

SAKALAGUNA
NAYUDU
v.
CHINNA
MUNUSWAMI
NAYAKAR.
—
SIR
LANCELOT
SANDERSON.

plaintiff, having made an adequate tender of the amount specified in the contract at the time mentioned therein, was entitled to call upon the defendants, the sons and heirs of Venkatapathi, for a conveyance of the property.

Their Lordships are of opinion that the decree of the High Court dated the 5th March, 1925, was correct, and that this appeal should be dismissed with costs. They will humbly advise His Majesty accordingly.

Solicitor for appellants: *H. S. L. Polak.*

Solicitor for respondent: *Douglas Grant and Dold.*

A.M.T.

INSOLVENCY—FULL BENCH.

*Before Sir William Phillips, Kt., Officiating Chief Justice,
Mr. Justice Ramesam and Mr. Justice Madhavan Nair.*

*In re KANCHERLA KRISHNA RAO.**

1927,
August 24.

Presidency Towns Insolvency Act (III of 1909), sec. 7 and cls. 12 and 18 of the Letters Patent for the High Court of Madras—Garnishee proceedings—Garnishee living in Calcutta—Performance of contract by garnishee due in Madras—Jurisdiction of Insolvency Court, Madras, against garnishee.

Held by the Full Bench (1) that section 7 of the Presidency Towns Insolvency Act (III of 1909) confers jurisdiction on the High Court in garnishee proceedings even when the garnishee lives outside the territorial jurisdiction, (2) that clause 18 of the Letters Patent is not governed by clause 12 of the Patent but (3) that it is a matter of discretion for the Judge in each case to either allow any particular claim to be tried in the Insolvency Court or to direct the Official Assignee to file a suit therefor in the ordinary course.

GARNISHEE PROCEEDINGS in I.P. No. 267 of 1923, in the matter of Kancherla Krishna Rao, an insolvent. This

* I.P. No. 267 of 1923.

case coming on for hearing, Mr. Justice KUMARASWAMI SASTRI, made the following

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ORDER OF REFERENCE TO A FULL BENCH:—

The following three paragraphs are taken from the Order of Reference:—

This is a garnishee application arising out of the insolvency of Kancherla Krishna Rao, who was appointed the sole agent for the Madras Presidency under a contract for the sale of kerosene oil and other products of the United Refineries (Burma), Ltd. The garnishee summons is taken out against Frank Johnson Sons & Co., Ltd., and the United Refineries (Burma), Ltd., claiming (five) lakhs of rupees as damages for breach of contract.

Various defences have been raised, one of them being as to the jurisdiction of this Court. The contract admittedly was made at Calcutta and the registered office of the first Company, Frank Johnson Sons & Co., Ltd., is at Calcutta and the office of the United Refineries (Burma), Ltd., is at Rangoon. None of them have any branch or carry on business in the Madras Presidency. The contention is that this Court has no jurisdiction as the contract was entered into outside Madras and the Companies sought to be made liable carry on business outside Madras. The question is whether the case is governed by clause 12 of the Letters Patent.

As regards the nature of a garnishee summons, I think that a garnishee summons is really a plaint which the Assignee has to file against persons whom he seeks to make liable for moneys due to the insolvent or for damages. If there was no insolvency, Kancherla Krishna Rao would have to file a suit for the recovery of damages for breach of the contract and all that section 7 of the Presidency Towns Insolvency Act does is to allow the Official Assignee to file an application for the recovery of any moneys which he claims instead of the expensive process of filing a suit for the same.

[Then on a construction of the contract in this case his Lordship held that the performance of the contracts, i.e., sending out oil to Madras, was to be in Madras and that therefore part of the cause of action arose in Madras. After referring to and discussing 13 Bom. 520, 45 Mad. 31, 33 Calc. 560, 40 Mad. 810, L.R., 8 Ch. App. 83 and Williams' Bankruptcy Practice,

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13th edition, pages 394 and 395, all of which are referred to later on, he referred the case to the CHIEF JUSTICE for a decision, necessary, by a Bench of three Judges, of the two questions mentioned in the judgment of the Full Bench.—Ed.]

