

Rs. 2,000 and in the meanwhile the first advance of Rs. 3,000 was acknowledged by the execution of a promissory note.

VENKATA-
RAMASWAMI
v.
IMPERIAL
BANK OF
INDIA.

Solicitors for first respondent: *King and Part-ridge.*

G.R.

APPELLATE CIVIL.

*Before Sir Lionel Leach, Chief Justice, and Mr. Justice
Krishnaswami Ayyangar.*

THE OFFICIAL ASSIGNEE, MADRAS (APPLICANT),
APPELLANT,

1938,
May 4.

v.

P. SURYAKANTHAMMAL AND ANOTHER (RESPONDENTS),
RESPONDENTS.*

*Presidency-towns Insolvency Act (III of 1909), sec. 58 (5)—
Scope of—Contempt of Court—Power of Court to commit
an agent of an insolvent for—Not limited by sec. 58 (5)—
Inherent power of Court.*

The powers of the High Court in its original insolvency jurisdiction to commit an agent of an insolvent for contempt are not limited to those conferred by sub-section 5 of section 58 of the Presidency-towns Insolvency Act. It has inherent power to commit to prison for contempt persons who deliberately aid an insolvent in defying an order of Court lawfully passed in the exercise of its insolvency jurisdiction.

Seaward v. Paterson(1) referred to.

APPEAL from the judgment of WADSWORTH J., dated 9th August 1937, in the exercise of the Insolvency Jurisdiction of the High Court in Application No. 246 of 1937 in Insolvency Petition No. 417 of 1936.

* Original Side Appeal No. 65 of 1937.

(1) [1897] 1 Ch. 545.

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MADRAS
v.
SURYA-
KANTHAMMAL.
LEACH C.J.

K. P. Mahadeva Ayyar for appellant.

A. S. Nataraja Ayyar for respondents.

The JUDGMENT of the Court was delivered by LEACH C.J.—This appeal raises a question with regard to the right of the Court to commit to prison for contempt persons who have deliberately aided an insolvent in defying an order of the Court lawfully passed in the exercise of the insolvency jurisdiction.

On 15th September 1936 one B. G. Sundaram Naidu was adjudicated insolvent. His assets included a house, No. 45, Guruvappa Chetti Street, Chintadri-pet, in which he, his wife and his son were living. This property was mortgaged to one Lakshmi Ammal and in the course of the administration of the estate the Official Assignee sold the property to the mortgagee. At the time of the sale the insolvent and his family were occupying the upper floor of the house and the rooms downstairs were in the occupation of tenants. On 3rd May 1937 the learned Judge sitting in insolvency (WADSWORTH J.) passed an order requiring the insolvent to vacate the premises on or before the 7th of that month. The tenants vacated the room which they were occupying and the insolvent and his family vacated the upper floor, but, immediately, he installed his wife, his mother and his son in the rooms downstairs. On 8th June 1937 the Official Assignee complained of this fact in a report to the Court. On 19th July 1937 WADSWORTH J. held that the insolvent was playing with the Court and gave him twenty-four hours to vacate the premises. He failed to comply with this order and on 20th July 1937 he was committed to jail for two weeks for contempt of Court. The insolvent appealed to this Court, but his appeal was dismissed on 27th July

1937. On 30th July 1937 the Official Assignee presented a petition to the learned Judge stating that the insolvent's wife and others were in possession of the house as the agents of the insolvent, and asking for an order of the Court directing the bailiff to remove them from the premises. This application was heard by WADSWORTH J. on 2nd August 1937. After the case had been called, the learned Advocate who now appears for the respondents, the insolvent's wife and son, appeared in Court and having entered an appearance on their behalf asked that one week's time be given to him to file an affidavit in opposition to the order which the Official Assignee was seeking. The time asked for was granted and within the time allowed the insolvent's wife filed an affidavit in which she alleged that there had been an agreement between her and Lakshmi Ammal under which she was to be allowed to reside in the house until a sum of Rs. 3,000, which she alleged she had advanced to Lakshmi Ammal, had been repaid. The learned Judge dealt with the application of the Official Assignee on 9th August 1937. He did not believe this story and in his order stated that he had no doubt that the wife was acting at the instigation of the husband. He held, however, that he had no power to commit her for contempt of Court. He considered that his powers of committing an agent for contempt were limited to the powers conferred by sub-section 5 of section 58 of the Presidency-towns Insolvency Act which only refers to the delivery up to the Official Assignee of monies and securities. On this ground he dismissed the Official Assignee's application, and the present appeal is from the order of dismissal.

