

**INSOLVENCY JURISDICTION.***Before Sanderson C. J., Woodroffe and Mookerjee JJ.*

LAKHIPRIYA DASI

v.

RAIKISHORI DASI.\*

1915

Nov. 29

*Insolvency—Security for Costs—Appeal—Jurisdiction—Presidency Towns  
Insolvency Act (III of 1909) s. 8 (2) (b) — Civil Procedure Code (Act V  
of 1908) ss. 117, 151 and O. XLI, r. 10—Practice.*

On an application to the Court of Appeal for security for costs in an appeal from an order of a Judge in insolvency :—

*Held*, that the Court has jurisdiction to entertain the application under s. 117 and O. XLI, r. 10 of the Code of Civil Procedure, read with s. 8 (2) (b) of the Presidency Towns Insolvency Act.

*Sesha Ayyar v. Nagarathna Lala* (1) not followed.

**APPLICATION.** This was an application for security for costs in an appeal preferred against a judgment in insolvency passed by Chaudhuri J.

On the 7th September 1911, a suit was instituted on a *hatchitta* in the Court of Small Causes against Goberdhone Seal by his mother-in-law, Sreemutty Raikishory Dasi. On the 9th November, 1911 Goberdhone Seal purported to convey his one-third undivided share of the premises No. 20, Panchanan Pal's Lane, which was his sole asset, to his wife Sreemutty Sarbasundari Dasi. On the 20th February 1912 Raikishory Dasi obtained a decree in her suit. On the 27th February 1912, Goberdhone filed his petition in insolvency. By a conveyance dated the 12th October 1912,

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Sreemutty Sarbasundari Dasi purported to convey the one-third undivided share conveyed to her by her husband, to the appellant Sreemutty Lakhipriya Dasi.

After filing his petition in insolvency, Goberdhone Seal took no further steps until an order was passed on the 11th June 1913 at the instance of Raikishory Dasi, for his committal unless he filed his schedule within a certain period. Thereupon, on the 16th July 1913, the insolvent filed his schedule, estimating his assets at *nil* and his liabilities at Rs. 2,526-1-3. The principal creditor was Raikishory Dasi, whose claim was admitted to be Rs. 2,369-14. The public examination of the insolvent was held on the 2nd November 1913, in the course of which the conveyance of the 9th November 1911 was challenged as a colourable and fraudulent transaction. The application for the insolvent's discharge was fixed for hearing on the 7th July 1914.

On the 2nd July 1914, Raikishory Dasi filed a petition praying for a declaration that the transfers of the 9th November 1911 and the 12th October 1912 were inoperative and void, and that the property remained that of the insolvent, and for consequential relief. On the 31st July 1914, Lakhipriya Dasi filed her affidavit in opposition alleging that the transfers were made *bonâ fide* and for valuable consideration and claiming the property.

Evidence was taken and, on the 16th March 1915, Chaudhuri J. held and declared that the transfers were void as against the Official Assignee, and ordered Lakhipriya Dasi to make over possession of the one-third undivided share in the premises to the Official Assignee.

Against this judgment and order Lakhipriya Dasi preferred an appeal. Thereupon, Raikishory Dasi made the present application for security for costs.

*Mr. Lahiri* (with him *Mr. K. N. Mazumdar*), for the applicant. The property in question form the only assets of the insolvent, and the applicant is the only substantial creditor. The appellant is a *parda-nashin* Hindu lady, and has no property. She should be ordered to furnish security for costs.

*Mr. Sircar* (with him *Mr. S. K. Chakravarti*), for the appellant. This Court has no jurisdiction to entertain the present application. The right of appeal in insolvency is given by section 8, sub-section 2, sub-clause (b) of the Presidency Towns Insolvency Act. The consequence is that the only provision under which this application can be made is Order XLI, rule 10 of the Code of Civil Procedure. Now there is direct authority, that such an application would not lie under s. 549 of the old Code (which has been reproduced by Order XLI, rule 10) in the case of an appeal from a single Judge of the High Court to the Court of Appeal: *Sesha Ayyar v. Nagarathna Lala* (1).

On the merits, it is submitted that "mere poverty is no ground for requiring an appellant to give security for the costs of the appeal:" see Woodroffe's Civil Procedure Code, 1st edition, p. 1237.

*Mr. Lahiri*, in reply. Section 8, sub-section (2), sub-clause (b) of the Presidency Towns Insolvency Act says that an appeal from a Judge in insolvency shall lie in the same way and be subject to the same provisions as an appeal from an order made by a Judge in the exercise of the ordinary original civil jurisdiction of the Court. Order XLI, rule 10 of the Code deals with the question of security for costs on appeal from the ordinary original civil jurisdiction. If the present application cannot be entertained, for the same reason no such similar application can be entertained in appeals from the ordinary original civil jurisdiction.

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It has always been the practice in this Court to entertain such applications. *Sesha Ayyar v. Nagarathna Lala* (1) has never been followed or referred to by this Court. Moreover, section 117 of the Code of Civil Procedure makes the provisions of Order XLI, rule 10 applicable to High Courts.

WOODROFFE J. This is an application for security for costs in an appeal against a judgment passed by Chaudhuri J., in insolvency. It is unnecessary to recapitulate the facts which are set out in the petition. The application is opposed both on grounds of law and fact. As regards the first question, the point is whether Order XLI, rule 10 applies to the case of an appeal from an order passed by a Judge in insolvency under Act III of 1909. Section 8 (b) of that Act states that an appeal shall lie in the same way and be subject to the same provisions as an appeal from an order made by a Judge in the ordinary Original Civil Jurisdiction. The question then is, does the order apply to the latter case. No doubt the case of *Sesha Ayyar v. Nagarathna Lala* (1) answers this question in the negative. This case was decided prior to the present Code and has not been referred to nor followed so far as we are aware in this Court where the previous practice has been to entertain such applications: under section 117 of the Code its provisions apply to the High Courts save as provided in Parts IX and X. I am of opinion, therefore, that we have power to entertain and adjudicate this application under section 117 and Order XLI, rule 10, of the Code. This conclusion is in conformity with the previous practice under which such applications have been adjudicated. It cannot be reasonably held that this Court, when sitting in appeal from a decision

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on the Original Side, is deprived of powers necessary to an effective jurisdiction admittedly existent on the Appellate Side of the same Court. For, if Order XLI, rule 10 does not apply, there is no other provision applicable, and in such a case it would be necessary to invoke the provisions of section 151. On the facts stated in the petition, and in particular on the findings of the learned Judge there stated, I am of opinion that security should be required of the appellant. The applicant is entitled to the costs of this application.

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SANDERSON C. J. I agree.

MOOKERJEE J. I agree.

J. C.

*Application allowed.*

Attorney for the appellant: *J. N. Mitter.*

Attorneys for the respondent: *R. M. Chatterji & Co.*