

APPELLATE CIVIL.

*Before Charles Gordon Spencer, Officiating Chief Justice
and Mr. Justice Srinivasa Ayyangar.*

1924,
November 7

V. A. V. S. FIRM (PETITIONERS), APPELLANTS,

v.

P. S. N. MURUGANATHAN CHETTY AND THE
OFFICIAL ASSIGNEE OF MADRAS (RESPONDENTS)—
RESPONDENTS.*

*Presidency Towns Insolvency Act (III of 1909), sec. 97—Firm—
(One of the partners adjudicated insolvent in the High Court
exercising insolvency jurisdiction—Insolvency proceedings
pending before the High Court—Subsequent petition for
adjudication of another partner filed in a District Court—
Application to High Court to transfer latter petition to High
Court—Power and duty of the High Court in insolvency.*

Where an order of adjudication as an insolvent has been made by the High Court, under the Presidency Towns Insolvency Act (III of 1909), against a partner of a firm, a Judge of the High Court exercising insolvency jurisdiction has, under section 97 of the Act, not only the power but is bound to transfer to the High Court any subsequent insolvency petition presented under the Provincial Insolvency Act to a District Court against another partner of the firm.

Srinivasa Aiyangar v. The Official Assignee of Madras (1915) I.L.R., 38 Mad., 472, distinguished; *Muneckchand, In re.* (1923) I.L.R., 47 Bom., 275, referred to.

APPEAL from an order passed by WALLER, J., in the exercise of the Original Insolvency Jurisdiction of the High Court refusing to transfer I.P. No. 105 of 1924 from the file of the District Court of Coimbatore to that of the High Court and to consolidate the same with I.P. Nos. 33 and 68 of 1921 on the file of the High Court.

This is an appeal from an order passed by WALLER, J., in the exercise of Original Insolvency Jurisdiction refusing to transfer to the High Court an Insolvency

* Original Side Appeal No. 60 of 1924.

Petition filed in the District Court of Coimbatore. An order of adjudication had been passed against one of the partners of a firm by a Judge of the High Court in the exercise of Insolvency Jurisdiction under the Presidency Towns Insolvency Act, in I.P. Nos. 33 and 68 of 1921 filed in the High Court; and Insolvency Proceedings were pending thereon before the Official Assignee. During the pendency of these proceedings, an Insolvency Petition was filed in the District Court by certain creditors against another partner of the firm under the Provincial Insolvency Act. The petitioners applied to a Judge of the High Court exercising Insolvency Jurisdiction to transfer the said petition to the High Court under section 97 of the Presidency Towns Insolvency Act and to consolidate that petition with the previous petitions pending in the High Court. The learned Judge refused to transfer the petition as prayed. The petitioners preferred this appeal. The respondent took a preliminary objection that no appeal lay as the order was not a judgment.

O. Thanikachalam Chettiyar for appellant.—The learned Judge was wrong in refusing to transfer the petition to the High Court. Section 97 of the Presidency Towns Insolvency Act (III of 1909) is imperative and conclusive. The decisions in *In re Nicholson*, *Ex-parte Nicholson*(1) relied on by the learned Judge is not applicable to the present case. That decision was under the English Bankruptcy Act of 1383 before rules were made under the Act. After rules were made under that Act, such applications could be made to the Bankruptcy Court. See *In re Williams*(2).

Section 97 of the Presidency Towns Insolvency Act (III of 1909) is general in its terms, and includes subsequent applications under the Provincial Insolvency Act.

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(1) (1886) 3 Morrel, 46.

(2) (1888) 5 Morrel, 103.

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Under section 126 of the Act, the Court has auxiliary jurisdiction, i.e., both Courts should act so as to aid each other in insolvency matters. Under section 3 of the Act, the High Court has insolvency jurisdiction, and under section 6, the Judge who is deputed to sit in the Insolvency Court has all the powers conferred on the High Court. Appeals from all orders passed in Insolvency Court are provided for by section 8.

Vere Mockett for respondent.—As regards transfer, Courts in India are in the same position as Courts in England were before the Bankruptcy Act of 1883 and rules of 1886 were made. The decision in *In re Nicholson*(1) was passed in February 1886, before rules were made in October 1886. There are no rules in India governing transfers under section 97 of the Presidency Towns Act (III of 1909). The decision in *In re Williams*(2), was given after rules were made in England. Section 18 of the Act (III of 1909) assumes adjudication under Presidency Towns Insolvency Act. In *Sreenivasa Iyengar v. Official Assignee of Madras*(3) it was held that the Judge exercising insolvency jurisdiction in the High Court had no power to transfer a case from the High Court to a District Court. See also *In re Maneekchand* (4). The law applicable to this petition will be the Provincial Insolvency Act. See *Besant v. Narayaniah* (5). Section 126—which provides that Courts are to aid each other in insolvency matters—cannot enable the High Court to call up the whole case from the District Court.

JUDGMENT

This is an appeal against an order of WALLER, J., sitting in the Insolvency Court, in which he refused to transfer

(1) (1886) 3 Morrel, 46.

(2) (1888) 5 Morrel, 103.

(3) (1915) I.L.R., 38 Mad., 472.

(4) (1923) I.L.R., 47 Bom., 275.

(5) (1915) I.L.R., 38 Mad., 807 (P.C.).

an insolvency petition presented to the District Judge of Coimbatore to the file of this Court.

