

- (c) cases not affected by non-registration,
  - (d) if registration after institution of suit cures defect
  - (e) exemption of firms and partners from operation of S. 69 I. P. A.
    - (1) if Section 69 I. P. A. applicable when a firm has places of business in as well as outside British India ;
    - (2) what British India means,
  - (f) if Section 69 I. P. A. applicable to
    - (i) execution proceedings
    - (ii) if applicable to pending suits
    - (iii) if it applies to suits instituted after the commencement of I. P. A<sup>1</sup>.
- 18. Partnership rules made by**
- (i) Governor General-in-Council,
  - (ii) by Local Government
    - (a) power of making rules
    - (b) rules *intra vires* and *ultra vires*.

## LECTURE IX

### BANKRUPTCY AND ADJUDICATION OF FIRMS AND PARTNERS

#### 1. Adjudication of Firms—

- (a) if a firm can be adjudicated insolvent in the firm name<sup>2</sup>,
- (b) the legal status of a firm under the old and the new Act,
- (c) if a firm can be adjudicated without adjudication of partners<sup>3</sup>,
- (d) if a firm and some of its partners can be adjudged without adjudication of other partners,
- (e) if an order of adjudication can be made against a dissolved firm,
- (f) distinction between a trading Hindu joint family and a firm in respect of adjudication<sup>4</sup>.

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(1) Surendra v. Monohar 37 C. W. N. 67.  
 (2) Kali Charan v. Hari Mohan 31 C. L. J. 206 and Gokuldas v. Parry & Co. I. L. R. 48 Mad. 795 and Exparte Blair (1877) 12 Ch. D. 235.  
 (3) Gokul v. Parry & Co. I. L. R. 48 Mad 795.  
 (4) Bolisetti Māmayya v. Kolla Kottaya, Kommurri Ramayya Rice Mill Co. I. L. R. 44 Mad. 810.

## 2. Acts of insolvency in case of a firm

- (a) Act of insolvency if to be an act of the firm<sup>1</sup>,
- (b) If the firm is liable to be adjudged
  - (i) for acts of a partner,
  - (ii) for acts of an agent ;
- (c) distinction between insolvency in case of a firm and in case of joint debtors other than a firm<sup>2</sup>.

## 3. Adjudication of Partners

- (a) partners if to be adjudged as joint debtors<sup>3</sup>,
- (b) if an order of adjudication can be made against
  - (i) the representative of a deceased partner,
  - (ii) against a foreign partner,
  - (iii) against a minor admitted to the benefits of a partnership<sup>4</sup>,
  - (iv) against a lunatic partner<sup>5</sup>,
  - (v) against a nominal partner ;
- (c) if all the partners can be adjudged without adjudication of the firm,
- (d) if a minor partner's share to be ascertained in insolvency proceedings or by a separate suit<sup>6</sup>.

## 4. Different acts of insolvency

- (a) transfer of property for the benefit of creditors generally,
- (b) transfer of joint and separate estate of partners<sup>7</sup>,
- (c) transfer with intent to defeat and delay creditors—transfer
  - (i) for present consideration
  - (ii) partly to secure existing debt and partly to obtain advances present or future,
  - (iii) for the private benefit of a partner<sup>8</sup>,
  - (iv) by way of assignment by one or two partners to a third partner<sup>9</sup>,
- (d) transfer void as fraudulent preference,

- (1) *Punniah v. Kesarmal Firm and 4 others* I. L. R. 50 Mad. 256.
- (2) *Maung v. Arun* I. L. R. 2 Rang. 309.
- (3) 30 C. W. N. 173.
- (4) *Jagamohan v. Girish* 2 I. L. R. 42 All. 515 and *Re Sital Prosad* I. L. R. 43 Cal. 1157.  
*Kostur Chand v. Dhan Pal* I. L. R. 23 Cal. 26 P. C.
- (5) *Re Farnham* (1896) 1 Ch. 336.
- (6) *Re Hira Lal* 97 I. C. 446.
- (7) *Abbot v. Barbage* 2 Bing. (N. C.) 444.
- (8) *Re Seehase* 22 C. W. N. 335.
- (9) *Exparte Mayor* 34 L. J. B. K. 25.

