by their previous decisions on applications for *interim* orders when it has been a matter for their discretion, and it by no means follows that because an application has been refused on the first occasion it must also be refused on the second occasion.

The application of the 16th January was made when the new Act had only just come into force, and I do not think the change effected generally by the Act in insolvency proceedings and particularly by section 25 in respect of protection orders was even mentioned during the argument.

The Act gives to the Court and its officers the fullest powers to investigate into the conduct and affairs of an insolvent, the Official Assignee conducts his public examination, and reports on his conduct when he applies for his discharge, while the burden which has hitherto rested upon creditors of protecting commercial morality has been entirely removed from their shoulders. Section 25 clearly intends that while an insolvent diligently performs the duties prescribed by the Act he should not be harassed by execution creditors, and should not be rendered liable to pressure whereby one creditor may get undue advantage over another. The section does not deprive the Court of its discretion in granting or refusing protection, but sub-section (4) indicates clearly the lines along which that discretion should be exercised when a creditor opposes the grant. If an insolvent can produce the certificate referred to, the onus is thrown on the opposing creditor of showing cause why the protection order should not be granted, but I do not think he is entitled to ask the Court to enter into an inquiry whether the insolvent has been guilty or not of commercial immorality, or of an offence under the Act. It is open to the creditor to show that the insolvent has imposed on the Official Assignee, and that in spite of the certificate he has not conformed to the provisions of the Act, or that the insolvent has been guilty of undue delay in applying for his discharge, for, the Court will not countenance an insolvent resting unreasonably beneath the shade of the protection order.

The Court must act in the interests of all the creditors and not in the interest of any particular creditor who wishes by way of compensation for his loss to put the insolvent in jail. This may often result in an insolvent's relations paying money to the execution creditor to get the insolvent released. It is for the interests of the creditors that the affairs of an insolvent should be fully investigated under the Act, and that cannot possibly be done if he is put in jail, or has to go into hiding to escape from arrest. Section 25 provides the Court with means whereby the Court can secure compliance with the provisions of the Act, and an opposing creditor should show that the Court has a grievance when asking the Court to exercise its discretion against an insolvent.

In my opinion the opposing creditors have not realised the change effected by the new Act, and I see no reason why the insolvent should not be granted protection. On the contrary it, must be in the interests of all the creditors that he should be given a chance of winding up his estate.

Attorneys for the insolvent: Messrs. *Ardeshir Hormusjee, Dinshaw & Co.*

Attorneys for opposing creditors: Messrs. *Crawford, Brown & Co., and Edgelow, Gulabchand and Wadia.*

K. McI. K.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

MOJILAL PREMANAND AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS,
v. GAVRISHANKAR KUSHALJI AND OTHERS (ORIGINAL DEFENDANTS
1, 4 AND 3), RESPONDENTS.*

1910.

July 13.

Limitation Act (XV of 1877), section 10—Will—Trustees—Suit by testator's sister for declaration of heirship and ownership of the residue of testator's estate—Resulting trust arising by operation of law—Limitation.

One Jethabhai died on the 7th December 1889 after having made a will dated the 20th February 1889. The will gave certain legacies, including one

* Second Appeal No. 402 of 1909.