

a percentage only on the amount claimed by them for maintenance. If this claim were decided on the merits, the full percentage would be paid; in other cases one-fourth only would be paid under section 7 of Act I of 1846. In the present case, there has been no decision passed on their claim either on the merits or in any other way. The lower Court decided the case on the compromise, which is silent as to the amount of maintenance to which the defendants Nos. 3 and 4 are entitled. It does not appear that they asked the Court below when it decided the case on the compromise to proceed on their claim and to define and award them their maintenance, and they have not here objected to the decision of the suit on the compromise alone. Had they done so, we should have been bound to have allowed the objection.

We, therefore, only reverse the order of costs, and remand the case for the amount of pleaders' fees to be correctly calculated. This will involve a determination of the amount of maintenance to which the defendants Nos. 3 and 4 are respectively entitled. If there is a dispute necessitating a decision on the merits as to the amount of maintenance to which either defendant is entitled, the pleader of that defendant will be entitled to the full percentage on the amount, if any, claimed, or if no amount is claimed, on the amount awarded. In other cases he will be entitled to one-fourth only. We make no order as to the costs of this appeal.

Order reversed and case remanded.

APPELLATE CIVIL.

Before the Honourable Chief Justice Farran and Mr. Justice Parsons.

SHANKAR RAGHUNA'TH (ORIGINAL OPPONENT No. 1), APPLICANT, v. VITHAL BA'BA'JI RA'GHU BADVE AND ANOTHER (ORIGINAL APPLICANT AND OPPONENT No. 2), OPPONENTS.*

1895.

September 17.

Insolvency—Jurisdiction—Civil Procedure Code (Act XIV of 1882), Secs. 344—360—Second Class Subordinate Judge's Court invested by the Local Government with insolvency jurisdiction—A debt of a scheduled creditor exceeding Rs. 5,000.

Where a person arrested in execution of a decree for money by the Court of a Second Class Subordinate Judge invested under section 360 of the Civil Procedure Code. (Act XIV of 1882) with the powers conferred on District Courts by sections 344

* Application No. 41 of 1895 under the extraordinary jurisdiction.

1895.
RAMCHANDRA
PARSHARA'M
v.
BHA'GUBA'J.

1895.

SHANKAR
v.
VITHAL.

to 359, makes an application to the Subordinate Judge's Court under section 344, that Court has power to entertain it and to make the declarations referred to in sections 344 to 359, and the fact that a debt due to a scheduled creditor exceeds Rs. 5,000 does not deprive it of jurisdiction.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Bahádur N. G. Phadke, First Class Subordinate Judge of Sholápur, reversing the order of Ráo Sáheb V. V. Phadke, Second Class Subordinate Judge of Pandharpur.

The opponent Vithal Babáji having been arrested in execution of a money decree applied to the Second Class Subordinate Judge of Pandharpur to be declared an insolvent under section 344 of the Civil Procedure Code (Act XIV of 1882). The application being rejected he applied to the High Court under its extraordinary jurisdiction, and that Court reversed the order and remanded the case for fuller inquiry. (See Printed Judgments for 1889, p. 337.)

On the remand the Subordinate Judge found the opponent's insolvency proved and declared him to be an insolvent on the 31st March, 1890, and prepared a schedule of his creditors, to two of whom, namely, Balvant Vyankáji and Shankar Raghunáth, the Subordinate Judge found Rs. 5,120 and Rs. 10,488-6-2 respectively to be due.

Balvant Vyankáji and the opponent Vithal appealed, the former urging that a smaller sum than was really due had been awarded him, and the latter that larger amounts were found due to Balvant and Shankar than were really due to them. The Appeal Court, however, found that the Subordinate Judge had no jurisdiction under section 24 of the Bombay Civil Courts Act (XIV of 1869) in the matter of the claims of Balvant and Shankar, they being over Rs. 5,000 in amount. It, therefore, set aside that part of the order which was appealed from, and directed that the proceedings be transferred to the proper Court.

Shankar Raghunáth thereupon applied to the High Court under its extraordinary jurisdiction and obtained a rule *nisi* calling on the opponent to show cause why the order of the lower Appeal Court should not be set aside.

1895.

SHANKAR
v.
VITVAL.

Báláji A. Bhagavat appeared for the applicant in support of the rule:—The lower Appellate Court was wrong. The Subordinate Judge had full jurisdiction to deal with the claims of these two creditors. No doubt section 344 of the Civil Procedure Code provides that an application for declaration of insolvency must be made to the District Court, but under section 360 the Local Government is authorized to invest by notification in the *Government Gazette* any other Court with powers in insolvency proceedings. The Subordinate Judge of Pandharpur had been duly invested with such powers. See *Bombay Government Gazette*, 1887, part I, page 198, 15th November, 1887. The Judge was, therefore, wrong in holding that the Subordinate Judge had no jurisdiction.

Ghanashám N. Nádkarni appeared for the opponents to show cause:—Under section 24 of the Civil Courts' Jurisdiction Act a Subordinate Judge of Second Class is empowered to take cognizance of claims which are less than Rs. 5,000. Even in insolvency proceedings the order which the Judge passes has the force of a decree: consequently such a decree passed by a Second Class Subordinate Judge would be without jurisdiction.

PER CURIAM:—As the Court of the Second Class Subordinate Judge of Pandharpur has been invested under section 360 of the Code of Civil Procedure (Act XIV of 1882) by the Local Government with the powers conferred on District Courts by sections 344 to 359, and as the applicant in this case was arrested in execution of a decree for money passed by that Court, his application under section 344 was rightly made to that Court, and that Court had power to entertain it and make the declarations and orders referred to in sections 344 to 359. It had jurisdiction to make the order that it did in the present case under section 352, and the lower Appellate Court was wrong in setting it aside on the ground that it was made without jurisdiction.

We make the rule absolute, and return the appeals to the Appellate Court for disposal on the merits. Costs of this application to be costs in the appeals.

Rule made absolute.