

(2) Whether section 33 is confined to cases in which the accident actually results in personal injury or death? RE HAWKINS.

Our answer to both questions is "No." As regards the second we may add that the wording of the section is perfectly clear and specifies cases *likely* to have resulted in loss of life or personal injury as well as those which actually so resulted. Whether such a result was likely in any case in which it did not actually ensue is a question of fact to be determined with reference to the surrounding circumstances. AYLING AND
TYARJI, JJ.

Attorneys for the accused—*Messrs. King and Partridge.*

S.V.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

C. A. EASWARA IYER (PLAINTIFF), APPELLANT,

v.

K. GOVINDARAJULU NAIDU (DEFENDANT) RESPONDENT.*

1910.
September 3.

Presidency-Towns Insolvency Act (III of 1909), sec. 17—Decree of Presidency Small Cause Court—Judgment-debtor, adjudicated insolvent subsequent to decree—Adjudication by the High Court—Application for execution by arrest in the Presidency Small Cause Court—Leave of the High Court, not obtained—Release of Judgment-debtor on security—Non-appearance, effect of—Security bond, validity of—Jurisdiction—Waiver—Presidency Small Cause Courts Act (XV of 1882), sec. 69.

Where a decree was passed by the Presidency Small Cause Court against a person who was subsequently adjudicated an insolvent by the High Court in the exercise of its insolvency jurisdiction, the former Court had no jurisdiction without the leave of the High Court to entertain any application for execution of the decree against the insolvent under section 17 of the Insolvency Act III of 1909. Consequently a security bond, executed to the former Court by a third party for the appearance of the judgment-debtor in the course of the execution proceedings carried on without the leave of the High Court, was obtained without jurisdiction and was void in law.

A reference to the High Court under section 69 of the Presidency Small Cause Courts Act should state clearly the points on which there is a difference of opinion among the Judges of the Small Cause Court.

* Referred No. 3 of 1914.

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CASE stated under section 69 of the Presidency Small Cause Courts Act (XV of 1882), by G. KRISHNAN, the Chief Judge and V. C. DESIKA ACHARIYAR and S. RAMASWAMI AYYANGAR, the Judges of the Presidency Court of Small Causes, Madras, in Full Bench Application No. 589 of 1913 in Small Cause Suit No. 6809 of 1913.

The facts of the case appear from the judgment of NAPIER, J.

Venkatasubba Rao and Radhakrishmayya for the appellant.

W. V. Rangaswami Ayyangar for the respondent.

NAPIER, J.

NAPIER, J.—This is a reference under section 69 of the Presidency Small Cause Courts Act (XV of 1882). It is much to be regretted that the Judges of that Court did not adhere more closely to the directions of the section in making their reference. They do not state clearly the points on which there is a difference of opinion. They practically refer the whole case to this Court saying that they are not agreed on the question whether “under the circumstances of the case, the bond should be enforced against the surety, the defendant.” In my opinion this is not a proper reference and were it not that one of the Judges of that Court has now retired, I would, speaking for myself, return the reference for resubmission in strict accordance with law. As that course is now impossible, I will deal with it as if the reference was on three points:—(1) whether there was any jurisdiction in the Court to take the bond, (2) whether the protection order granted by the High Court in the exercise of its insolvency jurisdiction operated to make the bond void and (3) whether the sum mentioned in the bond was penal. These three points have been elaborately argued before us, on the second point, the principal question to be considered are:—whether the continuance order did in fact relate back to cover the date when the bond was taken and also whether the protection order continued after he had entered this debt in his schedule could be read as covering this debt when no specific reference was made to the fact in the continuance order. From what we learn from the Registrar, it is clear that these orders for continuance of protection are made in rather a routine manner after once the protection has been given and I am inclined to think that any continuation of protection would cover all debts contained

in the schedule at the date of each such continuation order unless the order is made exempting from protection with respect to any particular debt. The point however is not under the present procedure of much importance, for I am of opinion that the first question must be answered in the negative. I hold that the Small Cause Court had after the 2nd of December, the date of his adjudication, no jurisdiction over the debtor to make any order against him without the sanction of the High Court. Section 17 of Act III of 1909 is far wider in its terms than the corresponding provisions in the old Insolvency Act of 1848 on which the present protection system is based. Section 17 covers the same ground as section 7 and section 49 of the old Act, but provides an entirely different procedure. Under section 49 a suit or action or execution proceeding pending in a Court at the time when the insolvent filed his schedule *could* be stayed, set aside or suspended by that Court, the Insolvency Court having power under another section to protect the insolvent from arrest on account of either all or any of the debts mentioned in the schedule. Section 17 of the present Act goes a great deal further. It provides that no creditor to whom the insolvent is indebted in respect of any debt *provable* in insolvency shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent or commence any suit or other legal proceedings except with the leave of the Court and on such terms as the Court may impose. It is argued before us that applying for a warrant in execution proceedings is not commencing other legal proceedings within the meaning of the section and *Emperor v. Mulshankar Harinand Bhat*(1), is relied on as an authority for that position, the words used by one of the learned Judges being "by other legal proceedings is meant particularly other proceedings of a civil nature connected with the insolvency debts."