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Before I discuss the law and the merits of the case I will first deal with an objection taken by the learned

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Advocate for the respondents that no appeal lies. He has cited the case of *P. Abdul Gaffor v. The Official Assignee*(1) in which a Bench of the Rangoon High Court held that section 8 of the Presidency-towns Insolvency Act does not allow an appeal from an order passed in insolvency unless the order comes within Order XLIII, rule 1, of the Code of Civil Procedure or is a judgment within the meaning of the Letters Patent. This decision has been criticised and it is in conflict with the decision of the Bombay High Court in *Mahomed Haji Essack v. Shaik Abdool Rahiman*(2), where a much wider view was taken on the question of the right of appeal from an order passed in insolvency. It is unnecessary for the purpose of this case to consider which opinion ought to be accepted, because it is clear that the order here passed was a judgment within the meaning of Clause 15 of the Madras Letters Patent. The learned Advocate for the respondents has also said that the Official Assignee is not an aggrieved party within the meaning of section 8 of the Presidency-towns Insolvency Act. I have been unable to follow why he should not be regarded as an aggrieved party. He made an application to the Court in a matter which concerned the administration of an estate in insolvency. The Court refused to pass an order on the ground that its powers were of a very limited nature and the powers which it had were not sufficient to commit an agent where the contempt was of an order relating to the delivery to the Official Assignee of immovable property. The Official Assignee says that the learned Judge had power to pass an order against the respondents and, if this is so, he certainly is an aggrieved party.

(1) (1925) I.L.R. 3 Ran. 605.

(2) (1915) I.L.R. 40 Bom. 461.

The learned Judge erred in his conclusion that his powers of committing for contempt an agent were limited to section 58 of the Presidency-towns Insolvency Act. The Court has the power to commit an insolvent who wilfully obstructs the Court and I have no doubt that it has inherent power to commit a person who with full knowledge deliberately obstructs the Court on his behalf. When exercising insolvency jurisdiction the Court is still the High Court. In *Seaward v. Paterson*(1) the Court of Appeal in England held that the Court has undoubted jurisdiction to commit for contempt a person who is not included in an injunction or who is not a party to the action but who knows of the injunction and aids and abets a defendant in committing a breach of it. RIGBY L.J. observed at page 558 :

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“That there is a jurisdiction to punish for contempt of Court is undoubted. It has been exercised for a very long time—far longer than any of us can remember—and it is a punitive jurisdiction founded upon this, that it is for the good, not of the plaintiff or of any party to the action, but of the public, that the orders of Court should not be disregarded, and that people should not be permitted to assist in the breach of those orders in what is properly called contempt of Court. It is astonishing to me to find that jurisdiction questioned at this date.”

There can be no doubt in this case that the insolvent's wife and his son are deliberately obstructing a lawful order of the Court and are doing so at the instigation of the insolvent. The son who is the second respondent in this appeal is not mentioned in the learned Judge's order, but he is exactly in the same position as his mother and has relied on his mother's affidavit. As both respondents have with full knowledge of the position acted in deliberate defiance of the

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Court's order, I am of opinion that they are liable to be committed for contempt. In view of the fact that the learned Judge did not pass an order against them, I think, however, that they may be given a short period to vacate the premises. My learned brother agrees with the views I have expressed and we pass this order: The respondents will vacate the premises known as No. 45 Guruvappa Chetty Street, Chintadripet, Madras, by Monday, 9th May 1938, failing which they will be committed to prison for a fortnight for contempt of Court. The Official Assignee is entitled to his costs, which we fix at Rs. 100.

G.R.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Madhavan Nair.

1938,
April 4.

V. R. KM. KUMARAPPA CHETTIAR (PETITIONER),
PETITIONER,

v.

K. M. V. R. CHIDAMBARAM CHETTIAR AND ANOTHER
(RESPONDENTS), RESPONDENTS.*

Provincial Insolvency Act (V of 1920), sec. 35—Adjudication order passed without jurisdiction—Annulment of—Power of Court.

Section 35 of the Provincial Insolvency Act empowers a Judge sitting in insolvency to annul an adjudication when it is clear that on the materials before the Court at the time the order of adjudication was passed it had no jurisdiction to pass the order. The section leaves the Court no discretion in the matter.

PETITION under section 75 of the Provincial Insolvency Act, praying the High Court to revise the decree of

* Civil Revision Petition No. 1297 of 1937.