- (e) absence from the place of business—absence of all partners if necessary—absence of the manager of a firm, if constitutes an act of insolvency<sup>1</sup>;
- (f) attachment of partnership property,
- (g) notice of suspension of payment of debts
- (h) imprisonment of partners for their own debts, if sufficient,  
if acts of insolvency can be committed outside British India<sup>2</sup>.

## 5. Forum

- (a) jurisdiction of the Court to entertain an application for insolvency on behalf of, or against a firm in its firm name—  
When the firm carries on business
  - (i) in different provinces in India,—
  - (ii) in British India as well as in foreign countries,
  - (iii) in British India and native states,
  - (iv) in presidency towns as well as in mofussil ;
- (b) difference between a firm and individual debtors as to acts giving jurisdiction to Court,
- (c) effect of concurrent jurisdiction by different Courts ,
  - (i) annulment of one of the adjudications in case of concurrent jurisdiction,
- (d) effect of adjudication of a firm by a foreign Court on an application in British Court in India.

## 6. Petition for insolvency

- (i) against a firm,
- (ii) by a firm.
  - (a) Limitation,
  - (b) particulars to be stated,
  - (c) names of the partners to be furnished,
  - (d) mode of signing the petition and the verification,
    - (i) affidavit, if necessary when one partner signs for others
  - (e) notice and publication,
  - (f) mode of appearance by the debtor firm on a petition of a creditor,
  - (g) production of account books—  
punishment of debtors for non-production of account books,
  - (h) discovery in insolvency proceedings,

(1) *Kastur v. Dhanpat* I. L. R. 23 Cal. P. C.

(2) *Exparte Crispin* (1873) L. R. 8 A. C. 374 at p. 380 and also *Cooke v. Charles* (1901) A. C. 102.

- (h) *interim* management of the business,
  - (i) appointment of *ad-interim* receiver ;
  - (ii) grounds on which *ad-interim* receiver can be appointed,
    - (a) custody of papers, documents, account books and valuables,
    - (b) conduct of the business,
  - (iii) forms of the petition,
  - (iv) evidence in support of the petition,
  - (v) expenses of *ad-interim* receiver,
  - (vi) objections to a petition for appointment of *ad-interim* receiver.
    - (a) evidence in support of the objections,
    - (b) affidavits sworn in from different districts, if in order,
    - (c) documents in support how to be used ;
  - (vii) security to be furnished by an *ad interim* receiver,
    - (a) official receiver or official assignee, if may be appointed,
    - (b) if managing partner can be appointed *ad-interim* receiver<sup>1</sup>.
  - viii) *Ad interim* receiver when to take charge,
  - (ix) Rights and duties of an *ad-interim* receiver.

## 7. Procedure in insolvency proceedings

- (a) defences to a petition for insolvency when presented by
  - (i) a debtor firm,
  - (ii) a creditor,
- (b) debts due to debtor firm from the petitioning creditor, when can be pleaded as a defence or by way of set-off<sup>2</sup>,
- (c) consolidation of petition for adjudication,
- (d) *Interim* stay of proceedings,
- (e) evidence necessary for adjudication,
- (f) adjudication when to be made,
- (g) form of adjudication,
- (h) publication of the order of adjudication,
- (i) effect of the order of adjudication,
  - (i) if managing partner can be appointed receiver after adjudication<sup>3</sup>,
- (j) duty of the debtor firm after adjudication.

## 8. Adjudication of the debtor firm for the purpose of winding up—

- (a) vesting order,
- (b) properties vesting in the receiver or the court<sup>4</sup>,

(1) 1934 Cal. 444.

(2) In re A Bankruptcy Notice (1934) 1 Ch. 431.

(3) Radhakanta v. Benode 1934 Cal. 444.

(4) Mahomed v. Masud I. L. R. 44 All. 617.

