

## ORIGINAL CIVIL.

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Before Panckridge J.

1934

Jan. 30.

*In re* MADAN THEATRES LIMITED.

*Insolvency—Petition in insolvency—Condition for removal of petition—Security to satisfaction of Registrar—Decision of Registrar as to sufficiency of security, if appealable—Practice—High Court (Original Side) Rules and Orders, Chap. VI, r. 15.*

Where a petition in insolvency is directed by the Court to be removed on condition that the debtor is to furnish security to the satisfaction of the Registrar, the Court has no power to interfere with the decision of the Registrar with regard to the sufficiency of the security tendered.

*Hoare & Co. v. Morshead* (1) followed.

APPEAL by the creditor against a decision of the Registrar in Insolvency.

The facts of the case and arguments of counsel appear in the judgment.

*Page* for the creditor Chowkhani.

*S. M. Bose* for the debtor company.

PANCKRIDGE J. I am of opinion that the preliminary objection taken by the company must prevail. The creditor presented a petition for compulsory winding up on April 11, 1933. The Court directed that the petition should be advertised as provided by the rules. The company moved the Court on April 28, 1933, to have the winding up petition taken off the file. Lort-Williams J. directed that this should be done on the company furnishing security, to the satisfaction of the Registrar, to the extent of Rs. 50,000 within a fortnight, and that in default the application should stand dismissed with costs.

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On appeal by the company, the Court reduced the security from Rs. 50,000 to Rs. 30,000. On June 7, 1933, the Registrar in Insolvency accepted five persons as sureties, the security being their interests in certain immoveable properties in Calcutta and its suburbs.

The creditor now wishes to appeal against the Registrar in Insolvency's decision under rule 15 of Chapter VI of the Original Side Rules and Orders. I need not, in the circumstances, discuss the grounds of appeal in detail. It is pointed out that the properties belong to a firm known as J. F. Madan, in which the sureties along with certain other persons are partners. It is said that, under the law, a partner cannot pledge partnership property to secure the debt of a third party. Objection is also taken to the title of some of the properties, and to their valuation. Moreover, it is submitted that the security is unsuitable, as the properties are already mortgaged to a bank, and this bank has instituted a mortgage suit, which is now pending and in which a receiver has been appointed. The company has supported the Registrar in Insolvency's decision on the merits, but has also maintained that I have no power to interfere with it. The appeal Court, so runs the argument, saw fit to impose the specific condition, on the fulfilment of which the winding up petition was to be taken off the file. That condition was fulfilled as soon as the Registrar in Insolvency, being satisfied with the security, accepted it, and I have no right to review his order, because to do so would be to substitute another condition, namely security to my own satisfaction, for that imposed by the Court. I think the correctness of this view is supported by the authority of *Hoare & Co. v. Morshead* (1). There, leave to defend under Order XIV, rule 6 of the Rules and Orders of the Supreme Court was given, upon the defendant's furnishing security to the satisfaction of the Master. The Master refused to accept the security offered and directed that the plaintiffs should

(1) [1903] 2 K. B. 359.

be at liberty to sign final judgment. The defendant appealed to the Judge in Chambers under Order LIV, rule 21, which corresponds in all material particulars with our Chapter VI, rule 15. The court of appeal affirmed the decision of the Judge that no appeal lay to him. Mathew L. J. observed that, in the circumstances of the case, the Master acted as a person, designated by virtue of the power given to the Judge of imposing any terms on giving leave to defend. Cozens-Hardy L. J. also indicated his opinion that the Master was acting, not in the exercise of his jurisdiction as Master, but as a *persona designata*. I appreciate that in the case before me the Court was not exercising a statutory power to impose conditions, but the power of the Court to order the removal of the petition on terms is not, and cannot be, challenged before me. Had the Court intended that the Registrar's decision should be subject to appeal, it would have been quite simple to make this clear in the order.

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I thought at one stage that difficulty might arise from the fact that it was the Registrar in Insolvency who accepted the security, although the order specified, or "designated", the Registrar, by which must be meant the Registrar, Original Side.

The reason for this is an order made by Sir Lancelot Sanderson on February 11, 1924, whereby he directed that all references with regard to security should be transferred from the Registrar to the Registrar in Insolvency. Though it is not so stated, I take it that the order was made under Chapter IV, rule 18. In my judgment, the Court must be assumed to have had Sir Lancelot Sanderson's authorisation in mind, when the order for security was made, or, in other words, that the Registrar in Insolvency is as much a person designated, as if the order specifically provided that the security was to be to his satisfaction.

Both parties appeared before him and no objection was raised to his dealing with the matter. Indeed the creditor has not taken this point before me. I am

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conscious that the Judge in Chambers has hitherto entertained appeals as to the sufficiency of the security tendered, in cases where conditional leave to defend has been given under Order XXXVII, or Chapter XIII-A. I do not think, however, that my natural reluctance to interfere with the established practice of the Court ought to deter me from construing the order for security in the manner, in which I consider authority shows that it should be construed.

The application is dismissed with costs. Certified for counsel.

*Application refused.*

Attorneys for the creditor : *Mukherjee & Biswas.*

Attorneys for the insolvent : *Dutt & Sen.*

G.K.D.