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in the Army, and in the Army during the period of the war. The residence here in Bombay was substantially longer than that in Mr. Justice Fletcher's case. And I think that on the whole I may hold that there was a sufficient residence here within the meaning of the Act to found the necessary jurisdiction on.

In saying that I have not overlooked the case of *Arthur Flowers* v. *Minnie Flowers*[1]; but there, as appears at page 205, there was a temporary sojourn for a day or two. Similarly, I think, the case of *Nusserwanjee Wadia* v. *Eleonora Wadia*[2] is distinguishable. That was a case under an earlier section of the Act as to residence. But here both the parties were within the jurisdiction when the petition was served on the respondent. I think, therefore, so far as the question of jurisdiction is concerned, the case is in order.

[His Lordship then dealt with the merits of the case and passed a decree *nisi* for the dissolution of the marriage. Liberty to petitioner to apply in chambers for alimony. Costs as between attorney and client.]

Solicitors for the petitioner: Messrs. *Little & Co.*

G. G. N.

(1) (1910) 32 All. 203 at p. 205. (2) (1913) 38 Bom. 125 at p. 149.

INSOLVENCY JURISDICTION.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

1920. August 9.

LAKHMIRAM KEVALRAM BHATT, APPELLANT AND INSOLVENT *v.* POONAMCHAND PITAMBER, RESPONDENT AND OPPOSING CREDITOR*.

Insolvent—Presidency Towns] [*Insolvency Act (III of 1909)—Discharge granted by the Insolvency Court in Bombay—Opposing creditor filing suit against insolvent after discharge, in foreign Court—Foreign Court decreeing*

*O.C. J. Appeal No. 1 of 1920. Insolvency Petition No. 732 of 1914.

claim of opposing creditor—Insolvent applying to Court granting discharge to restrain opposing creditor from proceeding with his suit or executing the decree—Jurisdiction of the Insolvency Court to restrain proceedings in foreign Court—Order of discharge of Insolvency Court in Bombay not binding on foreign Courts in the absence of reciprocity—Insolvency Court will not restrain opposing creditor from taking proceedings in a foreign State if the Official Assignee is unable to recover insolvent's property in that State—Equitable Jurisdiction to act in personam*—Practice.*

On 27th November 1914, the appellant applied for insolvency in Bombay under the Presidency Towns Insolvency Act, 1909. The respondent was one of the opposing creditors, and his debt mentioned in the schedule was in respect of costs awarded to him by the High Court in a suit filed against him by the appellant. On 1st October 1918, the insolvency proceedings terminated and the appellant was granted his discharge. Thereafter, the respondent sued the appellant for the amount of his debt in the Court of Sirohi State and obtained a decree for Rs. 2,834-4-0. The appellant, thereupon, took out a rule in the Insolvency Court at Bombay calling upon the respondent to show cause why he should not be restrained from proceeding in the suit filed against the appellant in the Sirohi Court and from executing the decree in the said suit. The respondent contended that the appellant had property in the Sirohi State which the State refused to hand over to the Official Assignee in Bombay and that under section 45 of the Presidency Towns Insolvency Act the Court had no jurisdiction to restrain the respondent from taking proceedings in the Sirohi State to recover his debt from the insolvent's property. The trial Court discharged the rule on the respondent undertaking not to arrest the insolvent personally and to give notice to other creditors mentioned in the schedule of any property or money received in execution of the decree to enable them to claim rateable distribution. On appeal,

Held, confirming the order of the trial Court, (1) that though an order of discharge granted by the Insolvency Court in Bombay would be recognised by all Courts in the British Empire, still there would be no obligation on Courts outside British India to recognise the order of discharge as a complete release from debts mentioned in the order ;

(2) that if the appellant insolvent had assets in the Sirohi State which the Official Assignee was unable to get hold of, the respondent ought not to be restrained from taking proceedings in that State to recover his debt from any property of the insolvent situate in that State.

Equitable jurisdiction of the Court to restrain a party before it from proceeding in an action in a foreign Court, discussed.

PER MACLEOD C. J. :—It would be contrary to all ideas of equity that a party trading and incurring debts in Bombay, and having property in foreign territory which the Official Assignee could not get hold of, should be

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able to completely get rid of all his liabilities as regards his creditors inside British India, and then proceed to enjoy his property outside British India, free from all those liabilities:

Venechand v. *Lakhmichand Manekchand*(1) and *Carron Iron Company* v. *Maclaren* (2), referred to.

INSOLVENCY PROCEEDINGS.

APPEAL, from the order of Kajiji J. discharging *rule nisi* obtained by an insolvent against an opposing creditor to show cause why he should not be restrained from proceeding with a suit filed by him in a foreign Court against the insolvent and from executing the decree in the said suit.

The appellant, an insolvent, had filed his petition in Bombay under the Presidency Towns Insolvency Act on 27th November 1914.

