

In my judgment, therefore, the appeal fails and must be dismissed and the Rule must be discharged.

CHOTZNER J. I agree.

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Appeal dismissed ; Rule discharged.

APPEAL FROM ORIGINAL CIVIL.

Before Rankin C. J. and Mitter J.

SALAMCHAND KANNYRAM

v.

JOOGUL KISSORE RAMDEO.*

1927

Aug. 25.

Jurisdiction—High Court, Original Side—Contempt of Court—Order of arrest, for contempt of Court, outside jurisdiction of High Court on its Original Side.

A Judge of the Calcutta High Court, sitting on its Original Side, has no right to direct a mofussil Court to execute a warrant of arrest for contempt of Court.

Rajah of Ramnad v. Seetharam Chetty (1) referred to.

APPEAL by the plaintiffs against an order of Gregory J.

By an order made in Suit No. 3280 of 1922 in the High Court, dated 26th August, 1925, a receiver was appointed and the defendant firm, Joogul Kissors Ramdeo, was directed to make over to the receiver certain books of account of their firm, some other documents and some moneys realised by them in contravention of a certain order of the Court. By a

* Appeal from Original Civil, No. 82 of 1927, in Suit No. 3280 of 1922.

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subsequent order, dated the 5th July, 1926, the defendant Ramdeo was committed to jail for contempt of Court, inasmuch as he had failed to comply with the aforesaid directions of the Court, dated the 26th August, 1925, and a warrant was directed to be issued to the Sheriff of Calcutta, commanding him to seize the person of the said Ramdeo wherever found within the local limits of the Ordinary Original Civil Jurisdiction of the High Court and convey the same to the Superintendent of the Presidency Jail. Before such warrant could be issued, the defendant Ramdeo preferred an appeal from the said order and subsequently obtained an order staying execution of the warrant, pending the hearing of the appeal, on condition that the said defendant should deposit in Court war bonds of the value of Rs. 3,000, within a fortnight from the date of the order granting stay, as security for his appearance in Court. The said defendant having failed to deposit the war bonds as directed, the warrant was issued and delivered to the Sheriff for execution. But the said defendant was staying outside Calcutta since the order of committal and the warrant could not be executed. The plaintiff, thereupon, applied for an order that the writ of warrant might be transmitted to the District Court. The application was dismissed by Gregory J. on the 15th June, 1927.

Hence this appeal.

Mr. S. N. Banerjee, for the appellant. The Court has power to transmit the order of committal like any other order, under section 136 of the Code. The order for committal for contempt was made in the exercise of the inherent powers of the Court derived from the Supreme Court and also under section 151 of the Code. The order must have been made under the Code, the

proceedings taken before the order, viz., the examination of witnesses and directions given to the receiver, having been had under the Code. The Court does not derive its jurisdiction only from the powers inherited from the Supreme Court. Section 36 of the Code must in any case apply, as it applies to all orders, whether under the Code or not.

Vulcan Iron Works v. Bishumbhur Prosad (1) is bad law.

No one for the respondent.

Cur. adv. vult.

RANKIN C. J. In this case an order was made on the 26th of August, 1925, appointing a receiver and directing that the defendant firm do make over to the receiver the books of account of their firm for a certain year and the *hatchittas* standing in the *benami* name of one Ramdeo's brother, Baij Nath Matilal, and those executed by various debtors of the defendant firm in acknowledgment of their debts. It was further ordered that the defendant firm do make over to the receiver or to this Court to be placed to the credit of the suit all moneys realised by them in contravention of a certain order. By another order made on the 5th of July, 1926, it was ordered that the Official Receiver be appointed receiver to the suit under the order already mentioned and that the said Ramdeo do stand committed to the custody of the Superintendent of the Presidency Jail for contempt of Court for having failed to make over to the said receiver the *hatchittas* mentioned in paragraph 22 of the said petition and that a warrant do issue directed to the Sheriff of Calcutta and to the Superintendent of the Presidency Jail commanding the Sheriff to arrest the said Ramdeo wherever he may be found within the local limits of

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(1) (1908) I. L. R. 36 Calc. 233.

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the jurisdiction of this Court and to convey him to the said jail.

It appears that Ramdeo was not within the limits of the Ordinary Civil Jurisdiction of the Court, but was residing and staying within the district of Nadia in this province. Accordingly, the warrant directed to the Sheriff failed to take effect. In consequence of this, the application which is now before us was launched on the 31st of March, 1927, and it asked the learned Judge on the Original Side for an order directing the District Judge of Nadia to execute the said warrant, seize the person of the defendant wherever found within the said district and convey it to the Sheriff of Calcutta, to be by him conveyed over to the Superintendent of the Presidency Jail.

