

## APPELLATE CIVIL.

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*Before Henderson and Khundkar J.J.*

G. C. CHAKRABARTI

v.

E. WHITE.\*

1935  

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May 21.

*Attachment—Insolvency court, when can direct the withdrawal of attachment—  
Provincial Insolvency Act (V of 1920), ss. 28, 51, 52, 74 (ii).*

Section 74 (ii) of the Provincial Insolvency Act does not give the insolvency court jurisdiction to stay execution proceedings elsewhere.

An order passed by an insolvency court before the order of adjudication, even if there be an order for summary administration, directing the withdrawal of an order of attachment passed by another court and also directing that no further attachment should be made is without jurisdiction.

APPEAL FROM ORIGINAL ORDER by the creditor.

The material facts of the case and arguments in the appeal appear from the judgment.

*Bijankumar Mukherji and Kumudbandhu Bagchi* for the appellant.

*Birajmohan Ray* for the respondent.

The judgment of the Court was as follows:—

This is an appeal from an order of the learned Additional District Judge of Howrah made in certain insolvency proceedings. The respondent filed his petition on the 8th February, 1934. The appellant had taken proceedings to execute a decree obtained by him against the respondent in the Small Causes Court, Calcutta, and had obtained an order for the attachment of the respondent's salary. On

\* Appeal from Original Order, No. 324 of 1934, against the order of S. N. Modak, Additional District Judge of Hooghly, at Howrah, dated May 10, 1934.

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the 8th February, 1934, the respondent moved the District Judge for the withdrawal of this order of attachment. The District Judge accordingly addressed the Registrar of the Small Causes Court and, among other things, requested him (i) to withdraw the attachment and (ii) to make no further attachment. The present appeal is directed against that order. It may be noted that there was an order for summary administration under section 74 of the Provincial Insolvency Act.

On behalf of the appellant, Dr. Mukherji has contended that the order of the lower court was without jurisdiction. The learned judge held that, in view of the provision of section 74 (ii), he was entitled to make the order under sections 51 and 52.

The effect of section 74 (ii) is that the property of the respondent has vested in the court as a receiver. But, in our judgment, there is nothing here which would give the insolvency court jurisdiction to stay execution proceedings elsewhere. It is clear that the order made cannot be supported under either of the sections upon which the learned judge has relied. Section 51 merely provides that the appellant is not entitled to keep the money realised for himself, but Dr. Mukherji has made no complaint against that part of the order which directs the Registrar to send any money realised to the insolvency court. Section 52 by its very terms cannot be invoked in support of the order.

Section 28 (2) does not come into play until an order of adjudication has been made and there is nothing to prevent the appellant from taking proceedings against the respondent's property. Section 29 deals with suits or proceedings, which are pending when an order of adjudication is made. But it is the trying court and not the insolvency court which has jurisdiction to decide whether such suits shall be stayed or not.

In our opinion, the order of the lower court, so far as it directed the Registrar to withdraw the attachment and to make no further attachment, was without jurisdiction and must be set aside. We make no order as to costs. It is desirable that the respondent's petition should be heard as soon as possible and the records should be sent down at once.

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*Appeal allowed.*