The respondent was one of the opposing creditors and his debt was in respect of costs awarded to him by the High Court in Suit No. 585 of 1911, filed by the appellant against him. This debt was mentioned by the appellant in the schedule to his petition.

After some interlocutory proceedings, the appellant was granted his discharge on 1st October 1918.

Subsequently, on 26th March 1919, the respondent filed a suit against the appellant in the Court of Sirohi State to recover Rs. 2,834-4-0 being the amount of costs awarded to him by the High Court in Suit No. 585 of 1911. The Sirohi Court decreed the claim on 8th July 1919, observing in the course of its judgment:—

"It is clear from the proceedings perused that the parties are residents of Hathal in the Sirohi State. Only their business is in Bombay. No evidence has been produced on behalf of the defendant against the decree obtained by the plaintiff from the Bombay High Court; that being so, this Court also confirms the decree.

The defendant pleads that he has been adjudged insolvent by the Bombay High Court and that (the claim under) the decree should therefore be dismissed. Of course, the defendant is right in pleading this excuse, but this

(1) (1919) 44 Bom. 272. (2) (1855) 5 H. L. C. 416.

insolvency can be taken into consideration only as far as Bombay is concerned because it (i. e., the certificate) makes no mention that there is no property belonging to the defendant in this State, and the same can have no effect on dealings connected with this State, because the defendant has got goods, property, land, &c., here. Well, then, how can the Court consider him an insolvent in the Sirohi State? Besides, no good reason or evidence against this has been shown or produced on behalf of the defendant to enable the Court to believe his story to be correct. The insolvency cannot therefore affect the defendant here, and we think the plaintiff is entitled to recover the amount of his decree."

Thereafter, the appellant obtained a *rule nisi* calling upon the respondent to show cause why he should not be restrained by an order and injunction from proceeding with the suit filed by him in the Sirohi Court and from proceeding with the execution of the decree passed in the said suit. The main ground upon which the appellant relied in support of the rule was that the discharge granted by the Insolvency Court at Bombay operated as a complete release of all debts mentioned in the schedule and that the Sirohi Court (though a foreign Court) had no jurisdiction even to entertain the suit filed against him by the respondent who was one of the opposing creditors.

The respondent contended that, in the events that had happened, the Insolvency Court had no jurisdiction to restrain him from continuing the proceedings in the Sirohi Court against the appellant. Paras. 6 and 7 of the respondent's affidavit set forth the reasons in support of his contention and were as follows :—

6. In April 1918, the Official Assignee wrote to the Sirohi State asking the State to take possession on his behalf of the insolvent's houses, cattle and outstandings at Hathal. The Musahib Ala of the State wrote back to the Official Assignee on the 24th June 1918, that as the Sirohi State had not till then entered into any arrangement of reciprocity to accept the proceedings of British Courts under the Insolvency Act he was unable to comply with their request. Thereupon the Official Assignee sold off by public auction in Bombay the insolvent's right, title and interest in the said property at Hathal and the same was purchased by the opposing creditor. Before the

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sale took place Messrs. Surajmal & Co. wrote several letters to the Official Assignee at first on behalf of the insolvent as the guardian of his son and subsequently on behalf of Bhaga Sada who was put forward as the son's guardian. After the sale took place the Official Assignee several times called upon the insolvent to sign the conveyance of his right, title and interest in the Hathal property in favour of the purchasers but he declined to do so. The matter was mentioned to the then Commissioner in Insolvency who ordered that a rule should be taken out by the Official Assignee against the insolvent for contempt of Court. The said rule was however discharged on 1st October 1918, and the insolvent was also granted his discharge on that day.

7. As the Sirohi State could not recognise any conveyance of the property at Hathal made by the Official Assignee alone without the signature of the insolvent, the sale fell through.

The rule came on for hearing before Kajiji J. His Lordship discharged the rule on the respondent undertaking not to arrest the insolvent personally and to give notice to the other creditors mentioned in the schedule of any property and money received in execution of the decree in order to enable them to claim rateable distribution.

The appellant appealed.

Bhandarkar, for the appellant.

B. J. Wadia, for the respondent.

MACLEOD, C. J.—The appellant in this appeal is an insolvent who has filed his petition under the Presidency Towns Insolvency Act, in Bombay on the 27th November 1914. As far as this Court is concerned, the insolvency proceedings came to an end on the 1st of October 1918, when the insolvent got his discharge. One of the opposing creditors mentioned in the schedule, the respondent in this case, has obtained a decree for Rs. 2,834-4-0 in the Court of Sirohi State, in respect of the debt for costs in Bombay High Court Suit No. 581 of 1911. In the insolvency proceedings it had been alleged that the insolvent had succeeded as the heir of his brother to certain property in the Sirohi State, but

he was able to prove that he was separate from his brother and that his brother's widow had adopted the insolvent's son. It would appear that the respondent still hopes to be able to attach that property. The appellant then took out a rule in this Court calling upon the respondent to show cause why he should not be restrained from proceeding in the suit filed by him against the insolvent in Sirohi State and from executing the decree passed in the said suit.

