APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

1916, October, 19, 20 and 26.

P. V. ALLA PICHAI (PETITIONER), APPELLANT

v.

KUPPAI PICHAI ROWTHER AND FOUR OTHERS (COUNTER-PETITIONERS—CREDITORS NOS. 1 TO 5), RESPONDENTS.*

Provincial Insolvency Act (III of 1907), ss. 2 (c) and (g), 22, 46 and 52—Dismissal of insolvency petition by Official Receiver—Application to District Court to revise, under section 22, whether an appeal—Official Receiver, whether a Court—Appeal to High Court from order of District Court, maintainability of.

A District Judge transferred a petition of a debtor to be adjudged an insolvent to the Official Receiver. The petition was dismissed by the Receiver on the grounds that the debtor had no realizable assets, that he might be concealing his assets, ready cash and outstandings, that he was not likely eventually to get his discharge and that therefore the petition was an abuse of process of Court. On an application by the debtor under section 22 of the Provincial Insolvency Act (III of 1907), the District Court confirmed the order:

Held, that an appeal lay to the High Court under section 46 of the Act, from the order of the District Court.

Held further, that the Official Receiver is not a Court subordinate to the District Court within section 46 (1) of the Act and that an application to the District Court under section 22 of the Act to revise the order of the Official Receiver, is not an "appeal" within section 46.

Held also, that the order of dismissal was based on a misconception of the Insolvency Procedure and should be set aside.

Jeer Chetti v. *Rangaswami Chetti* (1912) 22 M L.J., 52, followed.

APPEAL against the order of Rao Bahadur W. L. VENKATARAMAYYA GARU, the District Judge of Rāmnād at Madura, in Civil Miscellaneous Appeal No. 21 of 1913, preferred against the Order of T. S. RAMASWAMI AYYANGAR, the Official Receiver of Rāmnād at Madura, in Insolvency Petition No. 17 of 1912.

The District Judge transferred the petition of a debtor to be adjudged an insolvent to the Official Receiver.

The Official Receiver on examining the petitioner, found that assets shown in the schedules of property were really no assets of the petitioner at all; and for this and other reasons appearing from the evidence of petitioner, the Receiver dismissed

* Civil Miscellaneous Appeal No. 4 of 1915.

the petition. He pointed out that in view of the provisions of section 44 (3) *a*, *b*, *d*, *e*, of the Act, there was no likehood of the petitioner obtaining the final order of discharge; that no useful purpose would be served by adjudging him an insolvent; and that the application for adjudication as insolvent was a mere abuse of process.

An application was made by the Petitioner to the District Judge to revise the order of the Official Receiver under section 22 of the Provincial Insolvency Act (III of 1907).

The only point urged before the District Judge was that the Official Receiver was precluded at that stage of the proceedings from going into the question of the truth of the petitioner's averments as to his assets, but was bound to adjudge him an insolvent on proof that he had committed an act of insolvency, *viz.*, petitioned to be adjudged an insolvent.

The District Judge dismissed the application.

The applicant preferred this appeal.

B. Sitarama Rao and *S. R. Muthuswami Ayyar* for the appellant.

K. Bhashyam Ayyangar for the respondents.

OLDFIELD, J.—This is an appeal against the Order of the District Judge, Rāmnād, rejecting an application under section 22, Provincial Insolvency Act, to revise the order of the Official Receiver of his district, dismissing the appellant's application to be adjudicated insolvent.

The preliminary objection has been taken that such an order is not appealable. The objection is supported on the ground that the Official Receiver is a Court subordinate to the District Court and that the decision of the latter in appeal from him is final under section 46 (1). The questions are: *whether the Official Receiver is a Court* and *whether an application under section* 22 *against his decision is an appeal.* If they are answered in the affirmative, it would, in my opinion, follow that he is a Court subordinate to the District Court. I deal with each question, as far as possible, separately, although they must be dealt with, to some extent, on common grounds.

As regards the first, it is greatly against respondents' contention that neither Official Receivers nor Receivers under the Act generally, are expressly included in any definition of Court, "the Court", or "the District Court" which the Act contains.

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If then they are to be treated as Courts, it must be by implication from the provisions regarding their duties and the character of their orders; an argument has accordingly been based on section 52 (2). That provision does not apply to one portion of the Official Receiver's duties, those which he performs in exercise of the powers, which an ordinary receiver possesses under section 20, which are merely the executive acts of an officer of the Court and which need no more be supposed subject to appeal (in the strict sense) than those of any receiver appointed under the Civil Procedure Code. The provision applies only to the exercise by the Official Receiver of the Court's powers, which can be delegated to him under section 52 (1). No doubt those powers, which include such a refusal to pass an order of adjudication as is in question before us, are of a judicial character; and the respondent relies on the fact that under section 52 (2), "an act done or order made in their exercise is to be deemed an act of the Court." But that wording seems to me rather to support the appellant's contention that the Official Receiver's judicial acts and orders have a judicially binding authority, not intrinsically, but only derivatively in consequence of the character attached to them by legal implication, as acts of *the* Court, not of *a* Court, as respondents' argument requires.