The question before the Court was however whether the proceedings in a Criminal Court were *without* jurisdiction under this section, and it is with reference to that contention that the observation is made. That case is therefore no authority for the position. Reliance is also placed on the difference in

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language of the Provincial Insolvency Act which "have any remedy against the property or the *person* of the insolvent or commence any suit or other legal proceeding." I do not however think that this difference in wording detracts from the meaning to be given to the words "other legal proceedings." Execution proceedings were specifically mentioned in section 49 of the old Act and were clearly intended to cover applications for arrest as the proviso to the section enacts that if a person was already in custody, he should not be discharged out of it otherwise than by a protection order which could be made under section 13. It is further argued that if section 13 of the Act is to be held to include proceedings by way of application for warrant or arrest in execution, there is no necessity for a protection order. The answer is that the words in section 17 will not avail to discharge an insolvent from arrest any more than the words of section 49 of the old Act and that the order of the High Court is still necessary in such circumstances and may be granted or refused by the Court as it thinks fit. I am therefore not prepared to cut down the broad principle on which the section is based, namely, that when once a person is adjudicated an insolvent creditors seeking any remedy against him must just come to the High Court, on its insolvency side to get leave for that purpose. Applying this view of the law to the facts of the case, I am of opinion that after the 2nd of December, the date when the order of adjudication was made, the Court of Small Causes has no jurisdiction without the leave of the High Court to entertain any application in execution against the insolvent: and that leave admittedly not having been procured taking of security in execution proceedings was *ultra vires* of the Court. The matter being one of jurisdiction, it is immaterial whether the insolvent claimed the benefit of the section or not, though as a matter of fact it is clear that the Court was aware of the adjudication. In this view it becomes unnecessary to consider any other question and I would answer the reference by the learned Judges as indicated above. I would add that it is not at all clear to me under what provision of the Small Cause Court Act this bond was taken.

Section 55 (4) of the Civil Procedure Code provides that where a judgment-debtor who has been arrested expresses his intention to apply to be declared an insolvent he can be

released on furnishing security; but the High Court in making rules for the Presidency Small Cause Courts under section 9 of that Act has not embodied this provision in the rules and I have great doubt whether either section 30 of the latter Act or Order 21, rule 27 empowers the Court to take a bend of the nature.

SADASIVA AYYAR, J.—I agree that the first question should be answered in the negative. The decree debt of the plaintiff against the insolvent was provable in the insolvency. Hence section 17 of Act III of 1909 took away the jurisdiction of the Small Cause Court to pass any orders in execution without the leave of the High Court after the judgment-debtor had been adjudicated an insolvent. The bond sued on was therefore obtained without jurisdiction and was void. I do not answer the other questions as the answer to the first question is sufficient for the decision of the suit.

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APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Phillips.

KALIANJI SINGJI BHAI (SOLE PARTNER OF THE FIRM OF
RAYSEE AMARCHAND)—(COUNTER-PETITIONER), APPELLANT,

v.

THE BANK OF MADRAS (PETITIONER), RESPONDENT.*

Provincial Insolvency Act (III of 1907), ss. 16, 47, 12, cl. (3), and 51—Insolvency Rules XXI, cl. (3) and V, cl. 2 and 3—Civil Procedure Code (V of 1908), O. III, r. 3 and O. V, r. 12—Petition by creditor to adjudicate debtor an insolvent—Service of notice on agent, if sufficient—No notice sent by Court through registered post, effect of—Acts of insolvency committed by agent, if sufficient—Difference between English and Indian Law.

Where a petition was filed in a District Court by a creditor praying for an order to adjudicate his debtor an insolvent under section 16 of the Provincial Insolvency Act and a notice of such petition was served on his local agent with a general power of attorney from the debtor who was residing outside the jurisdiction of the Court.

Held, that the service of notice on the agent was in law sufficient though no notice was sent by the Court to the debtor through registered post.

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13, 16 and 17
and
1915.
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9, 10 and 14.

29 M. L. J. 788

* Appeal Against Order No. 62 of 1914.