

**INSOLVENCY JURISDICTION.***Before Greaves J**Re SITAL PRASAD AND OTHERS.\**

1916

June 16.*Insolvency—Minor—Infant, whether can be adjudicated an insolvent.*

An infant cannot be adjudicated an insolvent under any circumstances.  
*Ex parte Jones* (1) followed.

THIS was an application by Gowri Sankar, Kedar-nath and Juggernath to set aside the orders adjudicating them insolvents. The applicants, along with certain other persons with whom they were alleged to have been carrying on business in co-partnership, were adjudicated insolvents by two several orders dated the 22nd November, 1911, and the 29th January, 1912, Gowri Sankar having been adjudicated by the first order and the other two applicants by the second. Subsequently these two insolvency proceedings were consolidated. The present application was to set aside the orders of adjudication, so far as the applicants were concerned, on the ground that they were infants at the dates when the orders made against them respectively were passed. The application was opposed by certain secured creditors.

*Babu Subodh Chunder Mitter* (Attorney for the applicants). My clients were infants when the orders of adjudication were made against them and so they cannot be adjudicated insolvents. I rely on *Ex parte Jones* (1), *In re Nobodeep Chunder Shaw* (2) and *In re Hansraj Malji and Narandas Dayal* (3).

\* Insolvency Jurisdiction, No. 250 of 1911.

(1) (1881) L. R. 18 Ch. D. 109.      (2) (1886) L. L. R. 13 Calc. 68.

(3) (1883) L. L. R. 7 Bom. 411.

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*Mr. M. Zorab*, for the secured creditors. The Insolvency Act does not expressly exclude an infant from its operation. *Ex parte Jones* (1) no doubt lays down the rule with regard to the matter so far as the English law is concerned, but certain exceptions to the general rule are recognised in the English law, for example, with regard to necessaries supplied to an infant or with regard to judgment debts in an action for a tort: see *Williams on Bankruptcy*, 11th edition, p. 4. Under the Indian Contract Act, the liability incurred for necessaries supplied is laid down in section 68. The liability of an infant partner is laid down in section 247. In both instances the infant is not personally liable but his property is, and the whole question is whether an infant partner is a debtor. I submit he is a debtor, although the creditor has not got against him all the remedies which he has in other cases. *In re Nobodeep Chunder Shaw* (2) and *In re Hansraj Malji and Narandas Dayal* (3) merely follow *Ex parte Jones* (1) and do not discuss the question at all.

*Mr. S. K. Chuckerbutty*, for the Official Assignee left the matter to the judgment of the Court.

GREAVES J. This is an application on behalf of Gowri Sankar and two other partners in the firm Kedarnath and Juggernath who were adjudicated insolvents on the 29th January 1912, Gowri Sankar having been adjudicated on the 22nd November 1911, and these two insolvency proceedings have been consolidated. The application now before me is to set aside the order of adjudication, so far as these three persons are concerned, on the ground that they were infants at the date when the orders of adjudication

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made against them respectively were passed. It appears that an order was passed in the Court of the District Judge of Ghazipur under section 7, Act VIII of 1890 (The Guardians and Wards Act), on the 11th December, 1909. These three persons were minors on that date and Gowri Sankar attained his majority in the year 1916, and the other two infants will attain their majority in the years 1925 and 1928 respectively, and by virtue of the order of the District Judge of Ghazipur the age of majority of the infants will be 21. The application is opposed by certain secured creditors who have obtained an order for sale for the purpose of realising their securities under Schedule II, rule 18 of the Presidency Towns Insolvency Act, and I was referred to two sections of the Contract Act, viz., section 68, which provides that if a person incapable of entering into a contract is supplied with necessaries, the person supplying the necessaries is entitled to be reimbursed from the property of the person incapable of so contracting, and also to section 247 of the Contract Act, which provides that a person who is under the age of majority may be admitted to the benefits of the partnership but cannot be made personally liable for any obligation of the firm, and the argument addressed to me founded upon these two sections was that the infants, who are rendered liable under these sections, must be debtors, or otherwise there would be no right against their property under those sections. I think that argument is not well-founded. I do not think that the sections pre-suppose that they are debtors. In the case of infants who are under a disability, the law in this country, to prevent hardships arising in the case of supply of necessaries, or in the case of a family partnership, has provided special remedies against their property, but I do not think for a moment that they are debtors and so the

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distinction that counsel, who appeared for the secured creditors, sought to make with regard to the English case *Ex parte Jones* (1), the passage to which he referred being at p. 119, does not seem to me well founded. I do not think that the law contemplates that an infant should be adjudged an insolvent, although there is a passage in Williams on Bankruptcy, 11th Edition, p. 4, in which it is suggested that in respect of judgment-debts or necessities an infant may be so adjudicated, but there is no decision which so lays down, and I do not propose to so decide in the absence of any authority for the proposition. My own view is that the infant cannot be adjudged an insolvent under any circumstances, and so I grant the application and set aside the orders of adjudication made against Gowri Sankar and the other applicants, Kedar-nath and Juggernath. So far as the costs of the secured creditors are concerned, they can add their costs of their appearing here to their securities, and I make no order against Raghubir or against the infants themselves. The Official Assignee will take his costs out of the assets in his hands.

A. K. R.

*Application allowed.*

Attorney for the applicants: *Subodh Chunder Mitter.*

Attorney for the secured creditors and the Official Assignee: *J. A. Arnowitz.*

(1) (1881) L. R. 18 Ch. D. 109, 119.