

The plaintiff's right therefore, if any, arose in 1909, and the suit ought to have been brought within one year from that date. We allow the appeal, set aside the decree of the lower appellate court, and restore the decree of the court of first instance with costs in this Court and in the court below.

Appeal allowed.

1917

SUBA SINGH
v
MAHABIR
SINGH.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

ANUP KUMAR (OPPOSITE PARTY) v. KESHO DAS (APPLICANT)*
Act No. III of 1907 (Provincial Insolvency Act), sections 34, 35—Application for declaration of insolvency—Property of applicant attached—Power of insolvency court to stay proceedings in execution.

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April, 25.

An insolvency court has no power to interfere with execution proceedings pending in another court against a person who has filed his petition to be declared insolvent, at least, until either the debtor has been declared insolvent or until a receiver has been appointed.

In this case one Jamna Das applied to be adjudicated an insolvent. At the time of this application Anup Kumar had obtained a decree against Jamna Das, and had attached certain property of the judgement-debtor, and that property was about to be sold. Thereupon Swami Kesho Das, alleged to be another creditor of Jamna Das, made an application to the District Judge contending that, if the property was sold at the suit of Anup Kumar, the other creditors would be prejudiced, because Anup Kumar would probably get a larger portion of the assets. He prayed that, pending the disposal of the insolvency application, the sale proceedings, pending in the Subordinate Judge's Court, might be stayed. The District Judge allowed the application and stayed the execution proceedings accordingly. Against this order the attaching creditor appealed to the High Court.

The Hon'ble Munshi Narayan Prasad Ashthana, for the appellants.

Babu Purushottam Das Tandon, for the respondent.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises out of an insolvency matter. An application was made by one Jamna Das, to be adjudicated an insolvent. Lala Anup Kumar had

* First Appeal No. 191 of 1916, from an order of J. H. Cuming, District Judge of Saharanpur, dated the 16th of September, 1916.

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obtained a decree against Jumna Das and he had attached property of the judgement-debtor and the property was about to be sold. Swami Keshu Das, alleged to be another creditor of Jamna Das, made an application to the District Judge contending that if the property was sold at the suit of Anup Kumar, the other creditors would be prejudiced, because Anup Kumar would probably get a larger portion of the assets. He prayed that pending the disposal of the insolvency application the sale proceedings pending in the Subordinate Judge's court should be stayed. The learned Judge in a somewhat summary manner made the following order: - "The application is therefore allowed. Injunction will issue staying the sale pending the result of the insolvency petition." The present appeal is by Lala Anup Kumar against this order. It is an admitted fact that Jamna Das was not at the date of the order adjudicated an insolvent (apparently even up to the present he has not been so adjudicated). It seems to us that the order of the court below was wrong. The only provision which by any possibility could give jurisdiction to the District Judge is section 47 of the Provincial Insolvency Act which incorporates certain provisions of the Code of Civil Procedure. It is argued that the District Judge in an insolvency matter has the same powers which a Civil Court has, and *inter alia* power to issue an injunction where property is in danger of being wrongfully sold under a decree. But it cannot be said that this property (which is admittedly the property of the judgement-debtor) was about to be *wrongfully* sold in execution of the decree. Therefore this was not a case in which the Civil Court could have issued an injunction, and therefore (even on the assumption that the court in an insolvency matter has jurisdiction to issue an injunction to prevent one of the creditors executing his decree) it is not a case in which an injunction ought to or could legally have been issued. It is quite clear that the judgement-creditor was entitled to pursue all his legal rights and remedies in executing his decree save so far as he was restricted by the provisions of the Insolvency Act. Section 35 provides that "where the execution of a decree has issued against any property of a debtor which is saleable in execution and *before the sale* notice is given to the court executing the decree, that

the order of adjudication had been made against the debtor, the court shall, on the application, direct the property, if in the possession of the court, to be delivered to the receiver." This section and the preceding section 34 only apply when there has been an adjudication of insolvency or the appointment of a receiver. In the present case there has been neither an adjudication in insolvency nor the appointment of a receiver. We must allow the appeal, set aside the order of the court below and dismiss the application with costs in both courts to be paid by the opposite party.

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Appeal decreed.

REVISIONAL CRIMINAL.

Before Mr. Justice Piggott.

EMPEROR v. BHOLA AND OTHERS.*

Criminal Procedure Code, section 439—Appealable and non-appealable sentences given on a joint trial—Appeal by some accused—Reference made by appellate court as to the others

1917
May, 18.

Of several persons tried jointly by a Magistrate, some received appealable sentences, others non-appealable. The former appealed to the Sessions Judge, who acquitted them, but on grounds that were applicable to all.

Held that it was the duty of the judge to bring the cases of the remaining accused to the notice of the High Court under section 439 of the Code of Criminal Procedure.

THIS was a reference under section 439 of the Code of Criminal Procedure made by the Sessions Judge of Meerut under the following circumstances. Eleven persons were jointly tried before a Magistrate of the first class in respect of offences charged under section 409 and section 424 of the Indian Penal Code. Three men were convicted under the former of these sections and received appealable sentences. The remaining eight, Bhola and others, being convicted on a charge under section 424 of the Indian Penal Code, were sentenced to fine only. The first three appealed. The Sessions Judge acquitted these three upon grounds which were applicable also to the non-appealing accused. But he submitted the whole record to the High Court with the recommendation that they likewise should be acquitted.

* Criminal Reference. No. 367 of 1917.