

1913
Mar 7.

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.
THAKUR PRASAD (APPLICANT) v. FANNO LAL AND OTHERS
(OPPOSITE PARTIES).*

Act No. III of 1907 (Provincial Insolvency Act), sections 22, 46 and 52—Act No. IX of 1908 (Indian Limitation Act), section 5—Insolvency—Application to Court to reverse act of receiver—Limitation.

Held that section 5 of the Indian Limitation Act, 1908, does not apply to applications contemplated by section 22 of the Provincial Insolvency Act, 1907. Dropadi v. Hira Lal (1) distinguished.

ONE Thakur Prasad was a secured creditor of an insolvent being a mortgagee in possession. A receiver was appointed by the court, and it appears that on the 20th of September, 1911, the receiver took possession of the mortgaged property. On the 31st of October, 1911, Thakur Prasad applied to the court under section 22 of the Provincial Insolvency Act, 1907, praying that the act of the receiver might be reversed and the applicant restored to possession. The District Judge held that as the application had been made more than twenty-one days after the act complained of, it was time-barred, and accordingly rejected it. The applicant thereupon appealed to the High Court.

Munshi Govind Prasad, for the appellant.

The respondents were not represented.

TUDBALL and MUHAMMAD RAFIQ, JJ :—The facts of the case, out of which this appeal arises, are as follows :—The appellant is a secured creditor of an insolvent. He was a mortgagee in possession. A receiver was appointed by the court, and it appears that on the 20th of September, 1911, he took possession of the property in question. On the 31st of October, 1911, the present appellant made an application under section 22 of the Provincial Insolvency Act to the court asking it to reverse the act of the receiver and to restore him to possession, he being a secured creditor. The learned District Judge held that as the application was made more than twenty-one days after the act complained of had been done, it was time-barred. He accordingly rejected the application. On appeal before us it is urged that the act complained of did not come to the

* First Appeal No. 88 of 1912 from an order of H. E. Holme, District Judge of Allahabad, dated the 9th of March, 1912.

notice of the appellant on the date when it was done or soon after it and the appellant went to the court without delay, and therefore the court ought to have applied section 5 of the Limitation Act and admitted the application. The appellant did not ask the court to admit his application out of time and there is therefore on the record no evidence whatsoever to show that there was sufficient cause for so doing. We therefore remit the following issue to the court below :—“When did the act of the receiver first come to the knowledge of the appellant?” The court will take any evidence offered on the issue by the parties and remit its finding. On receipt of the finding ten days will be allowed for objections.

On the return of the findings the following judgement was delivered :—

The return made by the court below to the issue remitted is that the appellant came to know of the act of the receiver on the 27th of October, 1911, i.e., four days prior to his filing the application of 31st of October, 1911. If section 5 of the Limitation Act (IX of 1908), could apply to the application made by the appellant to the court below, then we should be of opinion that the appellant was entitled to ask the court to exercise the power granted by that section. But, in our opinion, section 5 of the Limitation Act does not apply to applications contemplated by section 22 of the Insolvency Act. Section 5 of the Limitation Act runs as follows :—“Any appeal or application for a review of judgement or for leave to appeal or *any other application to which this section may be made applicable by any enactment or rule for the time being in force* may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.” An application under section 22 of the Insolvency Act to the District Judge is not an appeal, application for review of judgement or for leave to appeal, and it is admitted that there is no rule or enactment under which this section was made applicable to section 22 of the Insolvency Act. Our attention is called to the Full Bench ruling in *Dropadi v. Hira Lal* (1). But that ruling does not help

1913

 THAKUR
 PRASAD
 v.
 PANNO LAL.

(1) (1912) I. L. R., 84 All, 496.

1913

TEAKUR
PRASAD
v.
PANNO LAL.

the appellant. Granting that the general provisions of the Limitation Act apply to the Insolvency Act, the very wording of section 5 limits the applicability of that section to *appeals* and *applications* of a certain character. An application under section 22 of the Insolvency Act does not come in any way within the category of such applications. It is urged that the application to the District Judge against the act of the receiver is really an appeal as is contemplated by section 5 of the Limitation Act. Clause (2) of section 52 of the Insolvency Act is quoted, which runs as follows:— “ Subject to the appeal to the court provided for by section 22, any order made or act done by the Official Receiver in the exercise of the said powers shall be deemed the order or act of the court.” It seems to us clear that the word ‘ appeal ’ in this clause is not used in the strict legal meaning of the word. The very wording of the section shows this. Section 22 is perfectly clear. The proviso says:—“ Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the order or decision complained of.” The right of appeal is given in section 46 of the Act. In our opinion an application under section 22 of the Act against an “ act ” of the receiver is not and cannot be an “ appeal ” such as is contemplated by section 5 of the Limitation Act. It is clear, therefore, that section 5 of the Limitation Act does not apply and the court below was, therefore, bound to reject the application made to it and this appeal must fail. It is dismissed. We make no order as to costs, as the other side is not represented.

Appeal dismissed.

FULL BENCH

Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Banerji and Mr. Justice Lyle.

SONA DEI AND ANOTHER (PLAINTIFFS) v. FAKIR CHAND AND OTHERS
DEFENDANTS)*

Maha-Brahmān—Agreement as to distribution of offerings—Construction of agreement.

The members of a family of Maha-Brahmans entered into an agreement amongst themselves whereby certain members of the family were to take the

*Second Appeal No. 1173 of 1912 from a decree of L. Johnston, District Judge of Meerut, dated the 30th of July, 1912, affirming a decree of Mohan Lal Hukku, Subordinate Judge of Meerut, dated the 10th of May, 1912.

1913
May, 9.