

APPELLATE CIVIL.

Before Mr. Justice Garganven.

GOCULDOSS JUMNADOSS & Co. AND ANOTHER
(RESPONDENTS 12 AND 2), PETITIONERS,

1928,
July 30.

v.

N. M. SADASIVIER AND OTHERS (PETITIONERS),
RESPONDENTS.*

Provincial Insolvency Act (V of 1924), ss. 3 and 5 (2)—Civil Procedure Code (Act V of 1908), sec. 24 (1) (b)—Letters Patent, cls. 13 and 18—Insolvency application filed in a mufassal Court—Application to the High Court to transfer it to its own original insolvency jurisdiction—Power of the High Court to transfer—Competency of High Court to administer Provincial Insolvency Act—What Insolvency Law applicable to the case.

The High Court in its Appellate Jurisdiction has no power, under section 24 (1) (b) of the Civil Procedure Code, to transfer an insolvency petition pending in a Subordinate Court in the mufassal to the Original Side of the High Court, on its original insolvency jurisdiction, for trial and disposal, because, firstly, the Original Side of the High Court is not a Court subordinate to the High Court in its Appellate Jurisdiction within the terms of the section, and secondly because the Original Side of the High Court, in the exercise of its original insolvency jurisdiction, is not competent to administer the Provincial Insolvency Act, which is the law applicable to the case.

Nor does clause 13 of the Letters Patent enable the High Court to transfer such a petition to the Original Side of the High Court in the exercise of its extraordinary original jurisdiction, because, under clause 18 of the Letters Patent and the provisions of the Provincial Insolvency Act, the High Court, if the case is transferred, is not competent to administer the Provincial Insolvency Act, which is the law applicable to the case.

PETITION praying that the High Court will be pleased to withdraw L.P. No. 100 of 1927 on the file of the Court of the Subordinate Judge of Madura and transfer the

* Civil Miscellaneous Petition No. 1214 of 1928.

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same for trial and disposal by the High Court into its Insolvency Jurisdiction.

O. Thamikachala Chettiyar for petitioner.

Ponnuswami Ayyar and *Narayanuswami Ayyar* for second respondent.

G. T. Ramanuja Achariyar for respondents 4 to 9.

R. Krishna Ayyar for tenth respondent.

JUDGMENT.

This is an application to withdraw I.P. No. 100 of 1927 from the file of the Subordinate Judge of Madura and transfer it for trial and disposal to the Original Side of the High Court. The preliminary objection is raised that such an application will not lie. The provision of law under which the application is made is section 24 of the Civil Procedure Code and I propose first to consider its maintainability under that section, referring subsequently to some clauses of the Letters Patent which have alternatively been relied upon.

Under section 5 (2) of the Provincial Insolvency Act, the High Court has the same power in regard to proceedings under the Act as it has in regard to civil suits; and under section 24 (1) (b), Civil Procedure Code, it may, at any stage, withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and (i) try or dispose of the same; or (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same.

It will be convenient to follow the course taken by the argument and consider in the first place whether the transfer may be ordered under part (ii) above. This requires that the Original Side of the High Court sitting in Insolvency should be a Court subordinate to the High Court in its Appellate Jurisdiction and competent to try the cause. As pointed out by TYABJI, J., in *Hindustan*

Assurance and Mutual Benefit Society, Limited v. Rail Mulraj(1), section 3 of the Civil Procedure Code, which defines which Courts are subordinate to the High Court, does not include the High Court in the exercise of its original civil jurisdiction; nor, with reference to the definition of "district" in section 2 (4) can it be said that the Original Side of the High Court is a "District Court" and for that reason subordinate to the High Court under section 3.

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There are also difficulties in the way of holding that the Original Side of the High Court would be competent to try and dispose of the insolvency petition if it were transferred to it. It is evident that, in order to do so, the High Court would have to exercise the powers which, but for the transfer, would have been exercisable by a District Court, that is to say, the Insolvency Law which it would have to apply would be the Provincial Insolvency Act. But under section 3 of that Act, the only Courts having jurisdiction are District Courts and such Courts subordinate to a District Court as the Local Government may invest with powers. My attention has been drawn to the case in *Srinivasa Aiyangar v. The Official Assignee of Madras*(2), in which the question arose whether a transfer in the reverse direction, from the High Court to the District Court of Tanjore, could be ordered, and it was held that it could not for the reason that the two jurisdictions were distinct. This case, while deciding that a District Court cannot administer the Presidency Towns Insolvency Act, does not of course settle the question whether the High Court in the exercise of its Original Insolvency Jurisdiction can apply the Provincial Insolvency Act, but I think it is clear that, so far as the Civil Procedure Code and the

(1) (1914) 27 M.L.J., 645.

(2) (1913) 25 M.L.J., 299.

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two Insolvency Acts are concerned, no such power exists. Accordingly whether it is proposed that the transfer should be made under part (ii) of section 24 (1) (b) or under part (i), which enables the High Court to withdraw any proceeding and try or dispose of the same, it appears to me that the same objection exists that competence is lacking; because a necessary condition of the application of part (i) must surely be that the proceeding must be of such a nature that the High Court has jurisdiction to try or dispose of it. I do not think that the provision itself is intended to confer a jurisdiction which would not otherwise exist.

Nor, I think, is this objection removed by any provision to be found in the Letters Patent. Clause 13 enables the High Court to remove, and to try and determine, as a Court of Extraordinary Original Jurisdiction, any suit within the jurisdiction of any Court subject to its superintendence; and this clause read with section 5 (2) of the Provincial Insolvency Act no doubt would apply to insolvency proceedings. We have, however, to look at clause 18 to see whether, upon such transfer being made, a Judge sitting in Insolvency could try the case. Such a Judge is to "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." These laws, namely, the Presidency Towns, and Provincial Insolvency Acts, do not confer upon a Judge sitting in Insolvency the power which he would need to exercise, if this transfer were ordered, to deal with the case under the latter Act.

My conclusion accordingly is that the application is not maintainable and I dismiss it with costs.

R. Ramachandra Chetti, Attorney for petitioner.