The learned Judge, Mr. Justice Gregory, dismissed this application, not being satisfied that he had any jurisdiction to make such an order. It would appear from the minutes of the proceedings before him that section 136 of the Civil Procedure Code was relied upon by the applicants and that the applicants also claimed to be entitled to the exercise of the inherent powers of the Court and also to powers under section 151 of the Code. Section 36 of the Civil Procedure Code was also referred to.

Mr. S. N. Banerjee has argued upon this appeal that sections 36 and 136 must between them cover this case. It is necessary, therefore, to observe that any order for arrest for contempt of Court committed by breach of an injunction or by defiance of the Court's receiver may be regarded in the High Court in different ways. In so far as the order is made not under the Code, but as an order for contempt of a Court of record, that is one thing. In so far as the order is made under a provision of the Code, that is another thing. Viewed merely as an order in the

exercise of the Court's inherent jurisdiction to punish for contempt, I am not of opinion that it is made out that any such order as is here asked for can be made by this Court. There can be no doubt, as it seems to me, that, for the purposes of execution of decrees and orders, the Ordinary Original Jurisdiction is confined within the local limits of Calcutta. The questions of the Court's power derived from the old Supreme Court to arrest for contempt of Court a person in the mofussil have not been argued before us and I make no pronouncement with regard to them. There can be no doubt that this Court, on its Appellate Side, in a case arising in the mofussil, would have the power to make such an order as is here asked for. That, on its Original Side, the Judge would have any right to direct the District Judge of Nadia to execute a warrant of arrest for contempt is a proposition which I doubt extremely. That matter, however, need not be further discussed. It has to be observed that this question is one which might arise just as easily in a mofussil Court as in the High Court. Any mofussil Court may appoint a receiver, and if a person residing outside its jurisdiction interferes with the receiver then the same problem arises as arises here. In my judgment, it is eminently desirable to proceed regularly under the Code so far as possible. It is trite law that the appointment of a receiver, so far as regards parties bound by the order, operates against them as an injunction. It is an injunction necessarily against interference with the Court's receiver, whether by withholding possession of property or otherwise. Under the Code, permanent injunctions are enforced in execution, but under Order XXXIX, interlocutory injunctions are enforced under a special power which is given to Courts in the mofussil as well as to the High Court notwithstanding

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that such Courts have no inherent right of arrest for contempt. The provision is contained in rule 2 of Order XXXIX, where it says:—"In case of disobedience, or of breach of any such terms as the Court granting an injunction may order, the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding six months." It seems to me that instead of appealing to this Court the applicants here would have been better advised to make a fresh application to the learned Judge on the Original Side asking for an injunction in express terms. In case of breach of that injunction, an order could be made under Order XXXIX, rule 2, directing the arrest and detention of the offender. In that case there would be no difficulty in holding that section 136 of the Civil Procedure Code would apply. This Court would have a statutory right to make the kind of order which is now asked for. If there be any objection to this course—and after all it is no part of the duty of this Court to give advice to these appellants—then these appellants must discover some other method of procedure for themselves. In the case of *Rajah of Ramnad v. Seetharam Chetty* (1), it was held that the High Court on its Original Side could not execute decrees by arrest outside its territorial limits, but there are observations which would appear to distinguish the case of arrest for contempt on the ground that that is in its nature a criminal matter. Accordingly the same reasoning may not apply in such a case. But apart altogether from any question of jurisdiction, it has to be remembered that there is a question of machinery to be considered and, as the Sheriff of Calcutta no longer functions outside the limits of the

(1) (1902) L. L. R. 26 Mad. 120.

Ordinary Civil Jurisdiction of this Court, grave difficulties arise if it be attempted in any way to exercise criminal jurisdiction by this summary proceeding over a person in the mofussil. That, however, was not touched upon in the arguments before us, and it is a question upon which it is not necessary now to pronounce any opinion.

In my opinion this appeal must be dismissed. We make no order as to costs.

MITTER J. I agree.

Attorney for the appellants: *Mr. A. K. Bannerjee.*

Attorney for the respondents: *Mr. M. L. Mullick.*

Appeal dismissed.

S. M.

APPELLATE CIVIL.

Before Suhrawardy and Graham JJ.

JEWRAJ KHARIWAL

v.

DAYAL CHAND JAHURY. *

1927

Nov. 17.

Insolvency—Provincial Insolvency Act (V of 1920), s. 70—Amendments, effect of—Preliminary enquiry, if essential—Nature of enquiry.

The effect of the amendments of section 70 of the Provincial Insolvency Act is to give the Court a discretion so that it may satisfy itself in any way it thinks proper on the facts of each particular case as to the propriety of ordering prosecution under the section. The Court may pass an order *ex parte* and in the absence of the insolvent.

* Appeal from Original Order No. 168 of 1927, against the order of G. C. Sankey, District Judge, 24-Parganas, dated Feb. 1 and 8, 1927.