

APPELLATE CIVIL.

Before Mr. Justice Parker.

VAIKUNTA PRABHU AND ANOTHER (DEFENDANTS), PETITIONERS, 1891.
Sept. 18, 23.

v.

MOIDIN SAHEB AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Civil Procedure Code—Act XIV of 1882, s. 588, cl. 17—Provincial Small Cause Courts Act—Act IX of 1897, s. 24—Insolvency petition in execution of decree in Small Cause Suit—Appeal.

In proceedings in execution of the decree passed in a Small Cause Suit by a District Munsif who had been invested with insolvency jurisdiction, the judgment-debtors filed a petition under section 344 of the Civil Procedure Code praying that they might be declared insolvents. Their petition was dismissed by the District Munsif :

Held, an appeal lay to the District Court against the order dismissing the petition.

PETITION under section 622 of the Civil Procedure Code praying the High Court to revise the order of W. J. Tate, Acting District Judge of South Canara, made on civil miscellaneous appeal No. 7 of 1889.

The facts of this case appear sufficiently for the purposes of this report from the judgment of the High Court.

The defendants preferred this petition.

Pattabhirama Ayyar for petitioners.

Narayana Rau for respondents.

JUDGMENT.—In the execution of small cause suit No. 417 of 1885 on the Mangalore District Munsif's file, the defendants applied to be declared insolvents. This application was filed as insolvency suit No. 7 of 1888, and was dismissed by the District Munsif. Their appeal to the District Court has been dismissed on the ground that no appeal lies; hence this revision petition under section 622, Civil Procedure Code.

The ground on which the District Judge has dismissed the appeal is that it is one from an insolvency order passed by the District Munsif in the exercise of his small cause jurisdiction,

* Civil Revision Petition No. 234 of 1890.

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and that under section 24 of Act IX of 1887, an appeal is only given from one of the orders specified in section 588, Civil Procedure Code (clause 29), chapter XLIII of the Civil Procedure Code (in which sections 588 and 589 occur), is not included in the chapter of the Procedure Code extended to Provincial Courts of Small Causes by schedule II, Civil Procedure Code.

On appeal it is argued that the order passed by the District Munsif was not passed in the exercise of his small cause jurisdiction, but in the exercise of a special jurisdiction conferred upon him by the Local Government under section 360, Civil Procedure Code, by which he has been invested with the powers conferred on District Courts in insolvency matters (*vide* G.O. of 14th December 1886, No. 480, Fort St. George Gazette, 14th December 1886, page 1093). It is pointed out that the special jurisdiction and powers given by sections 354 to 359 are far more extensive than the powers ordinarily vested in a Small Cause Judge, and hence it is argued that from the exercise of this special jurisdiction as an Insolvent Court an appeal will lie under section 588, clause 17, Civil Procedure Code, and that under section 589 as amended by section 3 of Act X of 1888, the appeal will lie to the District Court.

I am of opinion that this view is sound and must prevail. It appears also in consonance with the view taken by this Court in *Sitharama v. Vythilinga*(1).

I set aside the order of the District Judge and remand the appeal for investigation. The petitioner is entitled to his costs in this Court, and the costs in the District Court will abide and follow the result.

(1) I.L.R., 12 Mad., 472.