Accordingly his Lordship the CHIEF JUSTICE ordered the case to be placed before a Full Bench of three Judges as constituted above.

ON THIS REFERENCE—

S. Duraiswami Ayyar (with *K. S. Narayana Ayyangar*) for Official Assignee.—The Insolvency Court of Madras has jurisdiction to decide the question relating to the garnishee though he may be living outside this Presidency; see sections 7, 3 and 90 of the Presidency Towns Insolvency Act. Clause 12 of the Letters Patent does not control clause 18 of the Letters Patent which gives the High Court insolvency jurisdiction beyond the limits of the ordinary original civil jurisdiction of the High Court; *Abdul Khader v. The Official Assignee of Madras*(1), *Ganeshdas Panalal, In re*; *R. D. Sethna v. R. S. D. Chopra*(2), *Naoroji Sorabji Talati, In re*(3); compare Williams' Bankruptcy Practice, 13th edition, pages 392 to 395. It is not that there is no jurisdiction over strangers, but it will be a matter of discretion for the Insolvency Court to try the claim or not. Generally claims arising out of insolvency are ordinarily tried by insolvency Court; but claims not so arising are ordinarily referred to regular civil courts.

[OFFICIATING C.J.—If the Insolvency Act took away certain rights of the Insolvency Court, then clause 12 of the Letters Patent cannot give them. Similarly if the Insolvency Act does not take them away, clause 12 cannot limit clause 18 which gives insolvency jurisdiction.]

R. N. Aingar (with *O. T. Govindan Nambiar*) for garnishees.—The Insolvency Court has no jurisdiction in this matter. Section 7 of the Presidency Towns Insolvency Act defines only the power and not the territorial jurisdiction. Insolvency jurisdiction is not any special jurisdiction but is only part of the ordinary original civil jurisdiction of the High Court. If so, section 7 is impliedly subject to clause 12; *In the matter of*

(1) (1917) I.L.R., 40 Mad., 810.

(2) (1908) I.L.R., 32 Bom., 108.

(3) (1909) I.L.R., 33 Bom., 462.

Candas Narrondas; *Navivahu v. C. A. Turner*(1), *Annoda Prasad Banerjee v. Nobo Kishore Roy*(2), *In re Chidambaram Chetty*(3). In *Abdul Khader v. The Official Assignee of Madras*(4) there is no discussion of the present question and there is no reference to *In the matter of Candas Narrondas*; *Navivahu v. C. A. Turner*(1). In any event, the jurisdiction conferred by clause 18 is limited to the Presidency of Madras. In this case the contract was made in Calcutta and defendants reside in Calcutta. As performance of the contract alone was to be in Madras, part only of the cause of action arose in Madras and hence leave of the Court to file the suit in Madras is necessary; *In re James Currie*(5).

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[RAMESAM, J.—The words “within the Presidency of Madras” in clause 18 refer to insolvency arising within the Presidency and not to strangers against whom insolvent may have claims.]

If clause 12 does not control clause 18, then there will be execution against people who are outside the Presidency which is opposed to the spirit and wording of clause 12. Even if section 7 gives jurisdiction it is not desirable that questions against strangers should be decided by the Insolvency Court without being left for trial by ordinary Courts; Williams' Bankruptcy Practice, page 393, *Ellis v. Silber*(6), *Ex parte Dickin*, *In re Pollard*(7).

S. Duraiswami Ayyar, in reply.—Clause 12 deals with suits and not “proceedings in insolvency” which are exclusively dealt with by clause 18. Under section 17 of the Presidency Towns Insolvency Act, property of the insolvent wherever situate, i.e., though outside the Presidency, vests in the Official Assignee. Hence the Court should have power to order persons in possession of insolvent's property living outside this Presidency to hand it over to the Official Assignee.

OPINION.

PHILLIPS, Offg. C.J.—This petition comes before us on a reference by KUMARASWAMI SASTRI, J., and we are asked to determine two questions of law relating

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(1) (1889) I.L.R., 13 Bom., 520 at 532 (P.C.).

