

1912

HIRA SINGH
v.
MUSAMMAT
AMARTI.

BY THE COURT.—The appeal is allowed. The case will go back to the court below for decision having regard to the observations made in our judgment. The plaintiffs will be allowed an opportunity of adducing evidence of the facts entitling them to produce secondary evidence of the bond. Costs in this appeal will be costs in the cause. Defendants will be entitled to produce rebutting evidence.

Appeal allowed. Cause remanded.

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February 29.

Before Mr. Justice Karamat Husain and Mr. Justice Tudball.

MAKHAN LAL (PETITIONER) v. SRI LAL (OPPOSITE PARTY).*

Act No. XII of 1887 (Bengal, N.-W. P. and Assam Civil Courts Act), sections 8, 20—Act No. III of 1907, (Provincial Insolvency Act), sections 43, 46, 3—Appeal—Jurisdiction—Effect of order of District Judge assigning work to Additional Judge.

Where an Additional District Judge sentenced an applicant for insolvency under section 43 of the Provincial Insolvency Act, 1907, acting in the matter under an order of the District Judge assigning the particular class of work to him under section 8 of the Bengal, N. W. P. and Assam Civil Courts Act, 1887, it was held that an appeal from the Additional Judge's order lay to the High Court and not to the District Judge.

The facts out of which this appeal arose were, briefly, as follows:—

One Makhan Lal applied to the District Judge of Aligarh to be adjudicated an insolvent. The District Judge transferred that application to the file of the Additional District Judge. One Sri Lal was one of the opposing creditors. The Additional Judge found the applicant guilty under section 43 (2) of the Provincial Insolvency Act and sentenced him to one month's simple imprisonment. Makhan Lal appealed to the High Court.

Pandit Jaggivan Nath Takru, for the respondent, raised a preliminary objection that the appeal lay to the District Judge and not to the High Court. He submitted that the court of the Additional Judge was inferior to that of the District Judge; *vide* section 39 of the Bengal, Assam and N.-W. P. Civil Courts Act, 1887. In section 3 of that Act, the different courts have been named in order of their inferiority. An appeal from an order of a court subordinate to the District Judge lay to the District Judge—*vide* section 46 of the Insolvency Act—and no appeal lay to the High Court.

* First Appeal No. 112 of 1911, from an order of A. W. R. Cole, Additional Judge of Aligarh, dated the 23rd of September, 1911.

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Mr. R. K. Sorulji, for the appellant, here referred to section 20 of the Bengal, N.-W. P. and Assam Civil Courts Act. Under section 3 of the Insolvency Act no court except that of the District Judge could hear insolvency petitions. It was only when there was a special notification by the Government to that effect that any other court could hear such petitions. The Additional District Judge could only have a power to try such cases if his court were a court of concurrent jurisdiction with that of the District Judge. The words used in the Act were 'District Court.' In dealing with cases under section 43 the court had power as a criminal court, and the appellant should have been allowed a fair chance and opportunity to explain his conduct.

Pandit Jaggivan Nath Takru, for the respondent.

Section 47 of the Civil Courts Act gives general powers to District Judges in the exercise of their original jurisdiction and they have in the exercise of such jurisdiction power to transfer cases. Section 8 (2) gives to Additional Judges the same powers as to the District Judge.

KARAMAT HUSAIN and TUDBALL, JJ.—This is an appeal from the order of the Additional District Judge of Aligarh, whereby he, under section 43 of the Provincial Insolvency Act (Act III of 1907), sentenced the appellant to simple imprisonment for one month in that he had fraudulently or vexatiously concealed or refused to produce certain books of account before the Receiver appointed in the matter of his insolvency. A preliminary objection is taken that the appeal does not lie to this Court but to the court of the District Judge. It is urged that the court of the Additional District Judge is a court subordinate to the District Court as contemplated by section 46 of the Act and that the appeal under that section lies to the District Court. In this connection we may note that one of the grounds of appeal is that the Additional District Judge had no insolvency jurisdiction in that he has not been invested by the Local Government with powers under the proviso to section 3, clause (i), of the Act. In our opinion neither of these two pleas has any force. It is true that for certain purposes an Additional District Judge is subordinate to the District Judge. It is equally true that the Local Government has not issued any notification in respect to the Additional District Judge of Aligarh under section 3, clause I of the Act. Under that section

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of the Act the District Courts are the courts which have jurisdiction under the Act. The District Court means the principal Civil Court of original jurisdiction of the district. But, under section 8 of the Civil Courts Act (Bengal, N.-W. P. and Assam), Additional District Judges appointed under clause (1) of the section shall discharge any of the functions of a District Judge which the District Judge may assign to them and in the discharge of those functions *they shall exercise the same powers as a District Judge*. In the present case the District Judge having assigned one of the functions of a District Judge to his Additional District Judge, the latter has exercised the same powers as the former would have done but for his order. Under section 20 of the same Act the appeal therefore lies to this court. The lower court, therefore, was in the present matter not subordinate to the District Court in the manner contemplated in sections 3 and 46 of the Insolvency Act. The lower court, therefore, was part and parcel of the District Court. It had jurisdiction, and the appeal lies to this Court. There remain only the merits of the case for consideration. The applicant was called upon to produce his books. He produced nearly all. In regard to the balance he stated that he had previous to the insolvency proceedings handed them over to three of his creditors. Apparently his case was that an attempt was made at first to come to a settlement with all his creditors, and for that purpose he had made over these books to these three. The opposite party, Sri Lal, is one of these three, and it was he who applied to the court to compel the appellant to produce the books. The appellant and Sri Lal were the only two persons examined by the lower court. The former swore that he had handed over the books and the latter denied it. The court also took into evidence a report by the Receiver that the other two creditors named had also denied receipt of the books from the appellant. These persons were alive, and could and ought to have been called and examined on oath. The inquiry has in our opinion been far too meagre and summary, and the appellant should have a further opportunity of proving his allegation. We, therefore, allow the appeal, set aside the lower court's order and remand the case for full inquiry and decision according to law.

The parties will abide their own costs of this appeal.

Appeal allowed.