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There is a preliminary objection that no appeal lies on the ground that the Judge's order is not a judgment. But this can easily be disposed of by reference to section 8, clause 2(b) of the Presidency Towns Insolvency Act, which provides for an appeal lying to this Court against any order made by a Judge in the exercise of jurisdiction conferred on him by this Act.

The question we have to decide turns upon the interpretation of section 97 of the Presidency Towns Insolvency Act. This section runs thus:— "Where an order of adjudication has been made on an insolvency petition against or by one partner in a firm, any other insolvency petition against or by a partner in the same firm shall be presented in or transferred to the Court in which the first mentioned petition is in course of prosecution; and such Court may give such directions for consolidating the proceedings under the petitions as it thinks just." WALLER, J., declined to pass any orders on the application for transfer on the ground that it was ambiguous whether the Court to which the insolvency petition was presented or the Court in which the earlier proceedings against a partner in the same firm were pending should take action. In the firm to which the respondent belongs there are three partners and insolvency proceedings are still pending before the Official Assignee against Ambalavana Chetty and Narayanaswami Iyer who are the other two partners of the firm. WALLER, J., was impressed by the decision of CAVE, J., in *In re Nicholson*(1). That learned Judge refused to make an order for transfer of bankruptcy proceedings pending before a County Court Judge on the ground that he

(1) (1886) 3 Morrel, 46.

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thought that the application should be made to the County Court Judges. At the date when that case was decided the Bankruptcy Act of 1883 was the Act in force in England and was equally applicable to bankrupts in the County Court and in the High Court, and no rules had been framed providing for making transfers under section 112 which corresponds to section 97 of our Presidency Towns Insolvency Act. After rules had been framed no difficulty was found in another case in *In re Williams*(1) in making an order under this section.

Section 97 of the Presidency Towns Insolvency Act is plain in its terms and imperative. It provides that where insolvency proceedings are pending against one partner in a firm any other insolvency petition shall be presented in or transferred to the Court in which the first mentioned petition is in course of prosecution. There is no limitation of the words "any other insolvency petition" to insolvency petitions presented under the Presidency Towns Insolvency Act. It would therefore appear to be sufficiently wide to cover insolvency petitions presented under the Provincial Insolvency Act to a Court which is subject to the superintendence of this Court. There is no reason why the legislature should have made a provision of this kind in order to provide for transfers of insolvency proceedings only from one High Court to another, if the policy underlying the section is of general application. The section does not declare by whom the order of transfer should be made, but there can be no ambiguity in India because the only Court exercising jurisdiction in insolvency under the Presidency Towns Insolvency Act for the Presidency of Madras is the High Court of Madras. This is declared by section 3 of the Act, and under section 6 the Judge who is deputed to sit in the Court

(1) (1888) 5 Morrel, 103.

of Insolvency exercises all the powers conferred on the High Court under the section. Our attention has been called to the decision in *Srinivasa Aiyangar v. The Official Assignee of Madras* (1), in which it was held by a Bench of this Court that the Judge exercising insolvency jurisdiction in the High Court had no power to transfer a case pending before him under the Presidency Towns Insolvency Act, to the District Court of Tanjore. The *ratio decidendi* of that case appears to be that the Court to which the Insolvency petition was transferred was not competent to hear and dispose of the same, because the jurisdictions under the Presidency Towns Insolvency Act and the Provincial Insolvency Act were distinct, and therefore the District Judge of Tanjore would have no jurisdiction to proceed under the Presidency Towns Insolvency Act in the insolvency of a debtor who had presented a petition before the High Court of Madras. The decision was one given with special reference to section 24 of the Code of Civil Procedure which is made applicable by section 90, clause I of Act III of 1909 to Insolvency proceedings. No such difficulties confront us in the present case because the words of section 97 confer power on the Court to which the case is to be transferred to deal with the insolvency petition made against or by the same partner in the same firm and permit the Court to consolidate the proceedings. We have also been referred to a decision of MARTEN, J., in *In re Maneckchand*(2) in which he held that the Commissioner in Insolvency had no power to stay Insolvency proceedings in a District Court under section 18 of this Act, the grounds of his decision being that the District Court in its insolvency jurisdiction

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was subject to the superintendence of the High Court on its appellate side and not to the Commissioner in Insolvency, by which term he designated the Judge sitting in the Insolvency Court. It is unnecessary to canvass the correctness of that decision, as the terms of section 97 of the Act are quite independent of the provisions of section 18 and do not contain any reference to the powers of the High Court of superintendence over other Courts subject to its appellate jurisdiction, which it has under section 107 of the Government of India Act. For the purposes of the present case it is unnecessary to invoke the powers conferred on Courts of Insolvency in the Presidency Town and outside by section 126 of the Presidency Towns Insolvency Act and section 77 of the Provincial Insolvency Act (V of 1920) to aid each other. As the terms of section 97 make it obligatory on the Court exercising insolvency powers to transfer any insolvency petition in the circumstances existing in this case, we are of opinion that WALLER, J., had no discretion to refuse to transfer the petition presented to the District Court of Coimbatore, and that as he declined to make that order, we must allow the appeal and make the order ourselves, giving the appellant costs of this appeal payable out of the estate of the insolvent by the Official Assignee. The Court which deals with the petition may give such directions for consolidating the proceedings with the other pending insolvency proceedings as it thinks fit. Taxed costs on the Original side scale here and before WALLER, J., to be paid out of the insolvent's estate. The memorandum of cross objections is dismissed.

K.R.