

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Jackson.

PULLI GOUNDAN (SECOND RESPONDENT), PETITIONER,

1931,
September 3.

v.

KUMARASAMI GOUNDAN AND THREE OTHERS

(NIL. PETITIONER AND RESPONDENTS 1 AND 3), RESPONDENTS.*

Provincial Insolvency Act (V of 1920), ss. 75 and 68—Application by creditor under sec. 68—Collusive withdrawal and dismissal of—Appeal from order of—Right of—Another creditor not party to application has, when aggrieved by order.

Under section 75, clause 1, of the Provincial Insolvency Act, any aggrieved person may prefer an appeal against an order passed by the Judge in Insolvency.

Held, accordingly, in a case in which an application filed by one of the creditors under section 68 of the Provincial Insolvency Act was withdrawn by him collusively and was dismissed, that another creditor who was aggrieved by the order was, though not a party to the application under section 68, competent to appeal against it.

PETITION under section 75 (1) of the Provincial Insolvency Act V of 1920, praying the High Court to revise the order of the District Court, Coimbatore, dated 1st November 1929 and made in Civil Miscellaneous Appeal No. 33 of 1929 preferred against the order of the Court of the First Additional Subordinate Judge, Coimbatore, dated 10th January 1929, and made in Interlocutory Application No. 208 of 1928 in Insolvency Petition No. 31 of 1924.

A. C. Sampath Ayyangar and T. R. Srinivasa Ayyar for petitioner.

B. Sitarama Rao for *M. Krishna Bharati* for first respondent.

* Civil Revision Petition No. 834 of 1930.

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The JUDGMENT of the Court was delivered by
MADHAVAN NAIR J.—The purchaser of the properties from the Official Receiver of one Karuppa Goundan's estate is the petitioner before us. In Interlocutory Application No. 208 of 1928 one of the creditors filed an application before the Subordinate Judge of Coimbatore under section 68 of the Provincial Insolvency Act to set aside the sale. This application was not pressed and was dismissed. Another creditor took this order in appeal before the learned District Judge under section 75, clause 1, of the Act and the District Judge ordered that the application should be restored to file and enquired into by the Subordinate Judge. This Court directed the District Judge himself to go into the merits of the application and submit findings on two questions, viz., (1) whether or no the withdrawal of the petition under section 68 was collusive and (2) whether the appeal under section 75 of the Act to the District Court was *bona fide* and not merely in the insolvent's interest. The District Judge has now submitted his findings that the withdrawal was collusive and that the appeal under section 75 was a *bona fide* appeal. The correctness of these findings has not been challenged before us.

What is argued on behalf of the petitioner is that the appeal to the lower appellate Court by the creditor who filed the appeal was incompetent, inasmuch as he was not a party to the application under section 68 filed before the Subordinate Judge and that since he was a stranger to that application he was not competent to prefer the appeal under section 75. This argument was pressed before the learned District Judge also. He overruled the argument. The question has to be decided with reference to the terms of section 75,

clause 1, of the Provincial Insolvency Act which are as follows :—

“The debtor, any creditor, the receiver or any other person aggrieved by a decision come to or an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final.”

The terms of the section are very wide. Under this section any aggrieved person may prefer an appeal against an order passed by the Judge in Insolvency. It is not contended that the creditor who preferred the appeal before the District Judge, having regard to the facts and the findings, is not an “aggrieved person” within the meaning of the term, the only contention being, as we have said, that he was a stranger to the proceedings. In our opinion, though the creditor who preferred the appeal was not a party to the proceedings, still, having regard to the fact that he is aggrieved by the order appealed against, he would come within the terms of section 75 and would be entitled to prefer the appeal.

Section 8, clause 2, of the Presidency Towns Insolvency Act gives a right to any person aggrieved to prefer an appeal against an order passed by the Judge in Insolvency. In this respect the language of that section is similar to the language used in section 75 of the Provincial Insolvency Act. In a case in which that section had to be considered it was pointed out by the learned Judges of the Calcutta High Court in *Sarat Kumar Ray v. Nabin Chandra Ram Chandra Shaha*(1) that the permission given to a person who is not a party to an order to prefer an appeal on the ground that he is an aggrieved person is a peculiarity of the Insolvency Act, inasmuch as proceedings in

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Bankruptcy will affect not only parties thereto but also other people; see also the observations in *Chowdappa Gounder v. Kathaperumal Pillai*(1).

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We have no doubt that under section 75, clause 1, of the Provincial Insolvency Act the first respondent in the present case was competent to prefer the appeal to the lower appellate Court. In these circumstances we dismiss the revision petition with costs.

A.S.V.

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Mr. Justice Waller and Mr. Justice Krishnan Pandalai.

1931,
August 18.

SIVASAMI ODAYAR (DEFENDANT), APPELLANT,

v.

C. R. SUBRAMANIA AIYAR (PLAINTIFF), RESPONDENT.*

*Provincial Insolvency Act (V of 1920), sec. 52, as amended—
Interim receiver's right to apply under—Immovable property
under attachment by Court—Sec. 52 applies to.*

An interim receiver is entitled to apply under section 52 of the Provincial Insolvency Act. Section 52, as now amended, contemplates the presentation of an application, not, as it used to do, after adjudication, but at an earlier stage—that is to say, after an insolvency petition has been admitted.

Subramania Aiyar v. The Official Receiver, Tanjore, (1925) 50 M.L.J. 665, dissented from.

Mahasukh v. Valibhai, (1927) 30 Bom. L.R. 455, referred to. Section 52 of the Provincial Insolvency Act applies to immovable property under attachment by a Court.

Haranchandra Chakravarti v. Jay Chand, (1929) I.L.R. 57 Cal. 122, followed.

(1) (1926) I.L.R. 49 Mad. 794.
* Second Appeal No. 384 of 1927.