

INSOLVENCY JURISDICTION.

Before Lord-Williams J.

BILASROY SEROWGEE, *In re.**

1929.

Jan. 24.

Insolvency—Practice—Witness, pardanashin lady—Commission for examination, if obligatory—Contempt—Presidency-towns Insolvency Act (III of 1909), ss. 36 (1), 37, 90 (1)—Civil Procedure Code (Act V of 1908), s. 132.

Under section 36 (1) of the Presidency-towns Insolvency Act, the court in a suitable case may summon before it any *pardanashin* lady witness who is known or suspected to have in her possession any property belonging to the insolvent.

Section 132 (1) of the Code of Civil Procedure, which does not apply to examinations of witnesses under section 36 (1) of the Presidency-towns Insolvency Act, empowers the court to order any *pardanashin* lady witness to give evidence in court provided she is not compelled to come forth into view or to become visible to the public gaze.

APPLICATION.

This was an application on behalf of one Premasukhdas Kissenloll, creditors of the insolvent Bilasroy Serowgee, that certain *pardanashin* lady witnesses, who were summoned by the Registrar in Insolvency to appear before him on the 18th of February, 1929, under an order of the 13th of December, 1928, for their examination under section 36 of the Presidency-towns Insolvency Act, be committed for contempt of Court for disobeying the said order of the said Registrar and that warrant of arrest may be issued against them for the purpose of their examination under section 36 of the Presidency-towns Insolvency Act and also for other reliefs.

Mr. K. P. Khaitan, for the applicant. No appeal was made against the said order of the Registrar in Insolvency, dated the 13th of December, 1928. But the ladies chose to disobey the same and were therefore guilty of contempt. The said order was perfectly legal, the Registrar being fully competent to make it. Section 36 of the Presidency-towns Insolvency Act read along with section 6 gave the Registrar jurisdiction

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to summon all classes of witnesses. See *In re Kissory Mohan Roy* (1) and *Re Albert Felix Seldana* (2). The power to issue commission under section 37 of the Act is discretionary with the court. Moreover, section 90 (1) does not narrow down the court's powers under section 36. See *Re Dinaram Somani* (3). Furthermore, the provisions of the Code of Civil Procedure do not fetter the court's discretion to issue commission or not. *Pardanashin* lady witnesses frequently appear in court in *palki*. Appearance in *palki* does not violate the spirit of section 132 of the Code of Civil Procedure.

Mr. H. C. Mazumdar, for two of the *pardanashin* lady witnesses. Section 90 (1) taken along with section 37 of the Presidency-towns Insolvency Act makes the provisions of the Code of Civil Procedure applicable to cases coming under section 36. Under the Code of Civil Procedure, *pardanashin* lady witnesses cannot be compelled to come to court even in *palki*. See *Chamatkar Mohiney Dabee v. Mohesh Chunder Bose* (4), *Mohesh Chunder Addy v. Manick Lall Addy* (5), *Prorat Kumaree Dasse v. Opurba Kissen Sett* (6), *Solomon v. Jyotsna Ghosal* (7) and *Balakeshwari Debi v. Jnanananda Banerjee* (8).

Mr. B. D. Jhunjhunwalla, for another *pardanashin* lady witness supported *Mr. H. C. Mazumdar*.

LORT-WILLIAMS J. In my opinion section 132 (1) of the Civil Procedure Code does not apply to examinations under section 36 (1) of the Presidency-towns Insolvency Act and that the court in a suitable case may summon before it a *pardanashin* lady who is known or suspected to have in her possession any property belonging to the insolvent. Section 37 gives the court power, if it thinks fit, instead of summoning such a *pardanashin* lady to court, to issue commissions or letters of request. That power is discretionary. Further I am of opinion that the correct

(1) (1916) I. L. R. 44 Calc. 286.

(5) (1899) I. L. R. 26 Calc. 650.

(2) (1921) I. L. R. 48 Calc. 1089.

(6) (1899) 3 C. W. N. 753.

(3) (1923) 27. C. W. N. 370.

(7) (1917) I. L. R. 45 Calc. 492.

(4) (1832) I. L. R. 26 Calc.

(8) (1917) I. L. R. 45 Calc. 697.

meaning of section 132 (1) of the Civil Procedure Code is that a lady, who, according to the customs and manners of this country ought not to be compelled to appear in public, shall be exempt from personal appearance in court, that is, from being exposed to the public gaze—such a person is exempt not from attendance in court but from appearance in court. I think “appearance” means that she shall not be compelled to come forth into view or become visible to the public gaze. A method is provided in this country by which such ladies can be moved from place to place, in a *palki*, and, in my opinion, they may be compelled to come to court in a *palki* so long as they do not become visible to the public gaze. It follows, therefore, that if the examination of these ladies be taken by the Registrar in his private room, the public being excluded therefrom, and they being concealed from the gaze of the Registrar, the parties and the solicitors and counsel appearing in the enquiry, their feelings and sentiments will be considered sufficiently. Therefore, I order that these ladies be examined in the manner which I have indicated.

With regard to the question of costs, I have dealt with this matter on the footing that these ladies are not in contempt, but, in my opinion, they are in contempt. The order was made properly by the Registrar for their attendance. They have taken no steps to set that aside or to appeal from it. The result is that they are in disobedience to an order properly made and are in contempt. I believe that those who have advised them have misconstrued the provisions of these sections. Therefore, I do not inflict any penalty upon them for their contempt, but they must pay the cost of this application. I certify for counsel.

Attorneys for the applicant: *Khaitan & Co.*

Attorneys for two of the witnesses: *B. K. Basu & Co.*

Attorney for one of the witnesses: *B. D. Jhunjhunwalla.*

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