

REVISIONAL CIVIL.*Before Mr. Justice Fforde and Mr. Justice Tek Chand.***PANNA LAL-TASSADUQ HUSSAIN****(PLAINTIFFS) Petitioners***versus***HIRA NAND-JIWAN RAM (DEFENDANTS)****Respondents.**

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March 9.

Civil Revision No 604 of 1926.

*Provincial Insolvency Act, V of 1920; sections 28, 29—
Suit instituted against insolvent after adjudication (and in
ignorance of the order of adjudication)—without the permis-
sion of the Insolvency Court—whether maintainable.*

The present suit was instituted some 3 years subsequent to the defendant having been adjudicated an insolvent. It was alleged that the suit was brought in ignorance of the fact of the adjudication order and no leave of the Court to institute the suit had therefore been obtained.

Held, that the suit had been rightly dismissed under the provisions of section 28 of the Provincial Insolvency Act, according to which no suit can be brought after adjudication without first obtaining the permission of the Insolvency Court to bring that suit.

Held also, that the provisions of section 29 of the Act were not applicable to such a case.

Haji Umar Sharif v. Jwala Prasad (1), dissented from.

Application for revision of the decree of Lala Devi Dayal, Dharwan, Judge, Small Cause Court, Amritsar, dated the 19th June 1926, dismissing the plaintiff's suit.

KAHAN CHAND, for Petitioner.

Nemo, for Respondents.

[The order of Mr. Justice Tek Chand, dated 8th February 1927, referring the case to a Division Bench.]

The plaintiff petitioner on the 25th August 1925 instituted a suit against two defendants (1) Firm of

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Hira Nand-Jiwan Ram and (2) Tassaduq Hussain for recovery of a certain sum of money due by defendant No. 1 to the plaintiff and defendant No. 2 jointly. Hira Nand, proprietor of the Firm Hira Nand-Jiwan Ram, appeared and pleaded that the Firm had been adjudicated insolvent as far back as 28th November 1922 and that the suit could not proceed without the permission of the Insolvency Court. The defendant was directed to produce a copy of the order of the Dera Ismail Khan Court, adjudging the defendant's firm insolvent and the plaintiff was also asked to make enquiry and, if necessary, to obtain permission of the Insolvency Court to continue the suit. At the next hearing, on the 1st May 1926, the copy of the order of the Insolvency Court was not produced and the case was adjourned to the 19th June 1926. On that date again no copy of the order was produced as the record had been sent up from Dera Ismail Khan to the Judicial Commissioner's Court at Peshawar but the statement of Hira Nand, defendant and of Kanhaya Lal, Pleader, who had been conducting cases on behalf of the Receiver of the Firm Hira Nand-Jiwan Ram was recorded and the Court gave a finding that the defendant firm had been adjudicated insolvent as alleged. On this finding the Court held that as under section 28 of the Provincial Insolvency Act a creditor, whose debt is provable in insolvency, cannot commence any suit or legal proceeding against the insolvent without permission of the Insolvency Court and as the plaintiff had failed to obtain such permission the suit was dismissed with costs.

The plaintiff has preferred a petition for revision to this Court, and on his behalf it has been contended that section 28 of the Provincial Insolvency

Act has no applicability to a suit filed by a creditor, who has instituted a suit in ignorance of the adjudication order and consequently without obtaining the permission of the Insolvency Court, even though the order of adjudication had been passed before the suit was instituted. In support of this contention the plaintiff's learned counsel has quoted a ruling of the Judicial Commissioner's Court at Nagpur reported as *Haji Umar Sharif v. Jwala Prasad* (1), which has been cited, apparently without disapproval, by several commentators on the Provincial Insolvency Act.

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As at present advised I feel grave doubts as to the correctness of this ruling and am not prepared to follow it, but as the point involved is one of general importance and is likely to affect a large number of cases, I think it proper to refer the case to a Division Bench. The office is directed to fix this case for actual hearing at a very early date and to place it before a Division Bench of which I am a member.

Counsel to be informed.

JUDGMENT.

FFORDE J.—This is an application to revise an order of the Judge of the Small Cause Court at Amritsar dismissing the plaintiff's suit on the ground that the defendant had been adjudicated insolvent some time prior to the institution of the suit and leave had not been obtained, in accordance with section 28 of the Provincial Insolvency Act, to commence the suit.

FFORDE J.

The facts are sufficiently stated in the order of reference and need not be repeated. The petitioner relies upon the case of *Haji Umar Sharif, plaintiff-appellant v. Jwala Prasad, defendant-respondent* (1).

(1) (1924) 79 I. C. 662.

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a decision of the Additional Judicial Commissioner of Nagpur, in which it was held that where a suit had been filed against an insolvent in the civil court in ignorance of the fact of an adjudication order having been passed, and, consequently, without obtaining the permission of the Insolvency Court, a civil court can, under section 29 of the Act, permit the suit to be continued on such terms as it might think fit if it appear that the suit was brought in ignorance of the order of adjudication. With this construction of the statute I find myself, with all respect to the learned Additional Judicial Commissioner, quite unable to agree. Section 28 of the Provincial Insolvency Act, which is in effect the same as section 7 of the English Bankruptcy Act of 1914, expressly prohibits any suit or other legal proceedings being commenced except with the leave of the Court and on such terms as the Court may impose: that is to say, no suit may be brought after adjudication without first obtaining the permission of the Court to bring that suit. Section 29 deals with pending suits and provides that on proof of an adjudication order made against the debtor, the Court may stay or allow to continue a pending suit upon such terms as it may think fit to impose. The present suit was instituted some three years subsequent to the adjudication order. No leave of the Court had been obtained to bring these proceedings and consequently they are not maintainable.

In my opinion, the order of the Judge, Small Cause Court, is correct and this application in revision must therefore be rejected.

TEK CHAND J.

TEK CHAND J.—I agree. My opinion is given in the referring order, which should be read as a part of this judgment.

Revision rejected.

A. N. C.