The wording of section 52 (2) reproduces with one qualification, to which I return, that of section 99 (1) of the English Bankruptcy Act of 1883, which was in force when the Provincial Insolvency Act was passed; and its effect is to make the decisions of the Official Receiver authoritative and appealable as the decisions of the Court under which he works, like those of the Registrars of Courts in England: *vide*, *Re Maughan*(1). The qualification above referred to, consists in the provision that the Official Receiver's decisions shall have this authoritative character, subject to the appeal to the Court, provided by section 22, the wording of which follows that of the English section 90. Section 90 however provides for a right of application to the Court in order to displace the acts or decisions only of the Official Receiver or trustee, which are of an executive character and, with one exception (the disposal of proofs of debts), they correspond with those of a receiver under the Indian section 20. The

(1) (1888) 21 Q.B.D., 21.

conclusion is that in India, the Official Receiver with delegated powers, combines the functions of the English Official Receiver or trustee and registrar, and that the procedure under section 22, which in England is applied only to the acts or decisions of the former, has been applied by the Indian Act to those of an officer, who fills both capacities. When the procedure under section 22 was not in its origin of the nature of an appeal against a Court's order and when it need not be treated as providing one in cases in which the Official Receiver's proceedings under section 20 are in question, it is difficult to hold that its nature is changed, when it is applied to the decisions covered by section 52 (2). As the Bankruptcy Act contemplated no application to the Court against a Registrar's decision, direct English authority for this view is not to be expected. But the analogy between the decisions of an Official Receiver in India and those of an Official Referee with regard to the English Order XL, rule 6, is, as the respondent contends, close; and it was held in *Wynne Finch* v. *Chattor*(1) overruling *Daglish* v. *Barton*(2) cited by the respondent, that an application to displace the latter, was not an appeal.

Other support for the same conclusion is afforded to return to section 46 of the Provincial Insolvency Act, by the considerations that (1) section 22 occurs in a different portion of the Act from section 46 and is not referred to in it, although the period of limitation specified in the former differs from that in the latter and (2) if respondent's contention be accepted, section 46 provides in clause (1) for the anomaly of a second appeal to the District Court from the Official Receiver's decision without restriction of the grounds, on which it can be taken. There is on the other hand, no doubt the fact that an application under section 22 is referred to in section 52 (2) as an appeal. But the difficulties already referred to in the way of strict construction of the term are such that an interpretation of it in one of the ways enumerated by SUBRAHMANYA AYYAR, J., in *Chappan* v. *Moidin Kutti*(3) or, as it was used loosely by the learned Judges in *Daglish* v. *Barton*(2) must be preferred. The considerations referred to, especially that regarding limitation, in my opinion, justify a dicision in the appellant's favour that an application under section 22 is not an appeal.

(1) (1903) 2 Ch., 475. (2) (1900) 1 Q.B., 284.
(3) (1899) I.L.R., 22 Mad., 68.

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Indian authority also supports this view. In *Chidambaram* v. *Nagappa*(1), an application under section 22 is no doubt described as an appeal. But nothing turned on the description. In *Doraisami Iyyangar* v. *Meenakshisundara Ayyar*(2) and *Thakur Parsad* v. *Pamo Lal*(3), it was held that an application under section 48 was not an appeal. In these circumstances I hold that the preliminary objection is unsustainable and turn to the merits.

Appellant's application to be adjudicated insolvent was dismissed by the Official Receiver, and the Lower Court upheld the dismissal on the grounds that he had no realizable assets, that be might be concealing his accounts, some ready cash and some outstandings in the Straits Settlements, which he first mentioned in his examination, that he was not likely eventually to get his discharge and that therefore his petition was an abuse of the process of the Court.

This conclusion is, in my opinion, based on a misconception of the objects of insolvency procedure. It is supported by the Lower Court by reference to *Jeer Chetti* v. *Rangaswami Chetti*(4) in which *Girwardhori* v. *Jai Narain*(5) is followed. But both those decisions contemplate refusal of adjudication only in exceptional cases, the second referring explicitly to instances in which that course was upheld; and the present case in no way resembles any of them. In these circumstances the appeal must be allowed, and the orders of the Lower Court and Official Receiver be set aside, the latter being directed to restore the petition to file, pass an order of adjudication and take further proceedings in accordance with law. No order as to costs here or in the Lower Court.