- (i) goods in possession, order or disposition of the firm in its trade or business if in reputed ownership<sup>1</sup>,
- (ii) goods of a partner in possession of the firm<sup>2</sup>,
- (iii) goods of the firm in possession of an adjudicated partner<sup>3</sup>,
- (c) doctrine of reputed ownership if applies in case of change in the constitution of the firm before adjudication.
- (d) Rights of secured creditor after adjudication.

### 9. Composition and schemes of arrangement

- (i) before adjudication,
- (ii) after adjudication<sup>4</sup>;
- (a) position of the creditors of the firm and separate creditors of individual partners in such a scheme,
- (b) if one scheme for all creditors or different schemes for creditors of each partner in addition to a scheme for the creditors of the firm ;
- (c) consideration and distribution of the assets of the firm and separate assets of the partners in such scheme,
- (d) acceptance of such a scheme by creditors at a meeting,
- (e) approval of such a scheme by the court,
- (f) court's power to give effect to the scheme<sup>5</sup>.

### 10. Administration of the assets of a bankrupt firm—

- (a) disposal of assets and the good will,
- (b) trust funds in the hands of the firm, if to be treated as assets of the firm,
- (c) avoidance of fraudulent transfers,
  - (i) proceedings under sections 4, 53 and 54. I. P. A.
  - (ii) onus of proof in such proceedings,
  - (iii) determination to be made by court and not by receiver,
- (d) proof of debts by creditors.
  - (i) form of affidavit for such a proof,
  - (ii) if debts could be changed by other creditors or by the debtor or by the receiver,
  - (iii) expunging of proof,
- (e) rate of interest allowable on debts ;
  - (i) when assets prove insufficient,
  - (ii) when assets prove sufficient,

(1) In re Marshal 7 Cal. 412 ; Boileau v. Miller 10 C. L. R. 591 and Colonial Banks v. Whinney (1886) 11 Ac. 426 at p. 440.

(2) Exparte Hare (1835) 1 Deac. 16.

(3) Reynolds v. Bowley (1867) L. R. 2 Q. B. 474.

(4) Re Shivalal 40 I. C. 207.

(5) Re Krishna Kishore Adhicary I. L. R. 54 Cal. 650.

- (iii) interest posterior to adjudication, if and when allowable ;
  - (f) priority between creditors
    - (i) priority between ordinary creditor and a partner creditor<sup>1</sup>;
  - (g) matters which the official receiver is empowered to investigate in such administration,
  - (h) preparation of the schedules of creditors and distribution of assets,
    - (i) excess assets after payment of all creditors, how to be disbursed.
11. **Discharge**
- (i) if a firm can apply for discharge.

## LECTURE X

### QUASI-PARTNERSHIPS NOT GOVERNED BY THE INDIAN PARTNERSHIP ACT 1932

#### 1. Family partnerships

- (a) Hindu<sup>2</sup>,
- (b) Burmese Buddhist,
- (c) Mahomedan converts carrying on joint family business<sup>3</sup>,
- (d) Mahomedan and Christian families retaining Hindu customs having joint family trade<sup>4</sup>.

#### 2. Different kinds of joint family business—

- (a) ancestral business,
- (b) business partly ancestral and partly introduced by the managing members of the family<sup>5</sup>,
- (c) entirely new business started by members of a joint family,
  - (i) of the same nature,
  - (ii) of a different nature<sup>6</sup>;

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(1) In re Howes (1934) 1 Ch. 49.  
 (2) Re Gobinda Lal Mahata 39 C. W. N. 275 and Section 5 I. P. A.  
 (3) Solema Bibi v. Hafez I. L. R. 54 Cal. 687.  
 (4) Francis Ghosal v. Gabri Ghedal I. L. R. 31 Bom. 25 and M. A. Rowthen v. Grana Ammal 1934 Mad. 327.  
 (5) Sannyasi v. Krishnadhan I. L. R. 49 Cal. 560.  
 (6) Damu v. Bansi I. L. R. 51 Mad. 711; Venkat v. Palani I. L. R. 52 Mad. 227. <sup>c</sup>