The rule was discharged on the 7th of October 1919 by Mr. Justice Kajiji. The learned Judge in the course of his judgment said :—

"It is contended on behalf of the insolvent that under section 45 of the Presidency Towns Insolvency Act the discharge amounted to a release and therefore there was no debt and no cause of action for the suit in Sirohi State. In my opinion section 45 of the Act only applies when a creditor seeks to recover property of the insolvent which is in British Territory or in foreign Country or State if such foreign Country or State will recognise the Official Assignee of Bombay and hand over the property belonging to the insolvent in order that it may be applied for the benefit of all the creditors and he may not be allowed to keep it. But in this case the Sirohi State has refused to recognise the Official Assignee and has refused to hand over the property as appears from paragraph 6 of the opposing creditor's affidavit of 23rd September 1919. I therefore hold that there is nothing in the Insolvency Act under these circumstances to prevent a decree-holder from filing a suit in a foreign Court and recovering his money from the property of the insolvent."

The opposing creditor undertook not to arrest the insolvent personally and to give notice to the other creditors mentioned in the schedule of any property and money received in execution of the decree in order to enable them to claim rateable distribution. No doubt the point for argument before the learned Judge was whether the order of discharge is a complete release or not from the debts mentioned in the schedule. Such an order no doubt would be recognised by all Courts in the British Empire, but certainly there would be no obligation on Courts outside British

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India to recognise the order of discharge as a complete release from debts mentioned in the order. The real question is whether this Court has got jurisdiction to restrain a party from proceeding in an action in a foreign country and if it has, on what principle it will act in considering the question. This matter is discussed in *Venechand* v. *Lakhmichand Manekchand*[1] by Mr. Justice Pratt:—

"There is no doubt as to the jurisdiction of this Court to restrain a party within its jurisdiction from prosecuting a suit in a foreign Court. The principle on which this jurisdiction is exercised is set forth in the judgment of Lord Cranworth in the case of *Carron Iron Company* v. *Maclaren*[2]. It is that 'the Court acts *in personam*, and will not suffer any one within its reach to do what is contrary to its notions of equity, merely because the act to be done may be, in point of locality, beyond its jurisdiction'."

Therefore if we think that the action of the opposing creditor in filing the suit in the Sirohi State on the judgment of the Bombay High Court is contrary to our notions of equity, we should certainly restrain him from proceeding with that action. Of course that will not prevent him from continuing the action in the Sirohi State; but if he came within the jurisdiction of this Court, proceedings might be taken against him for contempt. Now on the particular facts of this case, there is nothing as far as I can see which offends our notions of equity in the opposing creditor continuing his proceedings in the Sirohi State against the insolvent, who had filed his petition to get rid of the obligation to pay the costs decreed against him in the suit I have referred to. He had no assets to hand over to the Official Assignee and as far as his obligations in British India were concerned, the order of discharge freed him from the liability to pay those costs. But if he has assets in the Sirohi State, there is no reason why the opposing creditor should not be at liberty to

(1) (1919) 44 Bom. 272 at p. 274.

(2) (1855) 5 H. L. C. 416 at pp. 436-437.)

take proceedings in that State in order that he may recover his debt from any property he may discover situate in that State. Generally speaking, it would certainly be contrary to all ideas of equity that a party trading and incurring debts in Bombay, and having property in foreign territory, which the Official Assignee could not get hold of, should be able to completely get rid of all his liabilities as regards his creditors inside British India and then proceed to enjoy his property outside British India, free from all those liabilities. This case, in my opinion, does not come within any of the three classes of cases which were referred to in *Carron Iron Company* v. *Maclaren*[1] in which it would be considered that a party within the jurisdiction should be restrained from taking proceedings outside the jurisdiction of the Court.

I, therefore, think the appeal fails and it will be dismissed with costs.

Solicitors for appellant: Messrs. *Kharas & Co.*

Solicitors for respondent: Messrs. *Jamsetji, Rustomji & Devidas.*

Appeal dismissed.

G. G. N.

[1] (1855) 5 H. L. C. 416.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

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July 13.

DUNDAPPA BASAPPA YEDAL AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS *v.* BHIMAWA KOM BASWANTIAPPA PATIL (ORIGINAL PLAINTIFF), RESPONDENT*.

Hindu Law—Shudras—Illegitimate daughter—Succession to her mother.

Under Hindu law, the illegitimate daughter of a Shudra succeeds to her mother in absence of any nearer heir.

* Second Appeal No. 6 of 1920 from Order.