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—The District Judge of Rāmnād transferred the petition of a debtor to be adjudged an insolvent to the Official Receiver. The petition was dismissed. On appeal, the District Judge confirmed that order. The debtor has preferred this appeal to the High Court. Mr. Bhashyam Ayyangar took a preliminary objection on behalf of the respondent that the appeal does not lie.

His contention was that under section 46 of the Provincial Insolvency Act, the decision of the District Judge on appeal is

(1) (1915) I.L.R., 38 Mad., 15. (2) (1914) 16 M.L.T., 246.
(3) (1913) I.L.R., 35 All., 410. (4) (1912) 22 M.L.J., 52.
(5) (1910) I.L.R., 32 All., 645.

final and that no second appeal is allowable. The point for decision is whether the appeal contemplated by section 46 covers one from the Official Receiver to the District Judge. The language employed in clause (2) of section 52 lends support to the contention of the learned vakil. But on turning to section 22, we find that an 'application' is spoken of to revise the order of the Receiver and not an 'appeal.' It looks as if the words "subject to the appeal to the Court provided for by section 22" in clause (2) of section 52, have been used *per incuriam*.

Mr. Sitarama Rao drew our attention to the fact that section 46 provides for an appeal by the person aggrieved against "an order made in the exercise of insolvency jurisdiction by a *Court subordinate to the District Court.*" I do not think that an Official Receiver can be said to be a *Court subordinate to the District Court.* Section 2 (*g*) read with the proviso to section 3 (1), makes it clear that the Courts referred to in section 46, are those on whom the local Government had conferred insolvency jurisdiction.

Another argument of the learned vakil for the appellant related to the period of limitation provided by clause (4) of section 46. Thirty days and ninety days are respectively the period of limitation for appeals to the District Court or to the High Court as the case may be. If appeals from Official Receivers were within section 46, there can be no necessity for making a special provision in regard to them, as has been done in section 22 by shortening the period to twenty days. It is therefore clear that section 46 does not cover appeals from the Official Receiver. The language of section 86 of the Presidency Towns Insolvency Act confirms this conclusion. Unlike section 22 of the Provincial Insolvency Act, it speaks of an appeal from the decision of the Official Assignee. This is apparently because the legislature has given more powers to the Official Assignee and has clothed him with greater judicial responsibility than the Official Receiver. It is noteworthy that under the Insolvent Debtors Act, before the Presidency Towns Insolvency Act of 1909 was passed, an 'application' was spoken of to revise the Official Assignee's order and not an 'appeal'.

Further, under the notification of the Government, there can be an Official Receiver in a Munsif's Court. Under section 22

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this officer's orders are revisable by the District Munsif. Against that, an appeal would lie to the District Judge. Thus there will be a second appeal in such cases ; whereas in the case of orders passed by an Official Receiver working under a District Judge, there can be only one appeal, if the contention of the respondent were upheld. I see no reason for imputing this inconsistency to the legislature.

As regards decided cases, in *Chidambaram* v. *Nagappa*(1) it seems to have been assumed without deciding that appeals would lie under section 46 from the orders of the Official Receiver. On the other hand, *Thakur Prasad* v. *Pamo Lal*(2) holds that proceedings against the orders of the Official Receiver, are not by way of appeal. *Doraiswami Ayyangar* v. *Meenakshi Sundara Ayyar*(3) follows this decision. *Mul Chand* v. *Murari Lal*(4) is to the same effect. Mr. BHASHYAM AYYANGAR quoted *Daglish* v. *Barton*(5) for the position that where a case is referred to an Official Referee, an appeal would lie to the Court of Appeal from his decision. There is some analogy between that and the present case. But the analogy would only lead to the inference that the appeal from the Official Receiver should have been preferred to the High Court. Apart from this, in *Wynne Finch* v. *Chattor*(6) Lord Justice STIRLING, in a considered judgment of the Court of Appeal, points out that although the Official Referee had all the powers of the Court delegated to him, under Order XL, rule 6 of the Judicature Act, the proper procedure was to apply to set aside the judgment. The Court of Appeal refused to accept the dictum in *Daglish* v. *Barton*(7) as correct. The language of section 22 of the Provincial Insolvency Act is apparently based on Order XL, rule 6. Further it has been generally the practice in this Court to hear appeals from the decisions of the District Judges interfering with the order of the Official Receivers. That practice seems to me to be in consonance with law. I, therefore, agree in overruling the preliminary objection. On the merits, I am clear, for the reasons given by my learned colleague, the order of the District Judge is wrong. The order must, therefore, be set aside.

N.R.

(1) (1915) I.L.R., 38 Mad., 15.
(2) (1913) I.L.R., 35 All., 410.
(3) (1914) 16 M.L.T., 246
(4) (1914) I.L.R., 36 All., 8.
(5) (1900) 81 L.T., 551 ; s.c., 1 Q.B., 284.
(6) (1903) 2 Ch., 475.
(7) (1900) 1 Q.B., 284.