(2) (1906) I.L.R., 33 Calc., 560.

(3) (1922) I.L.R., 45 Mad., 31.

(4) (1917) I.L.R., 40 Mad., 810.

(5) (1897) I.L.R., 21 Bom., 405.

(6) (1872) 8 Ch. App., 83.

(7) (1878) 8 Ch. D., 377.

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to insolvency, (1) whether section 7 of the Presidency Towns Insolvency Act confers jurisdiction on the High Court in garnishee proceedings where the garnishee lives outside its jurisdiction and (2) whether clause 18 of the Letters Patent is governed by clause 12 of the same. Both these questions were decided by a Bench of this Court in *Abdul Khader v. Official Assignee of Madras*(1) and it was there held that section 7 does give jurisdiction to the High Court to adjudicate on claims relating to immovable property situated outside the limits of its ordinary original civil jurisdiction. The learned Judges also held that clause 12 of the Letters Patent does not control the provisions of clause 18 so as to limit the insolvency jurisdiction of the Court. The reference does not in terms question the correctness of the decision in *Abdul Khader v. Official Assignee of Madras*(1) but the learned Judge refers the matter on the ground that these questions are of considerable importance and are frequently arising in the Insolvency Court.

It is contended for the garnishee that the proceedings in the Insolvency Court are governed by rules relating to the ordinary original civil jurisdiction of the High Court and that, as such jurisdiction is limited by clause 12 of the Letters Patent, the same limitations must apply to Insolvency matters. Section 7 of the Insolvency Act is identical with section 105 of the English Bankruptcy Act of 1914. Under that section 105 it has been held that the Court of Bankruptcy has jurisdiction in cases of claims by a trustee against a third party and that such jurisdiction is not limited to cases in which the trustee's right is a higher one than the bankrupt's. While admitting this jurisdiction, the Courts have observed that it is a discretionary one which

(1) (1917) I.L.R., 40 Mad., 810.

should not be exercised in all cases but the parties should be allowed to fight out the dispute in certain cases by an ordinary action. The question is fully dealt with by Williams in his *Bankruptcy Practice*, pages 392 to 395, and the principles on which the Bankruptcy Court should refuse jurisdiction are sought to be explained. In view of the fact that the same question has been dealt with fully by a Bench of this Court in *Abdul Khader v. Official Assignee of Madras*(1) it seems unnecessary to discuss the question at great length and I would merely express my agreement with the decision in that case and would repeat the observations of ABDUR RAHIM, Offg. C.J., that the Insolvency Court will seldom deem it expedient to try difficult questions of title. We are aware that this view of section 7 of the Insolvency Act has not been adopted in all the other High Courts of India and we understand that the question of further legislation on this point is now under consideration. Meanwhile I see no reason to differ from the previous decision of this Court so far as section 7 is concerned.

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As to whether clause 12 of the Letters Patent governs clause 18, the argument in *Abdul Khader v. Official Assignee of Madras*(1) is somewhat brief, but I agree that the conclusion arrived at is correct. The insolvency jurisdiction of the High Court is given by clause 18 of the letters patent. It has been held by the Privy Council in *In the matter of Candas Narrondas; Navivahu v. O. A. Turner*(2) that the entering up of a judgment by the Insolvency Court is an act done in the ordinary jurisdiction of the High Court. Similarly in *Anmoda Prasad Banerjee v. Nobo Kishore Roy*(3), SALE, J., following this case held that the High Court exercises the powers of an Insolvency Court under a special jurisdiction, but as a part of the ordinary jurisdiction vested

(1) (1917) I.L.R., 40 Mad., 810.

(2) (1889) I.L.R., 13 Bom., 520 at 532.

(3) (1906) I.L.R., 33 Calc., 560.

