

dismiss this application. The parties will bear their own costs of these proceedings.

TEK CHAND J.      TEK CHAND J.—I agree.

A. N. C.

*Application dismissed.*

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**REVISIONAL CIVIL.**

*Before Skemp J.*

1937  
 Jany. 28.

MURAD AND OTHERS (DEBTORS) Petitioners,  
*versus*  
 OFFICIAL RECEIVER, JHANG, AND ANOTHER  
 Respondents.

**Civil Revision No. 890 of 1936.**

*Punjab Relief of Indebtedness Act (VII of 1934) S. 25 : members of notified agricultural tribe — adjudicated insolvents — Appeal to District Judge against adjudication order — Application by insolvents during pendency of appeal to Local Debt Conciliation Board to effect a settlement — whether District Judge can proceed with the appeal after receipt of notice from Board to stay proceedings — Jurisdiction of High Court to revise the order of the District Judge — Provincial Insolvency Act (V of 1920) S. 75, proviso — and S. 28 (5) — whether exempts land of agriculturist from being taken into account under the section.*

Three brothers, members of a notified agricultural tribe were adjudicated insolvents on the petition of a creditor. They appealed against the order of adjudication to the District Judge, and pending the hearing of the appeal applied to the Local Debt Conciliation Board set up under the Punjab Relief of Indebtedness Act. Before the hearing of the appeal, the Board issued a letter to the District Judge to stay proceedings. The District Judge refused to stay the appeal holding that he had jurisdiction to hear it and rejected it.

*Held*, that although the order made in appeal by the District Judge is final under s. 75 of the Provincial Insolvency Act, the High Court under the proviso to the section,

in order to satisfy itself that the order was according to law, can call for the case and pass such order with respect thereto as it thinks fit.

*Held also*, that an appeal is a 'proceeding' within the meaning of s. 25 of the Punjab Relief of Indebtedness Act, 1934, and the District Judge acted without jurisdiction in proceeding to hear the appeal, after receiving notice from the Conciliation Board to stay proceedings.

*Held further*, that having regard to sub-s. 5 of s. 28 of the Provincial Insolvency Act the insolvents, being members of a notified agricultural tribe, their land was not liable to attachment or sale in execution of a decree and that the property cannot therefore be taken into account for purposes of the section.

*Application for revision of the order of Mr. P. R. B. May, District Judge, Jhang, at Sargodha, dated 22nd June, 1936, affirming that of Lala Mani Ram Khanna, Insolvency Judge, Jhang, dated 18th July, 1935, adjudicating the debtors as insolvents and appointing the Official Receiver, as Receiver to take charge of the property.*

MOHAMMAD DIN JAN, for Petitioners.

SHAMAIR CHAND and QABUL CHAND, for Respondents.

SKEMP J.—Three brothers Ludhiana Sials of the Jhang District were adjudicated insolvents on the petition of a creditor. They appealed against the order of adjudication to the District Judge and pending the hearing of the appeal applied to the local Debt Conciliation Board set up under the Punjab Relief of Indebtedness Act to effect a settlement between them and their creditors. Before the hearing of the appeal the Board issued a letter to the District Judge to stay proceedings. In due course, the effect of this was argued before the District Judge who held that he

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still had jurisdiction to hear the appeal and rejected it. The debtors have come here in second appeal.

It is contended that no second appeal lies and this is well founded. Section 75 of the Provincial Insolvency Act lays down that the appellate order of a District Court shall be final. But the proviso lays down that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit, and I shall treat the matter as a revision.

It is urged that the District Judge acted without jurisdiction in view of section 25 of the Punjab Relief of Indebtedness Act in proceeding to hear the appeal after receiving the letter of the Debt Conciliation Board. Section 25 is as follows :—

“ When an application has been made to a board under section 9, no Civil Court shall entertain any new suit or other proceeding brought for the recovery of any debt for the settlement of which application has been made to the board, and any suit or other proceeding pending before a Civil Court in respect of any such debt shall be suspended until the board has dismissed the application or an agreement has been made under section 17.”

Mr. Shamair Chand for the respondent urged that an appeal in an insolvency case is not a proceeding. ‘ Proceeding ’ is not defined in the Civil Procedure Code, and the provisions of law and the rulings cited before me are not relevant. A proceeding is a matter which proceeds or is going on and I do not see why this should not include an appeal against adjudication as an insolvent.

The argument of the District Judge is that although the Punjab Relief of Indebtedness Act has made certain amendments in the Provincial Insolvency Act it does not touch the effect of adjudication; that under section 28 (1) of the latter Act the insolvent shall aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors; that to make an application to the Debt Conciliation Board to arrange a settlement for him is entirely violating these directions; further that under section 28 (2) while the order of adjudication remains in force no creditor can move any Court against the debtor and that it would be anomalous if an adjudicated insolvent could under similar circumstances seek the help of the Debt Conciliation Board. The person applying must be one in free control of his property whereas the insolvent's property vests in the Court or in the Official Receiver.

The learned District Judge overlooked the effect of sub-section (5) of section 28 which runs: "The property of the insolvent for the purposes of this section shall not include any property . . . . which is exempted by the Code of Civil Procedure, 1908, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree." As the insolvents are members of a notified agricultural tribe their land is not liable to sale in execution of a decree and further their learned counsel Mr. Mohammad Din Jan points out that according to the appellants some of the debts were incurred by their father so that under section 9 of the Debtors' Protection Act, 1936, their land would not be liable for these debts. I think there is weight in these arguments and the land exempt from attachment and sale cannot be

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taken into account for purposes of section 28 of the Provincial Insolvency Act. There is no doubt that the insolvents are debtors. Indeed, section 38 of the Provincial Insolvency Act calls an adjudicated insolvent a debtor.

SREMP J.

The argument of the District Judge assumes that section 28 of the Provincial Insolvency Act is in conflict with section 25 of the Relief of Indebtedness Act. Even if this is correct, then the provision of the earlier statute (V of 1920) is impliedly repealed by the later (Punjab Act VII of 1934). See Maxwell, interpretation of statutes, Chapter VII. 7th Edition 136.

I do not understand why the respondents are opposing this application. I think they have a much better chance of realising something and realising it quickly through a Conciliation Board than through an Insolvency Court. In any case if the proceedings before the Conciliation Board fail the respondents can continue the insolvency proceedings.

I accept the revision and set aside the order of the learned District Judge rejecting the insolvents' appeal and direct that in accordance with section 25 of the Punjab Relief of Indebtedness Act the hearing of the appeal shall be suspended until the Conciliation Board has dismissed the application or an agreement has been made.

As the point is a novel one, the parties are to bear their own costs.

A. N. C.

*Revision accepted.*