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by the law. Taking it that the jurisdiction is exercised as ordinary original jurisdiction it does not follow that clause 12 which deals with ordinary original civil jurisdiction must govern the case. It is clause 11 of the Letters Patent that gives ordinary original civil jurisdiction to the High Court and that prescribes that it shall be exercised "within such local limits as may from time to time be declared and prescribed by any law made by the Governor in Council". Clause 12 makes provision for receiving, trying and determining suits in the exercise of its ordinary original civil jurisdiction, and so far as suits are concerned the territorial jurisdiction is limited to the town of Madras, but jurisdiction is also given in certain cases where the leave of the Court has been first obtained. So far as the insolvency jurisdiction is concerned, we have to refer to clause 18, which states that the Court for relief of insolvent debtors shall have and exercise within the Presidency of Madras such powers and authorities with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in India. In the first place; this clause shows that the Insolvency Court exercises not only original jurisdiction but also appellate jurisdiction provided such is constituted by any law. The law which gives the Insolvency Court its jurisdiction now is the Presidency Towns Insolvency Act III of 1909. Under section 3, the Courts having jurisdiction in insolvency under this Act shall be the High Courts of Judicature at Fort William, Madras and Bombay and in the Act there is no limitation of the jurisdiction to the town of Madras. Unless therefore clause 12 governs clause 18, such limitation cannot be upheld. It appears that the insolvency jurisdiction, although part of the ordinary original jurisdiction, is a special power relating to insolvency matters which can be distinguished from the power given under clause 12

relating to suits. On a consideration of the two clauses, it will be seen that it is impossible that clause 12 can govern clause 18, for if it does, the whole of it and not merely the provision for obtaining leave of the Court in certain cases must apply. If therefore an insolvency matter is of a small cause nature falling within the jurisdiction of the Small Cause Court at Madras, the High Court would have no jurisdiction at all and it is not contended that such petty questions arising in insolvency should go to the Small Cause Court. Similarly when there is a provision in clause 18 that the Insolvency Court shall have such powers as are constituted by the laws relating to insolvent debtors in India and there is no reference made to clause 12, it is difficult to hold that the clause should be read as if the words "subject to the provisions of clause 12" were inserted. Again if this were the case, the converse would equally apply and if the powers under clause 18 were restricted by the Act, such restriction would be of no avail as against clause 12. It is therefore impossible to hold that clause 18 is governed by clause 12 and this view is further confirmed by section 90 of the Insolvency Act which runs as follows:—

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"In proceedings under this Act, the Court shall have the like powers and follow the like procedure as it has and follows in the exercise of its ordinary original civil jurisdiction."

This by itself may support the view that clause 12 is applicable, but we find the following proviso :

"Provided that nothing in this sub-section shall in any way limit the jurisdiction conferred on the Court under this Act."

This proviso clearly provides that the limitations of clause 12, if they limit the jurisdiction conferred by the Insolvency Act, do not apply.

A further contention is put forward that the words "within the Presidency of Madras" in clause 18 take

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away the jurisdiction of the Court to deal with persons living or property situated outside the presidency, but it has been held by the Privy Council in *Official Assignee, Bombay v. Registrar, Small Cause Court, Amritsar*(1) that an adjudication and vesting order in Bombay had the effect of vesting all the property of the debtors, including that in the Punjab, in the Official Assignee of Bombay and it cannot be contended that the Insolvency Court has no jurisdiction to examine witnesses outside the Presidency although it may be necessary to do so by means of a commission, and consequently the words "within the Presidency of Madras" must be deemed to limit the jurisdiction of the High Court at Madras to cases of insolvency arising within the Presidency of Madras. I must therefore hold that the Insolvency Court has jurisdiction under section 7 of the Act and that clause 12 of the Letters Patent does not affect the provisions of clause 18. The case must therefore be remitted to the Insolvency Judge with a direction that he should use his discretion in determining whether the present claim, which we understand involves a very large sum of money, is one that should be tried in the Insolvency Court or whether the Official Assignee should be directed to file a suit in the ordinary course.

The costs of this reference shall be costs in the cause to be provided for in the order of the Insolvency Court.

RAMESAM, J.—I agree.

MADHAVAN NAIR, J.—I agree.

V. Varadaraja Mudaliar, attorney for Official Assignee.

King and Partridge, attorneys for garnishees.

N.R.

(1) (1910) I.L.R., 37 Calc., 418 (P.C.).